



Deschutes County Board of Commissioners
1300 NW Wall St., Suite 200, Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of December 21, 2015

DATE: December 14, 2015

FROM: Peter Gutowsky CDD (541) 385-1709

TITLE OF AGENDA ITEM:

Deliberation on Ordinance No. 2016-003 for a Zoning Text Amendment amending Deschutes County Code (DCC) Title 18 to Modify DCC 18.113.060, Standards for Destination Resorts.

PUBLIC HEARING ON THIS DATE? No.

BACKGROUND AND POLICY IMPLICATIONS:

Oregon Resorts Acquisition Partners, LP, owners of Eagle Crest Resort, applied for text amendment (Planning Division File No. 247-15-000444-TA). Their proposal amends 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.

The Deschutes County Planning Commission reviewed the proposed changes on September 24, 2015 and on October 22, forwarded to the Board, a recommendation of approval. The Board held a public hearing on November 30. They closed the oral record and left the written record open until December 4. They afforded the applicant final argument until December 11.

FISCAL IMPLICATIONS:

None.

RECOMMENDATION & ACTION REQUESTED:

Deliberation and consideration of first reading of Ordinance Nos.2016-003.

ATTENDANCE: Peter Gutowsky, Planning Manager

DISTRIBUTION OF DOCUMENTS:

Peter Gutowsky, CDD.



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
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STAFF REPORT

DATE: December 14, 2015
TO: Deschutes County Board of Commissioners
FROM: Peter Gutowsky, Planning Manager
RE: Eagle Crest Text Amendment / 247-15-000444-TA / Deliberation

The Deschutes County Board of Commissioners (Board) conducted 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. 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. The written record was left open until December 4 for additional testimony, and the applicant was allowed to submit final argument by December 11, 2015. The Board deliberates on December 21.

I. Text Amendment Revision

The applicant recommended a minor revision to their text amendment during the November 30 public hearing (bold):

*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. **Notwithstanding anything to the contrary in Deschutes County Code, these resorts may count units that are not deed-restricted and/or do not utilize a central check-in system operated by the resort so long as such units otherwise meet the Oregon statutory definition of overnight lodgings in Eastern Oregon.***

On December 1, the applicant recommended removing “otherwise” from the sentence (bold). Staff forwarded this minor revision to everyone who testified at the Board hearing that same day.

*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. Notwithstanding anything to the contrary in Deschutes County Code, these resorts may count units that are not deed-restricted and/or do not utilize a central check-in system operated by the resort so long as such units **otherwise** meet the Oregon statutory definition of overnight lodgings in Eastern Oregon.*

II. Additional Written Testimony and Final Argument

The following individuals submitted materials into the record by December 4:

- Brent McLean's (applicant)
- Merry Ann Moore
- Pamela Burry
- Eva Eagle
- Charles Humphreys
- Paul Lipcomb
- Nunzie Gould
- Kimry Jelen

The applicant submitted final argument on December 8 and a letter on December 10 addressing the County's cost of reviewing annual reports from Eagle Crest.

III. Board Options

The Board has several options:

- Continue deliberation to a subsequent meeting
- Modify the text amendment and conduct first reading at a subsequent meeting
- Approve the text amendment as proposed by the applicant and conduct first reading
- Deny the text amendment

Attachments:

- A. Brent McLean's minor revision
- B. Merry Ann Moore submittal
- C. Pamela Burry submittal
- D. Eva Eagle submittal
- E. Charles Humphrey submittal
- F. Paul Lipcomb submittal
- G. Nunzie Gould submittal
- H. Kimry Jelen submittal
- I. Applicant's final arguments
- J. Applicant's proposed review fee

Attachment A

From: [Brent McLean](#)
To: [Peter Gutowsky](#); [Laura Craska Cooper \(lcooper@brixlaw.com\)](#)
Subject: RE: Eagle Crest Text Amendment / Revision
Date: Tuesday, December 1, 2015 3:43:35 PM

In the spirit of continual refinement based on feedback, let's delete "otherwise" and circulate to those that need to see this.

Thanks,
Brent

-----Original Message-----

From: Peter Gutowsky [<mailto:Peter.Gutowsky@deschutes.org>]
Sent: Tuesday, December 1, 2015 3:26 PM
To: Brent McLean <bmclean@nvhg.com>; Laura Craska Cooper (lcooper@brixlaw.com) <lcooper@brixlaw.com>
Subject: RE: Eagle Crest Text Amendment / Revision

Attached are your revisions. Please confirm that they are correct.

Peter Gutowsky, AICP
Planning Manager
Deschutes County Community Development Department
117 NW Lafayette
Bend, OR 97701
ph# (541)385-1709
fax# (541)385-1764

Web: www.deschutes.org/cdd

12/3/15

To: Deschutes Board of County Commissioners

RE: Text Amendment proposal 247-15-000444-TA

Please go back to the drawing board and create a better solution to bring Eagle Crest into compliance with the overnight lodging requirement.

Eagle Crest is an important contributor to the local economy. I hope it continues to succeed as a business.

Eagle Crest is also a destination resort bound by state and local standards to build overnight units and keep them available, in order to serve its primary function as a visitor-serving amenity.

I've been participating in the ongoing public debate about destination resorts and their regulatory compliance since 2005. The proposed change to Deschutes County Code allowing Eagle Crest to redefine individually-owned properties as overnight lodging needs much work before it should be considered a fair balance between the public interest and the resort's needs. Here are the fundamental flaws with the proposed language that need a solution BEFORE it's codified forever as part of county statutes.

PROBLEM 1 - You don't have an accurate count on how many individual units are really being used as overnights.

The method used to create the round number of 300 units to be redefined as overnights was a voluntary survey that only 18 percent of property owners replied to. I asked the co-author of a textbook on survey research about the statistical validity of Eagle Crest's survey on overnights. He said that given the small sample size, the response rate, and unknown biases from respondents, you can't extrapolate to 300 units from the data.

Why not require Eagle Crest to hire a third party to contact ALL property owners by phone, in person or by mail if emails aren't available, so that a more accurate count of overnights and number of weeks rented can be tallied? Eagle Crest's commitment to transparency during this process should continue by making sure this counting is done in a way that inspires confidence in the results.

PROBLEM 2 - The above illustrates that Eagle Crest does not have a bona fide central reservation system in place.

If Eagle Crest were actually operating a central reservation and check-in system, then the resort would have detailed, specific information on the individually- owned units that are really being made available as overnights. It's apparent that this information

is lacking because there is not a true central reservation system as required by both county and state law.

PROBLEM 3 - The proposed future counting method for overnight bookings is archaic by today's technological standards and needs the attention of an IT person, not county planners.

The proposed reporting protocol is clunky, unmanageable and will not be successful. It's just not realistic to think that individual reports from each unit, collected as printouts or screenshots of rental calendars from around a dozen online rental agencies, every month, is a reasonable solution. It's also not the county's job to find staff to do this manual counting and then get reimbursed.

Why not require Eagle Crest to hire an IT person to figure this out and present a 21st century approach? One that will integrate the results from all the online rental agencies and the central reservation system? It will probably end up being cheaper for Eagle Crest anyway. They could even sell this solution to other resorts as a way to recoup their cost of developing it.

PROBLEM 4 - The Text Amendment should be specific to Eagle Crest alone, and not resorts built prior to 2001.

Black Butte Ranch and Inn of the Seventh Mountain were developed beginning in the 1970s. Sunriver Resort was started in the late 1960s. Please change the TA to read Eagle Crest, not resorts built in 2001 or prior.

PROBLEM 5 - Eagle Crest reports that 400 units are deed-restricted as overnights. I understand the County has no record of these.

In order for the public to have confidence that the state-required 2.5:1 homes to overnights ratio is really abided by, Deschutes County must obtain copies of these deeds and make them available in the public record.

PROBLEM 6 - The Transient Room Tax fee that is to be paid in lieu of complying with overnights is a very bad precedent.

I'm strongly opposed to allowing a fee to be paid in lieu of a resort complying with its statutory requirement to provide the proper ratio of overnight lodging. The resort should provide bonding money for the overnights remaining to be built, just as other resorts have been required to.

I must also comment on the proposed TRT fee structure. If the County moves forward with this very bad policy, please make sure of these two things:

- The “substitute” TRT should be calculated by averaging the rate of all available overnights at the resort, not just the least-expensive overnight rooms at the Lodge.
- The Text Amendment should state that this in-lieu TRT fee will be allowed as an approach solely at Eagle Crest and no other Deschutes County resorts.

Thank you for considering my views. Sincerely,

Merry Ann Moore
69225 Hawksflight Dr.
Sisters, OR 97759

Attachment C

From: [Pamela Burry](#)
To: [Peter Gutowsky](#); [Nick Lelack](#); [Tony DeBone](#); [Tammy Baney](#); [Alan Unger](#)
Cc: [Pamela Burry](#)
Subject: Fwd: Opposing Eagle Crest Amendment
Date: Thursday, December 3, 2015 12:45:19 PM

Dear Peter Gutowsky, Nick Lelack; Commissioners DeBone, Baney, Unger;

Thank you for continuing to take citizen response regarding an Eagle Crest Text Amendment. Please submit the following into the record.

I must air my opposition regarding the possibility of altering previously established requirements and creating a text amendment for Destination Resorts in Central Oregon which, in this case, is intended to assist the fluctuating economic needs of one such development.

I understand that the request for altering the requirements for Destination Resorts would be created for Eagle Crest alone and that, in itself, presents numerous red flags. The ability of one large-scale development to adjust the initial requirements mandated by law undermines and disrespects Oregon Land Use Laws. The intention is clear: If you can afford costly legal council, then changing the law, for you, is an option. This attempt by Eagle Crest is a one-off, and

1. it will invite other Destination Resorts to seek their own re-configuring of the law to fit their individual needs and, 2. it will allow Oregon Land Use laws to become malleable i.e the varying needs of an individual developer will become the primary consideration, rather than the mandate of the law.

At the county level, there is considerable cursory research and short term thinking in this proposal. Several, but not all, red flags are stated below:

As to the primary concern of Goal 8, ORS 197.435, the proposed situation with OLU, overnight lodging units, remains unclear, contradictory and short-sighted. As you know, the ratio of OLU to residential housing is a central requirement for ALL Destination Resorts in central Oregon and, the major point here is twofold: 1. the ratio number (which began as 2:1) has been altering in favor of the developer as per Eagle Crest's petition and, 2. the very definition of OLU has become either vague or is altering, significantly favoring the developer. The language in the proposed text amendment continues to change suggesting those at the county level are equally unsure how to make all this work. (Just yesterday a re-working of proposed text amendment language was sent out via email.)

The issue with the '...central reservation system..' is dubious. How will you track the use by various VRBO (and AIRBNB etc) renters when the back-calendars on such websites can not be confirmed and, it appears, are not available? Therefore, how will you monitor arrears? You can not verify the number of rental units from a survey that reflects approximately only one fifth of the EC properties. If a resident of Eagle Crest rents out only a bedroom on a VRBO site (as is possible), is that equivalent to renting an entire home? How will you make such calculations? How will county staff manage a thorough tracking of online overnights when it could easily require overseeing at least 4,800 pages of data each year? Where will you get the manpower, the financing and the system to regulate such an onslaught of data and feel confident of its accuracy? To say you will manage the data is one thing, but to

say *how* you will do it is another. Equally, to say the resort, as it has been said, will cover the costs of such data management is one thing, but how can that be said without knowing the costs, the staffing requirements and the time required to create the needed system? In addition, it has been repeatedly stated that Eagle Crest is the only resort established before 2001. This is categorically false. (For significance: see #e; under L; pages 3-4 Exhibit A, in red, dated 11/30/2015). Black Butte Ranch began in the 1970's with ground breaking in the 1960's (see Brooks Resources). Sun River also began before 2001. As to the issue of compliance fees that would be imposed if overnight numbers are not adequate, one can only suppose that Eagle Crest may find it preferable (financially beneficial) to pay the fees (that are comparatively minimal) rather than build the overnight lodging that was originally required upon application. For the resort, the compliance fees may be an easy way out of the problem of not complying with the original Goal 8 requirement.

There are far too many unresolved, unsubstantiated, thinly-thought-out issues of substantial significance to move forward with this amendment.

We oppose the text amendment for Eagle Crest. If online renting is the way of the future for Destination Resorts, then figure out the details, iron-out the problems, establish a precise reservation system and try again. At this stage, there are too many unresolved issues to move forward.

As always, thank you for reading and reviewing these concerns. Having voice in these matters is appreciated and essential.

Yours,

Pamela Burry
Sisters

Eva Eagle
17212 Pine Drive
Sisters, OR 97759

Dear Board of County Commissioners,

Please say “No” to Eagle Crest Text Amendment 247-15-000444-TA relative to overnight lodging requirements. This amendment is a bad idea for several reasons, only four of which I list here.

1. “One Off” exceptions are always a bad idea. They are inherently unfair if kept exclusive, and they tempt others who are similarly situated to plead for their own exceptions. At that point it typically seems fair to grant those further exemptions. Thus a ‘one time’ exception is rarely that.
2. This is actually not written as a ‘one time’ exception, but worse yet it already contains the means for larger application because the amendment applies to at least two other resorts: Sun River and Black Butte Ranch. So this is not as limited as advertised in the short run, let alone in the longer run when others seek their own exemptions.
3. A very significant problem with the proposal is the method for counting the overnight units. State law mandates that a central reservation system be used because that is the only way to get an accurate record. This amendment proposes using a survey of property owners to get a count of how many houses will be used as overnight accommodations, but with a response rate of 18%, this is hardly the sort of data that a public agency should use. I think it is incumbent upon Eagle Crest to do an actual count of units by contacting all property owners.
4. Even worse is the proposed means to continue tracking the overnight units at Eagle Crest. Instead of relying on records from individual on line accounts, the County should require a single, transparent report that will allow staff to monitor this efficiently. No matter how the costs of pulling reports together are shared, the difficulty of the proposed method will guarantee it is never done well enough to serve as a tool for regulation by a public entity.

I realize that there has been a lot of time invested in this text amendment, by staff and by Eagle Crest. They have all made a real effort to craft something that will work. But the proposed solution falls far short of being appropriate for the County to use. This proposal claims to be limited and to present a viable alternative to the current rules, but it fails on both counts.

Thank you for your consideration,



Eva Eagle

Charles Humphreys

PO Box 653
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541 815 1543
chuckinsisters@gmail.com

Friday, December 04, 2015

Board of County Commissioners
Deschutes County, Bend, Oregon

Comments on Eagle Crest Text Amendment

Dear Commissioners,

I am sure we all share the same desire that destination resorts in Deschutes County be successful and achieve the goals for which they were permitted – to provide lodging and recreational facilities to visitors. And I am equally sure that we share a common concern to respect the rules in place that protect the public interest and treat all resort owners equitably.

It is for this reason that I'm writing regarding the proposed Text Amendment for Eagle Crest that stipulates how it, and it alone, be allowed to monitor and account for the overnight lodging that state and county law requires it to provide.

Eagle Crest survey inadequate to be the basis of policy. Eagle Crest reports that 260 individually owned homes provide overnight lodging (in addition to the 40 or so participating in its Rental Management Program). This is extrapolated from a 2015 “survey” that less than a fifth of owners responded to. Using this survey as evidence that the entire resort conforms to legal requirements is, at best, problematic. Imagine, for a moment, taxpayers asking the revenue office to allow them to “sample” their income streams and expenses as the basis for determining how much tax they owe – with the taxpayer choosing, and verifying, the sampling method. Would this be considered good public policy? Yet, in a nutshell, this is what Eagle Crest proposes.

What the County should require of Eagle Crest is a census of homeowners, not a survey. But even if we were to entertain the use of sampling, Eagle Crest's survey is deficient.

Accuracy of Eagle Crest survey has not been verified. Surveys have many sources of inaccuracies, including sampling errors, response biases, and erroneous data. If this were a random sample, the sampling error turns out to give an extremely wide range of results within a standard 95% confidence interval – such that it becomes impossible to verify compliance. But the problem is worse because this sample is anything but random.

Eagle Crest provided no information or analysis showing that the home owners who did respond are representative of all home owners. As a result, it is quite reasonable to argue that there may be a substantial response bias which overstates the actual number of OLU's (e.g., homeowners without email addresses on file being perhaps less likely to rent out their homes). Finally, it provided no information showing that it had attempted to verify the accuracy of the responses that it did receive, notably the high proportion offering property more than 38 weeks. There may well be incentives for homeowners to overstate availability for tax reasons. In short, even if we were to accept the use of surveys to measure compliance, this particular survey is a terrible basis for doing so.

Policy decisions require a verified and comprehensive inventory, not a survey. What Eagle Crest needs is not a survey but an inventory of all individually owned houses and a clear statement from each about rentals. It seems odd, if not irresponsible, that a resort manager would be unable or unwilling to contact all home owners, and to get information from each one. It seems equally odd that a resort which is legally required to have a central reservation and check-in system for the rental of privately owned properties cannot provide detailed and specific information on each property. Given the possibility of erroneous self-reporting, it becomes even more critical verify the information provided – perhaps through spot checks that would ask to see, for example, logs, invoices, receipts, and tax treatment of a few randomly selected homeowners. Without such information, the County would have no way of judging whether information, even from a comprehensive inventory, is an accurate basis for a policy decision.

Problem of collecting data on OLU availability not yet adequately solved. Assuming Eagle Crest can produce such an inventory of its properties demonstrating that the required number would have met the legal requirements of an overnight lodging unit, the County is still faced with the second hurdle of monitoring their ongoing availability during the year. Eagle Crest has proposed that the web-based service, VRBO, as well as other internet services, can provide the raw data, and that, rather than crunching the numbers itself, it will fully compensate the County for its own analysis of the raw data to be provided by Eagle Crest. The VRBO is a reservation system. To use it for reporting purposes, someone must make monthly printouts of each property actually listed, which must then be aggregated manually. It is unclear whether the system archives information for subsequent verification; presentations by Eagle Crest show only a forward looking calendar. Without an historical database, the County would be at the mercy of Eagle Crest because there could be no backward looking review to audit reports. Before agreeing to this Text Amendment, it would seem prudent for the County to verify that these data will, in fact, serve its need. To my knowledge, that has not yet been done.

Viable solution to analyze monitoring data needs to be developed. More importantly, the promise by Eagle Crest to reimburse the County for processing costs appears to be open ended (one might wonder why a company would agree to fund an open-ended cost

recovery arrangement but that is perhaps outside the purview of the County) and without any legal standing or enforcement. Moreover, for the County the issue is perhaps less one of reimbursed dollars than one of whether staff are on board to do the work. Both sides may have the best intentions regarding ongoing monitoring, but without detailed specifics and a binding contract, good intentions may fade as soon as the Text Amendment is approved, with no recourse. Surely the County would want to be prudent enough to do two things beforehand: (1) verify that it has staff on board who would actually be assigned to do the work (this would include a reliable estimate of how much time would be needed), and (2) put Eagle Crest's promises to reimburse into an enforceable contract. Otherwise, properly accounting for the availability of OLU's becomes yet one more public cost of destination resorts, borne by all of us to the credit of developers.

Eagle Crest's urgency should not trump sound policy deliberation and design. While we can all sympathize with the eagerness of Eagle Crest to move forward quickly, especially after such a long period of discussion, that eagerness is no substitute for its providing complete and accurate information, and for the County's negotiating a clear and enforceable contract with Eagle Crest to provide ongoing monitoring information to verify that it remains in compliance with state and county law, in a form that is readily accessible and easy to use, at no cost to County.

County policy should ensure equitable treatment – not one-off deals. There is a final issue with much larger implications. This Text Amendment is a one-off arrangement for Eagle Crest. While each resort has its own history and its unique needs, sound public policy usually stipulates that resorts, or companies, or taxpayers be treated equally. At what point will the policy toward Eagle Crest be brought into line with policies for other destination resorts? That Eagle Crest needs action now to meet some kind of commercial objective is understandable, but is it the role of a public body to adapt rules for every individual business contingency? Is Eagle Crest's push for immediate action really any different than my asking the revenue department to defer my taxes so I can invest the money elsewhere? Would the Commission approve a tax deferment for me? Worse, if a one-off arrangement like this is subsequently used a model for all destination resorts, as some at the both the County and Eagle Crest seem to have proposed, the County will have moved one step further toward unraveling the development rationale for destination resorts.

From this latter perspective, Eagle Crest's proposal for an in-lieu payment of prospective TRT obligations, instead of ensuring the legally stipulated number of OLU's, would be a gross distortion of the role of destination resorts. Are these resorts merely a means of generating a particular tax on visitors, or are they a really meant to support economic development and jobs by attracting people to visit and spend money on local goods and services? Eagle Crest may find it much easier to pay the equivalent of the TRT it should

have been collecting than to do the hard work of constructing, maintaining, and managing the OLU's required by state and local statute. But just because it would be easier for Eagle Crest does not mean it would be good policy for economic development in the county.

This Text Amendment is an important project. As such it deserves the time required to make sure the County does it right. In my view, these issues require more diligence, more information, and more thought.

Sincerely,

—

A handwritten signature in black ink, appearing to read "Charles P. Humphreys". The signature is written in a cursive style with a large, prominent initial "C".

Charles Humphreys, Ph.D. (Economics)

Here are my thoughts as to this week's new proposed amendment to Eagle Crest's original proposed text amendment.

Philosophically, I agree that it may well be that the time has come to modify the way that we calculate overnight lodging units in Central Oregon and throughout the State of Oregon. However, this is not the way to go about doing that. Doing it correctly would require a state statutory change in Salem to alter Goal 8, as well as making complementary county code changes in Deschutes County. And if such changes should be made, there is simply no good reason to apply them just to Eagle Crest, rather than to all destination resorts currently affected by these laws.

Personally, I have a special fondness for Eagle Crest Resort as it is the place where my wife and I chose to celebrate our 30th wedding anniversary 15 years ago. Practically, I see real problems with the manner in which Eagle Crest seeks to get around current laws as to how overnight lodgings are calculated, and particularly with this week's new proposed amendment to their pending text amendment.

First, while the newly proposed amendment to Eagle Crest's original proposed text amendment may cure the internal legal conflict between their proposed text amendment and other DCC provisions created by the original text amendment. However, it would do so only by declaring that those conflicting code provisions just don't apply to this new provision, rather than by reconciling the internal policy conflicts they are creating with other code provisions. It would be better public policy to reconcile Eagle Crest's new proposal with existing county policy as set forth in the existing county code provisions, rather than to simply declare that the new language trumps any and all existing code provisions with which it conflicts.

Second, the newly proposed amendment to Eagle Crest's original proposed text amendment do nothing at all to address their proposal's direct conflict with Oregon's Statewide Planning Goals and Guidelines GOAL 8: Recreation Needs, OAR 660-015-0000(8). Goal 8 provides that individually owned units can be considered overnight lodgings only if such units "are available for overnight rental use . . . through a central reservation system operated by the destination resort" or by an Oregon licensed real estate professional.

Eagle Crest's proposal does not meet those criteria. While Eagle Crest does operate a central reservation system, many of the individually owned units that Eagle Crest now wishes to count toward its legal quota are not currently available through their central reservation system, but only through VRBO and other similar entities. If they were, Eagle Crest would have better data on who owned them, where they were located, and when they were available for rent to the general public.

Third, what's the rush here? Neither Deschutes County residents, nor our elected county officials, should be expected to process and approve an amendment to a proposed text amendment that changes existing provisions of our county code currently applicable to all destination resorts on such short notice. This is particularly true where, as here, the text amendment would provide special treatment for one resort under one code provision, as well as exemption from all other code provisions that conflict with it. The three working days' notice given to respond to this amendment to the Eagle Crest text amendment is simply inadequate.

Thank you for considering my concerns.

Paul Lipscomb
PO Box 579,
Sisters, OR 97759

Peter Gutowsky

Subject: RE: testimony Eagle Crest Text Amendment overnight penalty

-----Original Message-----

From: Nunzie [<mailto:nunzie@pacifier.com>]

Sent: Friday, December 4, 2015 4:58 PM

To: Board

Cc: Nick Lelack

Subject: testimony Eagle Crest Text Amendment overnight penalty

Greetings BOCC:

Kindly enter this into the Eagle Crest Text Amendment record I encourage the BOCC to deny the Eagle Crest Text Amendment on overnight penalty and overnight reporting with the wording that is before you now.

After so many years, it is time for the County to be able to track overnights in destination resorts.

It has not been shown what the fiscal effect of actually collecting TRT from an overnight is compared to a penalty payment for not having the unit available for the 38 week.

i.e. this new language does not incentivize a non compliant resort to become compliant with building their overnight accommodations.

The state standard was never about individual home owners in resorts being responsible for a resort to meet the overnight unit needs.

The resort has a central reservation system and should use this existing system which it can track instead of asking the County to do a lot of run around collecting individual vacation rental information from vrbo, homeaway, expedia, flipkey, craigslist etc The purposed of resorts asking the state to allow for property managers to be able to track olu's in addition to a resort's central reservation system was clear.

I don't think this should be further dilluted and I don't think the public should be footing any of these bills (i.e. staff time or other)

CDD should not be barred from obtaining resort information from it's finance department as identified in the text. This is not very transparent.

Your CDD director testified that in April 2016 he hopes to be able to offer the BOCC a matrix for how resorts are complying with overnights.

I think having 1 simple system is better than establishing protocol for one resort such as Eagle Crest's proposed Text Amendment because I think the language of the text amendment sets up a protocol that likely your other resorts will wish for.

This will set the stage for overnights not being actually built.

The simple solution to get the wording right for all resorts is what is needed by Deschutes County now.

I encourage denial at this time and come up with simpler language that achieves olu tracking and compliance with state law.

Thank you for considering my views,

Nunzie Gould

541-420-3325

Attachment H

From: [Kimry Jelen](#)
To: [Tammy Baney](#); [Alan Unger](#); [Tony DeBone](#); [Nick Lelack](#); [Peter Gutowsky](#)
Cc: [Kimry Jelen](#)
Subject: Eagle Crest Text Amendment
Date: Friday, December 4, 2015 3:28:09 PM

Dear Peter Gutowsky, Nick Lelack; Commissioners DeBone, Baney, Unger;

I appreciate the opportunity for public comment on this very important issue of Eagle Crest's Text Amendment.

While I can sympathize with the homeowners in Eagle Crest and understand how Eagle Crest might be frustrated having spent 19 months already, I hope that these very people can understand the bigger picture here. Even though it seems that Eagle Crest is genuinely working out a text amendment just for them specifically, it does set a precedent for other Resorts.

According to a quick history check on these resorts websites, Black Butte Ranch and Sunriver were both around prior to 2001, so I am not comfortable with the wording as it is - the lawyer said he could change it to be more specific by putting Eagle Crest in there, why not, why would they state resorts prior to 2001, why not just Eagle Crest so their intent is loud and clear that it is actually just for Eagle Crest?

How was it that 19 months of work was spent on this TA, without input from a very impressive community full of smart and helpful people - outside of Eagle Crest? Instead, you spending your time allowing a bandaid, a temporary fix, a short sighted one-off! Something much more productive than ONLY for Eagle Crest could be worked out with that much time... You know there is a BIG problem with this very issue.

Why are you even allowing Eagle Crest to put something forth that would create more unproductive work for the county? Why not have Eagle Crest spend the money hiring someone to do this? It seems wrong in so many ways.

Again, take a step back, instead of trying to make a quick fix, please consider you have an opportunity here to put something in place that would benefit all parties. Let it become something better!

However, if you must go forward with this Text Amendment please;

1. Make it air tight, so it ONLY pertains to Eagle Crest and add that if the county comes up with better rules and regulations regarding this (as mentioned this would be looked at in the spring), they drop the TA and go with the new Rules and Regulations.
2. Have Eagle Crest do the work, instead of reimbursing the county for doing the work. This just seems incredibly wrong to have the County literally, be on the payroll and work for one individual resort.
3. The survey talked about, seemed extremely vague and unclear and not something to base changing law over. No granting of overnight lodging status to these individual units should be approved by Deschutes County until the survey tool is reviewed and the results are deemed correct and accurate.

Going forward I hope you will try to work with the public and put in place a better process so the county can benefit from revenue from visitors to this area instead of allowing resorts to get away with not complying. It appearing that you are "in bed with" the resorts instead of following the law. Please look at the big picture and help keep Oregon a special place to live, do the right thing, not the easy thing - enabling resorts to not follow the law is unhealthy.

Thank you for your time,
Kimry Jelen



December 8, 2015

Peter Gutowsky
Planning Manager
Deschutes County Community Development Department
117 NW Lafayette, Bend, OR 97701

RE: Response to Public Comment

Dear Peter,

The following is Eagle Crest Resort's final rebuttal to the public comment pertaining to the Resort's proposed Text Amendment ("PTA").

RESPONSE TO PUBLIC COMMENT

The Resort sent its PTA electronically to 1,087 Resort property owners with email address on file on August 13, 2015. The Resort's PTA was covered on the front page of the Bend Bulletin business section on August 20, 2015. The Resort's PTA was considered by the Planning Commission at three separate meetings in September, October and November 2015. Very limited public comment was received up to this point, and each was covered in the Resort's burden of proof and/or the hearings.

The Resort's PTA was also reviewed in a Board of County Commissioner's ("BOCC") public hearing in November 2015. Following this public hearing, public comment was submitted by seven local citizens, none of whom live within the Resort. There are approximately 1,900 real estate property owners in the Resort and 170,000 citizens in the County. Specifically, the public comment has been submitted by the following:

- Ms. Eagles, who does not live within the Resort, never attended a public hearing, and has never reached out to the Resort to discuss the Resort's PTA.
- Ms. Burry, who does not live within the Resort and has never reached out to the Resort to discuss the Resort's PTA.
- Ms. Moore, who does not live within the Resort and has never reached out to the Resort to discuss the Resort's PTA.
- Mr. Humphreys, who does not live within the Resort, never attended a public hearing, and has never reached out to the Resort to discuss the Resort's PTA.
- Mr. Lipscomb, who does not live within the Resort, and has never reached out to the Resort to discuss the Resort's PTA.
- Ms. Jelen, who does not live within the Resort, never attended a public hearing, and has never reached out to the Resort to discuss the Resort's PTA.
- Ms. Gould, who does not live within the Resort, is a well-known opponent of all destination resorts, and has never reached out to the Resort to discuss the Resort's PTA.

The following includes the seven public comments, along with the Resort's responses in **bold** for clarity, as well as the Resort's final comment.

Eva Eagles. Sisters. Oregon

Public Comment Dated Dec 2, 2015

- *"One Off" exceptions are always a bad idea. They are inherently unfair if kept exclusive, and they tempt others who are similarly situated to plead for their own exceptions. At that point it typically seems fair to grant those further exemptions. Thus a 'one time' exception is rarely that.*

There is no other Goal 8 destination resort "similarly situated". As the Resort has detailed in its burden of proof and at the hearing, it is in a very unique situation. It was the first Goal 8 destination resort in Deschutes County, and the County and Resort have learned how to interpret and carry out the terms of Goal 8 over time. Since the Resort was first approved, State law and the County's ordinance have changed multiple times, and the County has grown more sophisticated about how to monitor and enforce OLU requirements. The facts that (i) the Resort is uniquely situated (almost fully platted) and (ii) that the other, newer resorts are operating under newer, different rules (requiring up-front construction of the initial units and bonding of additional units) provide good reason to create an Eagle Crest Resort-only solution to an Eagle Crest Resort-only situation.

- *This is actually not written as a 'one time' exception, but worse yet it already contains the means for larger application because the amendment applies to at least two other resorts: Sun River and Black Butte Ranch. So this is not as limited as advertised in the short run, let alone in the longer run when others seek their own exemptions.*

The resorts mentioned above are not Goal 8 destination resorts and therefore do not have OLU ratio requirements. Therefore, the Resort's PTA does not apply to these resorts.

- *A very significant problem with the proposal is the method for counting the overnight units. State law mandates that a central reservation system be used because that is the only way to get an accurate record. This amendment proposes using a survey of property owners to get a count of how many houses will be used as overnight accommodations, but with a response rate of 18%, this is hardly the sort of data that a public agency should use. I think it is incumbent upon Eagle Crest to do an actual count of units by contacting all property owners.*

As the Resort has detailed in its burden of proof and at the hearings, the Resort operates a central reservation system through which all units that will be counted are made available for rent. The Resort's PTA does not include a survey of any kind and therefore no sort of response rate is pertinent to the discussion.

- *Even worse is the proposed means to continue tracking the overnight units at Eagle Crest. Instead of relying on records from individual on line accounts, the County should require a single, transparent report that will allow staff to monitor this efficiently. No matter how the costs of pulling reports together are shared, the difficulty of the proposed method will guarantee it is never done well enough to serve as a tool for regulation by a public entity.*

The proposed report will be singular and transparent and will serve as the most comprehensive reporting tool of any Goal 8 destination resort for “regulation by a public entity.”

Pamela Burry. Sisters, Oregon

Public Comment Dated Dec 3, 2015

- *I must air my opposition regarding the possibility of altering previously established requirements and creating a text amendment for Destination Resorts in Central Oregon which, in this case, is intended to assist the fluctuating economic needs of one such development.*

The Resort’s PTA has nothing to do with fluctuating economic needs. The Resort’s PTA is not a text amendment for “destination resorts in Central Oregon” but the Resort specifically.

- *The ability of one large-scale development to adjust the initial requirements mandated by law undermines and disrespects Oregon Land Use Laws.*

As the applicant has demonstrated in its burden of proof and at the hearings, the PTA is consistent with State law. The State, through the Department of Land Conservation and Development, has concurred.

- *This attempt by Eagle Crest is a one-off, and [...] it will invite other Destination Resorts to seek their own re-configuring of the law to fit their individual needs.*

As noted above, the Resort’s PTA is specific to the Resort.

- *[This attempt by Eagle Crest is a one-off,] and it will allow Oregon Land Use laws to become malleable i.e the varying needs of an individual developer will become the primary consideration, rather than the mandate of the law.*

The individual needs of an individual developer is not at issue. The Resort has hundreds of OLU’s that meet State law, and through this PTA it is seeking to count them as OLU’s.

- *The ratio number (which began as 2:1) has been altering in favor of the developer as per Eagle Crest's petition. The very definition of OLU has become either vague or is altering, significantly favoring the developer.*

The Resort's PTA does not change the required ratio, or the State or County's definition of an overnight lodging unit. The County's definition is more stringent, but does not need to be, especially when considering the unique history of the Resort.

- *The language in the [PTA] continues to change suggesting those at the county level are equally unsure how to make all this work. (Just yesterday a re-working of [PTA] language was sent out via email.)*

This is a legislative process and certain public comment has produced limited improvements to the text. The substance and intent of the Resort's PTA, however, remains unchanged. The revised Text is entirely in keeping with the intent of 19 months of collaboration with the County; the Resort will count all OLUs that meet State law.

- *The issue with the '...central reservation system..' is dubious. How will you track the use by various VRBO (and AIRBNB etc) renters when the back-calendars on such websites can not be confirmed and, it appears, are not available? Therefore, how will you monitor arrears?*

The Resort will be pulling the availability calendars on a monthly basis – which will provide detailed, comprehensive availability. The calendars of availability are readily available. If they are not, the OLU will not be counted.

- *You can not verify the number of rental units from a survey that reflects approximately only one fifth of the EC properties.*

The Resort's PTA does not include a survey.

- *If a resident of Eagle Crest rents out only a bedroom on a VRBO site (as is possible), is that equivalent to renting an entire home?*

Nothing in State law or County code disqualifies a bedroom rental. However, the rule followed by the Resort has been the OLU must have a separate entrance and a separate bathroom. This methodology will continue after adoption of the Resort's PTA. Moreover, the OLU type ("separately rented unit" vs "home") will be *specifically* called out in the Resort's annual reports.

- *How will county staff manage a thorough tracking of online overnights when it could easily require overseeing at least 4,800 pages of data each year? Where will you get the manpower, the financing and the system to regulate such an onslaught of data and feel confident of its accuracy?*

To say you will manage the data is one thing, but to say how you will do it is another. Equally, to say the resort, as it has been said, will cover the costs of such data management is one thing, but how can that be said without knowing the costs, the staffing requirements and the time required to create the needed system?

As a result of the County's existing reporting requirements, the County has responsibilities for oversight that require dedicated resources. The Resort's reports per the PTA will be the most comprehensive of any Goal 8 destination resort in the County, and may require additional County staff time to review. The Resort has stated that it will cover these additional costs. In addition, the County has the authority to impose a fee in connection with the collection of the annual compliance reports.

- *In addition, it has been repeatedly stated that Eagle Crest is the only resort established before 2001. This is categorically false. (For significance: see #e; under L; pages 3-4 Exhibit A, in red, dated 11/30/2015). Black Butte Ranch began in the 1970's with ground breaking in the 1960's (see Brooks Resources). Sun River also began before 2001.*

The resorts mentioned above are not Goal 8 destination resorts and therefore do not have OLU ratio requirements. Therefore, the Resort's PTA does not apply to these resorts.

- *As to the issue of compliance fees that would be imposed if overnight numbers are not adequate, one can only suppose that Eagle Crest may find it preferable (financially beneficial) to pay the fees (that are comparatively minimal) rather than build the overnight lodging that was originally required upon application. For the resort, the compliance fees may be an easy way out of the problem of not complying with the original Goal 8 requirement.*

There is nothing "easy" about the proposed Compliance Fee.

Merry Ann Moore. Sisters, Oregon

Public Comment Dated Dec 3, 2015

- *You don't have an accurate count on how many individual units are really being used as overnights. The method used to create the round number of 300 units to be redefined as overnights was a voluntary survey that only 18 percent of property owners replied to.*

The Resort's PTA does not include a survey. A survey of the Resort's property owners has been used since 2008 and the County stated it was effective and should continue. However, the Resort's PTA does not propose to continue this practice.

- *Why not require Eagle Crest to hire a third party to contact ALL property owners by phone, in person or by mail if emails aren't available, so that a more accurate count of overnights and number of*

weeks rented can be tallied? Eagle Crest's commitment to transparency during this process should continue by making sure this counting is done in a way that inspires confidence in the results.

The Resort has hired a year-round, dedicated employee that will perform the necessary reporting on a monthly basis. The online availability calendars will prove highly accurate.

- *If Eagle Crest were actually operating a central reservation and check-in system, then the resort would have detailed, specific information on the individually- owned units that are really being made available as overnights. It's apparent that this information is lacking because there is not a true central reservation system as required by both county and state law.*

As the Resort has detailed in its burden of proof and at the hearings, the Resort operates a central reservation system through which all units that will be counted are made available for rent.

DLCD has stated "the department does not oppose the current proposal." Moreover, DLCD notes, "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 the authority to reasonably determine whether a particular resort's practices satisfy the statutory requirement."

- *The proposed reporting protocol is clunky, unmanageable and will not be successful. It's just not realistic to think that individual reports from each unit, collected as printouts or screenshots of rental calendars from around a dozen online rental agencies, every month, is a reasonable solution. It's also not the county's job to find staff to do this manual counting and then get reimbursed. Why not require Eagle Crest to hire an IT person to figure this out and present a 21st century approach? One that will integrate the results from all the online rental agencies and the central reservation system? It will probably end up being cheaper for Eagle Crest anyway. They could even sell this solution to other resorts as a way to recoup their cost of developing it.*

The proposed reporting protocol is neither "clunky" nor "unmanageable," and it will be successful. Moreover, the County will not perform the audits and prepare the reports; the Resort will.

- *Black Butte Ranch and Inn of the Seventh Mountain were developed beginning in the 1970s. Sunriver Resort was started in the late 1960s. Please change the TA to read Eagle Crest, not resorts built in 2001 or prior.*

The resorts mentioned above are not Goal 8 destination resorts and therefore do not have OLU ratio requirements. Therefore, the Resort's PTA does not apply to these resorts.

- *I'm strongly opposed to allowing a fee to be paid in lieu of a resort complying with its statutory requirement to provide the proper ratio of overnight lodging. The resort should provide bonding money for the overnights remaining to be built, just as other resorts have been required to.*

This is an Eagle Crest Resort-only solution to an Eagle Crest Resort-only situation. As presented in the Resort's burden of proof and at the hearings, there is no land on which to build or bond for additional OLU's.

- *I must also comment on the proposed TRT fee structure. The "substitute" TRT should be calculated by averaging the rate of all available overnights at the resort, not just the least-expensive overnight rooms at the Lodge.*

The Compliance Fee methodology is very sound. If the Resort cannot show it has the requisite number of OLU's, it will pay the average lodging tax the Resort pays for all of its OLU's. Moreover, there is no requirement for a resort developer to build tax-generating OLU's; timeshare units are OLU's and do not generate lodging tax. Therefore, the proposed Compliance Fee is very fair and reasonable.

Charles Humphreys. Sisters, Oregon

Public Comment Dated Dec 4, 2015

- *Eagle Crest survey inadequate to be the basis of policy. Accuracy of Eagle Crest survey has not been verified. Policy decisions require a verified and comprehensive inventory, not a survey.*

The Resort's PTA does not include a survey.

- *Problem of collecting data on OLU availability not yet adequately solved. VRBO is a reservation system. To use it for reporting purposes, someone must make monthly printouts of each property actually listed, which must then be aggregated manually. It is unclear whether the system archives information for subsequent verification; presentations by Eagle Crest show only a forward looking calendar.*

The Resort's presentations have shown forward-looking calendars only to show the detailed amount of information available, and to confirm the Resort's ability to show that an OLU is being made available for 38 weeks or more per year.

As soon as the Resort's PTA is approved, the Resort will begin pulling the OLU's 12-month calendars every month. This way, in February each year, the Resort's comprehensive annual report will show the previous 12 month history for each OLU.

- *Viable solution to analyze monitoring data needs to be developed. More importantly, the promise by Eagle Crest to reimburse the County for processing costs appears to be open ended [...] and without*

any legal standing or enforcement. Moreover, for the County the issue is perhaps less one of reimbursed dollars than one of whether staff are on board to do the work. Both sides may have the best intentions regarding ongoing monitoring, but without detailed specifics and a “binding contract, good intentions may fade as soon as the Text Amendment is approved, with no recourse. Surely the County would want to be prudent enough to do two things beforehand: (1) verify that it has staff on board who would actually be assigned to do the work (this would include a reliable estimate of how much time would be needed), and (2) put Eagle Crest’s promises to reimburse into an enforceable contract. Otherwise, properly accounting for the availability of OLU’s becomes yet one more public cost of destination resorts, borne by all of us to the credit of developers.

The Resort’s PTA is the result of 19 months of collaboration between the Resort and County and both sides have acted in good faith. As a result of the County’s existing reporting requirements, the County has responsibilities for oversight that require dedicated resources. The Resort’s reports per the PTA will be the most comprehensive of any Goal 8 destination resort in the County, and may require additional County staff time to review. The Resort has stated that it will cover these additional costs.

- *Eagle Crest’s urgency should not trump sound policy deliberation and design. While we can all sympathize with the eagerness of Eagle Crest to move forward quickly, especially after such a long period of discussion, that eagerness is no substitute for its providing complete and accurate information, and for the County’s negotiating a clear and enforceable contract with Eagle Crest to provide ongoing monitoring information to verify that it remains in compliance with state and county law, in a form that is readily accessible and easy to use, at no cost to County.*

The Resort’s PTA is the result of 19 months of collaboration between the Resort and County. The Resort is not seeking a “substitute for providing complete and accurate information”; the Resort will be providing the most accurate and comprehensive report of any Goal 8 destination resort in the County.

- *County policy should ensure equitable treatment – not one-off deals. There is a final issue with much larger implications. This Text Amendment is a one-off arrangement for Eagle Crest. While each resort has its own history and its unique needs, sound public policy usually stipulates that resorts, or companies, or taxpayers be treated equally.*

As the County’s first Goal 8 destination resort, the Resort has always been different. Over the 30 years of the Resort’s development, State law has changed and County code has changed. Moreover, the County’s enforcement has changed. The significant difference in the Resort’s history justifies a different treatment.

It is very important to note that the Resort’s PTA holds the Resort to the requirements of State law.

- *At what point will the policy toward Eagle Crest be brought into line with policies for other destination resorts?*

Why is this necessary? No other Goal 8 destination resort in the County mirrors the Resort and every other resort has been developed during periods of much greater understanding of State law, and County code and enforcement.

- *That Eagle Crest needs action now to meet some kind of commercial objective is understandable, but is it the role of a public body to adapt rules for every individual business contingency?*

This is not about any business contingency; it is about the real viability of the County's most mature Goal 8 destination resort and the County's highest lodging tax payer outside Sunriver.

- *Is Eagle Crest's push for immediate action really any different than my asking the revenue department to defer my taxes so I can invest the money elsewhere?*

This is not an appropriate metaphor. The Resort's PTA has been under discussion for 19 months, and through hearings and public comment for 5 months. The Resort is not seeking to defer financial obligations; it is seeking to count OLUs that meet State law.

- *Worse, if a one-off arrangement like this is subsequently used a model for all destination resorts, as some at the both the County and Eagle Crest seem to have proposed, the County will have moved one step further toward unraveling the development rationale for destination resorts.*

The Resort has never suggested that its PTA be used as a model of any other Goal 8 destination resort. Moreover, it would not "unravel" the rationale for Goal 8 destination resorts; under the Resort's PTA, only units that meet the Goal 8 definition of an OLU would be counted.

- *[...] Eagle Crest's proposal for an in-lieu payment of prospective TRT obligations, instead of ensuring the legally stipulated number of OLUs, would be a gross distortion of the role of destination resorts. Are these resorts merely a means of generating a particular tax on visitors, or are they a really meant to support economic development and jobs by attracting people to visit and spend money on local goods and services?*

The Resort's PTA aims to count OLUs that *do* exist and that *do* serve the function of attracting overnight guests. Furthermore, the Resort is one of the County's largest economic developments and job creators. If it ceased to operate, it would have a significant and negative impact on the economy and job market of Deschutes County.

Moreover, if the Resort were to build 300+ additional OLUs (setting aside the issue financial impossibility and lack of land, among others), the incremental gain to the local economy would be negligible as the demand does not exist. The OLUs would be competing with hundreds of OLUs already available – the ones the Resort seeks to count.

- *Eagle Crest may find it much easier to pay the equivalent of the TRT it should have been collecting than to do the hard work of constructing, maintaining, and managing the OLUs required by state and local statute.*

There would be nothing easy about paying the Compliance Fee. Moreover, the OLUs the Resort intends to count are compliant with State law.

Paul Lipscomb, Sisters, Oregon

Public Comment Dated Dec 4, 2015

- *“Philosophically, I agree that it may well be that the time has come to modify the way that we calculate overnight lodging units in Central Oregon and throughout the State of Oregon. However, this is not the way to go about doing that. Doing it correctly would require a state statutory change in Salem to alter Goal 8, as well as making complementary county code changes in Deschutes County. And if such changes should be made, there is simply no good reason to apply them just to Eagle Crest, rather than to all destination resorts currently affected by these laws.”*

The Resort’s PTA does not modify the way “we calculate overnight lodging UNITS in Central Oregon and throughout the State of Oregon.” The Resort’s PTA would allow the counting of OLUs that comply with State law. The Resort’s PTA is specific only to the resort, for very good reason.

- *“While the newly proposed amendment to Eagle Crest’s original [PTA] may cure the internal legal conflict between their [PTA] and other DCC provisions created by the original text amendment. However, it would do so only by declaring that those conflicting code provisions just don’t apply to this new provision, rather than by reconciling the internal policy conflicts they are creating with other code provisions. It would be better public policy to reconcile Eagle Crest’s new proposal with existing county policy as set forth in the existing county code provisions, rather than to simply declare that the new language trumps any and all existing code provisions with which it conflicts.”*

The Resort agrees that the legislative process has improved the Resort’s PTA. Because the Resort’s PTA is specific to the Resort, there is no need to make additional changes to the County’s existing ordinances.

- *“While Eagle Crest does operate a central reservation system, many of the individually owned units that Eagle Crest now wishes to count toward its legal quota are not currently available through their central reservation system, but only through VRBO and other similar entities. If they were,*

Eagle Crest would have better data on who owned them, where they were located, and when they were available for rent to the general public.”

There is no definition of central reservation system in State law or County code, so how can this conclusion be reached? As noted by DLCD, in the absence of such a definition, the County has the discretion to accept the Resort’s central reservation system.

The Resort’s website certainly meets the ordinary definition of a “central reservation system”, and it satisfies the original intent of the statutory requirement – to create a convenient location where a potential visitor can find and reserve lodgings.

As noted in the Resort’s burden of proof and at the hearings, the OLUs that the Resort seeks to count are available through the Resort’s central reservation system. Anyone visiting the Resort’s website can find these units and make a reservation.

If the Resort’s PTA is approved, the Resort will be providing comprehensive data on the OLUs, including “who owned them, where they were located, and when they were available for rent to the general public.”

- *“What’s the rush here? Neither Deschutes County residents, nor our elected county officials, should be expected to process and approve an amendment to a [PTA] that changes existing provisions of our county code currently applicable to all destination resorts on such short notice. This is particularly true where, as here, the text amendment would provide special treatment for one resort under one code provision, as well as exemption from all other code provisions that conflict with it. The three working days’ notice given to respond to this amendment to the Eagle Crest text amendment is simply inadequate.”*

While there is significant urgency to ensure the future viability of the Resort, there has been no rush in crafting, submitting and reviewing the Resort’s PTA. It is the result of 19 months of collaboration between the Resort and County. The collaboration commenced in March 2014. The application was submitted August 12, 2015 and since the Resort’s PTA has been through 5 months of public comment and hearings. It is inaccurate to say there has been a “rush.”

The Resort’s PTA does not “change existing provisions of our county code currently applicable to all destination resorts.”

Ms. Jelen, Sisters, Oregon

Public Comment Dated Dec 4, 2015

- While I can sympathize with the homeowners in Eagle Crest and understand how Eagle Crest might be frustrated having spent 19 months already, I hope that these very people can

understand the bigger picture here. Even though it seems that Eagle Crest is genuinely working out a text amendment just for them specifically, it does set a precedent for other Resorts. According to a quick history check on these resorts websites, Black Butte Ranch and Sunriver were both around prior to 2001, so I am not comfortable with the wording as it is - the lawyer said he could change it to be more specific by putting Eagle Crest in there, why not, why would they state resorts prior to 2001, why not just Eagle Crest so their intent is loud and clear that it is actually just for Eagle Crest?

The resorts mentioned above are not Goal 8 destination resorts and therefore do not have OLU ratio requirements. Therefore, the Resort's PTA does not apply to these resorts.

- How was it that 19 months of work was spent on this TA, without input from a very impressive community full of smart and helpful people - outside of Eagle Crest? Instead, you spending your time allowing a bandaid, a temporary fix, a short sighted one-off! Something much more productive than ONLY for Eagle Crest could be worked out with that much time... You know there is a BIG problem with this very issue.

This is very specifically the Resort's PTA. It has never been intended to apply to all Goal 8 destination resorts in the County. This is not a County initiative. Moreover, it has been drafted with the help of a "very impressive community of smart helpful people" inside and outside the Resort.

- Why are you even allowing Eagle Crest to put something forth that would create more unproductive work for the county? Why not have Eagle Crest spend the money hiring someone to do this? It seems wrong in so many ways.

The County will not perform the audits and prepare the reports; the Resort will.

- Again, take a step back, instead of trying to make a quick fix, please consider you have an opportunity here to put something in place that would benefit all parties. Let it become something better!

This is by no means a quick fix. The Resort's PTA is the culmination of three decades of development, a decade of reporting to the County, and 19 months of significant collaboration with the County to craft a PTA specific to the Resort. The Resort's PTA has been through 5 months of public comment and hearings in front of the Planning Commission and the Board of Commissioners. Based on public comment that has provided specific ways to improve the Resort's PTA, the Resort's PTA has been revised and improved.

The pleas to extend the process appear to be an attempt to use delay in lieu of a sound and persuasive objection.

- However, if you must go forward with this Text Amendment please; 1. Make it air tight, so it ONLY pertains to Eagle Crest [...].

The Resort's PTA is specific to the Resort. As discussed at the public hearing before the Board of County Commissioners, no other Goal 8 destination resort is in a similar situation and therefore none would require the updated reporting requirements included in the Resort's PTA. In any case, any other Goal 8 destination resort that wanted similar reporting requirements would need to first initiate a text amendment. Such a text amendment would go through the same public process - with hearings - as this Resort's PTA.

- Have Eagle Crest do the work, instead of reimbursing the county for doing the work. This just seems incredibly wrong to have the County literally, be on the payroll and work for one individual resort.

The Resort will be doing "the work".

- The survey talked about, seemed extremely vague and unclear and not something to base changing law over. No granting of overnight lodging status to these individual units should be approved by Deschutes County until the survey tool is reviewed and the results are deemed correct and accurate.

The Resort's PTA does not include a survey.

- Going forward I hope you will try to work with the public and put in place a better process so the county can benefit from revenue from visitors to this area instead of allowing resorts to get away with not complying. It appearing that you are "in bed with" the resorts instead of following the law. Please look at the big picture and help keep Oregon a special place to live, do the right thing, not the easy thing - enabling resorts to not follow the law is unhealthy.

The Resort is complying with State law. The Resort's PTA is in compliance with State law.

Nunzie Gould. Many Addresses. Oregon

Public Comment Dated Dec 4, 2015

- After so many years, it is time for the County to be able to track overnights in destination resorts.

Under the Resort's PTA, the Resort will be providing the most accurate and comprehensive reports of any Goal 8 destination resort in the County.

- It has not been shown what the fiscal effect of actually collecting TRT from an overnight is compared to a penalty payment for not having the unit available for the 38 week. i.e. this new language does not incentivize a non compliant resort to become compliant with building their overnight accommodations.

It seems very easy for some to say “just build the OLU.” Yet the OLU the Resort will count are compliant with State law and therefore why should it be forced to build more?

The Compliance Fee methodology is very sound. If the Resort cannot show it has the requisite number of OLUs, it will pay the average lodging tax the Resort pays for all of its OLUs. Moreover, there is no requirement for a resort developer to build tax-generating OLUs; timeshare units are OLUs and do not generate lodging tax. Therefore, the proposed Compliance Fee is very fair and reasonable.

- The state standard was never about individual home owners in resorts being responsible for a resort to meet the overnight unit needs.

The State “standard” or law is very clear – individually-owned OLUs may be counted by the Resort. Certainly these owners are not responsible for the Resort’s compliance, but yes, they absolutely count as OLUs.

- The resort has a central reservation system and should use this existing system which it can track instead of asking the County to do a lot of run around collecting individual vacation rental information from vrbo, homeaway, expedia, flipkey, craigslist etc[.]

The Resort’s website is a central reservation system and it will “use this existing system which it can track”. The Resort’s PTA is not requesting the County prepare its annual reports. The Resort will compile all the information called out in the Resort’s PTA from its central reservation system.

- The purposed of resorts asking the state to allow for property managers to be able to track olu's in addition to a resort's central reservation system was clear. I don't think this should be further diluted [...]

It is unclear what point Ms. Gould is trying to make here, and therefore the Resort is unable to respond.

- [...] I don't think the public should be footing any of these bills (i.e. staff time or other).

By requiring and monitoring the reports of Goal 8 destination resorts, the County already incurs cost. The Resort’s reports will be the most comprehensive of any Goal 8 destination

resort, and it is expected additional review time will be necessary. The Resort has stated repeatedly that it will reimburse the County for this additional time.

- CDD should not be barred from obtaining resort information from its finance department as identified in the text. This is not very transparent.

The Resort's PTA does not seek to bar the exchange of information among departments within the County. The Resort's PTA has been crafted to be very specific to the Resort alone. The text called out above is a part of County code that applies to all Goal 8 destination resorts, which is why it was not changed.

- Your CDD director testified that in April 2016 he hopes to be able to offer the BOCC a matrix for how resorts are complying with overnights. I think having 1 simple system is better than establishing protocol for one resort such as Eagle Crest's proposed Text Amendment because I think the language of the text amendment sets up a protocol that likely your other resorts will wish for. This will set the stage for overnights not being actually built.

The Resort understands the County Planning Department intends to provide a matrix that sums up all Goal 8 destination resorts into one easy-to-use table. The information generated by the Resort under the Resort's PTA will fit very nicely into such a matrix, making comparisons among the County's resorts quite easy.

The reporting mechanism may be different under the Resort's PTA (for many good reasons, as discussed in the Resort's burden of proof and at the hearings), but the information generated through such reporting will be easily comparable to, and more comprehensive than, the reporting from other Goal 8 destination resorts.

The Resort's PTA is specific to the Resort. Just because another Goal 8 destination resort could "wish" for the same, will not make it a reality.

- The simple solution to get the wording right for all resorts is what is needed by Deschutes County now.

The existing County code works for all other Goal 8 destination resorts. Moreover, the Resort's PTA being reviewed is not for all Goal 8 destination resorts - it is for the Resort specifically.

- I encourage denial at this time and come up with simpler language that achieves our tracking and compliance with state law.

The “language” proposed in the Resort’s PTA achieves OLU tracking and is compliant with State law. Moreover, the Resort will be providing the most comprehensive reporting of any Goal 8 destination resort in the County.

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RESORT'S FINAL COMMENT

The Resort's proposed and revised Text Amendment is:

SPECIFIC TO THE RESORT AND DOES NOT SET PRECEDENT FOR OTHER RESORTS

The Resort's PTA is specific to Goal 8 destination resorts approved prior to January 2001 – i.e. to Eagle Crest Resort – and therefore does not set precedence for other Goal 8 destination resorts. Sunriver Resort, Black Butte Ranch and Inn at the Seventh Mountain are not Goal 8 destination resort and are not required to report annually. Therefore the Resort's PTA does not affect these resorts in any way. If any of the remaining Goal 8 destination resorts – Tetherow, Pronghorn or Caldera Springs – were to request to report like the Resort, the request would have to be approved by the BOCC through a new and separate text amendment process. If the BOCC feels there is any confusion, the Resort's PTA could be further revised to call out the Resort specifically by name.

A UNIQUE SOLUTION FOR A UNIQUE RESORT

The Resort is the County's first Goal 8 destination resort and largest payer of transient lodging taxes after Sunriver Resort. It must provide 1 overnight lodging unit for every 2.5 platted lots. The Resort has hundreds of individually-owned units that meet the State's definition of an overnight lodging unit. County code is more stringent, but does not need to be. The Resort has been reporting these units that meet the State definition of "overnight lodging units" to the County since the reporting requirement began in 2006. It was not until 2014, when over 99% of the Resort's lots were approved and improved, that the County requested discussions about overnight lodging units.

THE RESULT OF SIGNIFICANT COLLABORATION WITH THE COUNTY

The Resort and County staff have been collaborating since May of 2014. Many potential solutions were thoroughly considered, and the Text Amendment is the culmination of that collaboration, which includes significant input from legal counsel on both sides.

As a result of the County's existing reporting requirements, the County has responsibilities for oversight that require dedicated resources. The Resort's reports per the PTA will be the most comprehensive of any Goal 8 destination resort in the County, and may require additional County staff time to review. The Resort has stated that it will cover these additional costs.

CONSISTENT WITH STATE LAW

Goal 8 states, *"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."*

There is no definition of central reservation system in either the County code or State statute. Per Webster's Dictionary, "central" is defined as *a place with a high concentration of a specified type of person or thing*; "reservation" is defined as *a place set aside for special use*; and "system" is defined as *an organized method*. **The Resort's website (www.eagle-crest.com) is a central reservation system; it is a place with a high concentration of overnight lodging units that provides an organized method for making reservations. Moreover, nothing in State Law requires the OLU's be centrally managed or operated, just centrally available.**

All of the OLU's the Resort intends to count are made available for rent via the Resort's website. This central reservation system has been the Resort's top producing central reservation system over the past five years.

Additional central reservation systems include but are not limited to (i) property-operated call centers, websites, and group sales teams, (ii) brand-operated (e.g. Holiday Inn) call centers, websites and group sales teams, and (iii) third-party websites (e.g. Expedia), wholesalers, and travel agents.

UNOPPOSED BY DLCD

Oregon's Department of Land Conservation and Development is the State's foremost expert in Oregon land use matters, including destination resorts. Its public comment dated November 10, 2015 states, **"the department does not oppose the current proposal." Moreover, DLCD notes, "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 the authority to reasonably determine whether a particular resort's practices satisfy the statutory requirement."**

As noted above, the County has a reasonable basis for concluding that the Resort's central reservation system satisfies the statutory requirement.

AN IMPROVEMENT THANKS TO THE LEGISLATIVE PROCESS

DC 18.04.030 is slightly different than State Law and states, *"Individually owned units may be considered overnight lodgings if they are available [...] **through a central reservation system and check-in services(s) operated by the destination resort...**"*

DC 18.113.060(D)(2) is slightly different and states, *"...**through one or more central reservation and check-in service(s) operated by the destination resort...**"*

Therefore, State law does not require a central check-in service; County code does. In addition, State law does not require individually-owned OLU's be deed-restricted; County code does. The Resort's original PTA did not change these terms/sections, yet it was always the intent after 19 months of collaboration with the County for the Resort to count OLU's that adhere to State law.

Given the public comment on the subject, the Resort's PTA has been revised to clearly call out the intent. The final revised Text Amendment has been submitted the BOCC and the public for review.

WITHOUT ALTERNATIVE

The Resort is compliant with State law. The Resort's PTA is compliant with State law. There are no other suitable alternatives. If the Resort's PTA is not approved, it could mean:

- The County would withhold building permits from the Resort, as well as its many real estate property owners. If the Resort were not able to update its hotel and facilities, the Resort and property values will languish. If property owners are unable to build or remodel their homes, property values will plummet and hundreds of lawsuits will ensue.

- The County would force the Resort to build 300+ OLU's. This would mean the Resort would:
 - Be more than doubling the total number of accommodations available in Redmond.

 - Have to grow outside its boundaries and the new land would have to be rezoned and would likely trigger significant approval hurdles (e.g. traffic, wildlife, utilities). Moreover, adjacent land values would skyrocket and the Resort would be forced to pay the same.

 - Have to source an estimated \$50 millions dollars, which would be an impossibility given these OLU's would directly compete with the hundreds of OLU's that are compliant with State law and the Resort intended to count; without demand and income, the debt would be unpayable.

The outcome of not approving the Resort's PTA is alarming.

A REASONABLE INTERPRETATION OF THE FACTS

The Resort has a unique history and situation. It is undeniably meeting the spirit of the law, and the PTA is a very reasonable solution. Moreover, the County's approval of the PTA would be a very reasonable interpretation of State law.

The Resort recently asked Jake Tanzer to review the PTA. Mr. Tanzer served as the 81st Associate Justice on the Oregon Supreme Court, served on the Oregon Court of Appeals, was a deputy district attorney for Multnomah County, and worked for the United States Department of Justice. His review is attached and states, "**...the proposed amendment to the ordinance would be lawful, consistent with the current market conditions, in the interest of Deschutes County and unquestionably within the requirements of Goal 8.**"

If the PTA is not approved, the outcome for the Resort and its many property owners is alarming. Accordingly, we respectfully request that the Board of County Commissioners approve the PTA.

Sincerely,

A handwritten signature in cursive script, appearing to read "Brent P. McLean".

Brent P. McLean

jake@jtanzner.com
www.jtanzner.com

JACOB TANZER
Commercial Arbitration
4405 S.W. Warrens Way
Portland, Oregon 97221

(503) 274-0017
fax (503) 226-6200

November 24, 2015

Brent P. McLean
Eagle Crest Resort
By email only

Dear Mr. McLean:

On behalf of Eagle Crest Resort, you have asked me to review proposed changes to the Deschutes County ordinance regulating reporting of the annual count of overnight lodging units in the resort. In particular, you have asked me whether the proposed changes are consistent with Statewide Planning Goal 8.

First, allow me to clarify that I am not giving a lawyer's legal opinion to or for a client. Although I practiced law for over forty years as a lawyer and a judge, including service as the State's Solicitor General, Court of Appeals Judge, and Supreme Court Justice. I am now on inactive status and am not authorized to practice law or to give legal opinions. Rather, you have asked me to respond as one who has worked with statutes, ordinances and administrative rules for many years, not simply as a lawyer and judge, but also as a state and county governmental administrator, advisor to governmental agencies, legislative witness and supplicant, and even now as a commercial arbitrator who must apply legislation to everyday conflicts. In all those capacities, the prime rule of interpretation has been to give the words of legislation their common meaning, in light of legislative intent, as it would be understood by any reasonable person reading them. I shall attempt to answer the inquiry in that spirit.

As to your question, Goal 8 requires large destination resorts such as Eagle Crest Resort to provide annual reporting to the county of its overnight lodgings. Goal 8 defines overnight lodgings to include hotel and motel rooms, cabins, timeshare-units, and individually owned units that 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" Deschutes County has incorporated this definition of overnight lodging at Deschutes County Code ("DCC") 18.04.030.

As a threshold matter, the proposed amendment to DCC 18.113.060 (3) (e), is only applicable to Eagle Crest Resort, and in no way amends the Goal 8 or DCC 18.04.030 definition of overnight lodgings. What the proposed amendment does is require Eagle Crest to report to the County all available information on the overnight rental use that is listed on the resort's web-based reservation system, irrespective of the

DCC and Goal 8 definitions of overnight lodgings. However, I find no definition of “centralized reservation system” in Goal 8 or other state or county regulations. Thus, if Eagle Crest Resort continues to maintain such a central reservation system, the overnight rental to the public or units through that system would be consistent with Goal 8 and the DCC.

The proposed amendment only requires an accounting of those units made available for overnight rental to the general public through the Eagle Crest Resort’s centralized system. That centralized system is linked with the other internet services that individual home owners may use. The text amendment sets a framework which the County can implement to assure Eagle Crest’s compliance with all relevant operational and reporting requirements for its centralized system.

I concur that internet services such as VRBO and FlipKey are not real estate property managers as that term is used in Goal 8. Consistent with that understanding, the proposed amendment does not suggest that they are property managers. As noted, the proposed amendment only addresses the accounting of those units made available for overnight rental to the general public through the Eagle Crest Resort’s centralized system.

An objective of Goal 8 is that reporting of overnight lodging be made accurately and comprehensively. This is also an objective of Deschutes County. With the advent of the internet, owners now have diverse means to rent their properties. By maintaining a centralized rental site for its homeowners, a resort operator like Eagle Crest Resort would essentially bring the county up to date with the newly developed marketing system in a way which is entirely consistent with the words of Goal 8 itself. The proposed amendment would accomplish this purpose of Goal 8 far better than the County’s current text. In short, not only is the text amendment consistent with the express language of Goal 8, but it also improves the County code’s compliance with the spirit and intent of Goal 8.

For these reasons, in my judgment the proposed amendment to the ordinance would be lawful, consistent with the current market conditions, in the interest of Deschutes County and unquestionably within the requirements of Goal 8.

Very truly yours,



Jacob Tanzer



December 10, 2015

Peter Gutowsky
 Planning Manager
 Deschutes County Community Development Department
 117 NW Lafayette, Bend, OR 97701

RE: Proposed County Review Fee

Dear Peter,

As a result of the County's existing overnight lodging unit ("OLU") reporting requirements for Goal 8 destination resorts, the County has responsibilities for oversight that require dedicated resources. Based on our conversations, the County has these dedicated resources in place. If Eagle Crest Resort's (the "Resort") proposed and revised Text Amendment ("PTA") is approved, the Resort will provide the most comprehensive annual reports of any Goal 8 destination resort in the County, which will require additional County review time.

Specifically, the part of the Resort's reports that will require additional County review will be the documentation relating to the approximately 300 individually-owned OLUs. Per the County's existing reporting format and the PTA's updated reporting requirements, each OLU would be shown per the example below:

ADDRESS	OWNER(S)	SCHEDULE OF AVAILABILITY	LISTING PAGE	UNIT TYPE
1 123 Victoria Falls Drive	Edward Finch/Molly Andrews	Click Here For Availability Calendars	Click Here For Listing Page	Home
2 425 Murrelet Drive	Milo Ryan	Click Here For Availability Calendars	Click Here For Listing Page	Home
3 333 Eagle Springs Court	Jane Doe	Click Here For Availability Calendars	Click Here For Listing Page	Home
4 444 Red Wing Loop	Stanton Russel	Click Here For Availability Calendars	Click Here For Listing Page	Home
5 786 Red Wing Lane	Amanda Turnberry	Click Here For Availability Calendars	Click Here For Listing Page	Separately Rented Unit

- The Schedule of Availability link for each OLU will take County staff to a webpage that displays the 12 months of availability calendars pulled by the Resort for this specific OLU. The calendars will be printable, and if the County prefers, the Resort will also provide a printed version of the full report each year.
- The Listing Page link is not required in the Resort's PTA and will not be required to verify an OLUs availability, but the Resort will be capturing and including this information so that if any OLU requires additional audit, this information will be a great starting point.
- The Unit Type is not required in the Resort's PTA and will not be required to verify an OLUs availability, however, one public comment asked how "bedroom" rentals would be handled. The Resort will be keeping records of the unit type and will only count OLUs that have a separate

entrance and separate bathroom – or “Separately Rented Unit”. Given the Resort will have this information, it will share the information.

Per our conversations, you have stated that based on your recent conversations with Nick Lelack:

- The County has estimated it will take the County 10 hours of administrative time to audit the calendars and 5 additional hours to compile the information into summary form. This is approximately 3 minutes per OLU assuming 300 OLUs.
- The total cost of the 15 hours is estimated to be \$1,000 or \$67 per hour.
- The necessary additional audit time will decrease slightly over time as the County becomes more familiar with the Resort’s reports.

The Resort has always stated that its new reports should not create a burden for the County. Moreover, the County has the authority to impose a fee in connection with the collection of the annual compliance reports. Therefore, the Resort suggests that the County impose a fee as follows:

- Require Fee Deposit: Collect a deposit of five-thousand dollars (\$5,000), applicable to the Resort only, payable at the time the Resort submits its annual report each year. Given the estimate you have provided, this will more than cover the County resources; and
- Track and Offset: Track staff hours associated with reviewing/auditing the Resort’s report each year and then offset such staff time against the deposit collected. Per the estimate you provided, the initial rate for staff time would approximately \$70 per hour, subject to increase each year per an agreed-upon index. For example, assume in 2017 the County audit took 20 hours to complete and summarize; the total fee would be 20 x \$70 or \$1,400, in which case the Resort would be refunded \$3,600 (\$5,000 less \$1,400).

I sincerely appreciate the County Planning Department’s continued cooperation, and you sharing this with the Board of County Commissioners for review prior to its meeting on December 21, 2015.

Sincerely,



Brent P. McLean

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 * ORDINANCE NO. 2016-003
Destination Resorts. *

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 ~~strike through~~ and new language underlined.

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

///

Dated this _____ of _____, 2016

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ALAN UNGER, CHAIR

TAMMY BANEY, VICE CHAIR

ATTEST:

Recording Secretary

ANTHONY DEBONE, COMMISSIONER

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

Date of 2nd Reading: _____ day of _____, 2016.

Record of Adoption Vote

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

Effective date: _____ day of _____, 2016.

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 choose 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, 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. Notwithstanding anything to the contrary in Deschutes County Code, these resorts may count units that are not deed-restricted and/or do not utilize a central check-in system operated by the resort so long as such units meet the Oregon statutory definition of overnight lodgings in Eastern Oregon
 - 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.
- 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

Comment [PG1]: Applicant's revision.

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. 2016-003 §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

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STAFF REPORT / BURDEN OF PROOF

DATE: December 14, 2015
TO: Deschutes County Board of Commissioners
FROM: Peter Gutowsky, Planning Manager
RE: Eagle Crest Text Amendment / 247-15-000444-TA / Public Hearing

The Deschutes County Board of Commissioners (Board) held 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. 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. They closed the oral record but left the written record open until December 4. They afforded the applicant final argument until December 11.

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 units available for

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 $(1,911-261 \text{ individually-owned residential units}) / (400 \text{ existing overnight lodging units} + 261 \text{ new overnight lodging units}) = 2.5 \text{ to } 1.$

³ See Attachment B, Page 29 for a breakdown of the units.

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 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 OLU's covered in the Resort's total annual TLT payments equals \$445.63 per OLU multiplied by the 100 delinquent OLU's.)

- 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) 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 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. DLCDC 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: DeschutesCO_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
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Oregon

Kate Brown, Governor

Department of Land Conservation and Development

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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.

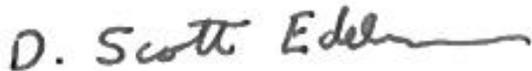
The county code is necessarily based on state law. Please see ORS 197.453 *et seq.* We believe there are areas of these statutes that are clear and objective and do not require interpretation. Others are inexact and call for the county to use judgement and exercise discretion. Much of ORS 197.435(5)(b)¹ 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,

A handwritten signature in black ink that reads "D. Scott Edelman" followed by a long, horizontal flourish.

Scott Edelman
Central Oregon Regional Representative

cc via e-mail:

Laura Craska Cooper, Brix Law
Hon. Paul Lipscombe



**PROPOSED TEXT AMENDMENT
TO DESTINATION RESORT STANDARDS
(DCC 18.113.060)**

Submitted to Deschutes County on August 12, 2015
[Revised on November 30, 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 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,** 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. [Notwithstanding anything to the contrary in Deschutes County Code, these resorts may count units that are not deed-restricted and/or do not utilize a central check-in system operated by the resort so long as such units meet the Oregon statutory definition of overnight lodgings in Eastern Oregon.](#)**
 - 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).

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 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 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.

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 The proposed text amendment does not impact or amend the County
RESPONSE: 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.