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STAFF REPORT

DATE: November 16, 2015

TO: Deschutes County Board of Commissioners

FROM: Peter Gutowsky, Planning Manager

RE: Eagle Crest Text Amendment / 247-15-000444-TA / Work Session

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The Deschutes County Board of Commissioners (Board) will hold a work session on November 23 to prepare for a public hearing on November 30 to consider text amendments proposed by Oregon Resorts Acquisition Partners, LP, owners of Eagle Crest Resort, to amend Deschutes County Code (DCC) 18.113.060, Standards for Destination Resorts (Attachment A). The text amendment modifies the current process and requirements for Eagle Crest to provide the County with annual accountings related to the inventory of overnight lodging units.

Recognizing that the Board may limit the applicant's opening comments during the November 30 public hearing due to a full meeting agenda, enclosed is their Planning Commission public hearing PowerPoint as a handout (Attachment B). It summarizes their burden of proof. In light of Thanksgiving week, staff will provide the Board's hearing packet at the work session.

I. Planning Commission Recommendation

The Planning Commission recommended approval on October 22.

II. Text Amendment

Account for all units presently rented, but not meeting current overnight unit requirements

The applicant's text amendment creates an updated reporting methodology for Eagle Crest Resort to more accurately report the availability of overnight lodging units made available through the Resort's central reservation system, and third party property management services annually. Eagle Crest is required to annually account for one overnight lodging unit for every 2.5 residential units.[1] In order to meet the ratio, Eagle Crest needs a total of 661 overnight housing units that are available at least 38 weeks out of the year.[2] Eagle Crest has 1,911 residential units (as platted residential lots) and 400 overnight units (as hotel, timeshare, and fractional ownership units) that meet county code, for a ratio of 4.78 residential units per overnight unit.

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[1] Overnight Lodging Units at destination resorts are subject to a number of statutory requirements, including minimum 38 week availability per year.

[2] (1,911-261 individually-owned residential units) / (400 existing overnight lodging units+261 new overnight lodging units) = 2.5 to 1.

Under the proposed text amendment, overnight lodging units would be documented through a monthly review of the Eagle Crest central reservation system as well as 3rd party websites (VRBO, Flipkey, Homeaway, etc.) that advertise individually-owned owned units available for overnight stays. Eagle Crest would be required to document the weeks that the units are advertised as being available and count as overnight units all units that meet or exceed the 38 week minimum.

A survey of owners conducted by Eagle Crest in 2015 suggests that 260 individually-owned homes were used for transient rentals 38 weeks or more the previous year. In addition, there were another 40 individually-owned homes that participated in the Resort's Rental Management Program in 2014, for a total of 300 additional units functioning as overnight lodging. This survey information suggests that, under the proposed accounting methodology, 300 units could be deducted from the residential total and added to the overnight total. This would allow Eagle Crest to reduce, for accounting purposes, its 1,911 platted home sites by 300 (260 transient rentals + 40 homes participating in Resort's rental program), leaving it with 1,611 platted home sites. With 700 units in the Resort's 2015 Overnight Lodging Report (400 Overnight Lodging Units in Phases 1 and 2 + 300 transient rentals), its ratio would be lowered to 2.3:1. This would put it in compliance with the 2.5:1 ratio required under state statute.

Provide a penalty for any remaining shortfall in overnight units

The text amendment also includes a compliance fee that provides the County with a remedy to recoup Transient Lodging Tax ("TLT") each year in the event the reporting mechanism revealed a shortfall in meeting the overnight lodging ratio (e.g. one overnight lodging unit for each 2.5 platted lots). After documenting Eagle Crest's central reservation system and 3rd party websites, if the Resort is deficient of the required units, based on the 2.5 to 1 ratio of individually owned residential units to overnight lodging units, the Resort will be assessed a compliance fee equivalent to the lost transient lodging tax that the County would have collected from those units.[3]

The compliance fee is consistent with state law, as ORS 197.435-197.467 does not identify or require any specific penalty for a failure to meet the required ratio. The Oregon statutes are geared toward establishing annual reporting mechanisms at the time of master planning and plat approvals and not with prescribing penalties for failure to meet the 2.5:1 ratio when a resort provides annual reports. If the Resort were to apply to create more residential lots, the Resort may not apply the compliance fee to meet the 2.5:1 ratio of individually-owned residential units to overnight lodging units per DCC 18.113.060(D)(2) and will have to demonstrate compliance per the new reporting methods or construct more overnight lodging units in order to comply with the 2.5:1 ratio.

<u>Attachments</u>:

A. Draft amendments
B. Applicant's Planning Commission Hearing PowerPoint

[3] In order to meet the 2.5:1 ratio, based on the total number of platted lots that exist today, the Resort needs 661 total overnight units. For example, assume the Resort paid $250,000 in TLT to the County for the 2015 calendar year, and the Resort's February 2016 compliance report included 561 total overnight lodging units (OLUs). The Resort would pay a compliance fee of $44,563 for the prior calendar year. (The Formula: $250,000 in 2015 annual TLT payments divided by the 561 OLUs covered in the Resort's total annual TLT payments equals $445.63 per OLU multiplied by the 100 delinquent OLUs.)

Attachment A

Chapter 18.113. DESTINATION RESORTS ZONE - DR

…

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

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.

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

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;
   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.

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.

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.

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 LCDC 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.
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.

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.

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

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.

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.

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.
   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.
   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. For resorts for which the conceptual master plan was originally approved on or after January 1, 2001, ~~T~~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. For resorts for which the conceptual master plan was originally approved before January 1, 2001, the following information on each individually owned residential unit counted as overnight lodging.

i. For those units directly managed by the resort developer or operator.

1. Who the owner or owners have been over the last year;
2. How many nights out of the year the unit was available for rent;
3. How many nights out of the year the unit was rented out as an overnight lodging facility under DCC 18.113;
4. Documentation showing that these units were available for rent as required.

ii. For all other units.

1. Address of the unit;
2. Name of the unit owner(s);
3. Schedule of rental availability for the prior year. The schedule of rental availability shall be based upon monthly printouts of the availability calendars posted on-line by the unit owner or the unit owner's agent.

f. This information shall be public record subject to ~~ORS 192.502(17)~~ the non-disclosure provisions in ORS Chapter 192.

Comment [PG1]: Friendly amendment by staff to correct statutory changes since the adoption of the County Code provisions.

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..
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).
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.
7. Compliance Fee.

a. In the event that a resort that was originally approved before January 1, 2001 fails to report compliance with the 2.5:1 ratio in a calendar year as reported in accordance with 18.113.060(L)(3)(e), the remedy shall be that such resort shall pay a compliance fee due not later than April 15 of the year following the year in which the shortfall occurred.

b. The compliance fee will be calculated as follows:

   i. First, by calculating the average per unit transient lodging tax paid by the resort the prior calendar year by dividing the total amount paid by the resort in transient lodging taxes for the prior calendar year by the sum of the number of overnight units managed by the resort for which the resort paid transient lodging taxes that same year and the number of timeshare units;

   ii. Second, by multiplying that average per unit transient lodging tax amount by the number of additional overnight lodging units that would have been necessary to comply with the 2.5:1 ratio for the applicable calendar year.

c. If the Resort were to apply to create more residential lots, the Resort may not apply the compliance fee to meet the 2.5:1 ratio of individually-owned residential units to overnight lodging units per DCC 18.113.060(D)(2) and will have to demonstrate compliance per the new reporting methods or construct more overnight lodging units in order to comply with the 2.5:1 ratio.

(Ord. 2015-0xx §x, 2015; Ord. 2013-008 §2, 2013; Ord. 2007-05 §2, 2007; Ord. 92-004 §13, 1992)

TEXT AMENDMENT APPLICATION

Deschutes County
Planning Commission Public Hearing
September 24, 2015

INTRODUCTION

- The original text we are here tonight to discuss was designed to ensure healthy resort communities in Oregon and to keep our farm lands from becoming “sage brush sub-divisions”.
- Specifically, we are here to review a proposed modification to the process and requirement of ours to provide the county with annual reports related to our inventory of overnight lodging units.
- State law was changed in 2003 to require these annual reports, and allow non-deed restricted OLUs to be counted.

INTRODUCTION

- County code was changed in 2007 to require these annual reports, yet it has not been updated to allow non-deed restricted OLUs to be counted.
- Yet over the years, since 2007, the Resort has included these non-deed restricted OLUs, based upon:
  - Annual surveys of the home owners, and
  - A firm understanding that these units were indeed OLUs per their design and the plat applications which included these OLUs.

INTRODUCTION

- In 2008 and 2009, the County's written response to the Resort's reports:
  - Stated that it appreciated the Resort's cooperation in determining the status of its individually owned, non-deed restricted units,
  - Called the surveys and reports effective, and
  - Asked that the practice continue.
- It was just after our report in 2014 that Nick and his team reached out and said that it was time for the County and Resort to memorialize the history and reporting methods.

INTRODUCTION

- Together, we have looked at all options and these text modifications are the result of a year and a half of work with our legal counsel and the County Planning Department and its legal counsel.
- Moreover, the modifications being reviewed are consistent with State law and the County Comprehensive Plan.

INTRODUCTION

- We are not asking for a free pass.
- We are asking that our very unique history be appreciated and that we be allowed to count the OLUs that are meeting the spirit of the law.
- And if we are ever unable to show that we have the requisite number of OLUs, we are proposing that we pay real fines.

INTRODUCTION

- Eagle Crest is one of the healthiest resorts in Oregon.
  - 1,900+ platted home sites, of which more than 90% are fully developed.
  - Three golf courses and a putting course.
  - Three sport centers, five pools, kids water park, and many sport courts.
  - Miles of hiking and walking trails.
  - Equestrian stables and horseback riding.
  - Adventure concierge and over thirty local adventure partners.
  - A Holiday Inn Resort.
  - 100 hotel rooms.
  - 300 timeshare units.
  - Hundreds of overnight lodging units that meet the requirements of State law.
  - Largest payer of Transient Lodging Taxes in Central Oregon outside Sunriver Resort to the tune of $275,000 per year.

INTRODUCTION

- We want to continue to:
  - Provide our guests and home owners world-class resort experiences,
  - Be a major economic contributor to the County, and
  - Keep our doors open.
- These modifications achieve these goals.
- I appreciate everyone being here tonight to consider this application.

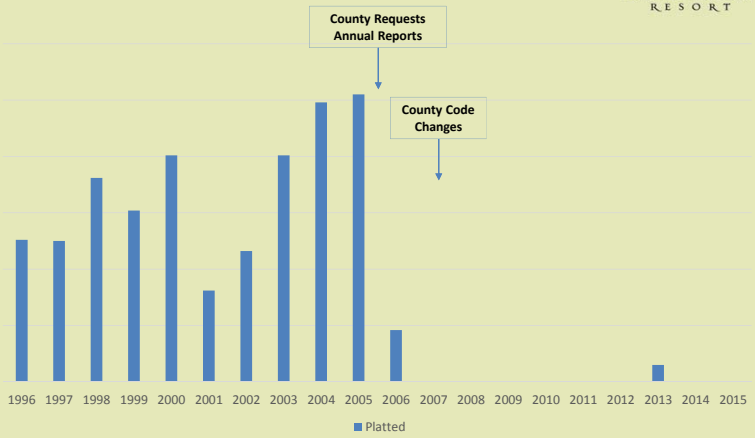
PRESENTATION

- History of Resort, Approvals and Reporting
- Current Situation and Options
- Text Amendment Application
- Burden of Proof
- Consistency with State and County Law
- Public Comment
- Questions Throughout

HISTORY

- JELD-WEN developed the Resort starting in 1985, **predating certain State and County destination resort statutes**
  - Phase II CMP 1994; FMP 1995
  - Phase III CMP 1999; FMP 2000
- In 2003, State law changed:
  - **OLUs not required to be deed restricted**
  - Resorts must report annually
- In 2006, the County requested annual reports
  - **97% of the Resort's lots were approved by this time**

PLATTED LOTS



DEED RESTRICTED UNITS

	Hotel	Timeshare	Total
Lodge at Eagle Crest	100		100
VROA		124	124
WorldMark - Lodge		44	44
WorldMark - Ridgehawk		34	34
WorldMark – Redtail		4	4
Fairway Vista		12	12
River View Vista		47	47
Eagle Creek		10	10
Eagle Springs		1	1
WorldMark – 8Plex		24	24
TOTAL	**100**	**300**	**400**

REPORTING HISTORY

- Feb 2006: County requests annual reports
- Mar 2006: Resort reports it is in compliance, including 143 non-deed restricted units as OLUs
- Apr 2006: County requests more information about the 143 non-deed restricted units (e.g. owner name, rental nights)
- Jun 2006: County records Ridge at Eagle Crest 50
- Aug 2006: County approves Ridge at Eagle Crest 58

REPORTING HISTORY

- Nov 2006: County re-requests information about the 143 non-deed-restricted units
- Oct 2007: Resort reports 590 units were approved as overnight lodging units during land use reviews but not required to be deed restricted. Additionally, the Resort will survey the owners in January 2008 and submit results to the County by March 30; such surveys will be done annually thereafter
- Dec 2007: County thanks the Resort for the letter and reiterates the need for the data

REPORTING HISTORY

- Mar 2008: Resort provides owner survey results, including non-deed restricted units as OLUs, and states the Resort is in compliance
- Dec 2008: County responds it appreciates the Resort's cooperation in determining the status of the individually-owned units; the survey was effective and should be done each year

REPORTING HISTORY

- Mar 2009: Resort provides owner survey results, including non-deed restricted units as OLUs, and states the Resort is in compliance
- Nov 2009: County responds it appreciates the Resort's cooperation in determining the status of the individually-owned units; the survey was effective and should be done each year

REPORTING HISTORY

- Mar 2010: Resort provides owner survey results, including non-deed restricted units as OLUs, and states the Resort is in compliance
- Mar 2011: Resort provides owner survey results, including non-deed restricted units as OLUs, and states the Resort is in compliance
- *There is turnover at the Resort and no reports provided in 2012 or 2013*
- Oct 2013: County records Ridge at Eagle Crest 29

REPORTING HISTORY

- May 2014: Resort provides owner survey results, including non-deed restricted units as OLUs, and states the Resort is in compliance
- Jun 2014: County and Resort begin discussions to memorialize the history
- Feb 2015: Resort provides owner survey results, including non-deed restricted units as OLUs, and states the Resort is in compliance

SURVEY EXAMPLE (2015)

- Conducted online via Survey Monkey
- Sent to 854 of 1,451 non-custom home owners w/ email
- Survey Questions
  - Home/townhome built? 89%
  - Live full time? 42%
  - Rent? 24%
  - Primary rental method? 45% on own, 30% third-party, 25% EC
  - Weeks available? 82% 38-weeks or more

OWNER SURVEY (2015)

- Response Rate = 31%
- Rental Rate = 24% (6% in Ridge to 67% in Forest Greens)
- Available 38 Weeks or More = 82%
- Extrapolated over 1,451 properties
- Additional EC Rental Program participants = 40
- **Non-deed Restricted OLUs = ~300**

LAND USE

	Total	Rentals	Net
Phase 1	202	0	202
Phase 2	903	201	702
Phase 3	806	99	707
TOTAL	**1,911**	**300**	**1,611**
Required OLUs	*765*		*645*
Deed Restricted OLUs	*400*		*400*
Additional OLUs Required	***365***		***245***

County code requires overnight lodging units be deed restricted. State code does not.

LIMITED OPTIONS

- Build Deed Restricted OLUs
  - No land available (nearly 4x the size of the Lodge)
  - Financially impossible: $45mm + infrastructure improvements or ~3x the value of the entire resort; no financing for construction or sales
- Legislative Fix
- Urban Unincorporated Community
- Incorporation
- Text Amendment
  - Joint solution that recognizes the unique history of the Resort and that State code does not require overnight lodging units to be deed restricted

AMENDMENT OVERVIEW

- Only for resorts approved before Jan 1, 2001 in order to specifically apply only to Eagle Crest Resort because:
  - It is significantly more mature than the other Destination Resorts in the County – i.e., the number of units built out and sold and the significant number of units available for rental
  - Other resorts were approved after State and County destination resort statutes were in place and therefore are in compliance

REPORTING (NO CHANGE)

- For units managed by the resort developer or operator:
  - Who the owner or owners have been over the last year
  - How many nights out of the year the unit was available for rent
  - How many nights out of the year the unit was rented out as an overnight lodging facility under DCC 18.113
  - Documentation showing that these units were available for rent as required

REPORTING (CHANGED)

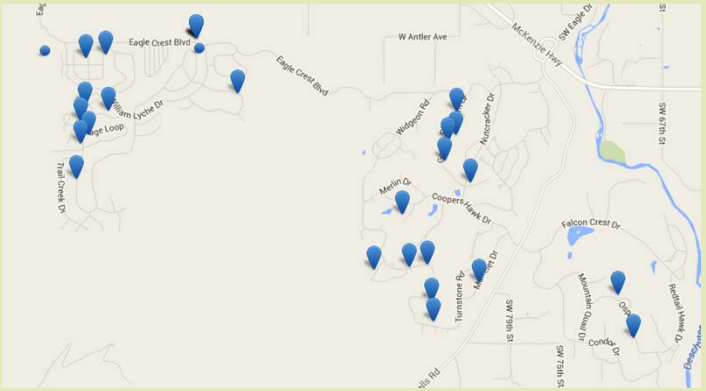
- For all other units:
  - Address of the unit
  - Name of the unit owner(s)
  - Schedule of rental availability for the prior year; the schedule of rental availability shall be based upon monthly printouts of the availability calendars posted online by the unit owner or the unit owner's agent

RENTAL AUDIT

Site/TPPM	5/1/15	9/22/15	VAR
Flip Key	39	53	14
Home Away	95	128	33
VRBO	105	137	32
Vacation Rentals	56	129	73
Dwellable	21	31	10
Vacasa	27	28	1
Rental Saver	36	72	36
Airbnb	24	15	-9
Vacation Rentals 411	7	7	0
Eagle Crest Resort	54	50	-4
Sun and Sage Properties	11	11	0
By Owner	11	11	0
Total	**486**	**672**	**186**

Five Months
38% Increase

HOME AWAY



27 TEXT AMENDMENT

HOME AWAY

28 TEXT AMENDMENT

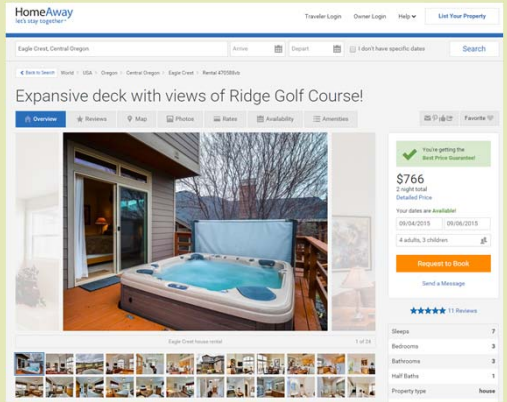
HOME AWAY

29 TEXT AMENDMENT

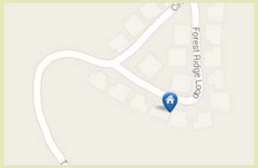
HOME AWAY

30 TEXT AMENDMENT

TRACKING



TRACKING



8524 Forest Ridge Loop

Dana and Patricia Kolik

Purchased 10/21/2003

TRACKING

- Again, each annual report will include:
  - Address of the unit;
  - Name of the unit owner(s);
  - Schedule of rental availability for the prior year. The schedule of rental availability shall be based upon monthly printouts of the availability calendars posted online by the unit owner or the unit owner's agent.
- If a unit were to change hands mid-year and not be available for rent, our tracking will show this and therefore the unit will not be counted for the year

COMPLIANCE FEE

- If applicable, due no later than April 15
- The compliance fee will be calculated as follows (**revised**):
  - First, by calculating the average per unit transient lodging tax paid by the Resort the prior calendar year by dividing the total amount paid by the resort in transient lodging taxes for the prior calendar year by the **sum of the** number of overnight units **managed by the resort** for which the resort paid transient lodging taxes that same year **and the number of resort timeshare units**;
  - Second, by multiplying that average per unit transient lodging tax amount by the number of additional overnight lodging units that would have been necessary to comply with the 2.5:1 ratio for the applicable calendar year.

COMPLIANCE FEE

- The resort may not use the fee to improve more home sites
- Example
  - $270,000 paid in 2015 covering 450 total units
    - 100 hotel rooms, 300 timeshare units, and 50 non-deed restricted individual homes participating in the Resort's rental management program
  - $270,000 / 450 units = $600 per unit
  - Assume the Resort were short 50 OLUs
  - 50 OLUs x $600 = $30,000 compliance fee for the year

BURDEN OF PROOF

- The proposed Text Amendment is:
  - Consistent with Statewide Planning Goals, State Law and County Comprehensive Plan
  - Specific to Eagle Crest Resort and its reporting requirements
- Questions?

PUBLIC COMMENT

- How do other resorts comply?
  - By building or bonding for OLUs, yet the major difference is they have always known HOW to comply
- Burdensome and expensive reporting for HOAs.
  - Agreed and no reason to pass to HOAs
- Need for rental regulations.
  - Rental regulations do not have to do with the Text; these would be County and HOA decisions, yet these rentals are happening now
- OLUs should be managed by Resort.
  - Even if they were deed restricted, it is against the law to require they be managed by the Resort or anyone else

CONSISTENT WITH STATE LAW

- "It is our opinion that the [Text Amendment] proposal is consistent with State Planning Goal 8 and the applicable statute. Considering the unique situation of Eagle Crest, as well as the ambiguity of the statute in relation to how counties implement and enforce it, this seems like a viable tracking and enforcement option."

– Department of Land Conservation and Development

CONCLUSION

- The history is very unique
- The Resort does not have the land, demand or financial ability to build hundreds more OLUs
- There are hundreds of active OLUs meeting State law today
- The audits will prove effective given the technology available
- The Compliance Fee is a real penalty
- The Text Amendment is:
  - A viable option
  - A joint solution
  - Consistent with Statewide Planning Goals, State Law and County Comprehensive Plan

THANK YOU

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code Title 18 to Modify DCC 18.113.060, Standards for Destination Resorts.	* * *	ORDINANCE NO. 2015-031

WHEREAS, Oregon Resorts Acquisition Partners, LP, owners of Eagle Crest Resort, applied for an Ordinance Text Amendment (Planning Division File No. 247-15-000444-TA) to the Deschutes County Code (DCC) Title 18, Chapter 18.113, Destination Resorts Zone, to modify the current process and requirements for Eagle Crest to provide the County with annual accountings related to the inventory of overnight lodging units under DCC 18.113.060; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on September 24, 2015 and on October 22, forwarded to the Deschutes County Board of Commissioners (Board), a recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on November 30, 2015 and concluded that the public will benefit from the proposed changes to DCC Title 18; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC Chapter 18.113 is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with language to be deleted in ~~strikethrough~~ and new language underlined.

Section 2. FINDINGS. The Board adopts as it findings in support of this Ordinance Exhibit "B," attached hereto and incorporated by reference herein.

///

Dated this _____ of _____, 2015

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

_____
ANTHONY DEBONE, CHAIR

_____
ALAN UNGER, VICE CHAIR

ATTEST:

_____
Recording Secretary

_____
TAMMY BANEY, COMMISSIONER

Date of 1st Reading: _____ day of _____, 2015.

Date of 2nd Reading: _____ day of _____, 2015.

Record of Adoption Vote

Commissioner	Yes	No	Abstained	Excused
Anthony DeBone	____	____	____	____
Alan Unger	____	____	____	____
Tammy Baney	____	____	____	____

Effective date: _____ day of _____, 2015.

ATTEST:

_____
Recording Secretary

Chapter 18.113. DESTINATION RESORTS ZONE - DR

...

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

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.

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

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:
   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.

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.

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.

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 LCDC 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.
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.

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.

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

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.

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.

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.
   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.
   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. For resorts for which the conceptual master plan was originally approved on or after January 1, 2001, ~~T~~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. For resorts for which the conceptual master plan was originally approved before January 1, 2001, the following information on each individually owned residential unit counted as overnight lodging.

i. For those units directly managed by the resort developer or operator.

1. Who the owner or owners have been over the last year;
2. How many nights out of the year the unit was available for rent;
3. How many nights out of the year the unit was rented out as an overnight lodging facility under DCC 18.113;
4. Documentation showing that these units were available for rent as required.

ii. For all other units.

1. Address of the unit;
2. Name of the unit owner(s);
3. Schedule of rental availability for the prior year. The schedule of rental availability shall be based upon monthly printouts of the availability calendars posted on-line by the unit owner or the unit owner's agent.

f. This information shall be public record subject to ~~ORS 192.502(17)~~ the non-disclosure provisions in ORS Chapter 192.

Comment [PG1]: Friendly amendment by staff to correct statutory changes since the adoption of the County Code provisions.

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..
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).
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.

7. Compliance Fee.

a. In the event that a resort that was originally approved before January 1, 2001 fails to report compliance with the 2.5:1 ratio in a calendar year as reported in accordance with 18.113.060(L)(3)(e), the remedy shall be that such resort shall pay a compliance fee due not later than April 15 of the year following the year in which the shortfall occurred.

b. The compliance fee will be calculated as follows:

   i. First, by calculating the average per unit transient lodging tax paid by the resort the prior calendar year by dividing the total amount paid by the resort in transient lodging taxes for the prior calendar year by the sum of the number of overnight units managed by the resort for which the resort paid transient lodging taxes that same year and the number of timeshare units;

   ii. Second, by multiplying that average per unit transient lodging tax amount by the number of additional overnight lodging units that would have been necessary to comply with the 2.5:1 ratio for the applicable calendar year.

c. If the Resort were to apply to create more residential lots, the Resort may not apply the compliance fee to meet the 2.5:1 ratio of individually-owned residential units to overnight lodging units per DCC 18.113.060(D)(2) and will have to demonstrate compliance per the new reporting methods or construct more overnight lodging units in order to comply with the 2.5:1 ratio.

(Ord. 2015-031 §1, 2015; Ord. 2013-008 §2, 2013; Ord. 2007-05 §2, 2007; Ord. 92-004 §13, 1992)

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/

STAFF REPORT

DATE: November 13, 2015

TO: Deschutes County Board of Commissioners

FROM: Peter Gutowsky, Planning Manager

RE: Eagle Crest Text Amendment / 247-15-000444-TA / Public Hearing

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The Deschutes County Board of Commissioners (Board) is holding a public hearing on November 30. The Board will consider text amendments proposed by Oregon Resorts Acquisition Partners, LP, owners of Eagle Crest Resort to amend Deschutes County Code (DCC) 18.113.060, Standards for Destination Resorts. The proposed text amendment modifies the current process and requirements for Eagle Crest to provide the County with annual accountings related to the inventory of overnight lodging units.

I. Text Amendment

Account for all units presently rented, but not meeting current overnight unit requirements:

The applicant's text amendment creates an updated reporting methodology for Eagle Crest Resort to more accurately report the availability of overnight lodging units made available through the Resort's central reservation system, and third party property management services annually (Ordinance No. 2015-031, Exhibit A).

Eagle Crest is required to annually account for one overnight lodging unit for every 2.5 residential units.[1] In order to meet the ratio, Eagle Crest needs a total of 661 overnight housing units that are available at least 38 weeks out of the year.[2] Eagle Crest has 1,911 residential units (as platted residential lots) and 400 overnight units (as hotel, timeshare, and fractional ownership units) that meet county code, for a ratio of 4.78 residential units per overnight unit.[3]

Under the proposed text amendment, overnight lodging units would be documented through a monthly review of the Eagle Crest central reservation system as well as 3rd party websites (VRBO, Flipkey, Homeaway, etc.) that advertise individually-owned owned units available for overnight stays. Eagle Crest would be required to document the weeks that the units are

---

[1] Overnight Lodging Units at destination resorts are subject to a number of statutory requirements, including minimum 38 week availability per year. This is described in detail below.
[2] (1,911-261 individually-owned residential units) / (400 existing overnight lodging units+261 new overnight lodging units) = 2.5 to 1.
[3] See Attachment B, Page 29 for a breakdown of the units.

Quality Services Performed with Pride

advertised as being available and count as overnight units all units that meet or exceed the 38 week minimum.

A survey of owners conducted by Eagle Crest in 2015 suggests that 260 individually-owned homes were used for transient rentals 38 weeks or more the previous year. In addition, there were another 40 individually-owned homes that participated in the Resort's Rental Management Program in 2014, for a total of 300 additional units functioning as overnight lodging. This survey information suggests that, under proposed accounting methodology, 300 units could be deducted from the residential total and added to the overnight total. This would allow Eagle Crest to reduce, for accounting purposes, its 1,911 platted home sites by 300 (260 transient rentals + 40 homes participating in Resort's rental program), leaving it with 1,611 platted home sites. With 700 units in the Resort's 2015 Overnight Lodging Report (400 Overnight Lodging Units in Phases 1 and 2 + 300 transient rentals), its ratio would be lowered to 2.3:1. This would put it in compliance with the 2.5:1 ratio required under state statute.

Provide a penalty for any remaining shortfall in overnight units:

The proposed text amendment also includes a compliance fee that provides the County with a remedy to recoup Transient Lodging Tax ("TLT") each year in the event the reporting mechanism revealed a shortfall in meeting the overnight lodging ratio (e.g. one overnight lodging unit for each 2.5 platted lots). After documenting Eagle Crest's central reservation system and 3rd party websites, if the Resort is deficient of the required units, based on the 2.5 to 1 ratio of individually owned residential units to overnight lodging units, the Resort will be assessed a compliance fee equivalent to the lost transient lodging tax that the county would have collected from those units.[4]

The compliance fee is consistent with state law, as ORS 197.435-197.467 does not identify or require any specific penalty for a failure to meet the required ratio. The Oregon statutes are geared toward establishing annual reporting mechanisms at the time of master planning and plat approvals and not with prescribing penalties for failure to meet the 2.5:1 ratio when a resort provides annual reports.

If the Resort were to apply to create more residential lots, the Resort may not apply the compliance fee to meet the 2.5:1 ratio of individually-owned residential units to overnight lodging units per DCC 18.113.060(D)(2) and will have to demonstrate compliance per the new reporting methods or construct more overnight lodging units in order to comply with the 2.5:1 ratio.

II. Background

Eagle Crest Resort has received a number of land use approvals beginning in 1982.

- Phase 1, consisting of 508 acres and located on the east side of Cline Falls Highway, preceded Statewide Planning Goal 8, destination resort requirements. It was approved in 1981.

[4] In order to meet the 2.5:1 ratio, based on the total number of platted lots that exist today, the Resort needs 661 total overnight units. For example, assume the Resort paid $250,000 in TLT to the County for the 2015 calendar year, and the Resort's February 2016 compliance report included 561 total overnight lodging units (OLUs). The Resort would pay a compliance fee of $44,563 for the prior calendar year. (The Formula: $250,000 in 2015 annual TLT payments divided by the 561 OLUs covered in the Resort's total annual TLT payments equals $445.63 per OLU multiplied by the 100 delinquent OLUs.)

- In 1993, after Deschutes County mapped areas for destination resorts and provided a zoning overlay district, consistent with State statute, Eagle Crest expanded into Phase 2. Located on the west side of Cline Falls Highway on the east slope of Cline Buttes, it contained 746 acres. Eagle Crest received approval for 497 single family homesites, plus 162 multi-family units, 120 timeshare townhouses and 226 hotel room facilities for a total of 891 new units and a total of 1,410 total units in both phases.

- In 2001, Phase 3 was proposed on 480 acres on the south and southeast area of Cline Buttes to expand the existing resort by developing 480 non-contiguous acres with up to 900 dwellings (including overnight) units as well as commercial uses and recreational amenities.

- None of the individually-owned residential properties are deed restricted.

In 2003, Senate Bill 911 (SB 911) amended the destination resort statute. Most of the changes in SB 911 provided a separate set of resort approval criteria for eastern Oregon. The amendments:

- Raised the ratio of individually owned residential units to overnight lodging from 2:1 to 2.5:1.

- Reduced the number of weeks a individually owned dwelling counted as overnight lodging must be in place in a rental pool from 45 to 38.

- Clarified that homeowners may rent overnight lodging units through either the resort's central service or an outside property management company.

- Altered phasing of the minimum required 150 units of overnight lodging to reduce resort's first phase overnight lodging from 75 units to 50 units and enabled the resort to phase in the remaining 100 units over a 10 year time period.

- Allowed counties to amend destination resort overlay mapping outside of periodic review.

- Added a requirement for an annual accounting of the overnight lodging at the resort including the status of the required 150 units of overnight lodging, the ratio between individually owned units and overnight units and information on individually owned units counted as required overnight units.

As a result of SB 911, Deschutes County Code amended its code and began requiring annual reporting, DCC 18.113.060(L) in 2006. Staff sent out a letter to Eagle Crest requesting the required annual report on individually owned units counting towards their overnight ratio.[5] The letter was sent only to Eagle Crest, because at the time, they were the only destination resort meeting the criteria. A timely response was received listing the total number of housing units of each type, but without the required information for the individually owned units acting as overnight units. Consequently, staff sent another letter. Beginning in 2008, Eagle Crest relied on a property owner questionnaire, surveying:

- Whether or not they rent their property as an overnight lodging unit;
- How many weeks it was available for rent;

[5] Board of County Commissioner memorandum, Terri Payne, August 23, 2006.

- How many nights it was rented;
- If they used a property manager or Eagle Crest;
- Is the property their primary residence or vacation home; and,
- If they are renting it, do they plan on renting it in the future?

While coordinating with Eagle Crest to verify their overnight requirements, staff was also reviewing and approving subdivision plats, assuming that the reporting requirements demonstrated that the requisite number of overnight units were available for 38 weeks a year. As the first Goal 8 destination resort, both Eagle Crest and Deschutes County were learning how to monitor overnight lodging unit requirements.

Deschutes County and Oregon Resorts Acquisition Partners, LP, have been meeting for several months to develop an acceptable strategy to address this issue and bring the resort into compliance. Prior to the application submittal, Deschutes County and Eagle Crest coordinated with the Oregon Department of Land Conservation and Development (DLCD). Scott Edelman, Central Oregon Regional Representative provided an email and a letter stating his agency has no objections to the proposal (Attachment A)

III. Burden of Proof

The Resort's findings, included in Attachment B, justify the amendments by stating, in part:

> *Because the County Code requires individually-owned units to be deed restricted in order to be counted as overnight lodging units but state law does not, the County Code is more restrictive than State Law. Having only the 400 units results in a shortfall of 300 deed restricted units that likely act as overnight lodging units but are not in strict compliance with County Code. This amendment will modernize County Code to reflect current overnight lodging trends and practices while providing an avenue for the Resort to comply with the 2.5:1 ratio.*
>
> *The Resort desires to update the County reporting requirements associated with overnight lodging units in order to be responsive to the technological changes in the industry. The Resort desires to use the same technologies to track the true number of overnight lodging units that are available with the Resort. The increased accuracy of reporting is aimed to ensure the long-term compliance and viability of the Resort.*
>
> *Specifically, the Resort is proposing to amend the text of Section 18.113.060 in a narrowly tailored fashion so as to only affect and apply to the Resort and not impact the operations or requirements applicable to any of the other County destination resorts.*
>
> *The amendment would result in, (1) imposition of practical reporting requirements that reflect the reality of modern vacation rental trends and allow for increased accuracy in the Resort's identification and reporting of vacation rental availability and usage, and (2) a mechanism by which the County can collect an amount approximately equivalent to the TLT for those unaccounted for units, annually, if the Resort's annual reports do not indicate compliance with the overnight lodging ratios.*

IV. Review Criteria

Deschutes County lacks specific criteria in DCC Titles 18, 22, or 23 for reviewing a legislative zoning text amendment. Oregon Resorts Acquisition Partners, LP, as the applicant bears the burden for justifying that the text amendment is consistent with State statutes, Statewide Planning Goals and the County Comprehensive Plan.

1. Oregon Statewide Planning Goals

Goal 8:Recreational Needs [OAR 660-015-0000(8)]

To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

RECREATION PLANNING
The requirements for meeting such needs, now and in the future, shall be planned for by governmental agencies having responsibility for recreation areas, facilities and opportunities: (1) in coordination with private enterprise; (2) in appropriate proportions; and (3) in such quantities, quality and locations as is consistent with the availability of the resources to meet such requirements. State and federal agency recreation plans shall be coordinated with local and regional recreational needs and plans.

Applicants Response: The proposed text amendment and change to the County reporting methodology is an example of the planning anticipated by this provision. The text amendment furthers the ability of the County and the Resort to more accurately track the amount of the overnight lodgings on destination resort land, and is thereby consistent with the stated purpose of collaborative public and private planning for appropriate quantities and placements of recreation facilities.

DESTINATION RESORT PLANNING
Comprehensive plans may provide for the siting of destination resorts on rural lands subject to the provisions of state law, including ORS 197.435 to 197.467, this and other Statewide Planning Goals, and without an exception to Goals 3, 4, 11, or 14.

Eligible Areas

(1) Destination resorts allowed under the provisions of this goal must be sited on lands mapped as eligible by the affected county. A map adopted by a county may not allow destination resorts approved under the provisions of this goal to be sited in any of the following areas:

(a) Within 24 air miles of an urban growth boundary with an existing population of 100,000 or more unless residential uses are limited to those necessary for the staff and management of the resort;

(b) On a site with 50 or more contiguous acres of unique or prime farm land identified and mapped by the United States Natural Resources Conservation Service or its predecessor agency; or within three miles of a High Value Crop Area except that

"small destination resorts" may not be closer to a high value crop area than one-half mile for each 25 units of overnight lodging or fraction thereof;

(c) On predominantly Cubic Foot Sites Class 1 or 2 forestlands, as determined by the State Forestry Department, that are not subject to an approved goal exception;

(d) In the Columbia River Gorge National Scenic Area as defined by the Columbia River Gorge National Scenic Act, P.L. 99-663;

(e) In an especially sensitive big game habitat as generally mapped by the Oregon Department of Fish and Wildlife in July 1984 and as further refined through development of comprehensive plans implementing this requirement.

(2) "Small destination resorts" may be allowed consistent with the siting requirements of section (1) above, in the following areas:

(a) On land that is not defined as agricultural or forest land under Goal 3 or 4; or

(b) On land where there has been an exception to Statewide Planning Goals 3, 4, 11, or 14.

Applicants Response: The proposed text amendment does not impact the list of ineligible lands for siting of destination facilities. Thus, this provision is not applicable.

Siting Standards

(1) Counties shall ensure that destination resorts are compatible with the site and adjacent land uses through the following measures:

(a) Important natural features, including habitat of threatened or endangered species, streams, rivers, and significant wetlands shall be maintained. Riparian vegetation within 100 feet of streams, rivers and significant wetlands shall be maintained. Alterations to important natural features, including placement of structures that maintain the overall values of the feature, may be allowed.

(b) Sites designated for protection in an acknowledged comprehensive plan designated pursuant to Goal 5 that are located on the tract used for the destination resort shall be preserved through conservation easements as set forth in ORS 271.715 to 271.795. Conservation easements adopted to implement this requirement shall be sufficient to protect the resource values of the site and shall be recorded with the property records of the tract on which the destination resort is sited.

(c) Improvements and activities shall be located and designed to avoid or minimize adverse effects of the resort on uses on surrounding lands, particularly effects on intensive farming operations in the area. At a minimum, measures to accomplish this shall include:

(i) Establishment and maintenance of buffers between the resort and adjacent land uses, including natural vegetation and where appropriate, fences, berms, landscaped areas, and other similar types of buffers.

(ii) Setbacks of structures and other improvements from adjacent land uses.

(iii) Measures that prohibit the use or operation in conjunction with the resort of a portion of a tract that is excluded from the site of a destination resort pursuant to

ORS 197.435(7). Subject to this limitation, the use of the excluded property shall be governed by otherwise applicable law.

Applicant's Response: The proposed text amendment does not impact standards for siting destination resorts, or the actual siting of the Resort. Thus, this provision is not applicable.

Implementing Measures

(1) Comprehensive plans allowing for destination resorts shall include implementing measures that:

(a) Adopt a map consisting of eligible lands for large destination resorts within the county. The map shall be based on reasonably available information, and shall not be subject to revision or refinement after adoption except in conformance with ORS 197.455, and 197.610 to 197.625, but not more frequently than once every 30 months. The county shall develop a process for collecting and processing concurrently all map amendments made within a 30 month planning period. A map adopted pursuant to this section shall be the sole basis for determining whether tracts of land are eligible for siting of large destination resorts under the provisions of this goal and ORS 197.435 to 197.467.

(b) Limit uses and activities to those permitted by this goal.

(c) Assure developed recreational facilities and key facilities intended to serve the entire development and visitor oriented accommodations are physically provided or are guaranteed through surety bonding or substantially equivalent financial assurances prior to closure of sale of individual lots or units. In phased developments, developed recreational facilities and other key facilities intended to serve a particular phase shall be constructed prior to sales in that phase or guaranteed through surety bonding.

Applicant's Response: The proposed text amendment does not amend the County Comprehensive Plan and is consistent with the Destination Resort policies at Section 3.9 of the Comprehensive Plan, which are addressed below. Thus, this provision is not applicable.

DEFINITIONS

Destination Resort -- A self-contained development providing visitor-oriented accommodations and developed recreational facilities in a setting with high natural amenities, and that qualifies under the definition of either a "large destination resort" or a "small destination resort" in this goal. Spending required under these definitions is stated in 1993 dollars. The spending required shall be adjusted to the year in which calculations are made in accordance with the United States Consumer Price Index.

Applicant's Response: The proposed text amendment does not impact the definition of "Destination Resort." Thus, this provision is not applicable.

Large Destination Resort -- To qualify as a "large destination resort" under this Goal, a proposed development must meet the following standards:

(1) The resort must be located on a site of 160 acres or more except within two miles of the ocean shoreline where the site shall be 40 acres or more.

(2) At least 50 percent of the site must be dedicated as permanent open space excluding yards, streets and parking areas.

(3) At least $7 million must be spent on improvements for onsite developed recreational facilities and visitor-oriented accommodations exclusive of costs for land, sewer, and water facilities and roads. Not less than one-third of this amount shall be spent on developed recreational facilities.

(4) Commercial uses allowed are limited to types and levels necessary to meet the needs of visitors to the development. Industrial uses of any kind are not permitted.

(5) Visitor-oriented accommodations including meeting rooms, restaurants with seating for 100 persons, and 150 separate rentable units for overnight lodging must be provided. Accommodations available for residential use shall not exceed two such units for each unit of overnight lodging, or two and one-half such units on land that is in Eastern Oregon as defined by ORS 321.805. However, the rentable overnight lodging units may be phased in as follows:

(a) On land that is not in Eastern Oregon, as defined in ORS 321.805:

(A) A total of 150 units of overnight lodging must be provided.

(B) At least 75 units of overnight lodging, not including any individually owned homes, lots or units must be constructed or guaranteed through surety, bonding or equivalent financial assurance prior to the closure of sale of individual lots or units.

(C) The remaining overnight lodging units must be provided as individually owned lots or units subject to deed restrictions that limit their use to overnight lodging units. The deed restrictions may be rescinded when the resort has constructed 150 units of permanent overnight lodging as required by this section.

(D) The number of units approved for residential sale may not be more than two units for each unit of permanent overnight lodging provided under this section.

(E) The development approval shall provide for the construction of other required overnight lodging units within five years of the initial lot sales.

(b) On lands in Eastern Oregon, as defined in ORS 321.805:

(A) A total of 150 units of overnight lodging must be provided.

(B) At least 50 units of overnight lodging must be constructed prior to the closure of sale of individual lots or units.

(C) At least 50 of the remaining 100 required overnight lodging units must be constructed or guaranteed through surety bonding or equivalent financial assurance within five years of the initial lot sales.

(D) The remaining required overnight lodging units must be constructed or guaranteed through surety bonding or equivalent financial assurances within 10 years of the initial lot sales.

(E) The number of units approved for residential sale may not be more than 2-1/2 units for each unit of permanent overnight lodging provided under this section.

(F) If the developer of a resort guarantees the overnight lodging units required under paragraphs (C) and (D) of this subsection through surety bonding or other equivalent financial assurance, the overnight lodging units must be constructed

within four years of the date of execution of the surety bond or other equivalent financial assurance.

(6) When making a land use decision authorizing construction of a "large destination resort" in Eastern Oregon, as defined in ORS 321.805, the governing body of the county or its designee shall require the resort developer to provide an annual accounting to document compliance with the overnight lodging standards of this definition. The annual accounting requirement commences one year after the initial lot or unit sales. The annual accounting must contain:

(a) Documentation showing that the resort contains a minimum of 150 permanent units of overnight lodging or, during the phase-in period, documentation showing the resort is not yet required to have constructed 150 units of overnight lodging.

(b) Documentation showing that the resort meets the lodging ratio described in section (5)(b) of this definition.

(c) For a resort counting individually owned units as qualified overnight lodging units, the number of weeks that each overnight lodging unit is available for rental to the general public as described in section (2) of the definition for "overnight lodgings" in this goal.

Applicant's Response: The proposed text amendment is consistent with this definition of Large Destination Resort. The text amendment does not impact the qualifying factors for a large destination resort, such as location, open space, investment in recreational facilities, allowed commercial uses, visitor-oriented accommodations, or the ratio of overnight lodging units to units for residential sale. The proposed text amendment is consistent with and implements the provisions requiring an annual accounting from destination resorts. The amendment retains the requirement for the accounting to include documentation of compliance with the minimum amount of overnight lodging units and overnight lodging unit ratio. Thus, the proposed text amendment is consistent with this definition of large destination resort.

Small Destination Resort -- To qualify as a "small destination resort" under Goal 8, a proposed development must meet standards (2) and (4) under the definition of "large destination resort" and the following standards:

(1) The resort must be located on a site of 20 acres or more.

(2) At least $2 million must be spent on improvements for onsite developed recreational facilities and visitor-oriented accommodations exclusive of costs for land, sewer, and water facilities and roads. Not less than one-third of this amount must be spent on developed recreation facilities.

(3) At least 25 but not more than 75 units of overnight lodging shall be provided.

(4) Restaurant and meeting rooms with at least one seat for each unit of overnight lodging must be provided.

(5) Residential uses must be limited to those necessary for the staff and management of the resort.

(6) The county governing body or its designee must review the proposed resort and determine that the primary purpose of the resort is to provide lodging and other services oriented to a recreational resource that can only reasonably be enjoyed in

a rural area. Such recreational resources include, but are not limited to, a hot spring, a ski slope or a fishing stream.

(7) The resort shall be constructed and located so that it is not designed to attract highway traffic. Resorts shall not use any manner of outdoor advertising signing except:

(a) Tourist oriented directional signs as provided in ORS 377.715 to 377.830; and

(b) Onsite identification and directional signs.

Applicant's Response: The Resort is a large destination resort, and the applicability of proposed text amendment is limited to the Resort. Thus, the definition of small destination resort is not applicable.

Developed Recreation Facilities -- are improvements constructed for the purpose of recreation and may include but are not limited to golf courses, tennis courts, swimming pools, marinas, ski runs and bicycle paths.

High-Value Crop Area -- an area in which there is a concentration of commercial farms capable of producing crops or products with a minimum gross value of $1,000 per acre per year. These crops and products include field crops, small fruits, berries, tree fruits, nuts, or vegetables, dairying, livestock feedlots, or Christmas trees as these terms are used in the 1983 County and State Agricultural Estimates prepared by the Oregon State University Extension Service. The High-Value Crop Area Designation is used for the purpose of minimizing conflicting uses in resort siting and is not meant to revise the requirements of Goal 3 or administrative rules interpreting the goal.

Map of Eligible Lands -- a map of the county adopted pursuant to ORS 197.455.

Open Space -- means any land that is retained in a substantially natural condition or is improved for recreational uses such as golf courses, hiking or nature trails or equestrian or bicycle paths or is specifically required to be protected by a conservation easement. Open spaces may include ponds, lands protected as important natural features, land preserved for farm or forest use and lands used as buffers. Open space does not include residential lots or yards, streets or parking areas.

Overnight Lodgings -- are permanent, separately rentable accommodations that are not available for residential use. Overnight lodgings include hotel or motel rooms, cabins, and time-share units. Tent sites, recreational vehicle parks, manufactured dwellings, dormitory rooms, and similar accommodations do not qualify as overnight lodgings for the purpose of this definition. Individually owned units may be considered overnight lodgings if:

(1) With respect to lands not in Eastern Oregon, as defined in ORS 321.805, they are available for overnight rental use by the general public for at least 45 weeks per calendar year through a central reservation and check-in service, or

(2) With respect to lands in Eastern Oregon, as defined in ORS 321.805, they are available for overnight rental use by the general public for at least 38 weeks per calendar year through a central reservation system operated by the destination resort or by a real estate property manager, as defined in ORS 696.010.

Recreation Areas, Facilities and Opportunities -- provide for human development and enrichment, and include but are not limited to: open space and scenic landscapes; recreational lands; history, archaeology and natural science resources; scenic roads and travelers; sports and cultural events; camping, picnicking and recreational lodging; tourist facilities and accommodations; trails; waterway use facilities; hunting; angling; winter sports; mineral resources; active and passive games and activities.

Recreation Needs -- refers to existing and future demand by citizens and visitors for recreations areas, facilities and opportunities.

Self-contained Development -- means a development for which community sewer and water facilities are provided onsite and are limited to meet the needs of the development or are provided by existing public sewer or water service as long as all costs related to service extension and any capacity increases are borne by the development. A "self-contained development" must have developed recreational facilities provided on-site.

Tract -- means a lot or parcel or more than one contiguous lot or parcel in a single ownership. A tract may include property that is not included in the proposed site for a destination resort if the property to be excluded is on the boundary of the tract and constitutes less than 30 percent of the total tract.

Visitor-Oriented Accommodations -- are overnight lodging, restaurants, meeting facilities which are designed to and provide for the needs of visitors rather than year-round residents.

Applicants Response: The proposed text amendment does not impact the definition of developed recreation facilities, high-value crop area, recreational needs, self-contained development, tract, or visitor-oriented accommodations. Thus, these definitions are not applicable.

GUIDELINES FOR GOAL 8

A. PLANNING

1. An inventory of recreation needs in the planning area should be made based upon adequate research and analysis of public wants and desires.

2. An inventory of recreation opportunities should be made based upon adequate research and analysis of the resources in the planning area that are available to meet recreation needs.

3. Recreation land use to meet recreational needs and development standards, roles and responsibilities should be developed by all agencies in coordination

with each other and with the private interests. Long range plans and action programs to meet recreational needs should be developed by each agency responsible for developing comprehensive plans.

4. The planning for lands and resources capable of accommodating multiple uses should include provision for appropriate recreation opportunities.

5. The State Comprehensive Outdoor Recreation Plan could be used as a guide when planning, acquiring and developing recreation resources, areas and facilities.

6. When developing recreation plans, energy consequences should be considered, and to the greatest extent possible non-motorized types of recreational activities should be preferred over motorized activities.

7. Planning and provision for recreation facilities and opportunities should give priority to areas, facilities and uses that

(a) Meet recreational needs requirements for high density population centers,

(b) Meet recreational needs of persons of limited mobility and finances,

(c) Meet recreational needs requirements while providing the maximum conservation of energy both in the transportation of persons to the facility or area and in the recreational use itself,

(d) Minimize environmental deterioration,

(e) Are available to the public at nominal cost, and

(f) Meet needs of visitors to the state.

8. Unique areas or resources capable of meeting one or more specific recreational needs requirements should be inventoried and protected or acquired.

9. All state and federal agencies developing recreation plans should allow for review of recreation plans by affected local agencies.

10. Comprehensive plans should be designed to give a high priority to enhancing recreation opportunities on the public waters and shorelands of the state especially on existing and potential state and federal wild and scenic waterways, and Oregon Recreation Trails.

11. Plans that provide for satisfying the recreation needs of persons in the planning area should consider as a major determinant, the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

Applicants Response: The proposed text amendment does not amend the County Comprehensive Plan or require additional planning relating to recreational lands. Thus, these Guidelines are not applicable.

B. IMPLEMENTATION

Plans should take into account various techniques in addition to fee acquisition such as easements, cluster developments, preferential assessments, development rights acquisition, subdivision park land dedication that benefits the subdivision, and similar techniques to meet recreation requirements through tax policies, land leases, and similar programs.

Applicants Response: The proposed text amendment does not amend the County Comprehensive Plan or require additional planning relating to recreational lands. Thus, this provision is not applicable.

C. RESORT SITING

Measures should be adopted to minimize the adverse environmental effects of resort development on the site, particularly in areas subject to natural hazards. Plans and ordinances should prohibit or discourage alterations and structures in the 100 year floodplain and on slopes exceeding 25 percent. Uses and alterations that are appropriate for these areas include:

1. Minor drainage improvements that do not significantly impact important natural features of the site;

2. Roads, bridges and utilities where there are no feasible alternative locations on the site; and

3. Outdoor recreation facilities including golf courses, bike paths, trails, boardwalks, picnic tables, temporary open sided shelters, boating facilities, ski lifts and runs. Alterations and structures permitted in these areas should be adequately protected from geologic hazards or of minimal value and designed to minimize adverse environmental effects.

Applicants Response: The proposed text amendment does not impact siting of destination resorts. Thus, this provision is not applicable.

2. Oregon Revised Statutes

ORS 197.435 - 467 Siting of Destination Resorts

197.435 Definitions for ORS 197.435 to 197.467. As used in ORS 197.435 to 197.467:

(1) "Developed recreational facilities" means improvements constructed for the purpose of recreation and may include but are not limited to golf courses, tennis courts, swimming pools, marinas, ski runs and bicycle paths.

(2) "High value crop area" means an area in which there is a concentration of commercial farms capable of producing crops or products with a minimum gross value of $1,000 per acre per year. These crops and products include field crops, small fruits, berries, tree fruits, nuts or vegetables, dairying, livestock feedlots or Christmas trees as these terms are used in the 1983 County and State Agricultural Estimates prepared by the Oregon State University Extension Service. The "high value crop area" designation is used for the purpose of minimizing conflicting uses in resort siting and does not revise the requirements of an agricultural land goal or administrative rules interpreting the goal.

(3) "Map of eligible lands" means a map of the county adopted pursuant to ORS 197.455.

(4) "Open space" means any land that is retained in a substantially natural condition or is improved for recreational uses such as golf courses, hiking or nature trails or equestrian or bicycle paths or is specifically required to be protected by a conservation easement. Open spaces may include ponds, lands protected as important

natural features, lands preserved for farm or forest use and lands used as buffers. Open space does not include residential lots or yards, streets or parking areas.

(5) "Overnight lodgings" means:

(a) With respect to lands not identified in paragraph (b) of this subsection, permanent, separately rentable accommodations that are not available for residential use, including hotel or motel rooms, cabins and time-share units. Individually owned units may be considered overnight lodgings if they are available for overnight rental use by the general public for at least 45 weeks per calendar year through a central reservation and check-in service. Tent sites, recreational vehicle parks, manufactured dwellings, dormitory rooms and similar accommodations do not qualify as overnight lodgings for the purpose of this definition.

(b) With respect to lands in eastern Oregon, as defined in ORS 321.805, permanent, separately rentable accommodations that are not available for residential use, including hotel or motel rooms, cabins and time-share units. Individually owned units may be considered overnight lodgings if they are available for overnight rental use by the general public for at least 38 weeks per calendar year through a central reservation system operated by the destination resort or by a real estate property manager, as defined in ORS 696.010. Tent sites, recreational vehicle parks, manufactured dwellings, dormitory rooms and similar accommodations do not qualify as overnight lodgings for the purpose of this definition.

(6) "Self-contained development" means a development for which community sewer and water facilities are provided on-site and are limited to meet the needs of the development or are provided by existing public sewer or water service as long as all costs related to service extension and any capacity increases are borne by the development. A "self-contained development" must have developed recreational facilities provided on-site.

(7) "Tract" means a lot or parcel or more than one contiguous lot or parcel in a single ownership. A tract may include property that is not included in the proposed site for a destination resort if the property to be excluded is on the boundary of the tract and constitutes less than 30 percent of the total tract.

(8) "Visitor-oriented accommodations" means overnight lodging, restaurants and meeting facilities that are designed to and provide for the needs of visitors rather than year-round residents. [1987 c.886 §3; 1989 c.648 §52; 1993 c.590 §1; 2003 c.812 §1; 2005 c.22 §140]

Applicants Response: The proposed text amendment does not impact the definition of developed recreation facilities, high-value crop area, map of eligible lands, open space, overnight lodging, self-contained development, tract, or visitor-oriented accommodations. Thus, the proposed text amendment is consistent with the statutory definitions at ORS 197.435.

197.440 Legislative findings. The Legislative Assembly finds that:

(1) It is the policy of this state to promote Oregon as a vacation destination and to encourage tourism as a valuable segment of our state's economy;

(2) There is a growing need to provide year-round destination resort accommodations to attract visitors and encourage them to stay longer. The

establishment of destination resorts will provide jobs for Oregonians and contribute to the state's economic development;

(3) It is a difficult and costly process to site and establish destination resorts in rural areas of this state; and

(4) The siting of destination resort facilities is an issue of statewide concern. [1987 c.886 §2]

Applicants Response: The proposed text amendment does not impact the policies in this section regarding siting of destination resorts and promotion of Oregon as a vacation destination. Thus, these provisions are not applicable.

197.445 Destination resort criteria; phase-in requirements; annual accounting. A destination resort is a self-contained development that provides for visitor-oriented accommodations and developed recreational facilities in a setting with high natural amenities. To qualify as a destination resort under ORS 30.947, 197.435 to 197.467, 215.213, 215.283 and 215.284, a proposed development must meet the following standards:

(1) The resort must be located on a site of 160 acres or more except within two miles of the ocean shoreline where the site shall be 40 acres or more.

(2) At least 50 percent of the site must be dedicated to permanent open space, excluding streets and parking areas.

(3) At least $7 million must be spent on improvements for on-site developed recreational facilities and visitor-oriented accommodations exclusive of costs for land, sewer and water facilities and roads. Not less than one-third of this amount must be spent on developed recreational facilities.

Applicants Response: The proposed text amendment does not impact the standards for destination resort location, open space, or investment in recreational facilities. Thus, these provisions are not applicable.

(4) Visitor-oriented accommodations including meeting rooms, restaurants with seating for 100 persons and 150 separate rentable units for overnight lodging shall be provided. However, the rentable overnight lodging units may be phased in as follows:

(a) On lands not described in paragraph (b) of this subsection:

(A) A total of 150 units of overnight lodging must be provided.

(B) At least 75 units of overnight lodging, not including any individually owned homes, lots or units, must be constructed or guaranteed through surety bonding or equivalent financial assurance prior to the closure of sale of individual lots or units.

(C) The remaining overnight lodging units must be provided as individually owned lots or units subject to deed restrictions that limit their use to use as overnight lodging units. The deed restrictions may be rescinded when the resort has constructed 150 units of permanent overnight lodging as required by this subsection.

(D) The number of units approved for residential sale may not be more than two units for each unit of permanent overnight lodging provided under this paragraph.

(E) The development approval must provide for the construction of other required overnight lodging units within five years of the initial lot sales.

Applicants Response: The standards at ORS 197.445(4)(a) are applicable to lands that are not in eastern Oregon, as defined in ORS 321.805. The Resort is located in Eastern Oregon, and the applicability of the proposed text amendment is limited to the Resort. Thus, these provisions are not applicable.

(b) On lands in eastern Oregon, as defined in ORS 321.805:

(A) A total of 150 overnight lodging must be provided.

(B) At least 50 units of overnight lodging must be constructed prior to the closure of sale of individual lot sales.

(C) Ate least 50 of the remaining 100 required overnight lodging units must be constructed or guaranteed through surety bonding or equivalent financial assurance within five years of the initial lot sales.

(D) The remaining required overnight lodging units must be constructed or guaranteed through surety bonding or equivalent financial assurances within 10 years of the initial lot sales.

(E) The number of units approved for residential sale may not be more than 2-1/2 units for each unit of permanent overnight lodging provided under this paragraph.

(F) If the developer of a resort guarantees the overnight lodging units required under subparagraphs (C) and (D) of this paragraph through surety bonding or other equivalent financial assurance, the overnight lodging units must be constructed within four years of the date of execution of the surety bond or other equivalent financial assurance.

Applicants Response: The proposed text amendment is limited to a broadened reporting methodology and establishing a remedy for not reaching the required ratio which is also a mechanism for the County to recoup otherwise unavailable TLT. No change is proposed to the required amount of overnight lodging, the timing of construction of such units, the security requirements associated with construction of such units, or the relative number of such units to units for residential sale. Thus, the proposed text amendment complies with these criteria.

(5) Commercial uses allowed are limited to types and levels of use necessary to meet the needs of visitors to the development. Industrial uses of any kind are not permitted.

Applicants Response: The proposed text amendment does not impact the commercial uses allowed on destination resorts. Thus, these provisions are not applicable.

(6) In lieu of the standards in subsections (1), (3) and (4) of this section, the standards set forth in subsection (7) of this section apply to a destination resort:

(a) On land that is not defined as agricultural or forest land under any statewide planning goal;

(b) On land where there has been an exception to any statewide planning goal on agricultural lands, forestlands, public facilities and services and urbanization; or

(c) On such secondary lands as the Land Conservation and Development Commission deems appropriate.

(7) The following standards apply to the provisions of subsection (6) of this section:

(a) The resort must be located on a site of 20 acres or more.

(b) At least $2 million must be spent on improvements for on-site developed recreational facilities and visitor-oriented accommodations exclusive of costs for land, sewer and water facilities and roads. Not less than one-third of this amount must be spent on developed recreational facilities.

(c) At least 25 units, but not more than 75 units, of overnight lodging must be provided.

(d) Restaurant and meeting room with at least one seat for each unit of overnight lodging must be provided.

(e) Residential uses must be limited to those necessary for the staff and management of the resort.

(f) The governing body of the county or its designee has reviewed the resort proposed under this subsection and has determined that the primary purpose of the resort is to provide lodging and other services oriented to a recreational resource which can only reasonably be enjoyed in a rural area. Such recreational resources include, but are not limited to, a hot spring, a ski slope or a fishing stream.

(g) The resort must be constructed and located so that it is not designed to attract highway traffic. Resorts may not use any manner of outdoor advertising signing except:

(A) Tourist oriented directional signs as provided in ORS 377.715 to 377.830; and

(B) On-site identification and directional signs.

Applicants Response: These provisions are applicable to small destination resorts, as the term is defined under Statewide Planning Goal 8. The Resort is a large destination resort. Thus, these provisions are not applicable.

(8) Spending required under subsections (3) and (7) of this section is stated in 1993 dollars. The spending required shall be adjusted to the year in which calculations are made in accordance with the United States Consumer Price Index.

Applicants Response: The proposed text amendment does not impact the spending and investment requirements for newly approved destination resorts. Thus, the proposed text amendment complies with these criteria.

(9) When making a land use decision authorizing construction of a destination resort in eastern Oregon, as defined in ORS 321.805, the governing body of the county or its designee shall require the resort developer to provide an annual accounting to document compliance with the overnight lodging standards of this section.

The annual accounting requirement commences one year after the initial lot or unit sales. The annual accounting must contain:

(a) Documentation showing that the resort contains a minimum of 150 permanent units of overnight lodging or, during the phase-in period, documentation showing the resort is not yet required to have constructed 150 units of overnight lodging.

(b) Documentation showing that the resort meets the lodging ratio described in subsection (4) of this section.

(c) For a resort counting individually owned units as qualified overnight lodging units, the number of weeks that each overnight lodging unit is available for rental to the general public as described in ORS 197.435.

Applicants Response: These criteria do not address the ability of the County to recoup otherwise unavailable TLT revenue. The proposed change to the County reporting methodology would not change the requirement to report annually, or to document compliance with the overall required number of overnight units and the relative number of such units to units for residential sale. Expanding the allowed format of reporting to include "monthly printouts of the availability calendars posted on-line by the unit owner or the unit owner's agent" is consistent with the requirement to report the number of weeks that each overnight lodging unit is available for rental" pursuant to subsection (c). Thus, the proposed text amendment complies with these criteria.

197.450 Siting without taking goal exception. In accordance with the provisions of ORS 30.947, 197.435 to 197.467, 215.213, 215.283 and 215.284, a comprehensive plan may provide for the siting of a destination resort on rural lands without taking an exception to statewide planning goals relating to agricultural lands, forestlands, public facilities and services or urbanization. [1987 c.886 §5]

Applicants Response: The proposed text amendment does not impact the standards for siting a destination resort without taking a goal exception. Thus, this provision is not applicable.

197.455 Siting of destination resorts; sites from which destination resort excluded. (1) A destination resort may be sited only on lands mapped as eligible for destination resort siting by the affected county. The county may not allow destination resorts approved pursuant to ORS 197.435 to 197.467 to be sited in any of the following areas:

(a) Within 24 air miles of an urban growth boundary with an existing population of 100,000 or more unless residential uses are limited to those necessary for the staff and management of the resort.

(b)(A) On a site with 50 or more contiguous acres of unique or prime farmland identified and mapped by the United States Natural Resources Conservation Service, or its predecessor agency.

(B) On a site within three miles of a high value crop area unless the resort complies with the requirements of ORS 197.445 (6) in which case the resort may not be closer to a high value crop area than one-half mile for each 25 units of overnight lodging or fraction thereof.

(c) On predominantly Cubic Foot Site Class 1 or 2 forestlands as determined by the State Forestry Department, which are not subject to an approved goal exception.

(d) In the Columbia River Gorge National Scenic Area as defined by the Columbia River Gorge National Scenic Act, P.L. 99-663.

(e) In an especially sensitive big game habitat area:

(A) As determined by the State Department of Fish and Wildlife in July 1984, and in additional especially sensitive big game habitat areas designated by a county in an acknowledged comprehensive plan; or

(B) If the State Fish and Wildlife Commission amends the 1984 determination with respect to an entire county and the county amends its comprehensive plan to reflect the commission's subsequent determination, as designated in the acknowledged comprehensive plan.

(f) On a site in which the lands are predominantly classified as being in Fire Regime Condition Class 3, unless the county approves a wildfire protection plan that demonstrates the site can be developed without being at a high overall risk of fire.

(2) In carrying out subsection (1) of this section, a county shall adopt, as part of its comprehensive plan, a map consisting of eligible lands within the county. The map must be based on reasonably available information and may be amended pursuant to ORS 197.610 to 197.625, but not more frequently than once every 30 months. The county shall develop a process for collecting and processing concurrently all map amendments made within a 30-month planning period. A map adopted pursuant to this section shall be the sole basis for determining whether tracts of land are eligible for destination resort siting pursuant to ORS 197.435 to 197.467. [1987 c.886 §6; 1993 c.590 §3; 1997 c.249 §57; 2003 c.812 §3; 2005 c.22 §142; 2005 c.205 §1; 2010 c.32 §1]

Applicants Response: The proposed text amendment does not impact the standards for siting a destination resort. Thus, these provisions are not applicable.

197.460 Compatibility with adjacent land uses; county measures; economic impact analysis; traffic impact analysis. A county shall ensure that a destination resort is compatible with the site and adjacent land uses through the following measures:

(1) Important natural features, including habitat of threatened or endangered species, streams, rivers and significant wetlands shall be retained. Riparian vegetation within 100 feet of streams, rivers and significant wetlands shall be retained. Alteration of important natural features, including placement of structures that maintain the overall values of the feature may be allowed.

(2) Improvements and activities shall be located and designed to avoid or minimize adverse effects of the resort on uses on surrounding lands, particularly effects on intensive farming operations in the area. At a minimum, measures to accomplish this shall include:

(a) Establishment and maintenance of buffers between the resort and adjacent land uses, including natural vegetation and where appropriate, fences, berms, landscaped areas and other similar types of buffers.

(b) Setbacks of structures and other improvements from adjacent land uses.

(3) If the site is west of the summit of the Coast Range and within 10 miles of an urban growth boundary, or if the site is east of the summit of the Coast Range and within 25 miles of an urban growth boundary, the county shall require the applicant to submit an economic impact analysis of the proposed development that includes analysis of the projected impacts within the county and within cities whose urban growth boundaries are within the distance specified in this subsection.

(4) If the site is west of the summit of the Coast Range and within 10 miles of an urban growth boundary, or if the site is east of the summit of the Coast Range and within 25 miles of an urban growth boundary, the county shall require the applicant to submit a traffic impact analysis of the proposed development that includes measures to avoid or mitigate a proportionate share of adverse effects of transportation on state highways and other transportation facilities affected by the proposed development, including transportation facilities in the county and in cities whose urban growth boundaries are within the distance specified in this subsection. [1987 c.886 §7; 2010 c.32 §2]

Applicants Response: The proposed text amendment does not impact the standards for a County to approve a new destination resort. Thus, these provisions are not applicable.

197.462 Use of land excluded from destination resort. A portion of a tract that is excluded from the site of a destination resort pursuant to ORS 197.435 (7) shall not be used or operated in conjunction with the resort. Subject to this limitation, the use of the excluded property shall be governed by otherwise applicable law. [1993 c.590 §7]

Applicants Response: The proposed text amendment does not impact the use of land excluded from destination resorts. Thus, this provision is not applicable.

197.465 Comprehensive plan implementing measures. An acknowledged comprehensive plan that allows for siting of a destination resort shall include implementing measures which:

(1) Map areas where a destination resort described in ORS 197.445 (1) to (5) is permitted pursuant to ORS 197.455;

(2) Limit uses and activities to those defined by ORS 197.435 and allowed by ORS 197.445; and

(3) Assure that developed recreational facilities and key facilities intended to serve the entire development and visitor-oriented accommodations are physically provided or are guaranteed through surety bonding or substantially equivalent financial assurances prior to closure of sale of individual lots or units. In phased developments, developed recreational facilities and other key facilities intended to serve a particular phase shall be constructed prior to sales in that phase or guaranteed through surety bonding. [1987 c.886 §8]

Applicants Response: The proposed text amendment does not amend the County Comprehensive Plan, including the goals and policies that implement ORS 197.465. Thus, these provisions are not applicable.

197.467 Conservation easement to protect resource site. (1) If a tract to be used as a destination resort contains a resource site designated for protection in an acknowledged comprehensive plan pursuant to open spaces, scenic and historic areas and natural resource goals in an acknowledged comprehensive plan, that tract of land shall preserve that site by conservation easement sufficient to protect the resource values of the resource site as set forth in ORS 271.715 to 271.795.

(2) A conservation easement under this section shall be recorded with the property records of the tract on which the destination resort is sited. [1993 c.590 §5]

Applicants Response: The proposed text amendment does not impact the standards for application of conservation easements. Thus, this provision is not applicable.

III. Deschutes County Comprehensive Plan

Section 3.9 Destination Resort Policies

Goals and Policies

Goal 1 To provide for development of destination resorts in the County consistent with Statewide Planning Goal 8 in a manner that will be compatible with farm and forest uses, existing rural development, and in a manner that will maintain important natural features, such as habitat of threatened or endangered species, streams, rivers and significant wetlands.

Applicants Response: The proposed text amendment does not impact the development of new destination resorts. Thus, the proposed text amendment is consistent with this goal.

Goal 2 To provide a process for the siting of destination resorts on rural lands that have been mapped by Deschutes County as eligible for this purpose.

Applicants Response: The proposed text amendment does not impact the process for siting destination resorts or the mapping of destination resort eligible lands. Thus, this goal is not applicable.

Goal 3 To provide for the siting of destination resort facilities that enhances and diversifies the recreational opportunities and economy of Deschutes County.

Applicants Response: The proposed text amendment does not impact the siting of new destination resorts. Thus, this goal is not applicable. However, the broadened reporting, additional TLT collections, and long term viability of the Resort, associated with the proposed text amendment all improve the recreational opportunities and economy of Deschutes County.

Goal 4 To provide for development of destination resorts consistent with Statewide Planning Goal 12 in a manner that will ensure the resorts are supported by adequate transportation facilities.

Applicants Response: The proposed text amendment does not impact the transportation facilities or demands associated with the Resort. Thus, this provision is not applicable.

Policy 3.9.1 Destination resorts shall only be allowed within areas shown on the "Deschutes County Destination Resort Map" and when the resort complies with the requirements of Goal 8, ORS 197.435 to 197.467, and Deschutes County Code 18.113.

Policy 3.9.2 Applications to amend the map will be collected and will be processed concurrently no sooner than 30 months from the date the map was previously adopted or amended.

Applicants Response: The proposed text amendment does not impact or amend the County Destination Resorts Map. Thus, the proposed text amendment is consistent with these policies.

Policy 3.9.3 Mapping for destination resort siting.

a. To assure that resort development does not conflict with the objectives of other Statewide Planning Goals, destination resorts shall pursuant to Goal 8 not be sited in Deschutes County in the following areas:

1. Within 24 air miles of an urban growth boundary with an existing population of 100,000 or more unless residential uses are limited to those necessary for the staff and management of the resort;

2. On a site with 50 or more contiguous acres of unique or prime farm land identified and mapped by the Soil Conservation Service or within three miles of farm land within a High-Value Crop Area;

3. On predominantly Cubic Foot Site Class 1 or 2 forest lands which are not subject to an approved Goal exception;

4. On areas protected as Goal 5 resources in an acknowledged comprehensive plan where all conflicting uses have been prohibited to protect the Goal 5 resource;

5. Especially sensitive big game habitat, and as listed below, as generally mapped by the Oregon Department of Fish and Wildlife in July 1984 and as further refined through development of comprehensive plan provisions implementing this requirement.

i. Tumalo deer winter range;

ii. Portion of the Metolius deer winter range;

iii. Antelope winter range east of Bend near Horse Ridge and Millican;

6. Sites less than 160 acres.

b. To assure that resort development does not conflict with Oregon Revised Statute, destination resorts shall not be sited in Deschutes County in Areas of Critical State Concern.

c. To assure that resort development does not conflict with the objectives of Deschutes County, destination resorts shall also not be located in the following areas:

1. *Sites listed below that are inventoried Goal 5 resources, shown on the Wildlife Combining Zone, that the County has chosen to protect:*
   i. *Antelope Range near Horse Ridge and Millican;*
   ii. *Elk Habitat Area; and*
   iii. *Deer Winter Range;*
2. *Wildlife Priority Area, identified on the 1999 ODFW map submitted to the South County Regional Problem Solving Group;*
3. *Lands zoned Open Space and Conservation (OS&C);*
4. *Lands zoned Forest Use 1 (F-1);*
5. *Irrigated lands zoned Exclusive Farm Use (EFU) having 40 or greater contiguous acres in irrigation;*
6. *Non-contiguous EFU acres in the same ownership having 60 or greater irrigated acres;*
7. *Farm or forest land within one mile outside of urban growth boundaries;*
8. *Lands designated Urban Reserve Area under ORS 195.145;*
9. *Platted subdivisions;*

d. *For those lands not located in any of the areas designated in Policy 3.9.3(a) though (c), destination resorts may, pursuant to Goal 8, Oregon Revised Statute and Deschutes County zoning code, be sited in the following areas:*
   1. *Forest Use 2 (F-2), Multiple Use Agriculture (MUA-10), and Rural Residential (RR-10) zones;*
   2. *Unirrigated Exclusive Farm Use (EFU) land;*
   3. *Irrigated lands zoned EFU having less than 40 contiguous acres in irrigation;*
   4. *Non-contiguous irrigated EFU acres in the same ownership having less than 60 irrigated acres;*
   5. *All property within a subdivision for which cluster development approval was obtained prior to 1990, for which the original cluster development approval designated at least 50 percent of the development as open space and which was within the destination resort zone prior to the effective date of Ordinance 2010-024 shall remain on the eligibility map;*
   6. *Minimum site of 160 contiguous acres or greater under one or multiple ownerships;*

e. *The County shall adopt a map showing where destination resorts can be located in the County. Such map shall become part of the Comprehensive Plan and Zoning Ordinance and shall be an overlay zone designated Destination Resort (DR).*

Applicants Response: The proposed text amendment is limited to a broadened reporting requirement and establishing a mechanism for the County to recoup otherwise unavailable TLT. No change is proposed to destination resort siting standards, the list of lands ineligible of

destination resorts, or the County Destination Resort Map. Thus, the proposed text amendment is consistent with these policies.

Policy 3.9.4 Ordinance provisions.

a. The County shall ensure that destination resorts are compatible with the site and adjacent land uses through enactment of land use regulations that, at a minimum, provide for the following:

1. Maintenance of important natural features ...

2. Location and design of improvements and activities ...

3. Such regulations may allow for alterations to important natural features...

b. Minimum measures to assure that design and placement of improvements and activities will avoid or minimize the adverse effects noted in Policy 3.9.4(a)

c. The County may adopt additional land use restrictions to ensure that proposed destination resorts are compatible with the environmental capabilities of the site and surrounding land uses.

d. Uses in destination resorts shall be limited to visitor- oriented accommodations, overnight lodgings, developed recreational facilities, commercial uses limited to types and levels necessary to meet the needs of visitors to the resort, and uses consistent with preservation and maintenance of open space.

e. The zoning ordinance shall include measures that assure that developed recreational facilities, visitor-oriented accommodations and key facilities intended to serve the entire development are physically provided or are guaranteed through surety bonding or substantially equivalent financial assurances prior to closure of sale of individual lots or units. In phased developments, developed recreational facilities and other key facilitated intended to serve a particular phase shall be constructed prior to sales in that phase or guaranteed through surety bonding.

Applicants Response: The proposed text amendment is limited to a broadened reporting requirement and establishing a mechanism for the County to recoup otherwise unavailable TLT. No change is proposed to destination resort site compatibility standards, facilities design and placement, environmental compatibility standards, allowed uses on destination resorts, or bonding and security requirements. Thus, the proposed text amendment is consistent with these policies.

V. STAFF PROPOSED CHANGES TO PROPOSED TEXT AMENDMENT.

When reviewing the proposed text amendment, Legal noticed the statutory reference in DCC 18.113.060(L)(3)(e), (f) in the proposed text amendment (Page 7 of the Burden of Proof), is incorrect due to statutory changes since the adoption of the County Code provisions. Thus, Staff proposes a friendly amendment to that provision such that it would read:

(f). This information shall be public record subject to the non-disclosure provisions in ORS Chapter 192.

Attachments:

A. DLCD Correspondence
B. Applicant's Burden of Proof

Peter Gutowsky

From: Edelman, Scott <scott.edelman@state.or.us>
Sent: Tuesday, November 10, 2015 10:04 AM
To: Peter Gutowsky
Subject: DLCD Letter Regarding Eagle Crest Text Amendment
Attachments: DeschutesC0_006-15_comments_11-X-15 JJ.pdf

Peter,

Please accept the attached letter as the department's official comments on this matter. This letter replaces the emails I previously sent. It has come to our attention that the Planning Commission may be reconsidering their original recommendation based on the last email I sent. As this letter states, we do not oppose the proposed text amendment and, therefore, do not recommend that the planning commission reconsider its original recommendation based on our previous input. Please forward this to your Planning Commission and Board of Commissioners.

Thanks for your patience and assistance.

Scott

Scott Edelman | Central Oregon Regional Representative
Community Services Division
Oregon Dept. of Land Conservation and Development
Central Regional Solution Center
1011 SW Emkay Drive, Suite 108 | Bend, OR 97702
Cell: (541) 306-8530 | Main: (541) 318-7921
scott.edelman@state.or.us | www.oregon.gov/LCD

Oregon
Kate Brown, Governor

Department of Land Conservation and Development
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Community Service Specialist (541) 318-7920
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November 10, 2015

Peter Gutowsky, Planning Manager
Deschutes County Community Development Department
117 NW Lafayette Avenue
Bend, Oregon 97708

SENT VIA E-MAIL

RE: Text Amendment to DCC 18.113.060, Standards for Destination Resorts.
(Local file no. 247-15-000444-TA; DLCD file no. 006-15)

Mr. Gutowsky:

Deschutes County has notified the Department of Land Conservation and Development (the department) that is considering a code text amendment to clarify overnight lodging accounting requirements for destination resorts with a conceptual master plan approved prior to January 1, 2001. It is our understanding that this proposal intentionally targets individually owned residential units. The department does not oppose the current proposal. Please consider this letter as our official comments on this matter, replacing any previous e-mail correspondence.

The department has been inclined to view this proposal as largely a matter of refining local compliance procedure. If approved, the proposed text amendment will specify how a destination resort subject to the applicable provisions is to demonstrate compliance with the county code. It will also prescribe penalties for noncompliance.

The county code is necessarily based on state law. Please see ORS 197.453 *et seq*. We believe there are areas of these statutes that are clear and objective and do not require interpretation. Others are inexact and call for the county to use judgement and exercise discretion. Much of ORS 197.435(5)(b)[1] is clear and objective. However, we are not aware of a standard definition of the term "central reservation system." In the absence of a definition, we believe the county has

[1] ORS 197.435 (5)(b): "With respect to lands in eastern Oregon, as defined in ORS 321.805, permanent, separately rentable accommodations that are not available for residential use, including hotel or motel rooms, cabins and time-share units. Individually owned units may be considered overnight lodgings if they are available for overnight rental use by the general public for at least 38 weeks per calendar year through a central reservation system operated by the destination resort or by a real estate property manager, as defined in ORS 696.010. Tent sites, recreational vehicle parks, manufactured dwellings, dormitory rooms and similar accommodations do not qualify as overnight lodgings for the purpose of this definition."

the authority to reasonably determine whether a particular resort's practices satisfy the statutory requirement.

Thank you for this opportunity to comment. Please feel free to contact me if you have any questions or concerns.

Respectfully,

D. Scott Edelman

Scott Edelman
Central Oregon Regional Representative

cc via e-mail:

Laura Craska Cooper, Brix Law
Hon. Paul Lipscombe

EAGLE CREST
RESORT

PROPOSED TEXT AMENDMENT
TO DESTINATION RESORT STANDARDS
(DCC 18.113.060)

Submitted to Deschutes County on August 12, 2015

Applicant: Oregon Resorts LLC

Applicant's Representative: Ball Janik LLP
Stephen T. Janik
Damien R. Hall
101 SW Main Street
Suite 1100
Portland, OR 97204
(503) 228-2525

LAND USE REVIEW REQUESTED

Applicant is requesting a text amendment to DCC 18.113.060 Standards for Destination Resorts. The proposed text amendment would modify the current process and requirements for Eagle Crest Resort (the "Resort") to provide the County with annual reports related to the inventory of overnight lodging units. The proposed modifications are consistent with state law and the County Comprehensive Plan.

The text of the amendment and a narrative demonstrating compliance with all applicable state and local land use regulations are attached as Exhibit 1 and Exhibit 2, respectively.

PROPOSAL OVERVIEW

The proposed text amendment creates an updated reporting methodology for the Resort to more accurately report the availability of overnight lodging units made available through the Resort's central reservation system, and third party property management services annually. Each year, in the event the reporting mechanism revealed a shortfall in meeting the overnight lodging ratio (e.g. one overnight lodging unit for each 2.5 platted lots), the proposed text amendment also includes a compliance fee that provides the County with a remedy to recoup an amount roughly equivalent to what the County would have received by way of Transient Lodging Taxes ("TLT"). The compliance fee is consistent with state law as ORS 197.435-197.467 does not identify or require any specific penalty for a failure to meet the required ratio. The Oregon statutes are geared toward establishing annual reporting mechanisms at the time of master planning and plat approvals and not with prescribing penalties for failure to meet the 2.5:1 ratio when a resort provides annual reports. If the Resort were to apply to create more residential lots, the Resort may not apply the compliance fee to meet the 2.5:1 ratio of individually-owned residential units to overnight lodging units per DCC 18.113.060(D)(2) and will have to demonstrate compliance per the new reporting methods or construct more overnight lodging units in order to comply with the 2.5:1 ratio.

BACKGROUND

The initial development of the Resort predates state and County adoption of destination resort regulations. When the County adopted destination resort standards, the Resort was the first in the County to obtain approval of a destination resort Conditional Master Plan. When the County adopted its current annual overnight lodging reporting requirements in 2007, the Resort had already been in operation for 17 years. The Resort is the most mature destination resort in the County, with approximately 700 overnight units and 90% of its approximately 1,611 platted lots being fully developed.

The Resort's 700 overnight units, per its 2015 annual report, are made up of 400 overnight units (hotel rooms, timeshares and fractional ownerships) that comply with County Code, and 300 individually owned, non-deed restricted overnight units. Because the County Code requires individually-owned units to be deed restricted in order to be counted as overnight lodging units but state law does not, the County Code is more restrictive than State Law.

Having only the 400 units results in a shortfall of 300 deed restricted units that likely act as overnight lodging units but are not in strict compliance with County Code. This amendment will modernize County Code to reflect current overnight lodging trends and practices while providing an avenue for the Resort to comply with the 2.5:1 ratio.

ECONOMIC DEVELOPMENT

The Rural Growth Chapter of the Deschutes County Comprehensive Plan ("Comprehensive Plan") recognizes the importance of destination resorts as means to diversify the County's housing stock, and to promote local tourism and therefore provide a beneficial impact to the County economy. Section 3.8 of the Comprehensive Plan includes the following:

> "The Central Oregon Visitor Association reporting that approximately 60% of the 2.5 million trips to Central Oregon in 2006 were associated with destination resort travel. The 2007 destination resort travel impacts for the County totaled over $470 million and supported over 4,500 local jobs."

The Resort is a significant part of the economic success of destination resorts in the County. The Resort is the highest payer of TLT in the County outside of Sunriver Resort, and the Resort's TLT payments to the County have increased by 75% since the new owners purchased the Resort in late-2010 and made substantial investments in further development of the Resort. Furthermore, the Resort paid approximately $275,000 in property taxes in 2014, which is just a fraction of the total property taxes paid by the over 2,000 property owners within the Resort. The Resort also employs over 600 local residents. Simply put, the Resort is a major contributor to the local economy.

HOUSING AND REPORTING REQUIREMENTS

Destination resorts are intended to provide a diversity of housing opportunities including overnight lodging units (hotel rooms, timeshares and fractional ownerships), vacation rental units, and private residences. In eastern Oregon, Statewide Planning Goal 8 calls for destination resorts to maintain a ratio of 2.5 dwelling units for each overnight lodging unit and that destination resorts report the status of that ratio to the county annually. The County Zoning Ordinance implements these state requirements.

Since at least 2008, the Resort has provided annual reports to the County, including the total count of the Resort's overnight lodging units (hotel rooms, timeshares, and fractional ownerships) as well as an estimate of the available vacation rentals units that are made available 38 weeks or more per year, based on the total count of those units participating in the Resort's rental management program and surveys of the Resort's property owners not participating in the Resort's rental management program.

Over the same period, the popularity of online vacation rental services such as Vacation Rental By Owner (VRBO.com) and HomeAway (Homeaway.com), has increased dramatically and vacation rental property owners now have multiple, highly-convenient and effective

ways to rent their units to the public outside of the Resort's rental management program. These new technologies have rendered current reporting methodologies out of date and therefore the Resort's annual reports no longer reflect the actual number of vacation rental units available within the Resort that are permissible per the Statewide Planning Goal 8.

AMENDMENT OVERVIEW

The Resort desires to update the County reporting requirements associated with overnight lodging units in order to be responsive to the technological changes in the industry. The Resort desires to use the same technologies to track the true number of overnight lodging units that are available with the Resort. The increased accuracy of reporting is aimed to ensure the long-term compliance and viability of the Resort.

Specifically, the Resort is proposing to amend the text of Section 18.113.060 in a narrowly tailored fashion so as to only affect and apply to the Resort and not impact the operations or requirements applicable to any of the other County destination resorts.

The amendment would result in, (1) imposition of practical reporting requirements that reflect the reality of modern vacation rental trends and allow for increased accuracy in the Resort's identification and reporting of vacation rental availability and usage, and (2) a mechanism by which the County can collect an amount approximately equivalent to the TLT for those unaccounted for units, annually, if the Resort's annual reports do not indicate compliance with the overnight lodging ratios.

If the Resort were to apply to create more residential lots, the Resort may not apply the compliance fee to meet the 2.5:1 ratio of individually-owned residential units to overnight lodging units per DCC 18.113.060(D)(2) and will have to demonstrate compliance per the new reporting methods or construct more overnight lodging units in order to comply with the 2.5:1 ratio.

The language of the proposed text amendment is provided below. Following that is a section addressing Approval Criteria, which demonstrates that the proposed text amendment is consistent with state statutes and the County Comprehensive Plan.

CONCLUSION

The proposed text amendment furthers the economic development objectives of the County, is consistent with state and local land use regulations, and provides an increased level of clarity and certainty to the Resort relating to overnight lodging, which in turn provides long-term viability to the Resort.

EXHIBIT 1

AMENDMENT TEXT

[Additions to text are shown in **bold, underlined** letters with deleted text in strikethroughs.]

18.113.060(L)

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)-(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.

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.

3. An annual report shall be submitted to the Planning Director 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. **For resorts for which the conceptual master plan was originally approved on or after January 1, 2001**, 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 rent as required.

   e. For resorts for which the conceptual master plan was originally approved before January 1, 2001, the following information on each individually owned residential unit counted as overnight lodging.

      i. For those units directly managed by the resort developer or operator.

         (1) Who the owner or owners have been over the last year;

         (2) How many nights out of the year the unit was available for rent;

         (3) How many nights out of the year the unit was rented out as an overnight lodging facility under DCC 18.113;

         (4) Documentation showing that these units were available for rent as required.

ii. For all other units.

(1) Address of the unit;

(2) Name of the unit owner(s);

(3) Schedule of rental availability for the prior year. The schedule of rental availability shall be based upon monthly printouts of the availability calendars posted on-line by the unit owner or the unit owner's agent.

~~[e]~~f. This information shall be public record subject to ORS 192.502(17).

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.

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).

6. Before approval of each final plat, all the following shall be provided:

   a. Documentation demonstrating compliance with the 2-1/2 to I 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.

7. Compliance Fee

a. In the event that a resort that was originally approved before January 1, 2001 fails to report compliance with the 2.5:1 ratio in a calendar year as reported in accordance with 18.113.060(L)(3)(e), the remedy shall be that such resort shall pay a compliance fee due not later than April 15 of the year following the year in which the shortfall occurred.

b. The compliance fee will be calculated as follows:

i. First, by calculating the average per unit transient lodging tax paid by the Resort the prior calendar year by dividing the total amount paid by the resort in transient lodging taxes for the prior calendar year by the sum of the number of overnight units managed by the resort for which the resort paid transient lodging taxes that same year and the number of resort timeshare units;

ii. Second, by multiplying that average per unit transient lodging tax amount by the number of additional overnight lodging units that would have been necessary to comply with the 2.5:1 ratio for the applicable calendar year.

c. If the Resort were to apply to create more residential lots, the Resort may not apply the compliance fee to meet the 2.5:1 ratio of individually-owned residential units to overnight lodging units per DCC 18.113.060(D)(2) and will have to demonstrate compliance per the new reporting methods or construct more overnight lodging units in order to comply with the 2.5:1 ratio.

EXHIBIT 2

APPROVAL CRITERIA

Oregon Statewide Planning Goals

Goal 8: Recreational Needs [OAR 660-015-0000(8)]

To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

RECREATION PLANNING

The requirements for meeting such needs, now and in the future, shall be planned for by governmental agencies having responsibility for recreation areas, facilities and opportunities: (1) in coordination with private enterprise; (2) in appropriate proportions; and (3) in such quantities, quality and locations as is consistent with the availability of the resources to meet such requirements. State and federal agency recreation plans shall be coordinated with local and regional recreational needs and plans.

APPLICANT'S RESPONSE: The proposed text amendment and change to the County reporting methodology is an example of the planning anticipated by this provision. The text amendment furthers the ability of the County and the Resort to more accurately track the amount of the overnight lodgings on destination resort land, and is thereby consistent with the stated purpose of collaborative public and private planning for appropriate quantities and placements of recreation facilities.

DESTINATION RESORT PLANNING

Comprehensive plans may provide for the siting of destination resorts on rural lands subject to the provisions of state law, including ORS 197.435 to 197.467, this and other Statewide Planning Goals, and without an exception to Goals 3, 4, 11, or 14.

Eligible Areas

(1) Destination resorts allowed under the provisions of this goal must be sited on lands mapped as eligible by the affected county. A map adopted by a county may not allow destination resorts approved under the provisions of this goal to be sited in any of the following areas:

(a) Within 24 air miles of an urban growth boundary with an existing population of 100,000 or more unless residential uses are limited to those necessary for the staff and management of the resort;

(b) On a site with 50 or more contiguous acres of unique or prime farm land identified and mapped by the United States Natural Resources Conservation Service or its predecessor agency; or within three miles of a High Value Crop Area except that "small destination resorts" may not be closer to a high value crop area than one-half mile for each 25 units of overnight lodging or fraction thereof;

(c) On predominantly Cubic Foot Sites Class 1 or 2 forestlands, as determined by the State Forestry Department, that are not subject to an approved goal exception;

(d) In the Columbia River Gorge National Scenic Area as defined by the Columbia River Gorge National Scenic Act, P.L. 99-663;

(e) In an especially sensitive big game habitat as generally mapped by the Oregon Department of Fish and Wildlife in July 1984 and as further refined through development of comprehensive plans implementing this requirement.

(2) "Small destination resorts" may be allowed consistent with the siting requirements of section (1) above, in the following areas:

(a) On land that is not defined as agricultural or forest land under Goal 3 or 4; or

(b) On land where there has been an exception to Statewide Planning Goals 3, 4, 11, or 14.

APPLICANT'S RESPONSE: The proposed text amendment does not impact the list of ineligible lands for siting of destination facilities. Thus, this provision is not applicable.

Siting Standards

(1) Counties shall ensure that destination resorts are compatible with the site and adjacent land uses through the following measures:

(a) Important natural features, including habitat of threatened or endangered species, streams, rivers, and significant wetlands shall be maintained. Riparian vegetation within 100 feet of streams, rivers and significant wetlands shall be maintained. Alterations to important natural features, including placement of structures that maintain the overall values of the feature, may be allowed.

(b) Sites designated for protection in an acknowledged comprehensive plan designated pursuant to Goal 5 that are located on the tract used for the destination resort shall be preserved through conservation easements as set forth in ORS 271.715 to 271.795. Conservation easements adopted to implement this requirement shall be sufficient to protect the resource values of the site and shall be recorded with the property records of the tract on which the destination resort is sited.

(c) Improvements and activities shall be located and designed to avoid or minimize adverse effects of the resort on uses on surrounding lands, particularly effects on intensive farming operations in the area. At a minimum, measures to accomplish this shall include:

(i) Establishment and maintenance of buffers between the resort and adjacent land uses, including natural vegetation and where appropriate, fences, berms, landscaped areas, and other similar types of buffers.

(ii) Setbacks of structures and other improvements from adjacent land uses.

(iii) Measures that prohibit the use or operation in conjunction with the resort of a portion of a tract that is excluded from the site of a destination resort pursuant to ORS 197.435(7). Subject to this limitation, the use of the excluded property shall be governed by otherwise applicable law.

APPLICANT'S RESPONSE: The proposed text amendment does not impact standards for siting destination resorts, or the actual siting of the Resort. Thus, this provision

is not applicable.

Implementing Measures

(1) Comprehensive plans allowing for destination resorts shall include implementing measures that:

(a) Adopt a map consisting of eligible lands for large destination resorts within the county. The map shall be based on reasonably available information, and shall not be subject to revision or refinement after adoption except in conformance with ORS 197.455, and 197.610 to 197.625, but not more frequently than once every 30 months. The county shall develop a process for collecting and processing concurrently all map amendments made within a 30 month planning period. A map adopted pursuant to this section shall be the sole basis for determining whether tracts of land are eligible for siting of large destination resorts under the provisions of this goal and ORS 197.435 to 197.467.

(b) Limit uses and activities to those permitted by this goal.

(c) Assure developed recreational facilities and key facilities intended to serve the entire development and visitor oriented accommodations are physically provided or are guaranteed through surety bonding or substantially equivalent financial assurances prior to closure of sale of individual lots or units. In phased developments, developed recreational facilities and other key facilities intended to serve a particular phase shall be constructed prior to sales in that phase or guaranteed through surety bonding.

APPLICANT'S RESPONSE: The proposed text amendment does not amend the County Comprehensive Plan and is consistent with the Destination Resort policies at Section 3.9 of the Comprehensive Plan, which are addressed below. Thus, this provision is not applicable.

DEFINITIONS

Destination Resort -- *A self-contained development providing visitor-oriented accommodations and developed recreational facilities in a setting with high natural amenities, and that qualifies under the definition of either a "large destination resort" or a "small destination resort" in this goal. Spending required under these definitions is stated in 1993 dollars. The spending required shall be adjusted to the year in which calculations are made in accordance with the United States Consumer Price Index.*

APPLICANT'S RESPONSE: The proposed text amendment does not impact the definition of "Destination Resort." Thus, this provision in not applicable.

Large Destination Resort -- *To qualify as a "large destination resort" under this Goal, a proposed development must meet the following standards:*

(1) The resort must be located on a site of 160 acres or more except within two miles of the ocean shoreline where the site shall be 40 acres or more.

(2) At least 50 percent of the site must be dedicated as permanent open space excluding yards, streets and parking areas.

(3) At least $7 million must be spent on improvements for onsite developed recreational facilities and visitor-oriented accommodations exclusive of costs for land, sewer, and water facilities and roads. Not less than one-third of this amount shall be spent on developed recreational facilities.

(4) Commercial uses allowed are limited to types and levels necessary to meet the needs of visitors to the development. Industrial uses of any kind are not permitted.

(5) Visitor-oriented accommodations including meeting rooms, restaurants with seating for 100 persons, and 150 separate rentable units for overnight lodging must be provided. Accommodations available for residential use shall not exceed two such units for each unit of overnight lodging, or two and one-half such units on land that is in Eastern Oregon as defined by ORS 321.805. However, the rentable overnight lodging units may be phased in as follows:

(a) On land that is not in Eastern Oregon, as defined in ORS 321.805:

(A) A total of 150 units of overnight lodging must be provided.

(B) At least 75 units of overnight lodging, not including any individually owned homes, lots or units must be constructed or guaranteed through surety, bonding or equivalent financial assurance prior to the closure of sale of individual lots or units.

(C) The remaining overnight lodging units must be provided as individually owned lots or units subject to deed restrictions that limit their use to overnight lodging units. The deed restrictions may be rescinded when the resort has constructed 150 units of permanent overnight lodging as required by this section.

(D) The number of units approved for residential sale may not be more than two units for each unit of permanent overnight lodging provided under this section.

(E) The development approval shall provide for the construction of other required overnight lodging units within five years of the initial lot sales.

(b) On lands in Eastern Oregon, as defined in ORS 321.805:

(A) A total of 150 units of overnight lodging must be provided.

(B) At least 50 units of overnight lodging must be constructed prior to the closure of sale of individual lots or units.

(C) At least 50 of the remaining 100 required overnight lodging units must be constructed or guaranteed through surety bonding or equivalent financial assurance within five years of the initial lot sales.

(D) The remaining required overnight lodging units must be constructed or guaranteed through surety bonding or equivalent financial assurances within 10 years of the initial lot sales.

(E) The number of units approved for residential sale may not be more than 2-1/2 units for each unit of permanent overnight lodging provided under this section.

(F) If the developer of a resort guarantees the overnight lodging units required under paragraphs (C) and (D) of this subsection through surety bonding or other equivalent financial assurance, the overnight lodging units must be constructed within four years of the date of execution of the surety bond or other equivalent financial assurance.

(6) When making a land use decision authorizing construction of a "large destination resort" in Eastern Oregon, as defined in ORS 321.805, the governing body of the county or its designee shall require the resort developer to provide an annual accounting to document compliance with the overnight lodging standards of this definition. The annual

accounting requirement commences one year after the initial lot or unit sales. The annual accounting must contain:

(a) Documentation showing that the resort contains a minimum of 150 permanent units of overnight lodging or, during the phase-in period, documentation showing the resort is not yet required to have constructed 150 units of overnight lodging.

(b) Documentation showing that the resort meets the lodging ratio described in section (5)(b) of this definition.

(c) For a resort counting individually owned units as qualified overnight lodging units, the number of weeks that each overnight lodging unit is available for rental to the general public as described in section (2) of the definition for "overnight lodgings" in this goal.

APPLICANT'S RESPONSE: The proposed text amendment is consistent with this definition of Large Destination Resort. The text amendment does not impact the qualifying factors for a large destination resort, such as location, open space, investment in recreational facilities, allowed commercial uses, visitor-oriented accommodations, or the ratio of overnight lodging units to units for residential sale. The proposed text amendment is consistent with and implements the provisions requiring an annual accounting from destination resorts. The amendment retains the requirement for the accounting to include documentation of compliance with the minimum amount of overnight lodging units and overnight lodging unit ratio. Thus, the proposed text amendment is consistent with this definition of large destination resort.

Small Destination Resort -- *To qualify as a "small destination resort" under Goal 8, a proposed development must meet standards (2) and (4) under the definition of "large destination resort" and the following standards:*

(1) The resort must be located on a site of 20 acres or more.

(2) At least $2 million must be spent on improvements for onsite developed recreational facilities and visitor-oriented accommodations exclusive of costs for land, sewer, and water facilities and roads. Not less than one-third of this amount must be spent on developed recreation facilities.

(3) At least 25 but not more than 75 units of overnight lodging shall be provided.

(4) Restaurant and meeting rooms with at least one seat for each unit of overnight lodging must be provided.

(5) Residential uses must be limited to those necessary for the staff and management of the resort.

(6) The county governing body or its designee must review the proposed resort and determine that the primary purpose of the resort is to provide lodging and other services oriented to a recreational resource that can only reasonably be enjoyed in a rural area. Such recreational resources include, but are not limited to, a hot spring, a ski slope or a fishing stream.

(7) The resort shall be constructed and located so that it is not designed to attract highway traffic. Resorts shall not use any manner of outdoor advertising signing except:

(a) Tourist oriented directional signs as provided in ORS 377.715 to 377.830; and
(b) Onsite identification and directional signs.

APPLICANT'S RESPONSE: The Resort is a large destination resort, and the applicability of proposed text amendment is limited to the Resort. Thus, the definition of small destination resort is not applicable.

Developed Recreation Facilities -- *are improvements constructed for the purpose of recreation and may include but are not limited to golf courses, tennis courts, swimming pools, marinas, ski runs and bicycle paths.*

High-Value Crop Area -- *an area in which there is a concentration of commercial farms capable of producing crops or products with a minimum gross value of $1,000 per acre per year. These crops and products include field crops, small fruits, berries, tree fruits, nuts, or vegetables, dairying, livestock feedlots, or Christmas trees as these terms are used in the 1983 County and State Agricultural Estimates prepared by the Oregon State University Extension Service. The High-Value Crop Area Designation is used for the purpose of minimizing conflicting uses in resort siting and is not meant to revise the requirements of Goal 3 or administrative rules interpreting the goal.*
Map of Eligible Lands -- a map of the county adopted pursuant to ORS 197.455.
Open Space -- means any land that is retained in a substantially natural condition or is improved for recreational uses such as golf courses, hiking or nature trails or equestrian or bicycle paths or is specifically required to be protected by a conservation easement. Open spaces may include ponds, lands protected as important natural features, land preserved for farm or forest use and lands used as buffers. Open space does not include residential lots or yards, streets or parking areas.
Overnight Lodgings -- are permanent, separately rentable accommodations that are not available for residential use. Overnight lodgings include hotel or motel rooms, cabins, and time-share units. Tent sites, recreational vehicle parks, manufactured dwellings, dormitory rooms, and similar accommodations do not qualify as overnight lodgings for the purpose of this definition. Individually owned units may be considered overnight lodgings if:
(1) With respect to lands not in Eastern Oregon, as defined in ORS 321.805, they are available for overnight rental use by the general public for at least 45 weeks per calendar year through a central reservation and check-in service, or
(2) With respect to lands in Eastern Oregon, as defined in ORS 321.805, they are available for overnight rental use by the general public for at least 38 weeks per calendar year through a central reservation system operated by the destination resort or by a real estate property manager, as defined in ORS 696.010.

Recreation Areas, Facilities and Opportunities -- *provide for human development and enrichment, and include but are not limited to: open space and scenic landscapes; recreational lands; history, archaeology and natural science resources; scenic roads and travelers; sports and cultural events; camping, picnicking and recreational lodging; tourist facilities and accommodations; trails; waterway use facilities; hunting; angling; winter sports; mineral resources; active and passive games and activities.*

Recreation Needs -- *refers to existing and future demand by citizens and visitors for recreations areas, facilities and opportunities.*

Self-contained Development -- *means a development for which community sewer and water facilities are provided onsite and are limited to meet the needs of the development or are provided by existing public sewer or water service as long as all costs related to service extension and any capacity increases are borne by the development. A "self-contained development" must have developed recreational facilities provided on-site.*

Tract -- *means a lot or parcel or more than one contiguous lot or parcel in a single ownership. A tract may include property that is not included in the proposed site for a destination resort if the property to be excluded is on the boundary of the tract and constitutes less than 30 percent of the total tract.*

Visitor-Oriented Accommodations -- *are overnight lodging, restaurants, meeting facilities which are designed to and provide for the needs of visitors rather than year-round residents.*

APPLICANT'S RESPONSE: The proposed text amendment does not impact the definition of developed recreation facilities, high-value crop area, recreational needs, self-contained development, tract, or visitor-oriented accommodations. Thus, these definitions are not applicable.

GUIDELINES FOR GOAL 8

A. PLANNING

1. An inventory of recreation needs in the planning area should be made based upon adequate research and analysis of public wants and desires.

2. An inventory of recreation opportunities should be made based upon adequate research and analysis of the resources in the planning area that are available to meet recreation needs.

3. Recreation land use to meet recreational needs and development standards, roles and responsibilities should be developed by all agencies in coordination with each other and with the private interests. Long range plans and action programs to meet recreational needs should be developed by each agency responsible for developing comprehensive plans.

4. The planning for lands and resources capable of accommodating multiple uses should include provision for appropriate recreation opportunities.

5. The State Comprehensive Outdoor Recreation Plan could be used as a guide when planning, acquiring and developing recreation resources, areas and facilities.

6. When developing recreation plans, energy consequences should be considered, and to the greatest extent possible non-motorized types of recreational activities should be preferred over motorized activities.

7. Planning and provision for recreation facilities and opportunities should give priority to areas, facilities and uses that

(a) Meet recreational needs requirements for high density population centers,

(b) Meet recreational needs of persons of limited mobility and finances,

(c) Meet recreational needs requirements while providing the maximum conservation of energy both in the transportation of persons to the facility or area and in the recreational use itself,

(d) Minimize environmental deterioration,

(e) Are available to the public at nominal cost, and

(f) Meet needs of visitors to the state.

8. Unique areas or resources capable of meeting one or more specific recreational needs requirements should be inventoried and protected or acquired.

9. All state and federal agencies developing recreation plans should allow for review of recreation plans by affected local agencies.

10. Comprehensive plans should be designed to give a high priority to enhancing recreation opportunities on the public waters and shorelands of the state especially on existing and potential state and federal wild and scenic waterways, and Oregon Recreation Trails.

11. Plans that provide for satisfying the recreation needs of persons in the planning area should consider as a major determinant, the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

APPLICANT'S RESPONSE: The proposed text amendment does not amend the County Comprehensive Plan or require additional planning relating to recreational lands. Thus, these Guidelines are not applicable.

B. IMPLEMENTATION

Plans should take into account various techniques in addition to fee acquisition such as easements, cluster developments, preferential assessments, development rights acquisition, subdivision park land dedication that benefits the subdivision, and similar techniques to meet recreation requirements through tax policies, land leases, and similar programs.

APPLICANT'S RESPONSE: The proposed text amendment does not amend the County Comprehensive Plan or require additional planning relating to recreational lands. Thus, this provision is not applicable.

C. RESORT SITING

Measures should be adopted to minimize the adverse environmental effects of resort development on the site, particularly in areas subject to natural hazards. Plans and ordinances should prohibit or discourage alterations and structures in the 100 year floodplain and on slopes exceeding 25 percent. Uses and alterations that are appropriate for these areas include:

1. Minor drainage improvements that do not significantly impact important natural features of the site;

2. Roads, bridges and utilities where there are no feasible alternative locations on the site; and

3. Outdoor recreation facilities including golf courses, bike paths, trails, boardwalks, picnic tables, temporary open sided shelters, boating facilities, ski lifts and runs. Alterations and structures permitted in these areas should be adequately protected from geologic hazards or of minimal value and designed to minimize adverse environmental effects.

APPLICANT'S RESPONSE: The proposed text amendment does not impact siting of destination resorts. Thus, this provision is not applicable.

Oregon Revised Statutes

ORS 197.435 - 467 Siting of Destination Resorts

197.435 Definitions for ORS 197.435 to 197.467. *As used in ORS 197.435 to 197.467:*

(1) "Developed recreational facilities" means improvements constructed for the purpose of recreation and may include but are not limited to golf courses, tennis courts, swimming pools, marinas, ski runs and bicycle paths.

(2) "High value crop area" means an area in which there is a concentration of commercial farms capable of producing crops or products with a minimum gross value of $1,000 per acre per year. These crops and products include field crops, small fruits, berries, tree fruits, nuts or vegetables, dairying, livestock feedlots or Christmas trees as these terms are used in the 1983 County and State Agricultural Estimates prepared by the Oregon State University Extension Service. The "high value crop area" designation is used for the purpose of minimizing conflicting uses in resort siting and does not revise the requirements of an agricultural land goal or administrative rules interpreting the goal.

(3) "Map of eligible lands" means a map of the county adopted pursuant to ORS 197.455.

(4) "Open space" means any land that is retained in a substantially natural condition or is improved for recreational uses such as golf courses, hiking or nature trails or equestrian or bicycle paths or is specifically required to be protected by a conservation easement. Open spaces may include ponds, lands protected as important natural features, lands preserved for farm or forest use and lands used as buffers. Open space does not include residential lots or yards, streets or parking areas.

(5) "Overnight lodgings" means:

(a) With respect to lands not identified in paragraph (b) of this subsection, permanent, separately rentable accommodations that are not available for residential use, including hotel or motel rooms, cabins and time-share units. Individually owned units may be considered overnight lodgings if they are available for overnight rental use by the general public for at least 45 weeks per calendar year through a central reservation and check-in service. Tent sites, recreational vehicle parks, manufactured dwellings, dormitory rooms and similar accommodations do not qualify as overnight lodgings for the purpose of this definition.

(b) With respect to lands in eastern Oregon, as defined in ORS 321.805, permanent, separately rentable accommodations that are not available for residential use, including

hotel or motel rooms, cabins and time-share units. Individually owned units may be considered overnight lodgings if they are available for overnight rental use by the general public for at least 38 weeks per calendar year through a central reservation system operated by the destination resort or by a real estate property manager, as defined in ORS 696.010. Tent sites, recreational vehicle parks, manufactured dwellings, dormitory rooms and similar accommodations do not qualify as overnight lodgings for the purpose of this definition.

(6) "Self-contained development" means a development for which community sewer and water facilities are provided on-site and are limited to meet the needs of the development or are provided by existing public sewer or water service as long as all costs related to service extension and any capacity increases are borne by the development. A "self-contained development" must have developed recreational facilities provided on-site.

(7) "Tract" means a lot or parcel or more than one contiguous lot or parcel in a single ownership. A tract may include property that is not included in the proposed site for a destination resort if the property to be excluded is on the boundary of the tract and constitutes less than 30 percent of the total tract.

(8) "Visitor-oriented accommodations" means overnight lodging, restaurants and meeting facilities that are designed to and provide for the needs of visitors rather than year-round residents. [1987 c.886 §3; 1989 c.648 §52; 1993 c.590 §1; 2003 c.812 §1; 2005 c.22 §140]

APPLICANT'S RESPONSE: The proposed text amendment does not impact the definition of developed recreation facilities, high-value crop area, map of eligible lands, open space, overnight lodging, self-contained development, tract, or visitor-oriented accommodations. Thus, the proposed text amendment is consistent with the statutory definitions at ORS 197.435.

197.440 Legislative findings. *The Legislative Assembly finds that:*

(1) It is the policy of this state to promote Oregon as a vacation destination and to encourage tourism as a valuable segment of our state's economy;

(2) There is a growing need to provide year-round destination resort accommodations to attract visitors and encourage them to stay longer. The establishment of destination resorts will provide jobs for Oregonians and contribute to the state's economic development;

(3) It is a difficult and costly process to site and establish destination resorts in rural areas of this state; and

(4) The siting of destination resort facilities is an issue of statewide concern. [1987 c.886 §2]

APPLICANT'S RESPONSE: The proposed text amendment does not impact the policies in this section regarding siting of destination resorts and promotion of Oregon as a vacation destination. Thus, these provisions are not applicable.

197.445 Destination resort criteria; phase-in requirements; annual accounting. *A destination resort is a self-contained development that provides for visitor-oriented accommodations and developed recreational facilities in a setting with high natural*

amenities. To qualify as a destination resort under ORS 30.947, 197.435 to 197.467, 215.213, 215.283 and 215.284, a proposed development must meet the following standards:

(1) The resort must be located on a site of 160 acres or more except within two miles of the ocean shoreline where the site shall be 40 acres or more.

(2) At least 50 percent of the site must be dedicated to permanent open space, excluding streets and parking areas.

(3) At least $7 million must be spent on improvements for on-site developed recreational facilities and visitor-oriented accommodations exclusive of costs for land, sewer and water facilities and roads. Not less than one-third of this amount must be spent on developed recreational facilities.

APPLICANT'S RESPONSE: The proposed text amendment does not impact the standards for destination resort location, open space, or investment in recreational facilities. Thus, these provisions are not applicable.

(4) Visitor-oriented accommodations including meeting rooms, restaurants with seating for 100 persons and 150 separate rentable units for overnight lodging shall be provided. However, the rentable overnight lodging units may be phased in as follows:

(a) On lands not described in paragraph (b) of this subsection:

(A) A total of 150 units of overnight lodging must be provided.

(B) At least 75 units of overnight lodging, not including any individually owned homes, lots or units, must be constructed or guaranteed through surety bonding or equivalent financial assurance prior to the closure of sale of individual lots or units.

(C) The remaining overnight lodging units must be provided as individually owned lots or units subject to deed restrictions that limit their use to use as overnight lodging units. The deed restrictions may be rescinded when the resort has constructed 150 units of permanent overnight lodging as required by this subsection.

(D) The number of units approved for residential sale may not be more than two units for each unit of permanent overnight lodging provided under this paragraph.

(E) The development approval must provide for the construction of other required overnight lodging units within five years of the initial lot sales.

APPLICANT'S RESPONSE: The standards at ORS 197.445(4)(a) are applicable to lands that are not in eastern Oregon, as defined in ORS 321.805. The Resort is located in Eastern Oregon, and the applicability of the proposed text amendment is limited to the Resort. Thus, these provisions are not applicable.

(b) On lands in eastern Oregon, as defined in ORS 321.805:

(A) A total of 150 overnight lodging must be provided.

(B) At least 50 units of overnight lodging must be constructed prior to the closure of sale of individual lot sales.

(C) Ate least 50 of the remaining 100 required overnight lodging units must be constructed or guaranteed through surety bonding or equivalent financial assurance within five years of the initial lot sales.

(D) The remaining required overnight lodging units must be constructed or guaranteed through surety bonding or equivalent financial assurances within 10 years of the initial lot sales.

(E) The number of units approved for residential sale may not be more than 2-1/2 units for each unit of permanent overnight lodging provided under this paragraph.

(F) If the developer of a resort guarantees the overnight lodging units required under subparagraphs (C) and (D) of this paragraph through surety bonding or other equivalent financial assurance, the overnight lodging units must be constructed within four years of the date of execution of the surety bond or other equivalent financial assurance.

APPLICANT'S RESPONSE: The proposed text amendment is limited to a broadened reporting methodology and establishing a remedy for not reaching the required ratio which is also a mechanism for the County to recoup otherwise unavailable TLT. No change is proposed to the required amount of overnight lodging, the timing of construction of such units, the security requirements associated with construction of such units, or the relative number of such units to units for residential sale. Thus, the proposed text amendment complies with these criteria.

(5) Commercial uses allowed are limited to types and levels of use necessary to meet the needs of visitors to the development. Industrial uses of any kind are not permitted.

APPLICANT'S RESPONSE: The proposed text amendment does not impact the commercial uses allowed on destination resorts. Thus, these provisions are not applicable.

(6) In lieu of the standards in subsections (1), (3) and (4) of this section, the standards set forth in subsection (7) of this section apply to a destination resort:

(a) On land that is not defined as agricultural or forest land under any statewide planning goal;

(b) On land where there has been an exception to any statewide planning goal on agricultural lands, forestlands, public facilities and services and urbanization; or

(c) On such secondary lands as the Land Conservation and Development Commission deems appropriate.

(7) The following standards apply to the provisions of subsection (6) of this section:

(a) The resort must be located on a site of 20 acres or more.

(b) At least $2 million must be spent on improvements for on-site developed recreational facilities and visitor-oriented accommodations exclusive of costs for land, sewer and water facilities and roads. Not less than one-third of this amount must be spent on developed recreational facilities.

(c) At least 25 units, but not more than 75 units, of overnight lodging must be provided.

(d) Restaurant and meeting room with at least one seat for each unit of overnight lodging must be provided.

(e) Residential uses must be limited to those necessary for the staff and management of the resort.

(f) The governing body of the county or its designee has reviewed the resort proposed under this subsection and has determined that the primary purpose of the resort is to provide lodging and other services oriented to a recreational resource which can only reasonably be enjoyed in a rural area. Such recreational resources include, but are not limited to, a hot spring, a ski slope or a fishing stream.

(g) The resort must be constructed and located so that it is not designed to attract highway traffic. Resorts may not use any manner of outdoor advertising signing except:

(A) Tourist oriented directional signs as provided in ORS 377.715 to 377.830; and

(B) On-site identification and directional signs.

APPLICANT'S RESPONSE: These provisions are applicable to small destination resorts, as the term is defined under Statewide Planning Goal 8. The Resort is a large destination resort. Thus, these provisions are not applicable.

(8) Spending required under subsections (3) and (7) of this section is stated in 1993 dollars. The spending required shall be adjusted to the year in which calculations are made in accordance with the United States Consumer Price Index.

APPLICANT'S RESPONSE: The proposed text amendment does not impact the spending and investment requirements for newly approved destination resorts. Thus, the proposed text amendment complies with these criteria.

(9) When making a land use decision authorizing construction of a destination resort in eastern Oregon, as defined in ORS 321.805, the governing body of the county or its designee shall require the resort developer to provide an annual accounting to document compliance with the overnight lodging standards of this section. The annual accounting requirement commences one year after the initial lot or unit sales. The annual accounting must contain:

(a) Documentation showing that the resort contains a minimum of 150 permanent units of overnight lodging or, during the phase-in period, documentation showing the resort is not yet required to have constructed 150 units of overnight lodging.

(b) Documentation showing that the resort meets the lodging ratio described in subsection (4) of this section.

(c) For a resort counting individually owned units as qualified overnight lodging units, the number of weeks that each overnight lodging unit is available for rental to the general public as described in ORS 197.435.

APPLICANT'S RESPONSE: These criteria do not address the ability of the County to recoup otherwise unavailable TLT revenue. The proposed change to the County reporting methodology would not change the requirement to report annually, or to

document compliance with the overall required number of overnight units and the relative number of such units to units for residential sale. Expanding the allowed format of reporting to include "monthly printouts of the availability calendars posted on-line by the unit owner or the unit owner's agent" is consistent with the requirement to report the number of weeks that each overnight lodging unit is available for rental" pursuant to subsection (c). Thus, the proposed text amendment complies with these criteria.

197.450 Siting without taking goal exception. *In accordance with the provisions of ORS 30.947, 197.435 to 197.467, 215.213, 215.283 and 215.284, a comprehensive plan may provide for the siting of a destination resort on rural lands without taking an exception to statewide planning goals relating to agricultural lands, forestlands, public facilities and services or urbanization. [1987 c.886 §5]*

APPLICANT'S RESPONSE: The proposed text amendment does not impact the standards for siting a destination resort without taking a goal exception. Thus, this provision is not applicable.

197.455 Siting of destination resorts; sites from which destination resort excluded. *(1) A destination resort may be sited only on lands mapped as eligible for destination resort siting by the affected county. The county may not allow destination resorts approved pursuant to ORS 197.435 to 197.467 to be sited in any of the following areas:*

(a) Within 24 air miles of an urban growth boundary with an existing population of 100,000 or more unless residential uses are limited to those necessary for the staff and management of the resort.

(b)(A) On a site with 50 or more contiguous acres of unique or prime farmland identified and mapped by the United States Natural Resources Conservation Service, or its predecessor agency.

(B) On a site within three miles of a high value crop area unless the resort complies with the requirements of ORS 197.445 (6) in which case the resort may not be closer to a high value crop area than one-half mile for each 25 units of overnight lodging or fraction thereof.

(c) On predominantly Cubic Foot Site Class 1 or 2 forestlands as determined by the State Forestry Department, which are not subject to an approved goal exception.

(d) In the Columbia River Gorge National Scenic Area as defined by the Columbia River Gorge National Scenic Act, P.L. 99-663.

(e) In an especially sensitive big game habitat area:

(A) As determined by the State Department of Fish and Wildlife in July 1984, and in additional especially sensitive big game habitat areas designated by a county in an acknowledged comprehensive plan; or

(B) If the State Fish and Wildlife Commission amends the 1984 determination with respect to an entire county and the county amends its comprehensive plan to reflect the commission's subsequent determination, as designated in the acknowledged comprehensive plan.

(f) On a site in which the lands are predominantly classified as being in Fire Regime Condition Class 3, unless the county approves a wildfire protection plan that demonstrates the site can be developed without being at a high overall risk of fire.

(2) In carrying out subsection (1) of this section, a county shall adopt, as part of its comprehensive plan, a map consisting of eligible lands within the county. The map must be based on reasonably available information and may be amended pursuant to ORS 197.610 to 197.625, but not more frequently than once every 30 months. The county shall develop a process for collecting and processing concurrently all map amendments made within a 30-month planning period. A map adopted pursuant to this section shall be the sole basis for determining whether tracts of land are eligible for destination resort siting pursuant to ORS 197.435 to 197.467. [1987 c.886 §6; 1993 c.590 §3; 1997 c.249 §57; 2003 c.812 §3; 2005 c.22 §142; 2005 c.205 §1; 2010 c.32 §1]

APPLICANT'S RESPONSE: The proposed text amendment does not impact the standards for siting a destination resort. Thus, these provisions are not applicable.

197.460 Compatibility with adjacent land uses; county measures; economic impact analysis; traffic impact analysis. *A county shall ensure that a destination resort is compatible with the site and adjacent land uses through the following measures:*

(1) Important natural features, including habitat of threatened or endangered species, streams, rivers and significant wetlands shall be retained. Riparian vegetation within 100 feet of streams, rivers and significant wetlands shall be retained. Alteration of important natural features, including placement of structures that maintain the overall values of the feature may be allowed.

(2) Improvements and activities shall be located and designed to avoid or minimize adverse effects of the resort on uses on surrounding lands, particularly effects on intensive farming operations in the area. At a minimum, measures to accomplish this shall include:

(a) Establishment and maintenance of buffers between the resort and adjacent land uses, including natural vegetation and where appropriate, fences, berms, landscaped areas and other similar types of buffers.

(b) Setbacks of structures and other improvements from adjacent land uses.

(3) If the site is west of the summit of the Coast Range and within 10 miles of an urban growth boundary, or if the site is east of the summit of the Coast Range and within 25 miles of an urban growth boundary, the county shall require the applicant to submit an economic impact analysis of the proposed development that includes analysis of the projected impacts within the county and within cities whose urban growth boundaries are within the distance specified in this subsection.

(4) If the site is west of the summit of the Coast Range and within 10 miles of an urban growth boundary, or if the site is east of the summit of the Coast Range and within 25 miles of an urban growth boundary, the county shall require the applicant to submit a traffic impact analysis of the proposed development that includes measures to avoid or mitigate a proportionate share of adverse effects of transportation on state highways and other transportation facilities affected by the proposed development, including transportation facilities in the county and in cities whose urban growth boundaries are within the distance specified in this subsection. [1987 c.886 §7; 2010 c.32 §2]

APPLICANT'S RESPONSE: The proposed text amendment does not impact the standards for a County to approve a new destination resort. Thus, these provisions are not applicable.

197.462 Use of land excluded from destination resort. *A portion of a tract that is excluded from the site of a destination resort pursuant to ORS 197.435 (7) shall not be used or operated in conjunction with the resort. Subject to this limitation, the use of the excluded property shall be governed by otherwise applicable law. [1993 c.590 §7]*

APPLICANT'S RESPONSE: The proposed text amendment does not impact the use of land excluded from destination resorts. Thus, this provision is not applicable.

197.465 Comprehensive plan implementing measures. *An acknowledged comprehensive plan that allows for siting of a destination resort shall include implementing measures which:*

(1) Map areas where a destination resort described in ORS 197.445 (1) to (5) is permitted pursuant to ORS 197.455;

(2) Limit uses and activities to those defined by ORS 197.435 and allowed by ORS 197.445; and

(3) Assure that developed recreational facilities and key facilities intended to serve the entire development and visitor-oriented accommodations are physically provided or are guaranteed through surety bonding or substantially equivalent financial assurances prior to closure of sale of individual lots or units. In phased developments, developed recreational facilities and other key facilities intended to serve a particular phase shall be constructed prior to sales in that phase or guaranteed through surety bonding. [1987 c.886 §8]

APPLICANT'S RESPONSE: The proposed text amendment does not amend the County Comprehensive Plan, including the goals and policies that implement ORS 197.465. Thus, these provisions are not applicable.

197.467 Conservation easement to protect resource site. *(1) If a tract to be used as a destination resort contains a resource site designated for protection in an acknowledged comprehensive plan pursuant to open spaces, scenic and historic areas and natural resource goals in an acknowledged comprehensive plan, that tract of land shall preserve that site by conservation easement sufficient to protect the resource values of the resource site as set forth in ORS 271.715 to 271.795.*

(2) A conservation easement under this section shall be recorded with the property records of the tract on which the destination resort is sited. [1993 c.590 §5]

APPLICANT'S RESPONSE: The proposed text amendment does not impact the standards for application of conservation easements. Thus, this provision is not applicable.

Deschutes County Comprehensive Plan

Section 3.9 Destination Resort Policies

Goals and Policies

Goal 1 ***To provide for development of destination resorts in the County consistent with Statewide Planning Goal 8 in a manner that will be compatible with farm and forest uses, existing rural development, and in a manner that will maintain important natural features, such as habitat of threatened or endangered species, streams, rivers and significant wetlands.***

APPLICANT'S RESPONSE: The proposed text amendment does not impact the development of new destination resorts. Thus, the proposed text amendment is consistent with this goal.

Goal 2 ***To provide a process for the siting of destination resorts on rural lands that have been mapped by Deschutes County as eligible for this purpose.***

APPLICANT'S RESPONSE: The proposed text amendment does not impact the process for siting destination resorts or the mapping of destination resort eligible lands. Thus, this goal is not applicable.

Goal 3 ***To provide for the siting of destination resort facilities that enhances and diversifies the recreational opportunities and economy of Deschutes County.***

APPLICANT'S RESPONSE: The proposed text amendment does not impact the siting of new destination resorts. Thus, this goal is not applicable. However, the broadened reporting, additional TLT collections, and long term viability of the Resort, associated with the proposed text amendment all improve the recreational opportunities and economy of Deschutes County.

Goal 4 ***To provide for development of destination resorts consistent with Statewide Planning Goal 12 in a manner that will ensure the resorts are supported by adequate transportation facilities.***

APPLICANT'S RESPONSE: The proposed text amendment does not impact the transportation facilities or demands associated with the Resort. Thus, this provision is not applicable.

Policy 3.9.1 *Destination resorts shall only be allowed within areas shown on the "Deschutes County Destination Resort Map" and when the resort complies with the requirements of Goal 8, ORS 197.435 to 197.467, and Deschutes County Code 18.113.*

Policy 3.9.2 *Applications to amend the map will be collected and will be processed concurrently no sooner than 30 months from the date the map was previously adopted or amended.*

APPLICANT'S RESPONSE: The proposed text amendment does not impact or amend the County Destination Resorts Map. Thus, the proposed text amendment is consistent with these policies.

Policy 3.9.3 *Mapping for destination resort siting.*

a. To assure that resort development does not conflict with the objectives of other Statewide Planning Goals, destination resorts shall pursuant to Goal 8 not be sited in Deschutes County in the following areas:

1. Within 24 air miles of an urban growth boundary with an existing population of 100,000 or more unless residential uses are limited to those necessary for the staff and management of the resort;

2. On a site with 50 or more contiguous acres of unique or prime farm land identified and mapped by the Soil Conservation Service or within three miles of farm land within a High-Value Crop Area;

3. On predominantly Cubic Foot Site Class 1 or 2 forest lands which are not subject to an approved Goal exception;

4. On areas protected as Goal 5 resources in an acknowledged comprehensive plan where all conflicting uses have been prohibited to protect the Goal 5 resource;

5. Especially sensitive big game habitat, and as listed below, as generally mapped by the Oregon Department of Fish and Wildlife in July 1984 and as further refined through development of comprehensive plan provisions implementing this requirement.

i. Tumalo deer winter range;

ii. Portion of the Metolius deer winter range;

iii. Antelope winter range east of Bend near Horse Ridge and Millican;

6. Sites less than 160 acres.

b. To assure that resort development does not conflict with Oregon Revised Statute, destination resorts shall not be sited in Deschutes County in Areas of Critical State Concern.

c. To assure that resort development does not conflict with the objectives of Deschutes County, destination resorts shall also not be located in the following areas:

1. Sites listed below that are inventoried Goal 5 resources, shown on the Wildlife Combining Zone, that the County has chosen to protect:

i. Antelope Range near Horse Ridge and Millican;

ii. Elk Habitat Area; and

iii. Deer Winter Range;

2. *Wildlife Priority Area, identified on the 1999 ODFW map submitted to the South County Regional Problem Solving Group;*
3. *Lands zoned Open Space and Conservation (OS&C);*
4. *Lands zoned Forest Use 1 (F-1);*
5. *Irrigated lands zoned Exclusive Farm Use (EFU) having 40 or greater contiguous acres in irrigation;*
6. *Non-contiguous EFU acres in the same ownership having 60 or greater irrigated acres;*
7. *Farm or forest land within one mile outside of urban growth boundaries;*
8. *Lands designated Urban Reserve Area under ORS 195.145;*
9. *Platted subdivisions;*

d. *For those lands not located in any of the areas designated in Policy 3.9.3(a) though (c), destination resorts may, pursuant to Goal 8, Oregon Revised Statute and Deschutes County zoning code, be sited in the following areas:*

1. *Forest Use 2 (F-2), Multiple Use Agriculture (MUA-10), and Rural Residential (RR-10) zones;*
2. *Unirrigated Exclusive Farm Use (EFU) land;*
3. *Irrigated lands zoned EFU having less than 40 contiguous acres in irrigation;*
4. *Non-contiguous irrigated EFU acres in the same ownership having less than 60 irrigated acres;*
5. *All property within a subdivision for which cluster development approval was obtained prior to 1990, for which the original cluster development approval designated at least 50 percent of the development as open space and which was within the destination resort zone prior to the effective date of Ordinance 2010-024 shall remain on the eligibility map;*
6. *Minimum site of 160 contiguous acres or greater under one or multiple ownerships;*

e. *The County shall adopt a map showing where destination resorts can be located in the County. Such map shall become part of the Comprehensive Plan and Zoning Ordinance and shall be an overlay zone designated Destination Resort (DR).*

APPLICANT'S RESPONSE: The proposed text amendment is limited to a broadened reporting requirement and establishing a mechanism for the County to recoup otherwise unavailable TLT. No change is proposed to destination resort siting standards, the list of lands ineligible of destination resorts, or the County Destination Resort Map. Thus, the proposed text amendment is consistent with these policies.

Policy 3.9.4 Ordinance provisions.

a. *The County shall ensure that destination resorts are compatible with the site and adjacent land uses through enactment of land use regulations that, at a minimum, provide for the following:*
   1. *Maintenance of important natural features ...*
   2. *Location and design of improvements and activities ...*
   3. *Such regulations may allow for alterations to important natural features...*

b. *Minimum measures to assure that design and placement of improvements and activities will avoid or minimize the adverse effects noted in Policy 3.9.4(a)*

c. *The County may adopt additional land use restrictions to ensure that proposed destination resorts are compatible with the environmental capabilities of the site and surrounding land uses.*

d. *Uses in destination resorts shall be limited to visitor- oriented accommodations, overnight lodgings, developed recreational facilities, commercial uses limited to types and levels necessary to meet the needs of visitors to the resort, and uses consistent with preservation and maintenance of open space.*

e. *The zoning ordinance shall include measures that assure that developed recreational facilities, visitor-oriented accommodations and key facilities intended to serve the entire development are physically provided or are guaranteed through surety bonding or substantially equivalent financial assurances prior to closure of sale of individual lots or units. In phased developments, developed recreational facilities and other key facilitated intended to serve a particular phase shall be constructed prior to sales in that phase or guaranteed through surety bonding.*

APPLICANT'S RESPONSE: The proposed text amendment is limited to a broadened reporting requirement and establishing a mechanism for the County to recoup otherwise unavailable TLT. No change is proposed to destination resort site compatibility standards, facilities design and placement, environmental compatibility standards, allowed uses on destination resorts, or bonding and security requirements. Thus, the proposed text amendment is consistent with these policies.