



STAFF REPORT

FILE NUMBER: 247-21-001111-SP

OWNER/APPLICANT: Central Land & Cattle Co., LLC – Kameron DeLashmutt

APPLICANT ATTORNEYS: Liz Fancher
J. Kenneth Katzaroff – Schwabe, Williamson, & Wyatt

SUBJECT PROPERTY: 67205 CLINE FALLS RD, REDMOND, OR 97756 / 67555 CLINE FALLS RD,
REDMOND, OR 97756 / 67545 CLINE FALLS RD, REDMOND, OR 97756
Map and Tax Lots: 1512000007700 / 1512000007800 / 1512000007900

REQUEST: Site Plan review for 70 Overnight Lodging Units (OLUs) in the
Thornburgh Destination Resort.

STAFF CONTACT: Caroline House, Senior Planner
Phone: 541-388-6667
Email: Caroline.House@deschutes.org

DOCUMENTS: Can be viewed and downloaded from:
<https://www.deschutes.org/cd/page/247-21-001111-sp-thornburgh-destination-resort-70-overnight-lodging-units>

I. APPLICABLE CRITERIA

Final Master Plan (FMP) Approval, File Nos. M-07-2/MA-08-6
Deschutes County Code (DCC)
Title 18, Deschutes County Zoning Ordinance
Chapter 18.16, Exclusive Farm Use Zones (EFU)
Chapter 18.113, Destination Resorts Zone (DR)
Chapter 18.116, Supplementary Provisions
Chapter 18.124, Site Plan Review
Title 22, Deschutes County Development Procedures Ordinance

II. BASIC FINDINGS

LOCATION: The Thornburgh Destination Resort (“Resort”) is comprised of a large tract of land +/- 1,970 acres in size (see *Figure 1* below) and includes several tax lots as shown in *Table 1* below. The three (3) tax lots which are a part of this review are located in the southern portion of the Resort and are identified with a (*) in *Table 1* and are shown in *Figure 2* below.

*Figure 1 – Thornburgh Destination Resort
Final Master Plan (FMP) – Master Development Plan*

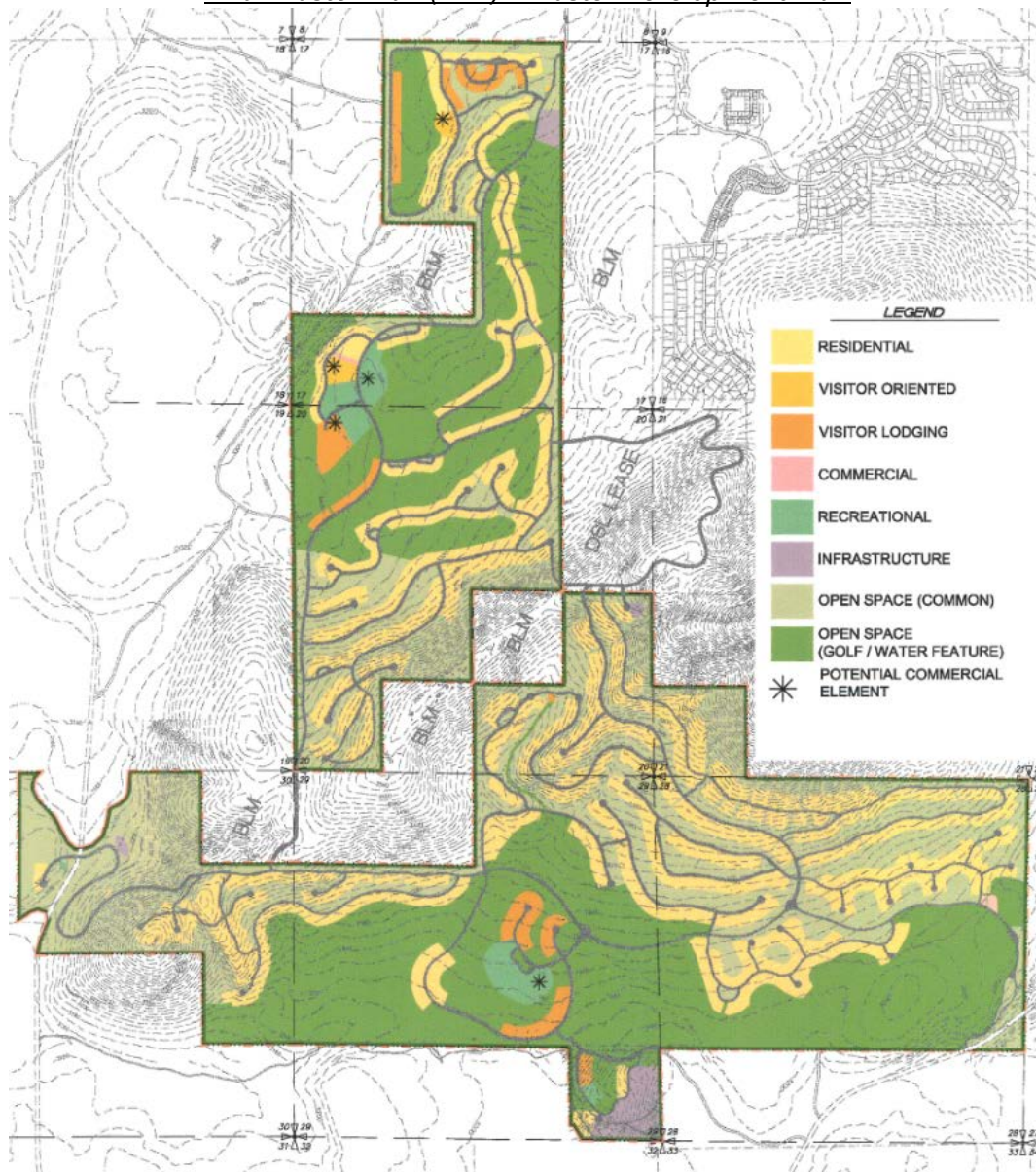


Table 1 - Thornburgh Destination Resort Location

Map Number & Tax Lot	Address
15-12-5000	11800 Eagle Crest Blvd.
15-12-5001	11810 Eagle Crest Blvd.
15-12-5002	11820 Eagle Crest Blvd.

15-12-7700*	67205 Cline Falls Rd.*
15-12-7701	67705 Cline Falls Rd.
15-12-7800*	67555 Cline Falls Rd.*
15-12-7801 ¹	67525 Cline Falls Rd.
15-12-7900*	67545 Cline Falls Rd.*
15-12-8000 ²	67400 Barr Rd.

Figure 2 – Subject Tax Lots



SITE DESCRIPTION: The subject property is approximately 3 miles west-southwest of the City of Redmond. The proposed development will be located in Phase A of the FMP Phasing Plan (see *Figure 3* below). The subject property includes sloping terrain, natural vegetation, rock outcroppings and ridge tops. At this time, the subject property is largely undeveloped land. However, the applicant has started construction of access roads, other infrastructure improvements (e.g. community water system, community sewer system, etc.), and a golf course. In addition, the applicant has applied for building permits for 80 locally approved OLU³. The southeastern corner of the subject property is bisected by Cline Falls Road and Barr Road bisects the southwest corner of the Resort tract. The primary access for the proposed development will be via an unnamed and not platted “Main Access Road” and an unnamed “Southern Entry Access Road”. Both roads are accessed via Cline Falls Road.

Figure 3 – FMP Phasing Plan (“Revised Rebuttal Exhibit D.1”)

¹ Staff notes a portion of this tax lot is not included in the Final Master Plan (FMP) approval.

² Staff notes portions of this tax lot are not included in the Final Master Plan (FMP) approval.

³ Reference Deschutes County File Nos. 247-21-000508-SP/247-21-000849-A/247-21-001115-A and pending Land Use Board of Appeals (LUBA) No. 2022-013.

Phase A = Light Yellow Color



SURROUNDING USES: The surrounding lands, not including other tax lots within the Resort, are primarily comprised of tracts owned by the Federal Government, State of Oregon, or Deschutes County. Most of this public land is part of the Cline Buttes Recreation Area and is zoned Exclusive Farm Use - Sisters/Cloverdale Subzone (EFU-SC) or Open Space & Conservation (OS&C). Further northeast is the Eagle Crest Destination Resort and a property with an approved Surface Mining site (Site No. 252) and Wireless Telecommunication Facility. To the east-northeast are Rural Residential (RR10) zoned lots that are generally five (5) to ten (10) acres in size. Most of these properties are developed with a single-family dwelling and related accessory structures.

RESORT LAND USE HISTORY: Below is a summary of the land use history for the Resort:

Conceptual Master Plan (File No. CU-05-20): On February 16, 2005, Thornburgh Resort Company, LLC (TRC) applied for the Resort Conceptual Master Plan (CMP) approval for the Thornburgh Destination Resort. The application was denied by the Hearings Officer on November 9, 2005. The BOCC issued Order Nos. 2005-143 and 2006-016 to call-up the Hearings Officer decision for review. On May 11, 2006, the BOCC approved the CMP. Annunziata Gould ("Gould") and Steve Munson ("Munson") appealed the BOCC decision to the Land Use Board of Appeals (LUBA Nos. 2006-100 and 2006-101). LUBA remanded the BOCC decision on May 14, 2007 (Gould v. Deschutes County, 54 Or LUBA 2005 (2007)). The LUBA decision was appealed to the Court of Appeals. On November 7, 2007, the Court of Appeals reversed and remanded LUBA's decision (Gould v. Deschutes County, 216 Or App 150, 171 P3d 1017 (2007)). The result was the BOCC decision in CU-05-20 approving the CMP was remanded to the County for further proceedings.

On April 15, 2008, the BOCC issued its decision on remand, again approving the CMP (Order No. 2008-151). Gould and Munson appealed the BOCC remand decision to LUBA on May 6, 2008 (LUBA No. 2008-068). On September 11, 2008, LUBA affirmed the BOCC decision (Gould v. Deschutes County, 57 Or LUBA 403 (2008)). That decision was appealed to the Court of Appeals (A140139). On April 22, 2009, the Court affirmed LUBA's decision (Gould v. Deschutes County, 227 Or App 601, 206 P3d 1106 (2009)). On October 9, 2009, the Supreme Court denied review (Gould v. Deschutes County, 347 Or 258, 218 P3d 540 (2009)). On December 9, 2009, the Court of Appeals issued its appellate judgement and the CMP received final approval as of December 9, 2009.

CMP Initiation of Use (File No. DR-11-8): On November 1, 2011, TRC applied for a Declaratory Ruling to demonstrate the CMP had been timely initiated. The Hearings Officer found the CMP was timely initiated. The BOCC declined to hear the appeal and Gould filed a LUBA appeal. On appeal, LUBA remanded that decision (LUBA No 2012-042). LUBA's decision was affirmed by the Court of Appeals, without opinion (Gould v. Deschutes County, 256 Or App 520, 301 P3d 978 (2013)). On remand, the Hearings Officer found the CMP was not timely initiated. TRC appealed the Hearings Officer's decision to the BOCC. The BOCC issued a decision finding the CMP was "initiated" before the two-year deadline expired. Gould appealed the BOCC decision to LUBA. On appeal, LUBA remanded this decision back to the BOCC decision on January 30, 2015 (LUBA No 2015-080). However, LUBA's decision was appealed and the Court of Appeals reversed and remanded stating that the express language of the County Code requires Defendant to substantially exercise the permit conditions as a whole, and any failure to initiate development by fully complying with the conditions should not be the fault of the applicant, a determination of which must be based on more than just the complexity of the process. The Court also held that the County could not interpret the County Code contrary to a prior LUBA order in this same litigation, as the lower tribunal was bound to follow the appellate Court's Ruling (Gould v Deschutes County, 272 Or App 666 (2015)). Later, as part of the submitted application materials for the Golf Course Site Plan review, the applicant included the following clarification on the status of the remand:

"Loyal Land has not initiated a review on remand. This application is moot, however, because the Resort's Final Master Plan (FMP) incorporates and satisfies all conditions of the CMP and has received final approval."

Final Master Plan (File Nos. M-07-2/MA-08-6): Thornburgh Resort Company filed for approval of the Resort Final Master Plan (FMP) in 2007, which was later amended in 2008. The application was approved by the County, appealed by Gould, and subsequently remanded by LUBA to address issues regarding the Thornburgh Wildlife Mitigation Plan (Gould v. Deschutes County, 59 Or LUBA 435 (2009)). The LUBA decision was appealed to the Court of Appeals. The Court affirmed LUBA's decision (Gould v. Deschutes County, 233 Or App 623, 227 P3d 759 (2010)). In 2015, on remand, the County denied approval of the FMP. Central Land and Cattle Company, LLC ("Central")⁴ successfully appealed the denial and LUBA remanded the County decision (Central Land and Cattle Company v. Deschutes County, 74 Or LUBA 326 (2016)). The Court of Appeals affirmed LUBA's decision without opinion (A163359). On the second remand, the FMP was approved by the County. The County decision was appealed by Gould. The County's approval was affirmed by LUBA (LUBA No. 2018-008, August 21, 2018) and the FMP is now final.

Tentative Plan & Site Plan - Phase A-1 Residential/OLU Lots & Utility Facilities (File Nos. 247-18-000386-TP/247-18-000454-SP/247-18-000592-MA): In May 2018, Central filed for approval of its Phase A-1 Tentative Plan and Site Plan review for utility facilities authorized by the CMP and FMP. The Hearings Officer approved the request with conditions. The BOCC declined review of an appeal (Order No. 2018-073). Gould filed an appeal to LUBA (LUBA No. 2018-140). LUBA remanded the County's decision on following issue:

"On remand, the county must consider whether, without TP Condition 17⁵, the tentative plan for Phase A-1 satisfies the no net loss/degradation standard and whether a change in the source of mitigation water constitutes a substantial change to the FMP approval, requiring a new application, modification of the application, or other further review consistent with FMP and DCC destination resort regulations.

The LUBA remand decision was appealed to the Court of Appeals (A171603), but the appeal was dismissed based on the filing deadline⁶. The Court of Appeals denied reconsideration of said order of dismissal. The Oregon Supreme Court accepted review of Court of Appeals order denying reconsideration of the order-dismissing petition for review (S067074). The Supreme Court agreed with Gould and instructed the Court of Appeals to hear that matter. The Court of Appeals

⁴ In October 2017, Central purchased all of the land within the Resort from TRC.

⁵ Staff notes Condition 17 required "Site design approval. Prior to issuance of building permits for 2 the single-family dwellings, obtain design approval for at least 50 OLU's, which approval shall demonstrate that: (a) the OLU's qualify as such and (b) the Big [Falls] Ranch and COID water referenced in the Mitigation Plan and FMP decision have been secured, [or] demonstrate that the proposed alternate source is acceptable to ODFW and provides the same quantity and quality mitigation so as not to constitute a substantial modification or justify a modification to the FMP."

⁶ During this time, Central initiated a remand application (file no. 247-19-000611-A). The County Hearings Officer concluded that he did not have jurisdiction to make a determination due to the related pending State appeal outcomes and the consequences of overlapping jurisdiction. The BOCC heard an appeal of the Hearing Officer decision filed by Gould (file no. 247-19-000799-A). The BOCC approved file nos. 247-18-000386-TP/247-18-000454-SP/247-18-000592-MA inclusive of all of the conditions except Conditional of Approval 17 was removed. Gould appealed the BOCC remand decision to LUBA (LUBA No. 2019-136). However, all parties to this LUBA appeal requested for the decision challenged in the appeal be remanded and Central initiated this remand under file no. 247-21-000731-A.

subsequently affirmed LUBA's decision in LUBA No. 2018-140 ((A171603). In August 2021, Central initiated a second a remand application (file no. 247-21-000731-A). The Hearings Officer affirmed File Nos. 247-18-000386-TP/247-18-000454-SP/247-18-000592-MA excepting that Condition 17 was deleted/removed. The BOCC declined to hear an appeal (Order No. 2021-059). Gould has filed an appeal to LUBA, which is pending review (pending LUBA No. 2021-112).

Site Plan – Phase A Golf Course (File No. 247-19-000881-SP): In December 2019, Central filed for site plan approval for a golf course authorized by the CMP and FMP. In April 2020, the Deschutes County Planning Division administratively approved the application. The BOCC called up an appeal filed by Gould and Central Oregon LandWatch (Order No. 2020-016). The BOCC affirmed the administrative approval on August 31, 2020. The County decision was appealed to LUBA and LUBA affirmed (LUBA No. 2020-095). The LUBA decision was appealed by Gould to the Court of Appeals (A176353). The Court of Appeals affirmed and the Oregon Supreme Court declined review (S069050). Therefore, the Site Plan approval for the golf course is final.

Site Plan – Phase A 80 OLUs (File No. 247-21-000508-SP): In May 2021, Central filed for site plan approval for 80 overnight lodging units authorized under the CMP and FMP. In September 2021, the Deschutes County Planning Division administratively approved the site plan. An appeal was filed by Gould, and the Hearings Officer denied the issues on appeal (file no. 247-21-000849-A) and approved the site plan. The BOCC declined review of an appeal (Order No. 2022-002). Gould has filed an appeal to LUBA (pending LUBA No. 2022-013).

Site Plan - Phase A-1 Resort Facilities (File No. 247-21-000537-SP): In May 2021, Central filed for site plan approval for a Welcome Center, Gatehouse, Golf Clubhouse and Community Hall authorized under the CMP and FMP. In November 2021, the Deschutes County Planning Division administratively approved the site plan. An appeal was filed by Gould, and the Hearings Officer denied the issues on appeal (file no. 247-21-001009-A) and approved the site plan. The BOCC declined review of an appeal (Order No.202-012). Gould has filed an appeal to LUBA.

Modification of FMP – OLU Ratio (File No. 247-21-000553-MC): In June 2021, Central filed a Modification to amend the ratio of OLUs per single-family dwelling unit (from 2:1 to 2.5:1) and related bonding requirements. In October 2021, the Deschutes County Planning Division administratively approved the modification. An appeal was filed by Gould, and the Hearings Officer denied the issues on appeal (file no. 247-21-000920-A) and approved the modification. The BOCC declined review of an appeal (Order No.202-011). Gould has filed an appeal to LUBA (pending LUBA No. 2022-003).

Tentative Plan - Phase A-2 Residential Lots (File No. 247-21-000637-TP): In June 2021, Central filed for Tentative Plan approval for 108 single-family dwelling lots authorized under the CMP and FMP. In October 2021, the Deschutes County Planning Division administratively approved the application. An appeal with filed by Christine Larson, and the Hearings Officer denied the issues on appeal (file no. 247-21-00948-A) and approved the tentative plan. The BOCC declined review of an appeal (Order No.202-011). Gould has filed an appeal to LUBA.

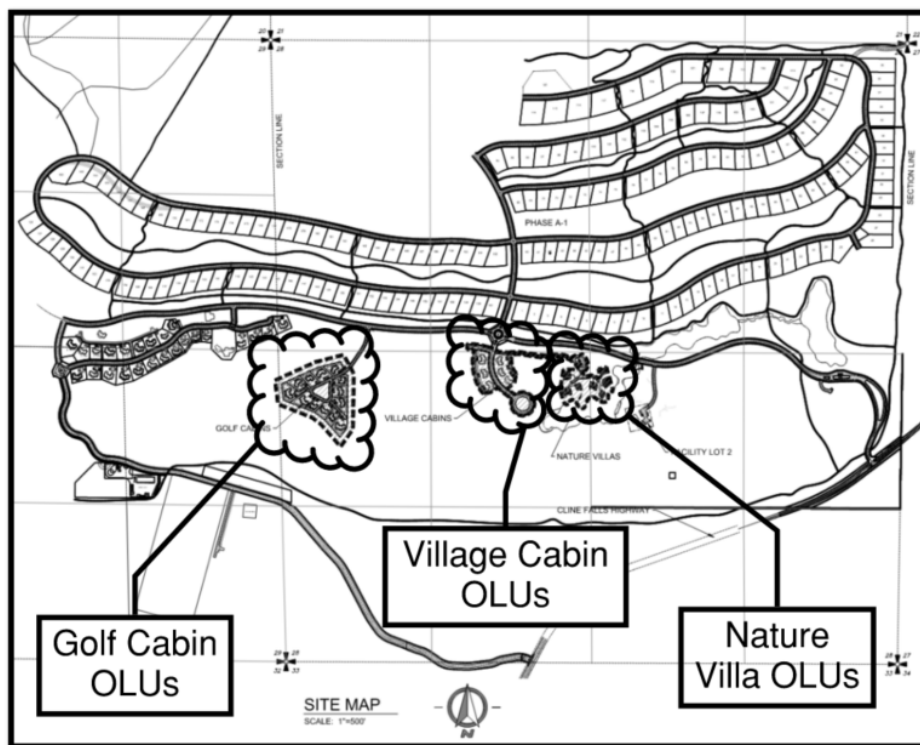
PROPOSAL: The applicant is seeking site plan approval for 70 overnight lodging units. The applicant provided the following description of the proposed site plan:

This site plan is proposing 70 units of overnight lodging. DCC 18.113.060(E)(2005) and FMP Condition 33a, say that the resort shall in the first phase provide for at least 150 overnight lodging units. A previous site plan, File Number 21-508-SP, proposed 80 units of overnight lodging (the "80 OLU site plan"). DCC 18.113.060(A)(1)(a) and FMP Condition 21 require that 50 OLU's be provided prior to the sale or rental of any real estate. Approval of the 80 OLU site plan application enabled the applicant to meet or exceed the 50 OLU's requirement. The 70 OLU's proposed by this site plan will supply the remainder of the resort's 150 Phase A OLU's. Units over the 50 OLU's that must be constructed to comply with Condition 21 will be developed or financially assured, as required by Condition 33 of the FMP and DCC 18.113.060 (2005), prior to the closure of sales, rental or lease of any residential dwellings or lots.

Other Phase A elements will be proposed in separate applications. The applicant is not attempting to evade any obligations imposed upon it by the FMP by waiting to propose additional elements in a subsequent site plan. Instead, it is taking an orderly and logical step toward providing all the Phase A resort amenities required prior to the sale of residential dwellings or lots by obtaining an approval that will allow [the applicant] to build at least 50 OLU's prior to the sale of lots.

Figure 4 – Proposed Overnight Lodging Units Site Plan⁷

(Note: For additional clarification staff added callouts to the Applicant's drawing)



⁷ Reference page 182 of the application materials submitted on December 28, 2021.

Figure 5 - Proposed Golf Cabins OLU Site Plan Detail⁸

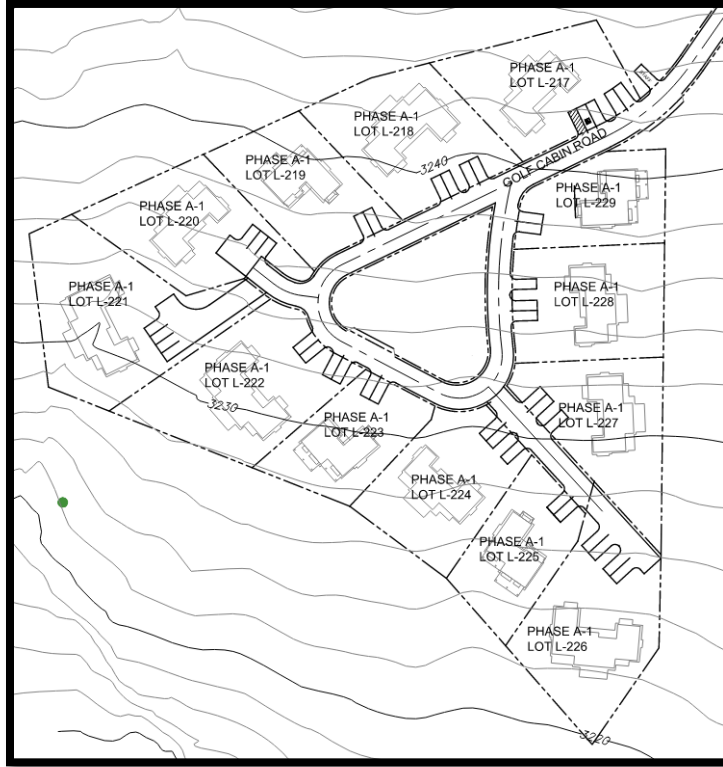
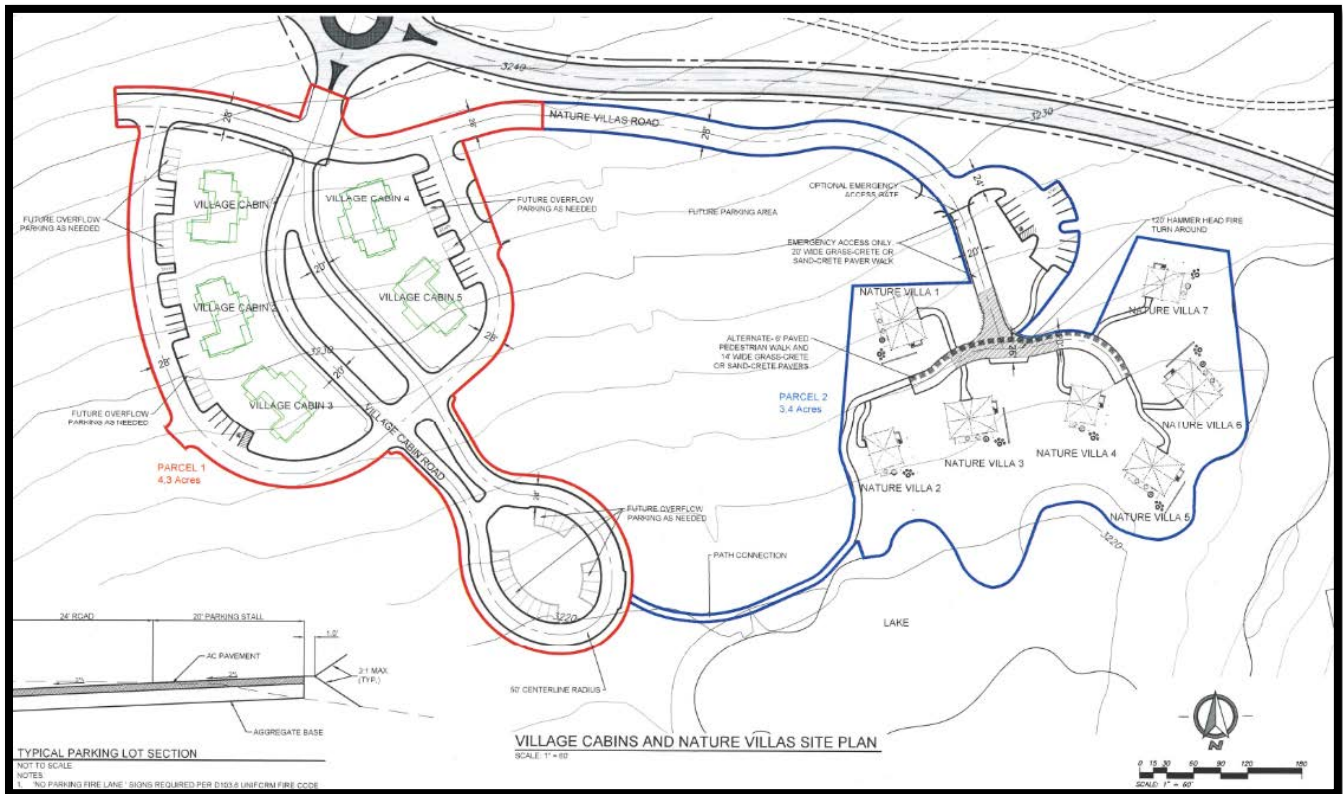


Figure 6 - Proposed Village Cabins & Nature Villas OLU Site Plan Detail⁹



⁸ Reference page 2 of the Applicant's incomplete letter response submitted on March 1, 2022.

⁹ Reference page 3 of the Applicant's incomplete letter response submitted on March 4, 2022.

The Applicant proposes to construct 25 structures with five (5) different floor plans. In total, three (3) of the proposed structures will be single occupancy units and the remaining 22 structures will contain 67 lock-off units. Staff created the following table to summarize the proposed configurations and number of OLUs for each area included in this Site Plan review application.

OLU Area	Proposed Floor Plan	Number of Lock-Off Units	Number of Structures	Total OLUs by Floor Plan	Drawing Sheet¹⁰
Golf Cabin OLUs	2AN	2	4	8	BP-9
	3A	3	5	15	BP-1
	4A	4	4	16	BP-5
	Golf Cabin OLUs Total = 39 OLUs				
Village Cabin OLUs	4A	4	5	20	BP-5
	Village Cabin OLUs Total = 20 OLUs				
Nature Villa OLUs	Nature Villa Single	1	3	3	BP-11
	Nature Villa Double	2	4	8	BP-13
	Nature Villa OLUs Total = 11 OLUs				

LOT OF RECORD: The Applicant provided the following information on the Lot of Record status of the subject property:

Tax Lot 7700 is comprised of a number of lots of record. The part of Tax Lot 7700 that comprises the subject property for this application is comprised of lots of record 1, 2, 3 and 4 of 247-14-000450-LR. A copy of the decision approving 247-14-000450-LR is Exhibit 2 of this application. Tax Lot 7800 is a single lot of record as determined by LR-91-56. Tax Lot 7900 is a lot of record because it was determined to be a lot of record by LR-98-44. Furthermore, the entire Resort property was determined to be a lot of record by the BOCC's decision approving the CMP, CU-05-20, DC 2006-11.

Ms. Gould's attorney, Jeff Kleinman, raised a lot of record issue during the County's review of the Phase A-1 tentative plan. We understand that this is an issue for staff in its review of Central Land's overnight lodging site plan application.

Mr. Kleinman filed copies of deeds recorded at 2021-44813 and 2021-44814 that mistakenly conveyed lots authorized to be created by the Phase A-1 tentative plan from Central Land and Cattle Company, LLC to Pinnacle Utilities, LLC. This mistake has been corrected by Central Land and Pinnacle as follows:

A. Pinnacle quitclaimed all interest in the land conveyed by 2021-44813 back to Central Land and Cattle Company, LLC. See attached Exhibit 20.

¹⁰ These drawing sheets can be found in the Applicant's incomplete letter response dated March 1, 2022.

B. Central Land has caused a correction deed to be recorded for 2021-44814. See attached Exhibit 21. The deed corrects the legal description of the land conveyed by it to convey the entire lot of record that includes the land previously conveyed. Pinnacle is now the owner of the entire lot of record.

C. The parcel conveyed by Exhibit 21 is Tax Lot 7801. It was created as a lawful parcel in 1918 by the Exhibit 22 deed from the State of Oregon to John T. Park, attached, and has remained as a lawful parcel since that time. In 1979, a partition was approved that showed Tax Lot 7801 as a separate parcel of land as shown on Exhibit 23.

*The mistaken recording of 2021-44813 and 2021-44814 prior to the recording of the final plat that will create them is not consequential. The recording of deeds does not create new lots or parcels. In *LandWatch Lane County v. Lane County (Doughty)*, __ Or LUBA __ (LUBA No. 2019-044, October 15, 2019), Exhibit 24, LUBA held that deeds that conveyed a larger property into different ownerships in 1992 when partition approval was required did not create new parcels. It explained:*

“[N]ew parcels have not been created because the deed creating the parcels occurred after land us[e] laws regulating land division became applicable. ORS 92.017 provides that “[a] lot or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law. (Emphasis added.) In the context of land use law, division by law requires a subdivision, partition or, prior to the applicability of the land division regulations, a deed conveyance.”

In the event the Phase A-1 plat is recorded, the subject property will include Lots 193-205 along with other areas shown for future development on the Phase A-1 Tentative Plan.

*In the 80 OLU Decision, the hearings officer determined that a challenge to the lot of record status of the entire resort property would be a collateral attack on the CMP and FMP. 80 OLU Decision, p. 8. The hearings officer also rejected claims that a mistaken conveyance somehow created an illegal subdivision of lands, finding that “the individual units of land that are described in the 2021 deeds were not ‘created’ in the ways described in ORS 92.012, DCC 17.04.02 or DCC 18.04.030(A).” *Id.*, p. 9. On that basis, he determined that the 2021 deeds did not and could not create new legal parcels, and that the deeds had been “undone” by the quitclaim deeds back. *Id.**

The DCC Site Plan review requirements are based on the legal configuration of the subject property. Staff finds the Applicant’s description of the lot of record status and its boundaries are unclear. In one instance, the Applicant states the subject property is comprised of multiple legal lots and in a different instance argues the entire Resort property is one lot of record. Moreover, the Applicant’s site plans do not identify the current configuration of the lot of record boundaries. For these reasons, staff asks the Hearings Officer to make clear findings on what is the current legal lot of record configuration/status for the development included in this application.

In the event the applicant is requesting site plan approval based on the tax lots being comprised of multiple legal lots, staff asks the Hearings Officer to clarify if the applicant will be required to file a modification if the subject property is later platted into separate lots. Staff believes a modification

of approval, pursuant to DCC 22.36.040, may be necessary as this criterion and several others sections is based on the final lot configuration.

Staff notes the proposed development areas are not, at this time, sited on approved platted lots. The Golf Cabin OLU lots have been locally approved as part of a Tentative Plat review. However, the Applicant has not obtained Final Plat approval. Additionally, the proposed development areas associated with the Village Cabin OLUs and Nature Villa OLUs have not been reviewed as part of a Tentative Plat or Final Plat approval.

PUBLIC AGENCY COMMENTS: The Planning Division mailed notices to several public agencies and received the following comments:

Central Oregon Irrigation District (COID), Kelley O'Rourke

COID has no facilities or water rights within the project area.

Deschutes County Building Division, Randy Scheid

NOTICE: The Deschutes County Building Safety Divisions code mandates that Access, Egress, Setbacks, Fire & Life Safety, Fire Fighting Water Supplies, etc. must be specifically addressed during the appropriate plan review process with regard to any proposed structures and occupancies.

Accordingly, all Building Code required items will be addressed, when a specific structure, occupancy, and type of construction is proposed and submitted for plan review.

Deschutes County Senior Transportation Planner, Peter Russell

I have reviewed the transmittal materials for file 247-21-001111-SP for 70 overnight lodging units (OLUs) in the Thornburgh destination resort at 15-12-00, Tax Lots 7700, 7800, and 7900. The site addresses are 67205, 6755, and 67545 Cline Falls Hwy. The proposal is consistent with the approved Conceptual Master Plan (CMP) and Final Master Plan (FMP) and no additional traffic analysis is required.

Board Resolution 2013-020 sets a transportation system development charge (SDC) rate of \$4,757 per p.m. peak hour trip. County staff has determined under the Institute of Traffic Engineers (ITE) Trip Generation Manual that lockoff units are the equivalent of Resort Hotel (Land Use 330) rooms. The ITE Trip Generation Manual, 11th Edition, indicates Resort Hotel generates at a rate of 0.41 p.m. peak hour trips per room. Each lockoff room is considered a separate unit. Therefore the applicable SDC is \$1,950 per lockoff room (\$4,757 X 0.41). The SDC is due prior to issuance of certificate of occupancy; if a certificate of occupancy is not applicable, then the SDC is due within 60 days of the land use decision becoming final.

THE PROVIDED SDC AMOUNT IS ONLY VALID UNTIL JUNE 30, 2022. DESCHUTES COUNTY'S SDC RATE IS INDEXED AND RESETS EVERY JULY 1. WHEN PAYING AN SDC, THE ACTUAL AMOUNT DUE IS DETERMINED BY USING THE CURRENT SDC RATE AT THE DATE THE BUILDING PERMIT IS PULLED.

Wetland/Waterway/Other Water Features

- There are/may be wetlands, waterways or other water features on the property that are subject to the State Removal-Fill Law based upon a review of wetland maps, the county soil survey and other available information.
- The National Wetlands Inventory shows wetland, waterway or other water features on the property

Your Activity

- It appears that the proposed project **may** impact wetlands and **may** require a State permit.
- An onsite inspection by a qualified wetland consultant is recommended prior to site development to determine if the site has wetlands or other waters that may be regulated. The determination or delineation report should be submitted to DSL for review and approval. Approved maps will have a DSL stamp with approval date and expiration date.

Applicable Oregon Removal-Fill Permit Requirement(s)

- A state permit is required for 50 cubic yards or more of fill removal or other ground alteration in wetlands, below ordinary high water of waterways, within other waters of the state, or below highest measured tide.

Closing Information

Additional Comments

DSL has reviewed multiple sub-components across multiple phases of Thornburgh Resort. This review is for a sub-component of Phase A-1: golf cabins, village cabins, and nature villas. Two intermittent streams are mapped through the project area. As noted in WN2021-0757, design sets between DSL plan reviews appear to be changing. At this point DSL recommends a wetland consultant is hired to conduct a wetland delineation to verify that the entire project footprint, which is mapped with multiple NHD intermittent streams, be investigated for wetlands and an investigation for intermittent vs ephemeral waters be conducted using the Stream Duration Assessment Method evaluation. It is not possible to determine if the entire project has >50 cubic yards of disturbance in jurisdictional waterways (intermittent streams) or if the project occurs only in ephemeral waterways, in which case, no state permit would be needed. Information on finding a qualified wetland professional consultant is listed under Resources at <https://www.oregon.gov/dsl/WW/Pages/WetlandConservation.aspx>

This is a preliminary jurisdictional determination and is advisory only.

This report is for the State Removal-Fill law only. City or County permits may be required for the proposed activity.

- A Federal permit may be required by The Army Corps of Engineers: (503)808-4373

Contact Information

- For information on permitting, use of a state-owned water, wetland determination or delineation report requirements please contact the respective DSL Aquatic Resource, Proprietary or Jurisdiction Coordinator for the site county. The current list is found at: <http://www.oregon.gov/dsl/ww/pages/wwstaff.aspx>
- The current Removal-Fill permit and/or Wetland Delineation report fee schedule is found at: <https://www.oregon.gov/dsl/WW/Documents/Removal-FillFees.pdf>

Response Date

1/26/2022

Response by:

Daniel Evans

Response Phone:

503-986-5271

Redmond Fire and Rescue, Tom Mooney

Staff incorporates the Redmond Fire and Rescue comments dated January 12, 2022, herein by reference.

The following agencies did not respond to the notices: Deschutes County Assessor, Deschutes County Environmental Health, Deschutes County Environmental Soils Division, Deschutes County Property Address Coordinator, Deschutes County Road Department, Oregon Department of Transportation (ODOT) Region 4 Planning, Oregon Department Of Agriculture Land Use Planning Coordinator, Oregon Department of Fish & Wildlife, Oregon Department of State Lands - Land Management, Oregon Water Resources Department, U.S. Fish & Wildlife Service, and Watermaster - District 11.

PUBLIC COMMENTS: The Planning Division mailed notice of the application to all property owners within 750 feet of the subject property on January 12, 2022. However, the applicant failed to pick-up the prepared¹¹ Proposed Land Use Action sign required under DCC 22.24.030(B). Staff asks the Hearings Officer to determine if the applicant has complied with the posted notice requirements of DCC 22.24.030(B).

A large number of public comments were submitted. Staff has incorporated responses to these concerns under the corresponding Deschutes County Code sections in this Staff Report. The submitted comments are included in the record and incorporated herein by reference.

REVIEW PERIOD: The subject application was submitted on December 28, 2021. The County mailed an incomplete letter to the Applicant on January 27, 2022, requesting additional information necessary to complete the review. The Applicant provided responses to the incomplete letter on March 1, 2022, and March 4, 2022. In the Applicant's response on March 4, 2022, the Applicant notified the County that no additional information would be submitted and the application was deemed complete.

The Deschutes County Planning Director decided to refer the subject application to a Public Hearing before a Hearings Officer pursuant to DCC 22.20.020(C) and the Applicant requested the hearing date be set for April 6, 2022 to accommodate their scheduling needs. Resultantly, the Applicant agreed to extend the 150-day land use review clock one (1) day. The County mailed a Notice of a Public Hearing to all parties on March 11, 2022 and published a Public Notice in the Bend Bulletin on March 13, 2022. The 150th day in which the County must take final action on the subject application is August 2, 2022.

III. FINDINGS & CONCLUSIONS

Thornburgh Resort Final Master Plan (FMP)

¹¹ Staff notes the applicant was notified of the posted notice requirements (ref. *Prior Notice* email from Brook Clark dated January 10, 2022).

FINDING: The applicant has obtained final approval of an FMP from Deschutes County which calls for OLU's to be constructed in Phase A. The applicant is required to demonstrate compliance with the relevant conditions of approval imposed by the FMP. Each FMP Condition is set out in full and is addressed below.

1. Approval is based upon the submitted plan. Any substantial change to the approved plan will require a new application.

FINDING: The Applicant provided the following response to FMP Condition 1 in their Burden of Proof (BoP):

The applicant is not proposing a substantial change to the approved plans. The applicant is requesting site plan approval of 13 golf cabins (39 OLU's), 6 village cabins (20 OLU's), and 7 nature villas (11 OLU's) in the general location allowed by the FMP Master Development Plan Map A.3.1 (See Exhibit 4). The site plan does not propose to modify any element of the FMP.

Location

The FMP prescribes the timing and amount of development of the Resort, not the specific location of resort facilities. In the first phase of development, improved recreational and resort facilities and overnight lodging units with a minimum dollar value must be provided before Phase A residential lots may be sold. The site plan shows development in the same general location as the FMP.

In his approval of the tentative plan, Hearing Officer Olsen noted that the Board's CMP decision CU-05-20 found:

*"there will be some fluidity between and among development phases, depending on market demand, weather and economic conditions." Hearings Officer Olsen also found: "The Board read DCC 18.113 as not requiring specificity, but only the general location of proposed development uses (emphasis in original). ***This appears to be consistent with the Hearings Officer decision which states that the resort will be developed in seven phases (A-G) but that 'significant flexibility is required in the scheduling and phasing of improvements' to accommodate changed conditions 'beyond the control of the applicant.' p. 21. It notes that 'some commercial and recreational facilities at the resort may be deferred until the resort population warrants their construction."*

Exhibit 5: TP A-1 HO Olsen Decision, pp. 20-23 (quoted material on p. 22).

Wildlife Mitigation Plan.

Thornburgh's Mitigation Plan (TMP) is comprised of two plans, the Wildlife Mitigation Plan which includes the monitoring plan (WMP) and, the April 2008 Fish and Wildlife Mitigation Plan (FWMP). The development in the location depicted on the submitted site plan will not cause any change in

the terrestrial mitigation plan. The WMP spells out the monitoring and reporting requirements that applicant is required to perform, and the enforcement measures afforded the County, the BLM, and the ODFW. The WMP was found to be sufficient by approval of the FMP after numerous challenges by Gould. The site plan does not propose or require any change to the WMP. Under the WMP, mitigation is not required until such time that impacts are created, the timing of which is discussed under condition #38 below. As the applicant is not proposing any change to the WMP, no action is necessary. Further the issue is settled and barred from further attack as determined by LUBA and the BOCC in earlier proceedings.

Fish and Wildlife Mitigation Plan (FWMP)

In its decision regarding Gould's appeal of the Phase A-1 tentative plan, LUBA determined that as long as a development application does not alter the FWMP, conditions of approval assuring compliance with the FWMP are not required. In rejecting Gould's claim that conditions of approval were needed to assure CLCC would do what is required by the FWMP, LUBA held:

*"Intervenor responds, and we agree, that removal of the dams [on Deep Canyon Creek] and provision of mitigation water is required by the FMP approval and the tentative plan does not alter the mitigation plan. *** The hearings officer was not required to impose additional condition to the approval of the tentative plan [to assure compliance with the FWMP]."*

Gould v. Deschutes County, 79 Or LUBA 561, 583 (2019). The same holds true for the current site plan – the approval of the site plan will not alter the mitigation promised by the FWMP and the requirements of the FWMP remain self-executing. When mitigation is required for this site plan, the applicant will be using water from Big Falls Ranch to mitigate for water quantity and quality impacts of the golf course and lake development proposed under this application as well as for the development approved under the Phase A-1 tentative plan. The applicant has entered into a contract with Big Fall Ranch to purchase 175 acres of irrigation water rights for use as mitigation water (See: Exhibit 3: Big Falls-Pinnacle Memo). This is 315 acre-feet of cold-water mitigation water rights – more water than needed for all Phase A development. Further the applicant subsequently closed on 90 acres of Big Falls Ranch water referred to in the FWMP (See: Exhibit 25: BFR Assignment to Pinnacle). Since the Big Falls Ranch water is an allowable source in the FWMP, and the source provides "cold water" mitigation there is no change. Nothing further is required.

Wildlife Mitigation Plan (WMP)

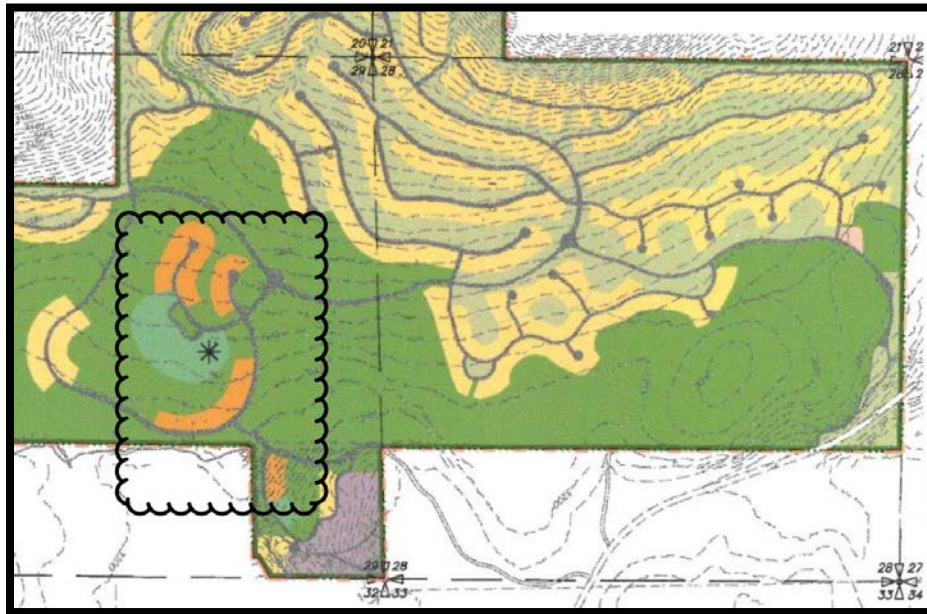
Condition 38 of the FMP assures that the Resort will comply with the approved wildlife mitigation plans. Compliance with the WMP is assured by annual County staff and wildlife agency reviews of the mitigation plans and measures undertaken by the Resort; not by County review of compliance during the review of a development application.

For the reasons detailed above, this application is not a substantial change from the approved FMP or Phase A-1 Tentative Plan and does not require a new application. This condition is met.

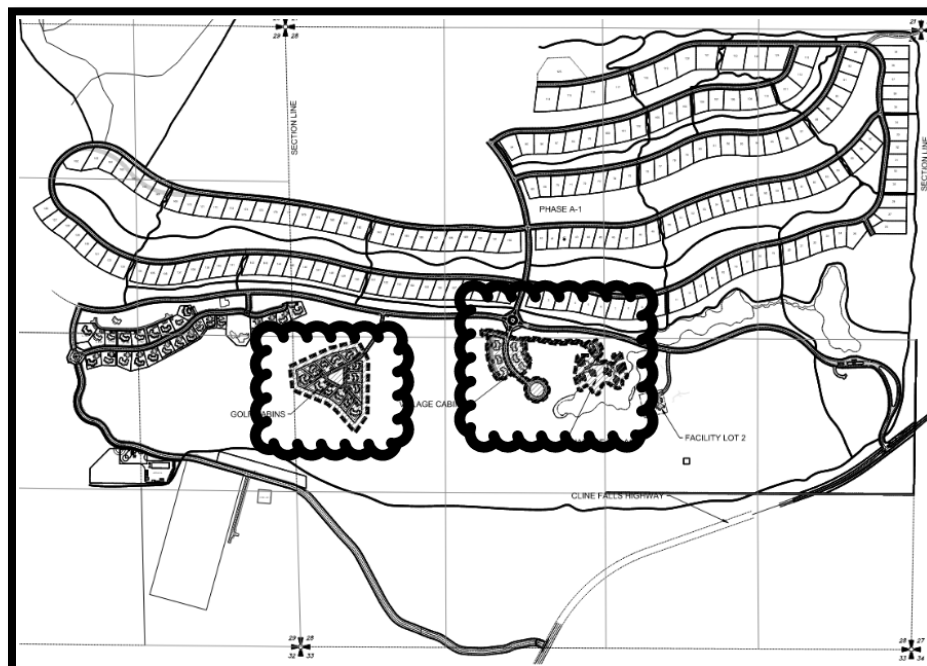
Based on this response, staff understands the applicant's current proposal is limited to site plan

approval for 70 OLUs in the general location allowed by the FMP Master Development Plan with no proposed changes to the FMP. As shown in *Figure 7* below, the FMP Master Development Plan identifies the general location of the required visitor lodging. The approved visitor lodging is located in Section 29 of Township 15S, Region 12E. However, the proposed OLUs will be located in Section 28 of Township 15S, Region 12E (see *Figure 8* below). For this reason, staff asks the Hearings Officer to determine if the proposed location complies with the FMP Condition 1.

*Figure 7 – FMP Master Development Plan Visitor Lodging Location
(Reference Orange Areas inside Bubbled Area)*



*Figure 8 – Proposed 80 OLU Locations
Reference Two Bubbled Areas*



2. All development in the resort shall require tentative plat approval through Title 17 of the County Code, the county Subdivision/Partition Ordinance, and/or Site Plan Review through Title 18 of the County Code, the Subdivision Ordinance.

FINDING: FMP Condition 2 requires the Resort to obtain Tentative Plat approval “and/or” Site Plan Review. The Applicant is seeking Site Plan Review approval as required by this Condition.

The Applicant provided the following response to FMP Condition 2 in their BoP:

Overnight lodging units are shown on this site plan in 3 locations, the first 39 OLU's are located on 13 lots that were approved by Deschutes County as part of the phase A-1 tentative plan authorizing the creation of the lots for overnight lodging units. The lots for these 39 OLUs are located specifically on Tax Lots 7800 and 7900.

The OLU Site Plan is drawn to show the location of property lines that will be established when the final plat for the Phase A-1 tentative plan is recorded. If the Phase A-1 tentative plan is not recorded, the 39 OLUs (13 lots) from phase A-1 will be built in the same general location on Tax Lots 7800 and 7900 as shown on the OLU site plan. The OLU site plan is designed to meet standards that apply if separate lots are platted for each OLU building. Some of the approval criteria addressed by the burden of proof will not apply if the OLU lots are not platted as approved. In that case the difference will be that all OLUs will be built on the same lot rather than separate lots. The applicant has, however, addressed those standards based on the 13 OLU lots as they will be platted by the applicant.

The other 31 OLUs that are the subject of this site plan review are located on Tax Lot 7700 in an area that was shown for future development in the A-1 tentative plan. 6 of these buildings will be included in a future tentative plan that will authorize lots for them. The other 7 buildings are shown on a single lot the applicant intends will remain as a single lot.

Based on this response, staff understands the Applicant's position is Tentative Plat approval is not required to comply with Condition 2.

However, it is unclear to staff if the FMP approval authorized or even contemplated standalone OLUs not reviewed as part of a Resort Tentative Plat. For example, as part of the Tentative Plat review process, applicants are required to demonstrate the required infrastructure (i.e. roads, sewer, water, etc.) will be constructed to support the proposed development. If Tentative Plat review is not required, the County has little to no authority to ensure the required infrastructure improvements have been completed prior to the start of construction of the proposed OLUs. In addition, it is unclear how other FMP Conditions will be met if the proposed OLUs are never platted. For these reasons, staff believes the applicant must obtain Tentative Plat approval, in addition to Site Plan Review approval, for the proposed OLUs to ensure compliance with Condition 2. Staff asks the Hearings Officer to make specific findings on this issue.

Staff notes Tentative Plat approval was not previously required as part of the County's review of the

locally approved 80 OLU's in the subject Resort. It is staff's opinion is this decision was in error and the County is not bound to continue making the same error.

"There is no requirement local government actions must be consistent with past decisions, but only that a decision must be correct when made. Indeed, to require consistency for that sake alone would run the risk of perpetuating error." Okeson v. Union County, 10 Or LUBA 1, 5 (1983).

3. ***Applicant shall provide a signed grant of right-of-way from the U.S. Department of the Interior Bureau of Land Management for an access easement connection to U.S. Highway 126, prior to submission of a Final Master Plan application.***

FINDING: FMP Condition 3 has been satisfied as noted in several previous County land use decisions for the Resort.

4. ***Subject to US Department of the Interior-Bureau of Land Management (BLM) approval, any secondary emergency ingress/egress across the BLM-owned land or roadways shall be improved to a minimum width of 20 feet with all-weather resort access surface capable of supporting a 60,000-lb. fire vehicle. Emergency secondary resort access roads shall be improved before any Final Plat approval or issuance of a building permit, whichever comes first.***

FINDING: The Applicant provided the following response to FMP Condition 4 in their BoP:

The emergency secondary resort access road requirement applies to final plat approval or issuance of a building permit. While the County has determined that the roads proposed by the Phase A-1 tentative plan and Golf Course Site Plan providing access to the community will satisfy this criterion, and the County's resolution of this issue was not challenged by Ms. Gould in her appeals of the tentative plan and golf course approvals, the applicant has constructed two secondary emergency ingress/egress roads to the property. Both roads were built to the standard set by Condition 4 of the CMP/FMP across BLM land. Most recently, the applicant constructed the southern access road on BLM land south of the Resort. This road meets secondary access requirements of the Redmond Fire Department for this site plan, as required by Condition 17 of the CMP/FMP.

It is unclear to staff if the secondary access requirements of the Redmond Fire Department are the same as Condition 4 above. Moreover, the Applicant's response to FMP Condition 17 in their BoP appears to indicate the fire code does not require emergency access roads until the 31st building permit. For these reasons, staff recommends the following condition be added.

Secondary Emergency Ingress/Egress. Prior to final plat or building permit issuance, the Applicant shall submit written documentation prepared by a relevant professional to demonstrate the two secondary emergency ingress/egress routes comply with the requirements of FMP Condition 4.

5. ***The developer will design and construct the road system in accordance with DCC 17. Road improvement plans shall be approved by the Road Department prior to construction.***

FINDING: The Applicant provided the following response to FMP Condition 5 in their BoP:

The roadways were addressed by the approvals of the Phase A-1 tentative plan and Golf Course site plan and were found to comply with DCC 17. The roads which serve the OLU have been designed in accordance with DCC 17 and are shown in this Site Plan Sheet C1.0. The improvement plans for the road system will be approved by the Road Department prior to construction. This condition will be met.

Compliance with the road system design and construction requirements of DCC Title 17 is typically reviewed as part of a Tentative Plat and Final Plat approval. In this case, the applicant's proposal includes several new roads that were not previously reviewed as part of a Tentative Plat and/or Final Plat approval. As noted under FMP Condition 27, it is not clear to staff if all the road standards of DCC Title 17 will be met. For these reasons, staff asks the Hearings Officer to make specific findings on whether FMP Condition 5 is met.

6. All easements of record or rights-of-ways shall be shown on any final plat. Plans shall be approved by the Road Department prior to construction.

FINDING: The Applicant provided the following response to FMP Condition 6 in their BoP:

This requirement applies during the County's review of the final plat. It is not a requirement of site plan approval.

As noted above, staff believes the proposed OLUs must be reviewed as part of a Tentative Plat approval, which would require the Applicant to obtain Final Plat approval as well. For this reason, staff asks the Hearings Officer to make specific findings on whether FMP Condition 6 is met.

7. All new proposed road names must be reviewed and approved by the Property Address Coordinator prior to final plat approval.

FINDING: The Applicant provided the following response to FMP Condition 7 in their BoP:

This requirement applies during the County's review of the final plat. It is not a requirement of site plan approval.

As noted above, staff believes the proposed OLUs must be reviewed as part of a Tentative Plat approval, which would require the Applicant to obtain Final Plat approval as well. For this reason, staff asks the Hearings Officer to make specific findings on whether FMP Condition 7 is met.

8. Plan review and approval of water supply plans for phase 1 will be required by Oregon Department of Human Services-Drinking Water Program (DHS-DWP) prior to Final Master Plan approval.

9. Applicant shall designate the location of all utility lines and easements that burden the property on the FMP.

FINDING: FMP Condition 8 and FMP Condition 9 have been satisfied as noted in several previous County land use decisions for the Resort.

- 10. Applicant shall provide, at the time of tentative plat/site plan review for each individual phase of the resort development, updated documentation for the state water rights permit and an accounting of the full amount of mitigation, as required under the water right, for that individual phase.**

FINDING: The Applicant provided the following response to FMP Condition 10 in their BoP:

In the tentative plan decision Hearing Officer Olsen determined "Condition 10 appears primarily to be an informational requirement requiring documentation of the state water permit and an accounting of mitigation under the water right." On appeal LUBA concurred. See Exhibit 6: LUBA TP A-1 Decision, Pg. 33-34. In a subsequent proceeding, for approval of the Golf Course and Lakes Site Plan, opponents argued that, among other things, the Applicant needed to show it had an enforceable contract with Big Falls Ranch, and, that its water rights permit had expired. Applicant argued the first was not needed, the second was false, that Hearing Officer Olsen's interpretation was correct, and that Opponents were attempting to amend the language of Condition 10, which was an impermissible collateral attack on the CMP. The applicant has a contract for the purchase of 315 acre-feet of water from Big Falls Ranch which is a sufficient amount of water for all Phase A-authorized development. See Exhibit 5: BFR Memo.

The Board of Commissioners agreed stating in its 2020 decision:

"The BOCC agrees this was resolved in the CMP with an intent consistent with Hearing Officer Olsen's interpretation, that it is an "informational requirement". The language of Condition 10 requires "updated documentation of the state water right permit." It doesn't require that the documentation show any particular status, for example, that the permit is free of protest, or the extension is pending, etc... It just requires updated documentation which the Applicant provided. It shows the Applicant has a water rights permit, that the permit has not been cancelled, and that it is in good standing. Condition 10 does not require the Applicant to provide an agreement, or any form of proof of an agreement or contract for mitigation water. It just requires Applicant to provide an accounting of the mitigation water for the uses in this site plan. Opponent attempts to expand the scope beyond that is a collateral attack on the CMP."

Exhibit 1: BOCC Golf Course Decision, Exhibit A: Pg. 7-9, 21-23.

With this application, and in compliance with the BOCC's direction, the applicant has provided updated documentation similar to what it provided to the Board in the case noted above.

The updated documentation includes documentation showing Pinnacle Utilities, LLC owns water rights permit # G-17036. See Exhibit 7: OWRD Pinnacle Transfer. Permit #G-17036 is a quasi-municipal water right granted by Oregon Water Resources Department for the Resort project See Exhibit 8: OWRD Water Rights Permit. On June 24, 2018, Pinnacle submitted an application to

amend its Incremental Development Plan (“IDP”). The amended IDP was approved on July 10, 2018, then further amended on September 1, 2020. See Exhibit 9: Incremental Development Plan.

On April 2, 2018 Pinnacle applied to extend the time to fully develop the water uses of permit G-17036. On June 5, 2018 OWRD issued a Proposed Final Order (“PFO”) approving Pinnacle’s extension. See Exhibit 10: OWRD Proposed Final Order (PFO) Approving Extension. On July 20, 2018, Annunziata Gould filed a protest of OWRD’s PFO approval and has requested a contested hearing. This appeal is pending. Opponents have argued Applicant’s water rights permit is void, or expired, or that Applicant cannot pump water under its permit. Under Oregon law, permit G-17036 remains in place during the review of the extension unless and until cancelled by OWRD. See OAR 690-320-0020 (providing for OWRD to send a certified letter of intent to cancel a permit, with 60 days to respond). OWRD has taken no action against the permit and said it has no intentions to do so.

In prior development reviews, OWRD has advised Deschutes County, after the Gould appeal was filed, that Pinnacle’s water rights permit is in good standing, that Pinnacle has done more than is required at this time and that Applicant has provided mitigation before pumping any groundwater under the authority of the permit. See Exhibit 11: Jeremy Giffin emails dated 12/24/19 and 8/24/18. OWRD’s Water Rights Information Query also states that the status of the permit is “non-cancelled.” See, Exhibit 12: OWRD Water Rights Query. LUBA also affirmed Hearings Officer Olsen’s determination that this type of evidence establishes that Thornburgh Resort has a valid water right. See Exhibit 6: TP A-1 LUBA Decision, p. 34. LUBA’s decision was affirmed without opinion by the Oregon Court of Appeals on April 21, 2021. Gould v. Deschutes County, 310 Or App 868, 484 P3d 1073 (Table)(2021). On appeal of the Golf Course site plan the BOCC agreed. See Exhibit 1: page 8-9.

In the 80 OLU Decision, the hearings officer concurred and adopted the previous interpretations of Condition 10, stating that “while Condition 10 must be considered in this review the Hearings Officer finds that relevant and authoritative decision-making bodies have clearly set forth how Condition 10 is to be interpreted.” 80 OLU Decision, p. 14. The hearings officer went on to find “that information evidence is in the record that the water permit has not been cancelled and that the Applicant has provided the Condition 10 necessary accounting.” Emphasis in original. Id., p. 15.

In March 2020 Pinnacle Utilities LLC submitted a Water Management Conservation Plan (WMCP) to OWRD as required by Permit G-17036. Comments were received and on November 5, 2020, Pinnacle submitted the final revised plan to OWRD. On November 24, 2020, OWRD issued a final order approving the WMCP and on January 23, 2021, Ms. Gould filed a Petition for Judicial Review in the Marion County Circuit Court. OWRD withdrew the final order approving the plan. On May 7, 2021, OWRD issued an Order on Reconsideration Approving the WMCP, finding, among other things, that Pinnacle’s future water needs “are reasonable and consistent with available land use plans and Pinnacle Utilities, LLC has demonstrated a need to divert water under Permit G-17036 during the next 20 years.” The approval ordered the following: (a) the WMCP will remain in effect until May 7, 2031; and (b) that by November 7, 2030 Pinnacle shall submit an updated plan; and (c) by May 7, 2026, it shall submit a progress report. See Exhibit 13: Neuman letter w/Order on

Reconsideration Approving the WMCP. At the request of OWRD, Pinnacle withdrew the WMCP, however the permit remains in full force and effect.

In addition to the updated documentation, the Applicant provided an accounting of the amount of mitigation needed for the development of the 26 cabins proposed under this site plan, which is approximately 11.7 acre-feet of mitigation. Previous applications provided similar accounting of the water needed. The tentative plan for phase A-1 required 50 acre-feet of mitigation water; the site plan for the golf course and lake required 151 acre-feet of mitigation; the 80 OLU site plan (24 cabins) required 10.8 acre-feet of mitigation; the site plan for the welcome center and golf clubhouse required 4.3 acre-feet of mitigation; and the Phase A-2 tentative plan required 30.6 acre-feet of mitigation; totaling 236.7 acre-feet. The total mitigation for this site plan and the prior applications is 258.4 acre-feet which is summarized in Exhibit 14: Mitigation Debit Table. This condition is met.

Based on the applicant's response above, staff understands no changes to the state water rights permit or related mitigation water rights are proposed. On March 24, 2022, staff verified on the Oregon Water Resources Department Water Rights Information Query website that Permit#G-17036 has a status of "non-cancelled". Additionally, previous County Hearings Officer Decisions and State Court rulings on this issue align with the applicant's response to this condition. For these reasons, staff finds FMP Condition 10 is met.

- 11. *At the time of submission for Final Master Plan (FMP) approval, Applicant shall include a written plan for entering into cooperative agreements with owners of existing wells within a two-mile radius of Applicant's wells. The plan shall include a description of how Applicant will provide notice to affected well owners and of the terms and conditions of an option for well owners to enter into a written agreement with Applicant under which Applicant will provide indemnification to well owners in the event of actual well interference as a result of Applicants water use. The plan shall remain in effect for a period of five years following full water development by Applicant. Specific terms and conditions of the plan shall be developed in cooperation with County staff and the Oregon Water Resources Department.***

FINDING: FMP Condition 11 has been satisfied as noted in several previous County land use decisions for the Resort.

- 12. *Commercial, cultural, entertainment or accessory uses provided as part of the destination resort shall be contained within the development and shall not be oriented to public roadways. Commercial, cultural and entertainment uses allowed within the destination resort shall be incidental to the resort itself. As such these ancillary uses shall be permitted only at a scale suited to serve visitors to the resort. Compliance with this requirement shall also be included as a condition of FMP approval.***

FINDING: The Applicant provided the following response to FMP Condition 12 in their BoP:

This condition is included in the FMP approval and was addressed in the decision approving the Phase A-1 tentative plan. The OLU's are not a "commercial, cultural or entertainment use." They

are defined, instead, by Title 18 as residential commercial uses. This condition does not apply. Furthermore, even if the OLU's were considered commercial uses, they are uses mandated by State law and the FMP and are not oriented to public roadways and are at a scale suited to serve visitors to the resort.

The applicant appears to be referring to the following DCC 18.04.030 definition in their response:

"Commercial residential use" means a building, portion of a building or group of buildings designed or used for human occupancy or lodging for which a fee is charged, such as a hotel, motel or tourist camp, but excluding quarters intended for permanent occupancy such as a duplex or apartment. A manufactured home park is not included in this definition.

However, DCC 18.04.030 has a more a specific definition for "overnight lodgings" and "visitor-oriented accommodations" within a destination resort:

"Overnight lodgings" with respect to destination resorts, means permanent, separately rentable accommodations that are not available for residential use. Overnight lodgings include 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 and check-in service operated by the destination resort or through a real estate property manager, as defined in ORS 696.010. Tent sites, recreational vehicle parks, mobile homes, dormitory rooms and similar accommodations do not qualify as overnight lodging for the purpose of this definition.

"Visitor-Oriented Accommodations" with respect to destination resorts, means overnight lodging, restaurants and meeting facilities designed to provide for the needs of visitors rather than residents.

Based on these destination resorts specific definitions, staff finds OLU's are defined as visitor-oriented overnight lodging units that are not available for residential use. Therefore, OLU's cannot be defined as a commercial residential use as proposed by the applicant. Staff finds the proposed use is also defined as a commercial use¹² in DCC 18.040.030 and the proposed OLU's are subject to FMP Condition 12.

It is unclear to staff if the proposed OLU's will be contained within the Resort without being platted as part of the Resort. Additionally, it is unclear to staff if the proposed OLU's will be oriented to a public roadway based on the submitted information. For example, the proposed Nature Villa OLU's appear to be oriented towards Cline Falls Highway. However, there may be topographical changes and mature vegetation that would screen the proposed OLU's from Cline Falls Highway. Staff believes additional information is likely needed to confirm compliance with FMP Condition 12. Staff asks the Hearings Officer to make specific findings on this Condition.

¹² Per DCC 18.04.030 "commercial use" means the use of land primarily for the retail sale of products or services, including offices. It does not include factories, warehouses, freight terminals or wholesale distribution centers.

- 13. Applicant shall specify all recreational facilities within the proposed resort as part of final master plan submittal.**

FINDING: FMP Condition 13 has been satisfied as noted in several previous County land use decisions for the Resort.

- 14. Applicant and its successors shall do the following to ensure that all open space used to assure the 50% open space requirement of Section 18.113.060 (D)(1) is maintained in perpetuity:**

- A. Applicant shall submit for approval, as part of the Final Master Plan, a delineation of the Open Space that is substantially similar to the area shown in the Open Space plan submitted as Ex. 9, B-14 to the "Memorandum of Applicant, in response to public comments dated September 28, 2005, Open Space shall be used and maintained as "open space areas" as that term is used in DCC 18.113.030(E).**

FINDING: FMP Condition 14A has been satisfied as noted in several previous County land use decisions for the Resort.

- B. The CC&Rs, as modified and submitted to the County on December 20, 2005, shall be further revised such that, Section 3.4 retains the first two sentences, but then the balance of 3.4 is replaced with the following:**

At all times, the Open Space shall be used and maintained as "open space areas." The foregoing sentence is a covenant and equitable servitude, which runs with the land in perpetuity and is for the benefit of all of the Property, each Owner, the Declarant, the Association, and the Golf Club. All of the foregoing entities shall have the right to enforce covenant and equitable servitude. This Section 3.4 may not be amended except if approved by an affirmative vote of all Owners, the Declarant, the Golf Club and the Association.

FINDING: FMP Condition 14B has been satisfied as noted in several previous County land use decisions for the Resort.

- C. All deeds conveying all or any part of the subject property shall include the following restriction:**

This property is part of the Thornburgh Resort and is subject to the provisions of the Final Master Plan for Thornburgh Resort and the Declaration of Covenants, Conditions and Restriction of Thornburgh Resort. The final Master Plan and the Declaration contain a delineation of open space area that shall be maintained as open space areas in perpetuity.

FINDING: The Hearings Officer made the following finding in the locally approved 80 OLU Site Plan Decision (ref. files nos. 247-21-000508-SP/247-21-000849-A):

"In the future all conveyances to third parties will be required to contain the Condition 14C notice language."

The Applicant provided the following response to this condition:

This requirement applies when the applicant conveys land in the resort. It is not an applicable approval criterion during review of the site plan but rather an existing requirement of the FMP that will apply to the OLU lots when they are conveyed.

In 80 OLU Decision, the hearings officer determined that the purpose of Condition 14C was to inform third-party purchasers of the Resort's open space obligations, and that the current status of the resort was that that was in compliance with Condition 14C. 80 OLU Decision, p. 16-17. Any conveyance in the future will require the restrictive deed language.

Staff recommends the following condition be added to ensure compliance:

Conveyance Restriction. All deeds conveying all or any part of the subject property shall include the following restriction: This property is part of the Thornburgh Resort and is subject to the provisions of the Final Master Plan for Thornburgh Resort and the Declaration of Covenants, Conditions and Restriction of Thornburgh Resort. The final Master Plan and the Declaration contain a delineation of open space area that shall be maintained as open space areas in perpetuity.

D. All open space areas shall be clearly delineated and labeled on the Final Plat.

FINDING: As noted above, staff believes the proposed OLUs must be reviewed as part of a Tentative Plat approval, which would require the Applicant to obtain Final Plat approval as well. For this reason, staff asks the Hearings Officer to make specific findings on whether FMP Condition 14D is met.

E. Any substantial change to the open space approved under this section will require a new land use permit.

FINDING: The Applicant provided the following response to FMP Condition 14E in their BoP:

No substantial change is proposed to the open space by the OLU site plan.

Based on the Applicant's response, it appears to Applicant is proposing to change the FMP approved open space approved. However, the proposed changes are not "substantial". Staff believes additional information is needed from the Applicant to ensure any proposed changes to the approved open spaces are not a substantial change. As noted above, the proposed OLUs are not located in the same location as contemplated in the CMP. For this reason, it is unclear if the OLU locations will affect any required open space. In addition, the some of the proposed OLUs are not located on a platted lot(s). Therefore, it is unclear to staff if the FMP open space requirements will be met if the subject property is never platted. For these reasons, staff asks the Hearings Officer to

make specific findings on whether FMP Condition 14E is met.

- 15. Applicant shall obtain an approved Water Pollution Control Facility (WPCF) permit (as described in DCC 18.113.070(L)) prior to application for Final Master Plan.**

FINDING: FMP Condition 15 has been satisfied as noted in several previous County land use decisions for the Resort.

- 16. All temporary structures shall be limited to a maximum of 18 months on the resort site.**

FINDING: The Applicant provided the following response to FMP Condition 16 in their BoP:

No temporary structures are proposed by the OLU site plan.

Staff finds the construction of the proposed OLUs, which would be authorized under this Site Plan review, may require the use of temporary structures such as mobile construction offices. For this reason, staff recommends the following condition be added:

Temporary Structures. All temporary structures shall be limited to a maximum of 18 months on the resort site.

- 17. All development within the proposed resort shall meet all fire protection requirements of the Redmond Fire Department. Fire protection requirements shall include all minimum emergency roadway improvements.**

FINDING: The Applicant provided the following response to FMP Condition 17 in their BoP:

All development will meet fire protection requirements imposed by code or as a condition of approval based on the requirements of the Redmond Fire Department. As noted above both Emergency roadway improvements have already been made according to the standards required by the FMP prior to approval of the final plat, as required by Condition 4, above. Further, fire code doesn't require Emergency access until the 31st building permit.

The Applicant also provided responses to the Redmond Fire Department comments in their incomplete letter response dated March 1, 2022. It is unclear to staff if the completed emergency roadway improvements comply with this standard and, as noted above, staff recommends a condition be added to ensure compliance. Staff also notes regardless of the fire code requirements, the secondary access emergency roadway improvements are required prior to final plat or the issuance of any building permits per FMP Condition 4. Staff recommends the following condition to ensure compliance with Condition 17:

Fire Protection Requirements. Prior to issuance of building permits, the applicant must submit written confirmation from the Redmond Fire Department that all fire protection requirements, identified in the submitted January 12, 2022 Redmond Fire Department comment letter, have been met.

18. No development shall be allowed on slopes of 25% or more on the site.

FINDING: The Applicant provided the following response to FMP Condition 18 in their BoP:

The applicant is not proposing development on slopes of 25% or more. As explained during the review of the Phase A-1 tentative plan, this condition implements DCC 18.113.070(H) (2005). It says: “[n]o structure will be located on slopes exceeding 25 percent.” Given this context, the term “development,” means the construction of buildings, on slopes exceeding 25%. This site plan is not proposing construction of buildings in such locations. This criterion is met.

The applicant has requested approval to establish 70 OLUs prior to Tentative Plat and/or Final Plat approval. Therefore, it is unclear to staff how this standard can be evaluated in the context of this request. Staff finds this standard is generally evaluated across a lot. For this reason, staff asks the Hearings Officer to make specific findings on whether FMP Condition 18 is met.

19. Applicant shall implement a Wildfire/Natural Hazard Protection Plan for the resort as identified in Ex. 15, B-29 of the CMP burden of proof statement. Prior to approval of each subdivision and site plan, Applicant shall coordinate its evacuation plans through that development phase with the Deschutes County Sheriff's Office and the Redmond Fire Department. At the same time, Applicant shall also coordinate its plans for the movement of evacuees over major transportation routes with the Oregon State Police and the Oregon Department of Transportation.

FINDING: The Applicant provided the following response to FMP Condition 19 in their BoP:

The applicant provided the information as part of the filing of the Phase A-1 Tentative Plan and the Golf Course site plan which included plans for the evacuation of the lots included in this site plan. At that time the applicant had informed the Redmond Fire Department and Deschutes County Sheriff of its filing of the 80 OLU site plan application and has done so with the filing of this application as well. Applicant previously coordinated with the Oregon State Police and ODOT to develop its evacuation plans. As noted, the CMP/FMP includes a Wildfire & Natural Hazard Protection Plan. The proposed site plan does not violate that plan or preclude implementation of the plan.

The applicant has been in routine communication with Redmond Fire regarding this application, prior to its filing, and since pertaining to the review of the specific construction drawings for roads in and around this site plan. Prior to the filing of this application the applicant placed calls to other Authorities to inform them of the filing of this application, that it was consistent with the prior plans for evacuation, to ask if they needed further information, or wanted a copy of this plan to review. No authority needed further materials. The Sheriff informed Applicant nothing was needed as he would get information directly from the County.

This condition is met.

Based on this response, staff finds FMP Condition 19 has been met.

- 20. *The cumulative density of the development at the end of any phase shall not exceed a maximum density of 0.72 dwelling units per acre (including residential dwelling units and excluding visitor-oriented overnight lodging).***

FINDING: The Applicant provided the following response to Condition 20 in their BoP:

This site plan is proposing visitor-oriented overnight lodging which does not count toward the maximum density limit set for the Resort. As such, this condition is not relevant to review of this site plan.

As noted under the staff findings for Condition 12 above, staff agrees with the Applicant's response to this condition. The current proposal is for visitor-oriented overnight lodging. Therefore, FMP Condition 20 does not apply to this Site Plan review.

- 21. *Each phase of the development shall be constructed such that the number of overnight lodging units meets the 150 overnight lodging unit and 2:1 ratio of individually owned units to overnight lodging unit standards set out in DCC 18.113.060 (A)(1) and 18.113.060 (D)(2). Individually owned units shall be considered visitor-oriented lodging if they are available for overnight rental use by the general public for at least 45 weeks per calendar year through one or more central reservation and check-in services. As required by ORS 197.445 (4)(b)(B), at least 50 units of overnight lodging must be constructed in the first phase of development, prior to the closure of sale of individual lots or units.***

In addition to complying with the specific requirements of DCC 18.113.70(U), 1-5, Applicant, its successors and assigns, shall at all times maintain (1) a registry of the individually owned units subject to deed restriction under DCC 18.113.070 (U)(2), requiring they be available for overnight lodging purposes; (2) an office in a location reasonably convenient to resort visitors as a reservation and check-in facility at the resort; and (3) a separate telephone reservation line and website in the name of "Thornburgh Resort", to be used by members of the public to make reservations. As an alternative to or in addition to (3), Applicant may enter into an agreement with a firm (booking agent) that specializes in the rental of time-sharing of resort property, providing the Applicant will share the information in the registry required by (1) and cooperate with the booking agent to solicit reservations for available overnight lodging at the resort. If applicant contracts with a booking agent, Applicant and the booking agent shall cooperate to ensure compliance with the requirements of DCC 18.113.070 (U)(5), by filing a report on January 1 of each year with the Deschutes County Planning Division.

FINDING: The Applicant provided the following response to FMP Condition 21 in their BoP:

This site plan does not propose any individually owned, single family lots. This site plan provides 70 additional OLU's. Individually owned units will be available for overnight rental use by the general public through one or more central reservation and check-in services as required by this

condition or as it may be amended in a subsequent land use application. Check-in and reservation services will be provided in the Resort's Welcome Center. The Welcome Center will be built in a location that is reasonably convenient to resort visitors, just off the entrance road to the Resort from Cline Falls Road as shown as Facilities Lot 2, in the Phase A-1 Tentative Plan. The site plan for the Welcome Center was filed and received approval from staff, and was then appealed to the Hearings Officer. The registry and reservation line and website requirements apply once the OLU's have been built and are not relevant approval criteria for this site plan. The requirements of DCC 18.113.070(U)(2005) are addressed below.

In the 80 OLU Decision, the hearings officer determined that the level of detail provided met this condition. 80 OLU Decision, p. 17-18. Applicant provides the same detail in this application.

Staff finds FMP Condition 21 has been met for this application.

- 22. The final covenants, conditions and restrictions adopted by the developer and amendments thereto shall conform in all material respects to this decision and the requirements of the DCC.**

FINDING: The Applicant provided the following response to FMP Condition 22 in their BoP:

This requirement applies to CC&Rs. The applicant submitted draft CC&Rs with its CMP/FMP and will update them to a final version, substantially similar to the approved version prior to submittal of the first final plat. The CC&R's will comply with this condition.

Staff finds FMP Condition 22 has been met for this application.

- 23. No permission to use or improve Barr Road as access to the Resort is given or implied by this decision.**

FINDING: The Applicant provided the following response to FMP Condition 23 in their BoP:

The site plan does not propose access to Barr Road.

Staff finds no access is requested and, therefore, no permission to use or improve Barr Road as access to the Resort is given or implied by this decision.

- 24. Applicant shall complete annexation of the property in any area of development into Deschutes County Rural Fire Protection District No. 1 before commencing combustible construction in the area.**

FINDING: FMP Condition 24 has been satisfied as noted in several previous County land use decisions for the Resort.

- 25. Applicant shall submit a detailed erosion control plan with the first Tentative Plat or Site Plan, whichever comes first.**

FINDING: The Applicant provided the following response to FMP Condition 25 in their BoP:

The applicant has complied with this condition when it filed its Phase A-1 tentative plan and again when it filed the Golf Course and Lakes site plan. While nothing further is required to comply with this condition applicant has provided a drainage detail for the parking road drainage. See SP C2.1.

However, the Applicant also provided the following description in their BoP for the proposed location of 31 of the proposed OLU's included in this application:

The other 31 OLU's that are the subject of this site plan review are located on Tax Lot 7700 in an area that was shown for future development in the A-1 tentative plan. 6 of these buildings will be included in a future tentative plan that will authorize lots for them. The other 7 buildings are shown on a single lot the applicant intends will remain as a single lot.

Staff finds the Applicant has demonstrated compliance with FMP Condition 25 for the 39 OLU's that have been locally approved as part of the Phase A-1 Tentative Plat approval. However, staff finds the referenced drawing sheet SP C2.1 does not include a detailed erosion control plan, and the Golf Course and Lakes site plan review did not include the Village Cabin OLU's or Nature Villa OLU's. For these reasons, staff asks the Hearings Officer to make specific findings on whether FMP Condition 18 is met.

26. *Lot size, width (frontage), coverage, off-street parking and setbacks, including solar setbacks, are permitted as described in Applicant's Exhibit 8, B-24a in the Burden of Proof document [for the CMP] subject to review during the subdivision approval process to confirm that there will be safe vehicle access to each lot. Compliance with the dimensional standards shall be confirmed during subdivision approval for each development phase. All multi-family units, commercial structures, and other resort facilities are exempted from meeting the solar setback standards.*

FINDING: The Applicant provided the following response to FMP Condition 26 in their BoP:

Condition 26 applies during the review of a subdivision application. It does not apply to site plan applications. The standards of CMP Exhibit 8, B-24a, Exhibit 15, Lot Standards, are addressed in findings related to setback requirements of the DR overlay zone.

As noted above, staff believes all of the proposed OLU's must be reviewed as part of a Tentative Plat approval. For this reason, staff asks the Hearings Officer to make specific findings on whether FMP Condition 26 is met.

27. *Road width shall be consistent with the requirements set forth in the County's subdivision ordinance, DCC Chapter 17.36.*

FINDING: The road width requirements are shown DCC 17.36 Table A below:

TABLE "A"

Deschutes County
Minimum Road Design Standards for:

RURAL COUNTY ROADS

(Outside of the La Pine, Tumalo and Terrebonne Unincorporated Communities)

Road Type/Class	ROW	Paved Width (3, 5)	Travel Lane Width	Paved Shoulder Width	Gravel Shoulder Width	Turn Lane Width	Swale (12, 13)	Sidewalk Required (11)	Surface Type	Base Depth (4)	Max. Grade (6)	Design Speed/ Min. Tang./ Min. Curve
Private	--	20', 28' (8)	--	--	--	--	--	--	0-9 or 2" AC	6"	12%	(2)

(8) 20' allowed for cul-de-sac's and roads with low anticipated traffic volumes as long as separate multiple use paths are provided. 28' width required (including the required 4' striped shoulder bikeway in each direction) for circulator and primary subdivision access roads and other roads when separate multiple use paths are not provided.

The Applicant provided the following response to FMP Condition 27 in their BoP:

The proposed road widths comply with the requirements of DCC Chapter 17.36, specifically those standards that pertain to private roads as shown in Table A of the Deschutes County Minimum Road Design Standards.

The submitted site plans show new roads to the Village Cabin OLU's and Nature Villa OLU's will vary in width from 20 feet or 28 feet. Per detail (8) above, the 20-foot road width is allowed for low anticipated traffic volumes as long as separate multiple use paths are provided. The submitted drawings do not appear to show multiple use paths will be provided to the proposed OLU's. Therefore, staff finds the proposed 20-foot road widths do not comply with FMP Condition 27. For this reason, staff asks the Hearings Officer to make specific findings on whether FMP Condition 27 is met.

28. Applicant shall abide at all times with the MOU with BLM, dated September 28, 2005, regarding mitigation of impacts on surrounding federal lands, to include wildlife mitigation and long-range trail planning and construction of a public trail system. The mitigation plan adopted by Applicant in consultation with Tetra Tech, ODFW and the BLM shall be adopted and implemented throughout the life of the resort.

FINDING: The Hearings Officer made the following finding in the Site Plan approval for the 80 OLU's in the Resort:

"The Hearings Officer, in this case, reviewed Hearings Officer Anne Corcoran Briggs' October 6, 2008 Decision of the Deschutes County Hearings Officer Thornburgh Resort Company Final Master Plan (Applicant Exhibit 12 - the "FMP Hearings Officer Decision").

...

The Hearings Officer, in this case, also agrees with Applicant that the FMP Hearings Officer Decision Condition 28 does state "See conditions # 38 and #39."

Therefore, staff addresses the requirements of this Condition under FMP Condition 38 and FMP Condition 39.

29. Applicant shall abide at all times with the MOU with ODOT, regarding required improvements and contributions to improvements on ODOT administered roadways.

FINDING: The Applicant provided the following response to FMP Condition 29 in their BoP:

The applicant previously submitted an executed Cooperative Improvement Agreement (CIA) with ODOT required by the MOU. A copy of this agreement is Exhibit 16 of this application. Payments under the agreement are not due until after the county has approved the first final plat. This site plan is not proposing a final plat, so this condition does not apply.

As noted above, staff believes the proposed OLU's must be reviewed as part of a Tentative Plat approval, which would require the Applicant to obtain Final Plat approval as well. For this reason, staff asks the Hearings Officer to make specific findings on whether FMP Condition 29 is met.

30. Applicant shall submit a detailed traffic circulation plan, delineating resort access roads, resort internal circulation roads and resort secondary emergency ingress/egress roads, prior to Final Master Plan approval.

FINDING: FMP Condition 30 has been satisfied as noted in several previous County land use decisions for the Resort.

31. All exterior lighting must comply with the Deschutes County Covered Outdoor Lighting Ordinance per Section 15.10 of Title 15 of the DCC.

FINDING: The Applicant provided the following response to FMP Condition 31 in their BoP:

All lighting will be shielded and directed downward and will otherwise comply with the requirements of Section 15.10 of Title 15. That law applies to the resort's lighting regardless of whether this application is conditioned to comply or not.

Staff recommends the following condition be added to ensure compliance.

Exterior Lighting. All exterior lighting must comply with the Deschutes County Covered Outdoor Lighting Ordinance per Section 15.10 of Title 15 of the DCC.

32. No permission to install a helicopter landing zone (helipad) at the Resort is given or implied by this decision.

FINDING: The Applicant provided the following response to FMP Condition 32 in their BoP:

The applicant is not seeking approval of a helicopter landing zone. This requirement is not

applicable to the review of the site plan.

Staff finds no permission is requested and, therefore, no permission to install a helicopter landing zone (helipad) at the Resort is given or implied by this decision.

- 33. The Resort shall, in the first phase, provide for the following:**
- A. At least 150 separate rentable units for visitor-oriented lodging.**
 - B. Visitor-oriented eating establishments for at least 100 persons and meeting rooms which provide eating for at least 100 persons.**
 - C. The aggregate cost of developing the overnight lodging facilities and the eating establishments and meeting rooms required in DCC 18.113.060(A)(1) and (2) shall be at least \$2,000,000 (in 1984 dollars);**
 - D. At least \$2,000,000 (in 1984 dollars) shall be spent on developed recreational facilities.**
 - E. The facilities and accommodations required by DCC 18.113.060 must be physically provided or financially assured pursuant to DCC 18.113.110 prior to closure of sales, rental or lease of any residential dwellings or lots.**

FINDING: The Applicant provided the following response to FMP Condition 33 in their BoP:

The applicant will meet the various requirements of this condition as discussed here and in prior applications for the Phase A-1 TP and the Golf Course Site Plan.

Condition 33A: Applicant will meet Condition 33A regarding the 150 units of lodging by providing 150 separate rentable units for visitor lodging, or financially assuring them, per Condition 33E, prior to the closure of sales, rental or lease of any residential buildings. This site plan seeks approval of 13 golf cabins, 6 village cabins, and 7 nature villas (25 total) that will provide 70 OLU's. Twenty-four golf cottages were approved with the 80 OLU site plan. The golf cabins, village cabins, and nature villas proposed in this site plan, like the golf cottages proposed in the 80 OLU site plan, qualify as the "visitor-oriented lodging" or OLUs approved by the CMP. As shown by the CMP approval, the applicant planned to comply with condition 33A by constructing "50 golf cottages with lock out facilities to ensure 150 separate rentable units are available..." See Exhibit 17: BOCC CMP Decision, pgs. 42-43 (quoted text on page 43).

Annunziata Gould appealed the CMP and argued at LUBA that the Resort's OLUs had not been shown to "actually function as overnight lodging rather than normal residential housing that does not qualify as overnight lodging." 54 Or LUBA at 223. Gould v. Deschutes County, 54 Or LUBA 205 (2007), rev'd and rem'd on other grounds, 216 Or App 150, 171 P3d 1017 (2007). In response, LUBA specifically approved the use of individually-owned cottages with lock-off units as OLUs, including the 50 cottages proposed for Phase A. 54 Or LUBA at 224. LUBA found that the County's Resort code and CMP decision provided adequate assurances that the individually owned properties would function as the overnight lodging units required by State law and the County's code.

During the Phase A-1 TP review, the applicant stated the 37 OLU lots in the Phase A-1 tentative

plan would produce 111 OLU's. The 80 OLU site plan proposed 80 of those OLU's; and this site plan proposes an additional 70 OLU's. Gould appealed the TP decision claiming the TP decision needed further details on the ownership, locations and design of the OLU's to determine if they qualified as OLU's.

At LUBA the applicant responded "that the county's prior CMP/FMP decision, and related appeals resolved the OLU issue." LUBA agreed stating:

"The character of the OLU's, and whether they met the definition of OLU, was decided in the CMP approval and not challenged on appeal from the CMP approval in Gould CMP II. That issue is settled, unless and until the resort seeks approval from the county to modify the design of the required OLU's."

Gould v. Deschutes County, 79 Or LUBA 561, 570 (2019).

LUBA also said:

"[E]ven if we agreed with petitioner that the approved OLU design is inconsistent with the decisions in the Caldera cases, an issue on which we express no opinion, that conclusion would provide no basis for reversal or remand in this appeal because that issue is not subject to collateral attack in subsequent application carrying out the FMP."

79 Or LUBA at 570. See Exhibit 6, LUBA TP A-1 Decision, Pg. 11-15.

LUBA was clear that the applicant is entitled to construct 50 buildings with lock-offs to provide 150 separate, rentable OLU's in the initial phase. This site plan shows 13 golf cabins, 6 village cabins, and 7 nature villas (26 total) with a total of 70 OLU's, which is the remainder of the initial 150 OLU's. It does not propose a change to the approved CMP plan or the FMP. As such, the issue of whether the golf cabins with lock-offs meet the definition of OLU's was settled in the Thornburgh CMP and nothing further is needed.

Even if the lock-off issue hadn't been settled by approval of the CMP, the lock-off design proposed here incorporates all the elements the BOCC found, in their final approval of the expansion of the Caldera Resort, assure that lock-off units, function as a separate rentable unit and OLU, including:

- 1. Each OLU has a separate outside entrance so guests can enter their unit separate from other units.*
- 2. Each unit has a separate unit number (e.g.: 24-c) to identify it separately from other units.*
- 3. Each OLU has a separate, private bathroom.*
- 4. Each OLU has an individual sleeping area, with a variety of sleeping options.*
- 5. Each OLU will have a television allowing guests to relax in their unit separate from other guests.*
- 6. Each OLU has a separate key, unique to that unit so that only a guest of the unit may open the locked door to the unit and sharing will occur only if units in a building are rented by a group or family that wishes to rent adjoining units.*
- 7. Parking spaces are provided for each OLU that are used in common with other guests adjacent*

to each structure.

8. Each OLU has a central location near the golf course and golf clubhouse.

The BOCC found:

“There is no functional or practical difference between two adjoining OLU’s and two adjoining hotel rooms. Both units are separate from adjoining units in the sense that they are independent and include all of the required elements of a transient accommodation or a “sleeping unit” as defined by the Oregon Structural Specialty Code...”

With these elements, the BOCC noted that there are no physical connections between the units or other interaction between guests while they are in their own unit. Each OLU operates independent of the other units in a manner exactly the same as adjoining hotel rooms that have a locking interior door. Given the fact that hotel rooms of this type qualify as two separate rentable units for overnight lodging under ORS 197.445(4), there isn’t any basis to conclude that individually owned lock-off units do not similarly qualify as “separate.” See Exhibit 18: BOCC Caldera Springs Decision, Pages 4-8.

Each OLU in this site plan meets the elements referenced by the BOCC above and will operate independently of each other. Each OLU will have: i) a separate entrance, ii) a distinct unit number, iii) a private bathroom, iv) its own sleeping area, v) a separate key unique to that OLU, vi), parking spaces to be used in common with guests of adjacent OLUs, and vii) its own television.

While not a requirement for Thornburgh, the BOCC also noted the Caldera OLU’s were centrally located and offered their guests numerous amenities and services typical to, and largely required at destination resorts, exceeding those normally found in a hotel. See BOCC Caldera Springs Decision, Page 6. Similarly, guests of the Thornburgh OLUs will have access to amenities and services far greater than those typical of hotels in the region. The 70 OLUs shown in this site plan are the remaining OLUs that can apply towards the required 150 OLUs. This condition will be met.

The Applicant proposes to construct 25 structures with five (5) different floor plan layouts. Four (4) of the proposed layouts are for lock-off OLUs. These layouts are identified by the applicant as 2AN, 3A, 4A, and Nature Villa Double. In total, 22 of the 25 proposed structures will contain 67 lock-off OLUs.

Staff believes the design standards established by the BOCC in their final approval of the expansion of the Caldera Resort are relevant to the current review. Below staff has created a table and made findings on whether each lock-off unit design complies with the 8-pronged test established by the BOCC.

	2AN	3A	4A (Golf Cabins)	4A (Village Cabins)	Nature Villa Double
1	Complies	Complies	Complies	Complies	Complies
2	Add'l Info Needed	Add'l Info Needed	Add'l Info Needed	Add'l Info Needed	Add'l Info Needed

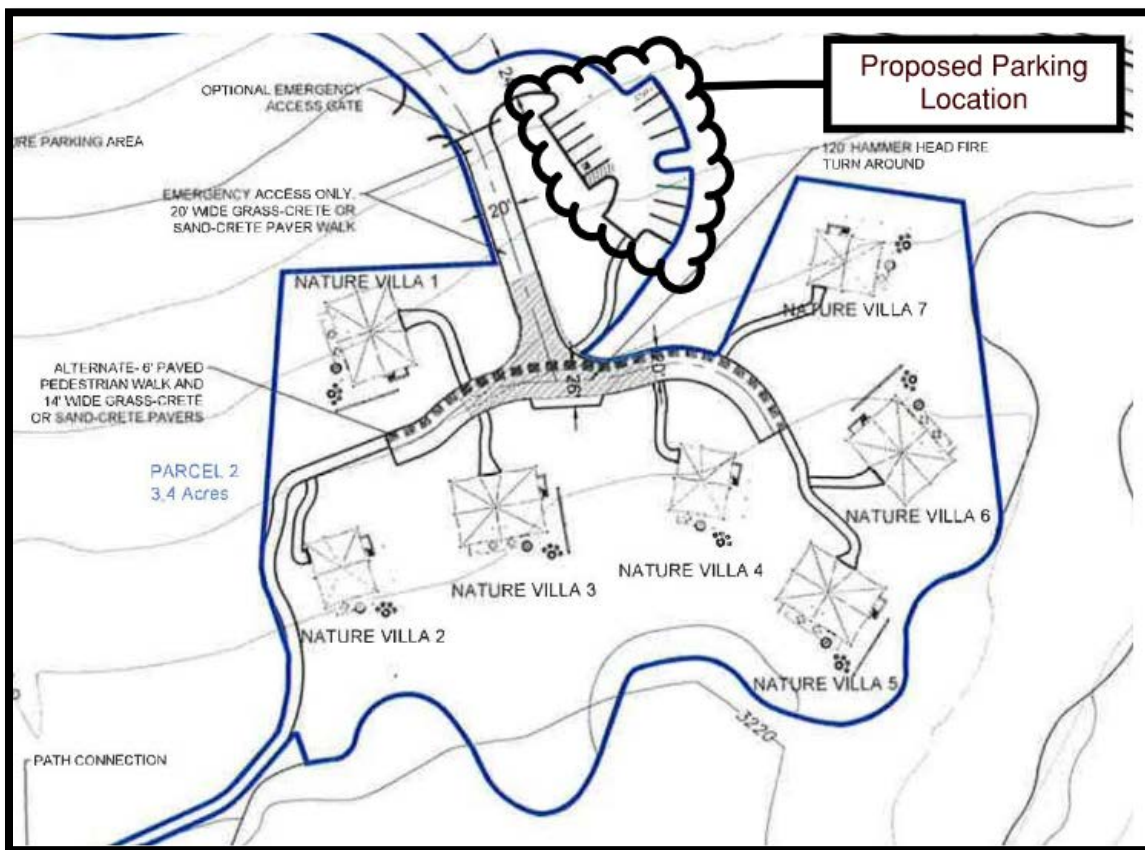
3	Complies	Complies	Complies	Complies	Complies
4	Complies	Complies	Complies	Complies	Complies
5	Complies	Complies	Complies	Complies	Complies
6	Add'l Info Needed	Add'l Info Needed	Add'l Info Needed	Add'l Info Needed	Add'l Info Needed
7	Complies	Complies	Complies	Complies	Does Not Comply
8	Complies	Complies	Complies	Complies	Complies

Staff finds the proposed parking spaces for the Nature Villa OLUs are not adjacent to each OLU structure (see *Figure 9* below). The Applicant's incomplete letter response, dated March 1, 2022, appears to acknowledge this discrepancy with the following response:

Guest spaces for all cabins are located adjacent to, or on the lot for, each cabin.

Staff asks the Hearings Officer to make specific findings on whether all of the requirements of FMP Condition 33 are met.

Figure 9 - Proposed Parking Location for Nature Villa OLUs



34. Where construction disturbs native vegetation in open space areas that are to be retained in substantially natural condition, Applicant shall restore the native vegetation. This requirement shall not apply to land that is improved for recreational uses, such as golf

courses, hiking or nature trails or equestrian or bicycle paths.

FINDING: The Applicant provided the following response to FMP Condition 34 in their BoP:

The applicant does not anticipate that this site plan will disturb native vegetation in open space areas that are to be retained in a substantially natural condition. But in the event that such disturbance does occur, the Wildlife Mitigation Plan approved in the FMP prescribes the protocols whereby such disturbance will be restored. These protocols will be followed.

Figure 10 and Figure 11 below show the open space areas approved as part of the FMP. The proposed OLU site plans appear to be located in areas identified as open space areas on these maps. Staff recommends a condition of approval to ensure compliance.

Open Space Area Restoration. Where construction disturbs native vegetation in open space areas that are to be retained in substantially natural condition, Applicant shall restore the native vegetation. This requirement shall not apply to land that is improved for recreational uses, such as golf courses, hiking or nature trails or equestrian or bicycle paths.

Figure 10 – FMP Open Space Plan (Exhibit A.1.1)

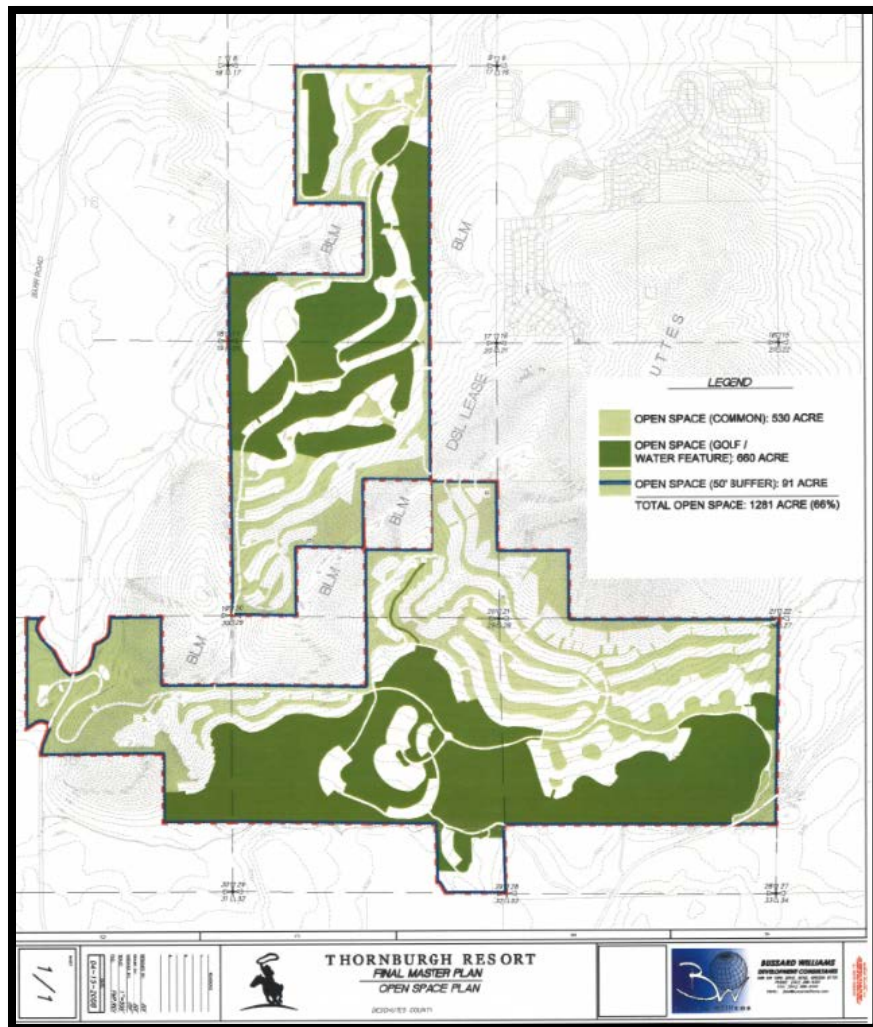
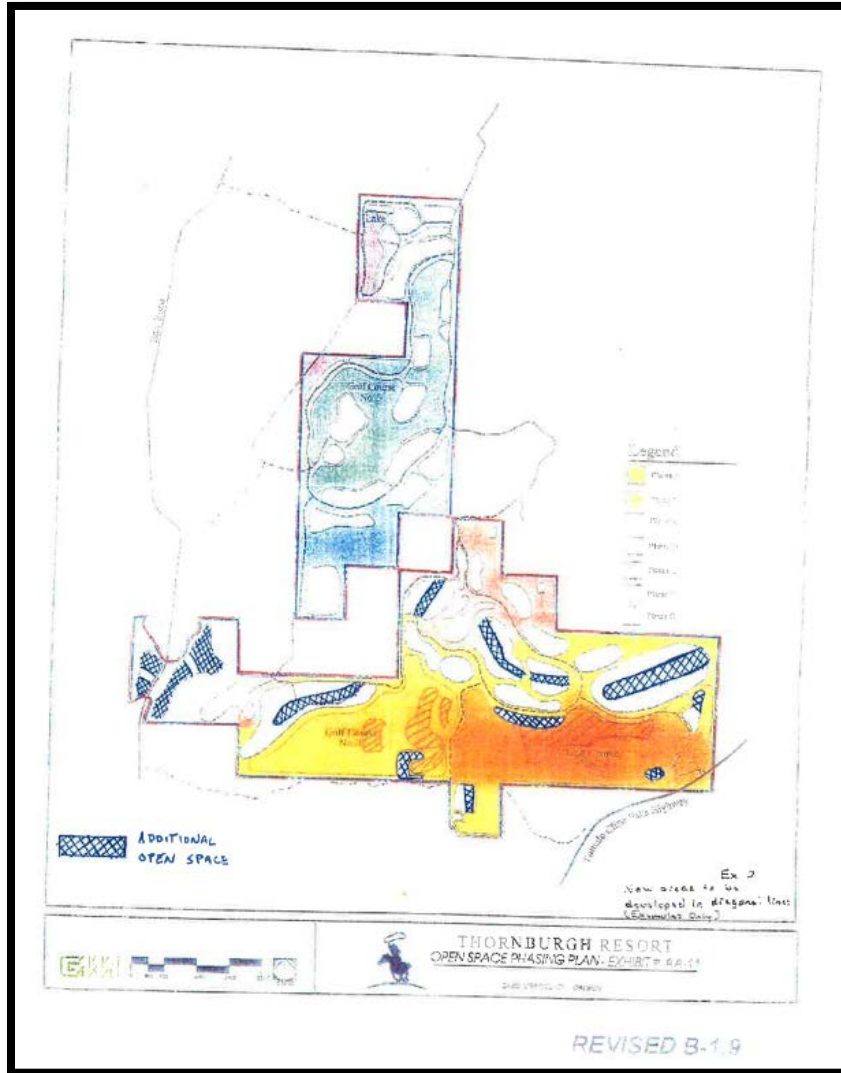


Figure 11 - FMP Additional Open Space Plan (Exhibit #AA-11, Revised B-1.9)



35. **The contract with the owners of units that will be used for overnight lodging by the general public shall contain language to the following effect: “[Unit Owner] shall make the unit available to [Thornburgh Resort/booking agent] for overnight rental use by the general public at least 45 weeks per calendar year through a central reservation and check-in service.**

FINDING: The Applicant provided the following response to FMP Condition 35 in their BoP:

This requirement applies when the applicant sells the golf cottages to new owners. It is not applicable to the review of this site plan.

The County Planning Division does not monitor property sales. For this reasons, staff recommends a condition be added to ensure compliance.

OLU Owner Contracts. The contract with the owners of units that will be used for overnight lodging by the general public shall contain language to the following effect: “[Unit Owner] shall make the

unit available to [Thornburgh Resort/booking agent] for overnight rental use by the general public at least 45 weeks per calendar year through a central reservation and check-in service.

36. Applicant shall coordinate with the Sheriff's Office and its designated representative to address all public safety needs associated with the resort and the development process.

FINDING: The Applicant provided the following response to FMP Condition 36 in their BoP:

Prior to the filing of this application the applicant placed calls to other Authorities to inform them of the filing of this application, that it was consistent with the prior plans for evacuation, to ask if they needed further information, or wanted a copy of this plan to review. No authority needed further materials. The Sheriff informed applicant nothing was needed as he would get information directly from the County.

The Sheriff's Office, also, has been involved in the design of the resort during development of the CMP and FMP and was notified of the filing of the Phase A-1 Tentative plan approving 13 of the lots in this site plan, at the filing of the Golf Course and Lakes Site Plan, at the filing of the 80 OLU site plan, as well as with the filing of this site plan.

It is unclear to staff if the Sheriff's Office is aware that the applicant is proposing to establish the proposed OLUs without Tentative or Final Plat approval. As noted above, the DCC Title 17 road standards are typically review during this process. One key component of this review is to establish road names so that addresses can be created to ensure emergency services can effectively respond. For this reason, staff asks the Hearings Officer to make specific findings on whether FMP Condition 36 is met.

37. Applicant shall demonstrate compliance with DCC 18.113.070(D) by submitting a wildlife mitigation plan to the County as part of its application for Final master plan approval. The County shall consider the wildlife mitigation plan at a public hearing with the same participatory rights as those allowed in the CMP approval hearing.

FINDING: FMP Condition 37 has been satisfied as noted in several previous County land use decisions for the Resort.

38. The applicant shall abide by the April 2008 Wildlife Mitigation Plan, the August 2008 Supplement, and agreements with the BLM and ODFW for management of off-site mitigation efforts. Consistent with the plan, the applicant shall submit an annual report to the county detailing mitigation activities that have occurred over the previous year. The mitigation measures include removal of existing wells on the subject property and coordination with ODFW to model stream temperatures in Whychus Creek.

FINDING: The Applicant provided the following response to FMP Condition 38 in their BoP:

This condition states an ongoing obligation of the resort. The WMP / FMP does not call for any actions to be taken at the time of site plan or tentative plan approval so is not relevant at this

time. Rather, it is enforceable by virtue of being a condition of the FMP and has already been found reasonably certain to succeed. There are numerous elements that require further and ongoing approvals that ensure compliance and allow for enforcement to proceed. LUBA ruled that compliance with Condition 38 is assured by annual reporting rather than a review conducted each time the applicant seeks development approvals. The Applicant's OLU site plan proposes no change to the Resort's mitigation plans. Consequently, as noted by LUBA, the Applicant is not required to fill in any details about the WMP during development review. See Exhibit 6: LUBA TP A-1 Decision, Pages 34-38, and: Exhibit 1, BOCC Golf Course Decision, Pages 5, 18-29. The hearings officer in the 80 OLU Decision made similar findings. Nothing is required at this time. This condition is met.

Staff agrees with the Applicant's response and finds FMP Condition 38 is met at this time.

- 39. The applicant shall provide funding to complete a conservation project by the Three Sisters Irrigation District to restore 106 acre-feet of instream water to mitigate potential increase in stream temperatures in Whychus Creek. The restoration shall occur as described in the applicant's submittals. The mitigation water shall be placed in stream no later than the date that groundwater pumping to serve the development commences (not testing). The applicant shall provide a copy of an agreement with the irrigation district detailing funding agreement prior to the completion of Phase A.**

FINDING: The Applicant provided the following response to FMP Condition 39 in their BoP:

This condition is tied to pumping groundwater to serve the development. It does not apply to the review of the site plan. That said, the TSIF water has already been placed in stream. Applicant will provide a copy of the agreement with TSID prior to the commencement (not testing) of groundwater pumping to serve the development, as required by this condition.

Hearings Officer Olsen, in the Olsen Phase A-1 Tentative Plan Decision (file nos. 247-18-000386-TP/454-SP/592-MA, page 45), provided the following findings:

"...this condition does not require compliance at the preliminary plat stage. It is not applicable until a later stage of development. The applicant's decision to break Phase 'A' into subphases, however, raises the possibility that the applicant would start pumping groundwater for development in this phase "A-1" prior to demonstrating compliance by filing the agreement. Accordingly, again to address the unanticipated potential impacts of the applicant's development approach, I find it is appropriate to require that this agreement be filed with the County prior to issuance of building permits for Phase 'A'."

Staff notes the Applicant has filed a request for building permits for most of the OLU structures locally authorized under land use files nos. 247-21-000508-SP/247-21-000849-A. For this reason, staff asks the Hearings Office to determine if the Applicant is required to demonstrate the mitigation water, as described under FMP Condition 39, is placed in stream prior to issuance of building permits for the proposed OLU's.

Title 18 of the Deschutes County Code, County Zoning

Chapter 18.113, Destination Resorts Zone – DR

Section 18.113.040, Application Submission.

The authorization of a permit for a destination resort shall consist of three steps.

- A. *Conceptual Master Plan and Conditional Use Permit for Destination Resort. A conceptual master plan (CMP) shall be submitted which addresses all requirements established in DCC 18.113.040. The CMP application shall be processed as if it were a conditional use permit under DCC Title 22, shall be subject to DCC 18.128.010, 18.128.020 and 18.128.030 and shall be reviewed for compliance with the standards and criteria set forth in DCC 18.113.***

FINDING: As noted in the Basic Findings section, the Resort's Conceptual Master Plan and Conditional Use Permit have been approved.

- B. *Final Master Plan. The applicant shall prepare a final master plan (FMP) which incorporates all requirements of the County approval for the CMP. The Planning Director shall review the FMP to determine if it complies with the approved CMP and all conditions of approval of the conditional use permit. The Planning Director shall have the authority to approve, deny or return the FMP to the applicant for additional information. When interpretations of the Planning Director involve issues which are discretionary, the FMP approval shall be treated as a land use permit in accordance with DCC Title 22.***

FINDING: As noted in the Basic Findings section, the Resort's Final Master Plan has been approved.

- C. *Site Plan Review. Each element or development phase of the destination resort must receive additional approval through the required site plan review (DCC 18.124) or subdivision process (DCC Title 17). In addition to findings satisfying the site plan or subdivision criteria, findings shall be made that the specific development proposal complies with the standards and criteria of DCC 18.113 and the FMP.***

FINDING: The Applicant is now completing the third step of Resort's submissions process by requesting Site Plan and Tentative Plan approvals for different elements of the FMP.

The Applicant provided the following response to this criterion:

During review of the golf course and lake site plan the parties and the administrative approval set forth different theories about what was required to demonstrate compliance with "standards and criteria of DCC 18.113 and the FMP." The administrative approval treated DCC 18.113.060 and 070 as applicable approval criteria. The BOCC disagreed and found that DCC 18.113.060, 18.113.070 and 18.113.090 apply only during the review of the Resort's master plan; not during

the review of development applications. DCC 18.113.050, also, does not apply because it details the information that must be provided in the CMP application and is not applicable thereafter.

The Applicant also argued, and the BOCC concurred, that findings of compliance with the conditions of approval of the FMP, but not the CMP, are required as part of any site plan or tentative plan approval for the resort. The BOCC found that several CMP conditions were found by the FMP decision to have been "satisfied." These conditions are CMP Conditions 3, 8, 9, 11, 13, 14A, 14B, 15, 24, 30 and 37. Also, CMP Condition 28 was replaced by Conditions 38 and 39 and, therefore, is not a relevant approval criterion for review of a development application. See Exhibit 1, BOCC Golf Course Decision, Pages 4-6.

The applicant has addressed the conditions of approval of the FMP, above. This document explains below how the site plans comply with the standards and criteria of Chapter 18.113 that were a part of the CMP and FMP and, therefore, are relevant to the County's review of this application.

As noted in the staff findings above, it is not clear if the Applicant's proposal addresses all of the conditions of approval of the FMP. Additionally, it is not clear if the Applicant's proposal addresses all of standards and criteria of DCC 18.113. Staff asks the Hearing Officer to focus his review on the issue areas identified in this Staff Report.

Section 18.113.060, Standards for Destination Resorts.

G. Dimensional Standards:

- 1. *The minimum lot area, width, lot coverage, frontage and yard requirements and building heights otherwise applying to structures in underlying zones and the provisions of DCC 18.116 relating to solar access shall not apply within a destination resort. These standards shall be determined by the Planning Director or Hearings Body at the time of the CMP. In determining these standards, the Planning Director or Hearings Body shall find that the minimum specified in the CMP are adequate to satisfy the intent of the comprehensive plan relating to solar access, fire protection, vehicle access, visual management within landscape management corridors and to protect resources identified by LCDDC Goal 5 which are identified in the Comprehensive Plan. At a minimum, a 100-foot setback shall be maintained from all streams and rivers. Rimrock setbacks shall be as provided in DCC Title 18. No lot for a single family residence shall exceed an overall project average of 22,000 square feet in size.***

FINDING: The Applicant provided the following response to this criterion:

The CMP application proposed that no minimum lot area, lot coverage, frontage or yard requirements would apply to any Resort development. The BOCC approved the CMP as proposed but added lot standards for residential lots agreed to by the applicant. These standards are set out on Exhibit B-24a of the CMP. Exhibit 15. These standards apply only to "residential lots" so do

not apply to OLUs which are commercial residential uses similar to a motel room. Nonetheless, to err on the side of caution, the applicant has applied the siting standards applicable to Type G residential lots. The Type G lots require setbacks of 20' front yard, 15' rear yard and 5' side yard. Lot coverage is 80%. The OLU buildings comply with these standards.

Staff finds the proposed OLUs are not defined under DCC 18.04.030 as a commercial residential use and the residential lot standards required under the CMP do not apply to current proposal. This finding is consistent with the Tentative Plan approval for Phase A-1.

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

FINDING: The proposed OLUs comply with the above-listed setbacks as shown by the applicant's site plan. The subject property does not adjoin a state highway.

Section 18.113.070, Approval Criteria. (2005 Ordinance/CMP)

- U. A mechanism to ensure that individually-owned units counting toward the overnight lodging total remain available for rent for at least 45 weeks per calendar year through a central reservation and check-in service. Such a mechanism shall include all of the following:**
 - 1. Designation on the plat of which individually-owned units are to be considered to be overnight lodging as used in DCC 18.113;**
 - 2. Deed restrictions limiting use of such identified premises to overnight**

- lodging total purposes under DCC 18.113 for at least 45 weeks each year;*
3. *Inclusion in the CC&Rs of an irrevocable provision enforceable by the County limiting use of such identified units to overnight lodging purposes under DCC 18.113 for at least 45 weeks each year;*
 4. *Inclusion of language in any rental contract between the owner of the unit and any central reservation and check-in service requiring that such units be made available as overnight lodging facilities under DCC 18.113 for at least 45 weeks each year; and*
 5. *A requirement that each such unit be registered and a report filed on each such unit yearly by the owner or central booking agent on January 1 with the Planning Division as to the following information:*
 - a. *Who the owner or owners have been over the last year;*
 - b. *How many nights out of the year the unit was available for rent through the central reservation and check-in service; and*
 - c. *How many nights out of the year the unit was rented out as an overnight lodging facility under DCC 18.113.*

FINDING: The Applicant provided the following response to this criterion in their BoP:

This is the code applicable at the time of FMP review and approval. The 2021 Modification Decision updated these provisions to be the new law in existence.

Item 1 will be met by the applicant when filing the final plat for Phase A-1. The deed restrictions, CC&R and rental contracts are a part of the approved FMP. The reporting and registration requirements of subsection (5) apply after the units are built and rented as OLU's. The applicant will also comply with the requirements as modified by the 2021 Modification Decision, including modifying the 45 week requirement to 38 weeks.

As noted in this Staff Report, 39 of the proposed OLU's are not included in the Phase A-1 Tentative Plat approval. The Applicant is requesting approval, as part of this Site Plan application, to establish the proposed OLU's without Tentative Plat or Final Plat approval. It is unclear to staff how the Applicant's request and compliance with these criteria should be evaluated. Staff asks the Hearings Officer to make specific findings on these criteria.

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

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

FINDING: As noted in the FMP Conditions section above, staff asks the Hearings Officer to determine if the proposed location of the OLU's complies with the FMP Master Development Plan

Map and whether any changes to the FMP open space requirements rise to a level to be considered a substantial change.

Section 18.113.110, Provision of Streets, Utilities, Developed Recreational Facilities and Visitor Oriented Accommodations.

- A. The Planning Director or Hearings Body shall find that all streets, utilities, developed recreational facilities and visitor oriented accommodations required by the FMP are physically provided or are guaranteed through surety bonding or substantial financial assurances approved by the County prior to closure of sale of individual lots or units.**
- B. Financial assurance or bonding to assure completion of streets and utilities, developed recreational facilities and visitor oriented accommodations in the FMP shall be required pursuant to the security requirements for site plan review and subdivision review established by the Deschutes County Code.**

FINDING: The Applicant provided the following response to these criteria:

This code section makes it clear that required Resort facilities may be constructed or assured. The only exception is that the applicant is required by FMP Condition 21 to construct 50 OLU's prior to selling Resort lots.

Staff finds these criteria establish the improvement or financial assurance/bonding requirements for *all* streets, utilities, developed recreational facilities and visitor oriented accommodations required by the FMP prior to closure of sale of individual lots or units. In addition to these criteria, FMP Condition 21 requires the following:

"As required by ORS 197.445 (4)(b)(B), at least 50 units of overnight lodging must be constructed in the first phase of development, prior to the closure of sale of individual lots or units."

Staff recommends a condition to ensure compliance with this section. Staff notes the establishment of an Improvement Agreement (i.e. bonding or substantial financial assurances) requires a separate County review and approval.

Resort Improvement Requirements. Prior to closure of sale of individual lots or units, all streets, utilities, developed recreational facilities and visitor oriented accommodations required by the FMP are physically provided or are guaranteed through surety bonding or substantial financial assurances approved by the County.

Chapter 18.116, Supplementary Provisions

Section 18.116.020, Clear Vision Areas.

- A. In all zones, a clear vision area shall be maintained on the corners of all property at the intersection of two streets or a street and a railroad. A clear vision area shall contain no planting, fence, wall, structure, or temporary or permanent obstruction exceeding three and one-half feet in height, measured from the top of the curb or, where no curb exists, from the established street centerline grade, except that trees exceeding this height may be located in this area provided all branches and foliage are removed to a height of eight feet above the grade.**
- B. A clear vision area shall consist of a triangular area on the corner of a lot at the intersection of two streets or a street and a railroad. Two sides of the triangle are sections of the lot lines adjoining the street or railroad measured from the corner to a distance specified in DCC 18.116.020(B)(1) and (2). Where lot lines have rounded corners, the specified distance is measured from a point determined by the extension of the lot lines to a point of intersection. The third side of the triangle is the line connecting the ends of the measured sections of the street lot lines. The following measurements shall establish clear vision areas within the County:**
 - 1. In an agricultural, forestry or industrial zone, the minimum distance shall be 30 feet or at intersections including an alley, 10 feet.**
 - 2. In all other zones, the minimum distance shall be in relationship to street and road right of way widths as follows:**

Right of way Width	Clear vision
80 feet or more	20 feet
60 feet	30 feet
50 feet and less	40 feet

FINDING: The Applicant provided the following response to these criteria:

The clear vision area rules apply to street intersections. "Streets" are defined by DCC 18.04.030 as "the entire width between the right-of-way lines of every public way for vehicular and pedestrian traffic." While the private roads proposed by the site plan are not public ways, staff found in its final decision of the 80 OLU site plan that "any open way for vehicles, persons, or animals is a road, of which public road and private road are sub-types. Since 'street' includes the term road, this criterion applies." The private roads proposed in this site plan will comply with the clear vision requirements of this code section to assure safety, including ensuring a "safe environment" as required under DCC 18.124.060(C).

Staff finds the appropriate DCC 18.04.030 definition to apply to these criteria is:

"Road or street" means a public or private way created to provide ingress or egress to one or more lots, parcels, areas or tracts of land.

Based on this definition, staff finds the Applicant's proposal includes required clear vision areas at the following intersections¹³ shown on the submitted site plan drawings:

- Village Cabin Road and Nature Villa Road
- Village Cabin Road and Main Access Road
- Gold Cabin Road and Main Access Road
- Village Cabin Road and Pedestrian Walkway
- Nature Villa Road and Pedestrian Walkway

As part of the Applicant's previous Site Plan application for the 80 approved OLU's, the Applicant submitted a landscape drawing that included the required clear vision areas¹⁴. However, the Applicant has not provided sufficient information as part of this application for staff to confirm these criteria will be met. Staff asks the Hearings Officer to confirm if the Applicant has demonstrated compliance with these criteria.

To the extent these criteria do not apply, staff finds a failure to observe clear vision areas at intersections would not provide the "safe environment" required under DCC 18.124.060(C) and staff uses these criteria as guidelines to ensure a "safe environment".

Section 18.116.030, Off street Parking and Loading.

- A. Compliance. No building or other permit shall be issued until plans and evidence are presented to show how the off street parking and loading requirements are to be met and that property is and will be available for exclusive use as off-street parking and loading. The subsequent use of the property for which the permit is issued shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by DCC Title 18.**

FINDING: Staff recommends a condition be added to ensure compliance with this criterion.

Off-Street Parking & Loading Compliance. The subsequent use of the property for which the permit is issued shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by DCC Title 18.

- B. Off-Street Loading. Every use for which a building is erected or structurally altered to the extent of increasing the floor area to equal a minimum floor area required to provide loading space and which will require the receipt or distribution of materials or merchandise by truck or similar vehicle, shall provide off-street loading space on the basis of minimum requirements as follows:**

...

- 2. Restaurants, office buildings, hotels, motels, hospitals and institutions, schools and colleges, public buildings, recreation or entertainment facilities**

¹³ Staff notes the road names shown on the Applicant's site plan have not been reviewed or approved by the County.

¹⁴ Reference Sheet No. LC-1 in file no. 247-21-000508-SP.

and any similar use which has a gross floor area of 30,000 square feet or more shall provide off street truck loading or unloading berths subject to the following table:

Sq. Ft. of Floor Area	No. of Berths Required
Less than 30,000	0
30,000-100,000	1
100,000 and Over	2

FINDING: No loading berth is required.

3. ***A loading berth shall contain space 10 feet wide, 35 feet long and have a height clearance of 14 feet. Where the vehicles generally used for loading exceed these dimensions, the required length of these berths shall be increased.***

FINDING: No loading berth is required.

4. ***If loading space has been provided in connection with an existing use or is added to an existing use, the loading space shall not be eliminated if elimination would result in less space than is required to adequately handle the needs of the particular use.***

FINDING: No loading space has been provided in connection with an existing use or added to an existing use.

5. ***Off-street parking areas used to fulfill the requirements of DCC Title 18 shall not be used for loading and unloading operations except during periods of the day when not required to take care of parking needs.***

FINDING: Staff recommends a condition be added to ensure compliance with this criterion.

Off-Street Parking Availability. Off-street parking areas used to fulfill the requirements of DCC Title 18 shall not be used for loading and unloading operations except during periods of the day when not required to take care of parking needs.

- C. ***Off-Street Parking. Off-street parking spaces shall be provided and maintained as set forth in DCC 18.116.030 for all uses in all zoning districts. Such off-street parking spaces shall be provided at the time a new building is hereafter erected or enlarged or the use of a building existing on the effective date of DCC Title 18 is changed.***

FINDING: Staff finds this criterion requires parking be provided and maintained for the proposed OLU. Staff recommends a condition be added to ensure compliance with this criterion.

Off-Street Parking. Off-street parking spaces shall be provided and maintained as set forth in DCC 18.116.030 for all uses in all zoning districts. Such off-street parking spaces shall be provided at the time a new building is hereafter erected or enlarged or the use of a building existing on the effective

date of DCC Title 18 is changed.

D. Number of Spaces Required. Off-street parking shall be provided as follows:

...

- 9. Other uses not specifically listed above shall be provided with adequate parking as required by the Planning Director or Hearings Body. The above list shall be used as a guide for determining requirements for said other uses.**

FINDING: The Applicant provided the following response to this criterion in their BoP:

DCC 18.116.030(D) does not include a category for OLU's. Subsection (D)(2) includes hotels and motels and sets different requirements for each. In previous OLU applications for the Caldera and Tetherow destination resorts, a requirement of one parking space per OLU was imposed. In the 80 OLU site plan decision. Staff agreed that one parking space per OLU was appropriate, so long as 2 additional parking spaces for employees as part of the parking area near lot 201 (as shown on the 80 OLU site plan) were provided. The site plan for this application provides one parking space per OLU (70 total), plus three additional parking spaces for employees – one for the golf cabins, one for the village cabins, and one for the nature villas. This criterion is met.

In addition, the Applicant provided the following response to this criterion in their incomplete letter response dated March 1, 2022:

As noted in the applicant's burden there is not a category for OLU's (which are not hotel or motel rooms) so we have treated them consistent with treatment in other resorts and consistent to the method used in the approved site plan for 80 OLU's. In this plan every bedroom is a lock-off and there are parking spaces for every guest lock-off unit. While these OLU units have no employees, they will require maintenance and cleaning operations, at times. Staff parking spaces are provided for this. The site plan details both the number of lodging units per building (total of 70) and the number of parking spaces for guests (total of 70) and staff (4 spaces) as follows:

- *Golf Cabins have 39 lodging units, and 39 guest parking spaces, plus 1 staff parking space. See page C2.0.*
- *Village Cabins have 20 lodging units and 20 guest parking spaces, plus 2 staff spaces. See Page C2.1.*
- *Nature Villas have 11 lodging units and 12 guest parking spaces, plus 1 staff parking space.*
- *Parking for the Nature Villas is located centrally adjacent to all units just off the entrance road into the Nature Villas. See Page C2.1.*

Guest spaces for all cabins are located adjacent to, or on the lot for, each cabin.

Figure 12 – Applicant's Parking Calculation Table from Sheet C2.0

Lot	Type	Beds/Keys	Parking	Size (SF)	Bike parking
L-217	3A	3	3	1,855	6
L-218	4A	4	4	2,400	8
L-219	2AN	2	2	1,510	4
L-220	3A	3	3	1,855	6
L-221	4A	4	4	2,400	8
L-222	4A	4	4	2,400	8
L-223	2AN	2	2	1,510	4
L-224	3A	3	3	1,855	6
L-225	2AN	2	2	1,510	4
L-226	4A	4	4	2,400	8
L-227	3A	3	3	1,855	6
L-228	3A	3	3	1,855	6
L-229	2AN	2	2	1,510	4
Total		39	39	1,917	78

Figure 13 - Applicant's Parking Calculation Table from Sheet C2.0

Building	Type	Beds/Keys	Parking	Size (SF)	Bike parking
Nature Villa 1	Double	2	2	1,209	4
Nature Villa 2	Double	2	2	1,209	4
Nature Villa 3	Single	1	1	669	2
Nature Villa 4	Double	2	2	1,209	4
Nature Villa 5	Single	1	1	669	2
Nature Villa 6	Double	2	2	1,209	4
Nature Villa 7	Single	1	1	669	2
Total		11	11	978	22

Building	Type	Beds/Keys	Parking	Size (SF)	Bike parking
Village Cabin 1	4A	4	4	2,400	8
Village Cabin 2	4A	4	4	2,400	8
Village Cabin 3	4A	4	4	2,400	8
Village Cabin 4	4A	4	4	2,400	8
Village Cabin 5	4A	4	4	2,400	8
Total		20	20	2,400	40

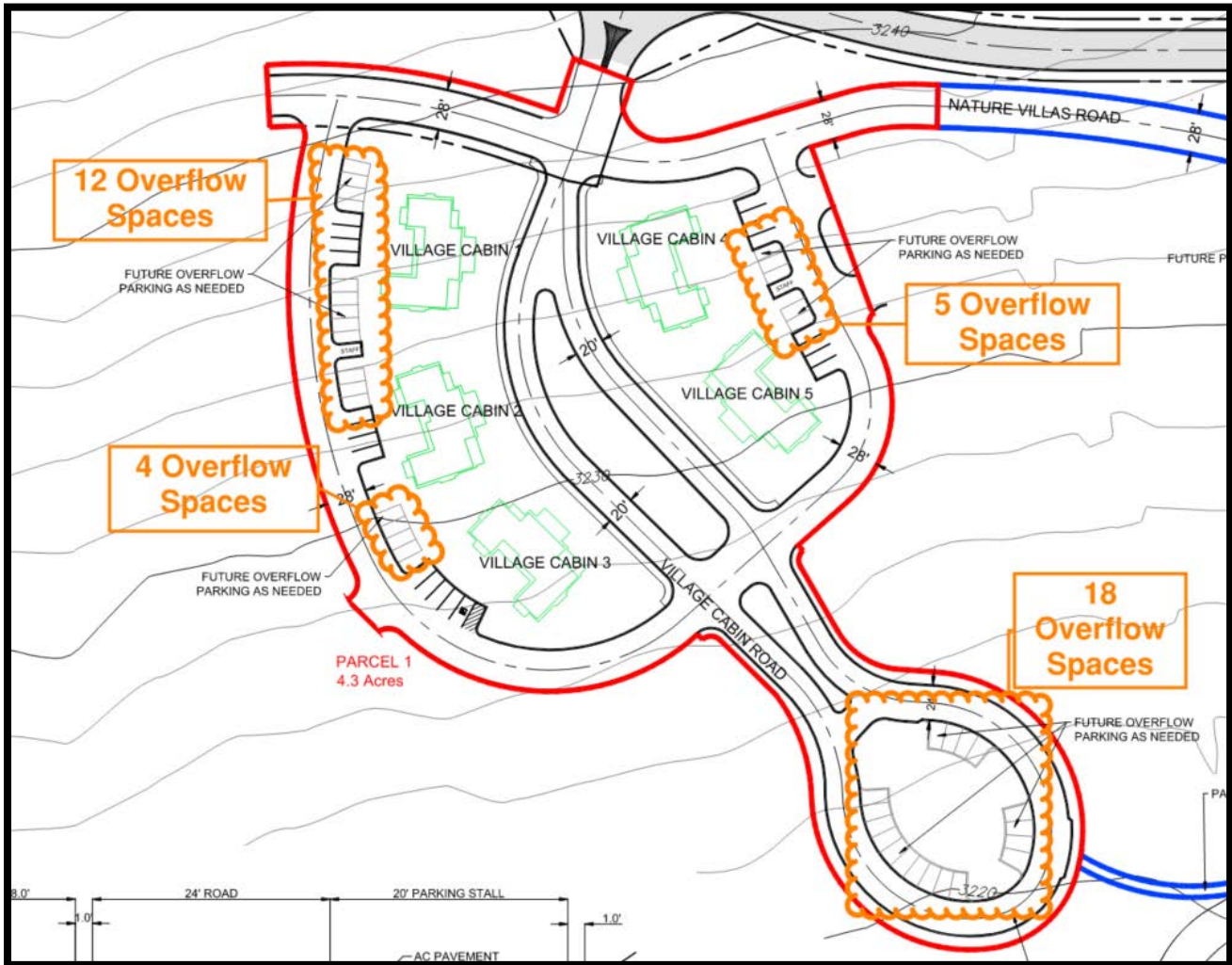
Staff agrees the appropriate vehicular parking ratio for the proposal is one space per OLU with the inclusion of staff parking for each of three proposed OLUs locations. The proposed site plan complies with this requirement.

Overflow Parking

In addition to the required parking, it appears the applicant may be requesting approval for several

overflow parking areas for the Village Cabin OLU use. The submitted site plan shows a total of 39 overflow parking spaces (see *Figure 14* below). Staff notes no explanation was provided by the Applicant regarding why this amount of overflow parking is necessary for the Village Cabin OLU, but not the other proposed OLUs. For this reason, it is unclear if these parking spaces are intended to be used in association with other, future, uses of the resort. Staff asks the Hearings Officer to make specific findings on what parking spaces are included in this review.

Figure 14 -Village Cabin Overflow Parking Spaces



E. General Provisions. Off-Street Parking.

1. **More Than One Use on One or More Parcels. In the event several uses occupy a single structure or parcel of land, the total requirement for off-street parking shall be the sum of requirements of the several uses computed separately.**

FINDING: The total requirement for off-street parking is calculated as the sum of requirements of all on-site uses computed separately.

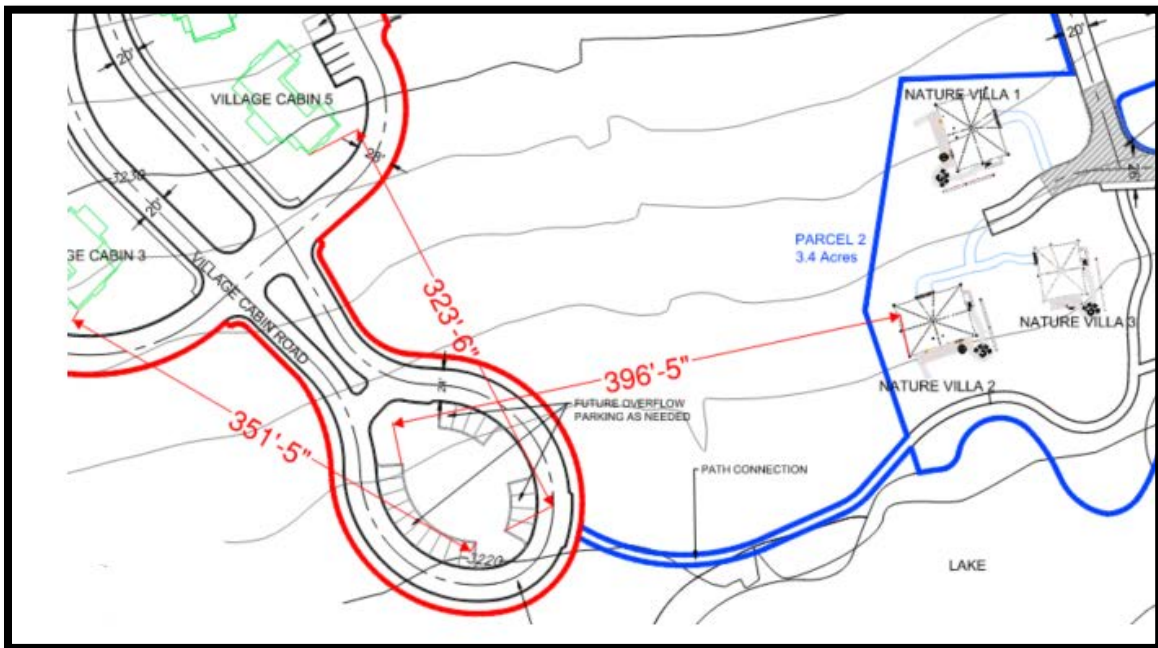
- 2. Joint Use of Facilities.** *The off-street parking requirements of two or more uses, structures or parcels of land may be satisfied by the same parking or loading space used jointly to the extent that it can be shown by the owners or operators of the uses, structures or parcels that their operations and parking needs do not overlap at any point of time. If the uses, structures or parcels are under separate ownership, the right to joint use of the parking space must be evidenced by a deed, lease, contract or other appropriate written document to establish the joint use.*

FINDING: The applicant provided the following response to this criterion in their BoP:

The OLU parking will be used by guests when they are utilizing other Resort facilities which will lessen the need for parking elsewhere in the Resort for OLU guest use. No joint use of parking facilities is proposed in this site plan, but will be proposed in future site plan applications for other facilities located in the village area.

Based on this response, it appears the Applicant plans to submit future Site Plan review applications for other facilities located in the Village Cabin area. Based on this response, staff finds no joint use parking is proposed at this time.

Figure 15 - Distance of Southern Overflow Parking from Closest OLUs



- 3. Location of Parking Facilities.** *Off-street parking spaces for dwellings shall be located on the same lot with the dwelling. Other required parking spaces shall be located on the same parcel or another parcel not farther than 500 feet from the building or use they are intended to serve, measured in a straight line from the building in a commercial or industrial zone. Such parking shall be located in a safe and functional manner as determined*

during site plan approval. The burden of proving the existence of such off-premise parking arrangements rests upon the applicant.

FINDING: Staff finds the proposed future overflow parking south of the proposed Village Cabin OLU structures is not located within 500 of each proposed structure. In addition, the submitted site plan does not show any pedestrian walkways connections. For these reasons, it is unclear to staff if the proposed parking is located in a safe and functional manner. Staff asks the Hearings Officer to make specific findings on these issues.

- 4. Use of Parking Facilities. Required parking space shall be available for the parking of operable passenger automobiles of residents, customers, patrons and employees only and shall not be used for the storage of vehicles or materials or for the parking of trucks used in conducting the business or used in conducting the business or use.***

FINDING: Staff recommends a condition be added to ensure compliance with this criterion.

Use of Parking Facilities. Required parking space shall be available for the parking of operable passenger automobiles of residents, customers, patrons and employees only and shall not be used for the storage of vehicles or materials or for the parking of trucks used in conducting the business or used in conducting the business or use.

- 5. Parking, Front Yard. Required parking and loading spaces for multi-family dwellings or commercial and industrial uses shall not be located in a required front yard, except in the Sunriver UUC Business Park (BP) District and the La Pine UUC Business Park (LPBP) District and the LaPine UUC Industrial District (LPI), but such space may be located within a required side or rear yard.***

FINDING: The Applicant provided the following response to this criterion in their BoP:

This application is not proposing parking spaces for multi-family dwellings or commercial or industrial uses. Overnight lodging units are defined by DCC 18.04.030 as a “commercial residential use” and are a required element of a destination resort use. Furthermore, if OLU are considered commercial uses, this code section does not apply because no front yard is required for commercial lots and buildings. See, CMP Exhibit B-24a, Exhibit 15.

Staff finds this criterion is met as the CMP approval established no front yard is required for commercial lots and buildings.

- 6. On-Street Parking Credit. Notwithstanding DCC 18.116.030(G)(2), within commercial zones in the La Pine Planning Area and the Terrebonne and Tumalo unincorporated communities, the amount of required off-street parking can be reduced by one off-street parking space for every allowed on-street parking space adjacent to a property up to 30% of the required off-street parking. On-street parking shall follow the established configurations in the parking design standards under DCC 18.116.030 Table 1.***

To be considered for the parking credit, the proposed parking surface, along the street frontage under review, must have a defined curb line and improved as required under DCC 17.48, with existing pavement, or an engineered gravel surface. For purposes of establishing credit, the following constitutes an on-street parking space:

- a. Parallel parking (0 degree), each 20 feet of uninterrupted curb;**
- b. Diagonal parking (60 degree), each with 11 feet of curb;**
- c. Perpendicular parking (90 degree), each with 10 feet of curb;**
- d. Curb space must be connected to the lot that contains the use;**
- e. Parking spaces that would not obstruct a required clear vision area, nor any other parking that violates any law or street standard; and**
- f. On-street parking spaces credited for a specific use may not be used exclusively by that use, but shall be available for general public use at all times. No signs or actions limiting general public use of on-street spaces are permitted.**

FINDING: The Resort is not located in the commercial zones of the La Pine Planning Area or the Terrebonne or Tumalo Unincorporated Communities. These criteria do not apply.

F. Development and Maintenance Standards for Off-Street Parking Areas. Every parcel of land hereafter used as a public or private parking area, including commercial parking lots, shall be developed as follows:

- 1. Except for parking to serve residential uses, an off-street parking area for more than five vehicles shall be effectively screened by a sight obscuring fence when adjacent to residential uses, unless effectively screened or buffered by landscaping or structures.**

FINDING: The Applicant provided the following response to this criterion in their BoP:

Only the parking area for the Nature Villas has a parking area that provides more than five parking spaces. It will be buffered by landscaping as shown on page LC-3 of the Site Plan. This condition will be met.

Staff finds the proposed landscaping for the Nature Villa OLU will effectively screen the proposed parking area. However, it is unclear to staff if the Applicant's Village Cabin parking areas comply with this criterion. The site plan shows overflow parking spaces for more than five vehicles and it appears the proposed parking area adjacent to the proposed OLU structures includes parking for more than five spaces. Staff asks the Hearings Officer to make specific findings on whether these parking spaces must be screened as described under this criterion.

- 2. Any lighting used to illuminate off-street parking areas shall be so arranged that it will not project light rays directly upon any adjoining property in a residential zone.**

FINDING: The Applicant provided the following response to this criterion in the BoP:

This site plan does not include property in residential zone nor does it adjoin property in a residential zone. That said, all lighting that may be used in this site plan to illuminate off street parking will be low and directed downward so that it does not project light onto any adjoining property. This criterion is met.

Staff agrees with the Applicant's response.

- 3. *Groups of more than two parking spaces shall be located and designed to prevent the need to back vehicles into a street or right of way other than an alley.***

FINDING: The Applicant provided the following response to this criterion:

The applicant's site plan provides parking areas that are designed to prevent the need to back vehicles into a street or right of way other than an alley in groups of more than two parking spaces. While the parking spaces for lots 217-223 and 228-229 back onto the right of way, they do not have more than two spaces grouped together. The parking spaces for Lots 224-227 as well as the Village Cabins back onto an alley that is also an access aisle for the parking on these lots. This criterion is met.

DCC 18.04.030 defines alley as follows:

"Alley" means a narrow street through a block primarily for vehicular service access to the back or side of properties adjoining another street.

Staff notes street classifications are evaluated as part of the Tentative Plat and Final Plat approval. As noted above, the Applicant has not obtained Tentative Plat approval for the proposed development areas associated with the Village Cabin OLU and Nature Villa OLU. The development area for the Golf Cabin OLU have been reviewed as part of a Tentative Plat approval (Phase A-1). However, the Hearings Officer found "no alleys are included in the site plan"¹⁵. It is unclear to staff if the proposed parking spaces on Golf Cabin OLU Lots 224, 226, and 227 comply with this requirement as the Phase A-1 Tentative Plat approved this vehicular access as a road. Staff asks the Hearings Officer verify this criterion will be met.

- 4. *Areas used for standing and maneuvering of vehicles shall be paved surfaces adequately maintained for all weather use and so drained as to contain any flow of water on the site. An exception may be made to the paving requirements by the Planning Director or Hearings Body upon finding that:***
 - ...***
 - b. The subject use is located outside of an unincorporated community and the proposed surfacing will be maintained in a manner which will not create dust problems for neighboring properties; or***

FINDING: The Applicant provided the following response to this criterion in their BoP:

¹⁵ Reference pg. 13 of Hearings Officer Decision (file nos. 247-18-000386-TP / 454-SP / 592-MA).

All the areas used for standing and maneuvering in this site are anticipated to be paved surfaces that will be maintained for all weather use and drained to contain the flow of water on site as noted on the Site Plan, Page C2.1. The applicant is not requesting an exception to the paving requirements, although the applicant may decide to have an alternate all-weather surface for the area around the nature villas and therefore asks for flexibility to accommodate that request.

In addition, the Applicant provided the following additional information in their incomplete letter response dated March 1, 2022:

Applicant seeks authorization to use grass crete or sand crete pavers to minimize paving and to increase the permeability of surfaces in very limited areas and therefore the original burden of proof indicated that an exception is requested. In particular, applicant seeks an exception for the parking area located at the Nature Villas – not the parking lot near the Nature Villas, but the "paths" from the parking area to the Nature Villas themselves, which have been designed to meet fire access standards but which the applicant would like authorization to use this alternative paving method. This area will see very little vehicular traffic as it is limited to emergency vehicles. This type of hard surface will provide a look that is closer to the natural environment and has previously been approved for use in areas around the Welcome Center. Dust is unlikely to be an issue as the pavers are planted with grass or filled with sand, preventing dust from establishing or releasing. Attachment B shows examples of alternative pavers.

Figure 16 – Applicant's Attachment B - Grass Crete & Sand Crete Paver Examples





Based on the Applicant's responses, staff finds all of the proposed areas used for standing and maneuvering of vehicles will be paved except for the parking areas from the parking area to the Nature Villas. The Applicant did not address how these areas will be drained as to contain any flow of water on the site. Staff recommends a condition be added to ensure compliance. Staff also finds the proposed grasscrete and sandcrete surfacing for the parking areas from the parking area to the Nature Villas will not create dust problems for neighboring properties if properly maintained. Staff recommends a condition be added to ensure compliance.

Parking Area Water Management. Prior to the issuance of building permits, the Applicant shall submit written verification from a licensed Engineer confirming the areas used for standing and maneuvering of vehicles are designed to contain any flow of water on the site.

Grasscrete/Sandcrete Areas. All areas for standing and maneuvering of vehicles with grasscrete and sandcrete surfacing must be properly maintained to prevent dust problems on neighboring properties.

5. Access aisles shall be of sufficient width for all vehicular turning and maneuvering.

FINDING: The Applicant provided the following response to this criterion in their BoP:

The term "access aisle" is not defined by the code. The code does, however, define the term "access" as follows:

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

The code also defines the term "driveway" as follows:

"Driveway" means a way created to provide vehicular access from a public or private road to a garage or parking area.

In other land use applications, the County has applied access aisle requirements to private parking areas that provide access to a private developed as a road as well as to public property; perhaps reasoning that the access aisle is a “driveway” that provides vehicular access from a private road to a parking area. In any case, the term “access” modifies the term “aisles” to indicate that they are located within a parking area and extend to a public or private road. The alleys that provide access to lots 224-226, plus the Village Cabin parking areas are viewed as an access aisle for the parking areas on these lots.

All access aisles described above are of sufficient width for vehicular turning and maneuvering. All are at least 24’ wide. This is the width required by DCC 18.116.030(G) to provide sufficient width for all vehicular turning and maneuvering, and in its final decision on the 80 OLU site plan, Staff concurred and found that the proposed access aisles described in that application, which are identical to those proposed here, were of sufficient width for vehicular turning and maneuvering.

Staff finds the Nature Villa OLU parking area has a 24-foot wide access aisle compliant with this criterion. The OLU that will be directly accessed via an approved road or street are not subject to this criterion. However, it is unclear to staff whether the Applicant has obtained the necessary approvals for the establishment of alleys. Absent the necessary County approvals, it is unclear to staff if these proposed 20-foot accesses are defined as access aisles. Staff asks the Hearings Officer verify this criterion will be met.

- 6. *Service drives to off-street parking areas shall be designed and constructed to facilitate the flow of traffic, provide maximum safety of traffic access and egress and maximum safety of pedestrians and vehicular traffic on the site. The number of service drives shall be limited to the minimum that will accommodate and serve the traffic anticipated. Service drives shall be clearly and permanently marked and defined through the use of rails, fences, walls or other barriers or markers. Service drives to drive in establishments shall be designed to avoid backing movements or other maneuvering within a street other than an alley.***

FINDING: The Applicant provided the following response to this criterion in their BoP:

The code does not define the term “service drive.” Neither does the dictionary relied on by Oregon Courts – Webster’s Third New International Dictionary Unabridged. This dictionary does, however, define the term “service road” and that definition is instructive. It is a “frontage road.” A frontage road is a facility that provides direct access to a number of properties. It is logical to assume that a service drive is a driveway that provides access to multiple properties. This interpretation is consistent with the BOCC’s finding that an easement road that crossed a neighboring property and provided access to a parking lot and its access aisles on the subject property was a “service road.” File 247-18-000545-CU/-546-CU/-811-MA. Staff, in its decision approving the 80 OLU site plan, agreed that this definition applied to that application, and as such, it should apply to this application. If this definition is applied to this application, the access aisles in the parking areas along the rear of Lots 224 through 226 and the Village Cabins meet the definition of a “service drive.”

Staff found in the final decision approving the 80 OLU site plan that landscaping and/or edge-of-pavement are not markers of the sort required under this criterion and conditioned approval on the service drives being marked and defined through the use of rails, fences, walls, or other barriers or markers, including reflective pavement markers placed at no less than 40-foot intervals. The applicant will comply with the "marking requirement" by marking service drives as a condition of approval. The applicant is not proposing a drive-in establishment so the final sentence of this code section is not a relevant approval criterion for this site plan.

Historically, the County has found a "service drive" includes any vehicle maneuvering surface that connects to a road or street, but is not immediately adjacent to a parking space. Based on this interpretation, staff finds the Applicant's proposal includes one service drive associated with the Nature Villa OLUs parking area. Staff finds this service drive is 24 feet wide, provides +/-40 feet of area for vehicle queuing, and there are no pedestrian crossings nearby. Based on this layout, staff finds this service drive is designed and constructed to facilitate the flow of traffic, provide maximum safety of traffic access and egress and maximum safety of pedestrians and vehicular traffic on the site. Staff recommends a condition be added to ensure compliance with the marking requirements.

Service Drive Design. Service drives shall be clearly and permanently marked and defined through the use of rails, fences, walls or other barriers or markers.

As noted above, the Applicant states alley access is proposed to Golf Cabin OLUs Lots 224-226 and the Village Cabin OLUs. An alley is a type of street. Therefore, it is unclear to staff if this criterion applies to these accesses. Staff asks the Hearings Officer to make specific findings whether these areas for vehicular maneuvering constitute a service drive.

- 7. Service drives shall have a minimum vision clearance area formed by the intersection of the driveway centerline, the street right of way line and a straight line joining said lines through points 30 feet from their intersection.**

FINDING: The Applicant provided the following response to this criterion in their BoP:

The site plan does not propose a "Street." That term is separately defined by DCC 18.04.030 to and is discussed above in the Finding for DCC 18.116.020(A). As a result, the clear vision area requirement does not apply. Nonetheless, the applicant has designed its plan to meet this clear vision requirement. Given the lack of clarity about the meaning of the term "service drive," the applicant has designed the driveways and service drives on all lots to provide 30 feet clear vision areas that comply with this code section.

As noted earlier in this Staff Report, staff disagrees with the Applicant's interpretation of the DCC 18.04.030 "street" definition and finds the Applicant's proposal includes one (1) service drive to the Nature Villa OLUs parking area. The submitted landscape plan for the Nature Villas service drive shows landscaping is proposed within the clear vision area. Staff asks the Hearings Officer to verify this criterion has been met.

- 8. Parking spaces along the outer boundaries of a parking area shall be contained by a curb or bumper rail placed to prevent a motor vehicle from extending over an adjacent property line or a street right of way.**

FINDING: The Applicant provided the following response to this criterion in their BoP:

All the parking has been designed such that it will not extend over an adjacent property line by providing a landscaped buffer of at least 5' in width between the edge of the parking space and an adjoining property. Lots 217-229 provide head-in parking that is not immediately adjacent to a property line, so will not extend over an adjacent property line or street right-of-way.

Several of the parking spaces along the outer boundaries of the proposed Golf Cabin OLU lots are less than 10 feet from the adjacent property line. Specifically, Golf Cabin OLU Lots 217, 220, 221, 222, and 226. Given this limited separation, staff recommends a condition be added to prevent a motor vehicle from extending over an adjacent property line.

Parking Space Curb/Bumpers. The Applicant shall install a curb or bumper rail for all vehicular parking spaces located on the sites described as Golf Cabin OLU Lots 217, 220, 221, 222, and 226.

- G. Off-Street Parking Lot Design. All off-street parking lots shall be designed subject to County standards for stalls and aisles as set forth in the following drawings and table:**

(SEE TABLE 1 AT END OF CHAPTER 18.116)

- 1. For one row of stalls use "C" + "D" as minimum bay width.**
- 2. Public alley width may be included as part of dimension "D," but all parking stalls must be on private property, off the public right of way.**
- 3. For estimating available parking area, use 300-325 square feet per vehicle for stall, aisle and access areas.**
- 4. For large parking lots exceeding 20 stalls, alternate rows may be designed for compact cars provided that the compact stalls do not exceed 30 percent of the total required stalls. A compact stall shall be eight feet in width and 17 feet in length with appropriate aisle width.**

FINDING: The Applicant provided the following response to these criteria in their BoP:

All parking spaces are ninety-degree spaces and comply. Access aisles are 24-feet wide. The design standards of Table 1 are met.

Staff finds all parking spaces are at least 9' x 20'. The proposed access aisle for the Nature Villa OLU parking area complies with this criterion. As noted above, staff asks the Hearings Officer to confirm if the Applicant's proposal includes additional access aisles. If yes, staff asks the Hearings Officer to confirm any access aisles comply with these dimensional standards.

Section 18.116.031, Bicycle Parking.

New development and any construction, renovation or alteration of an existing use requiring a site plan review under DCC Title 18 for which planning approval is applied for after the effective date of Ordinance 93-005 shall comply with the provisions of DCC 18.116.031.

A. Number and Type of Bicycle Parking Spaces Required.

1. General Minimum Standard.

- a. All uses that require off-street motor vehicle parking shall, except as specifically noted, provide one bicycle parking space for every five required motor vehicle parking spaces.**
- b. Except as specifically set forth herein, all such parking facilities shall include at least two sheltered parking spaces or, where more than 10 bicycle spaces are required, at least 50 percent of the bicycle parking spaces shall be sheltered.**

FINDING: Staff finds each OLU is required to have two (2) sheltered bicycling parking spaces. The Applicant provided the following additional information in their incomplete letter response dated March 22, 2022:

Each OLU has 2 bike parking spaces as noted on Site Plan pages C2.0 and C2.1. The cabins (golf and Village) provide bike parking under overhangs and under covered porches as shown on pages BP 1, 5, and 9. The Nature Villas also have 2 bike parking spaces as shown on pages BP 11 and 13.

Staff reviewed the referenced drawings and finds the sheltered bicycle parking spaces shown on drawing sheets BP-5 and BP-9 meet this requirement. However, the proposed sheltered bicycle parking shown on sheets BP-1, BP-11, and BP-13 do not appear to comply with all of the DCC 18.116.031(B) design requirements. For this reason, staff asks the Hearings Officer to make specific findings on whether the Applicant has demonstrated compliance with these criteria.

- c. When the proposed use is located outside of an unincorporated community, a destination resort, and a rural commercial zone, exceptions to the bicycle parking standards may be authorized by the Planning Director or Hearings Body if the applicant demonstrates one or more of the following:**
 - i. The proposed use is in a location accessed by roads with no bikeways and bicycle use by customers or employees is unlikely.**
 - ii. The proposed use generates less than 50 vehicle trips per day.**
 - iii. No existing buildings on the site will accommodate bicycle parking and no new buildings are proposed.**
 - iv. The size, weight, or dimensions of the goods sold at the site makes transporting them by bicycle impractical or unlikely.**
 - v. The use of the site requires equipment that makes it unlikely that a bicycle would be used to access the site. Representative**

examples would include, but not be limited to, paintball parks, golf courses, shooting ranges, etc.

FINDING: No exception to the bicycle parking requirements is allowed as the Applicant's proposal is part of a destination resort.

2. ***Special Minimum Standards.***
 - a. ***Multi-Family Residences. Every residential use of four or more dwelling units shall provide at least one bicycle parking space for each unit. In those instances in which the residential complex has no garage, required spaces shall be sheltered.***
 - b. ***Parking Lots. All public and commercial parking lots and parking structures shall provide a minimum of one bicycle parking space for every 10 motor vehicle parking spaces.***
 - c. ***Schools. Schools, both public and private, shall provide one bicycle parking space for every 25 students, half of which shall be sheltered.***
 - d. ***Colleges. One-half of the bicycle parking spaces at colleges, universities and trade schools shall be sheltered facilities.***

FINDING: As noted above, staff finds the Applicant's proposal is a commercial use. Therefore, subsection (b) applies to the proposed parking areas. Staff finds the proposed site plans provide more than one (1) bicycle parking space for every 10 motor vehicle parking spaces.

3. ***Trade Off with Motor Vehicle Parking Spaces.***
 - a. ***One motor vehicle parking space may be deleted from the required number of spaces in exchange for providing required bicycle parking.***
 - i. ***Any deleted motor vehicle space beyond the one allowed above shall be replaced with at least one bicycle spaces.***
 - ii. ***If such additional parking is to be located in the area of the deleted automobile parking space, it must meet all other bicycle parking standards.***

FINDING: The Applicant is not requesting a trade off with motor vehicle parking spaces. These criteria do not apply.

- b. ***The Hearings Body or Planning Director may authorize additional bicycle parking in exchange for required motor vehicle parking in areas of demonstrated, anticipated, or desired high bicycle use.***
4. ***Calculating number of bicycle spaces.***
 - a. ***Fractional spaces shall be rounded up to the next whole space.***
 - b. ***For facilities with multiple uses (such as a commercial center) bicycle-parking requirements shall be calculated by using the total number of motor vehicle spaces required for the entire development.***

FINDING: Bicycle parking has been calculated by the rounding up of fractional spaces and accounting for the total number of motor vehicle spaces required for the entire development.

B. Bicycle Parking Design.

1. General Description.

- a. Sheltered Parking.** *Sheltered parking may be provided within a bicycle storage room, bicycle locker, or racks inside a building; in bicycle lockers or racks in an accessory parking structure; underneath an awning, eave, or other overhang; or by other facility as determined by the Hearings Body or Planning Director that protects the bicycle from direct exposure to the elements.*

FINDING: Staff finds the proposed sheltered bicycle parking shown on sheets BP-11 and BP-13 do not comply with these criteria (see *Figure 17* and *Figure 17* below). The reference drawings shows this parking is only partially under a “decorative PVC flysheet”. Additionally, staff finds the proposed sheltered bicycle parking shown on sheets BP-1 and BP-9 are not fully covered. Staff asks the Hearings Officer to verify if the proposed bicycle parking complies with these criteria.

Figure 17 – Nature Villa Single OLU Bicycle Parking Location

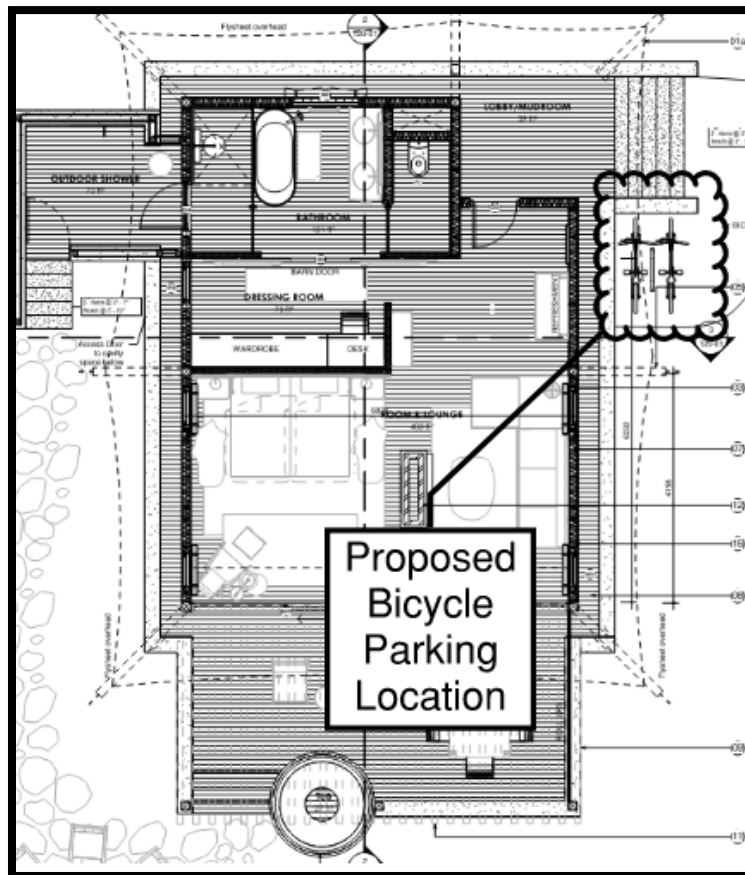
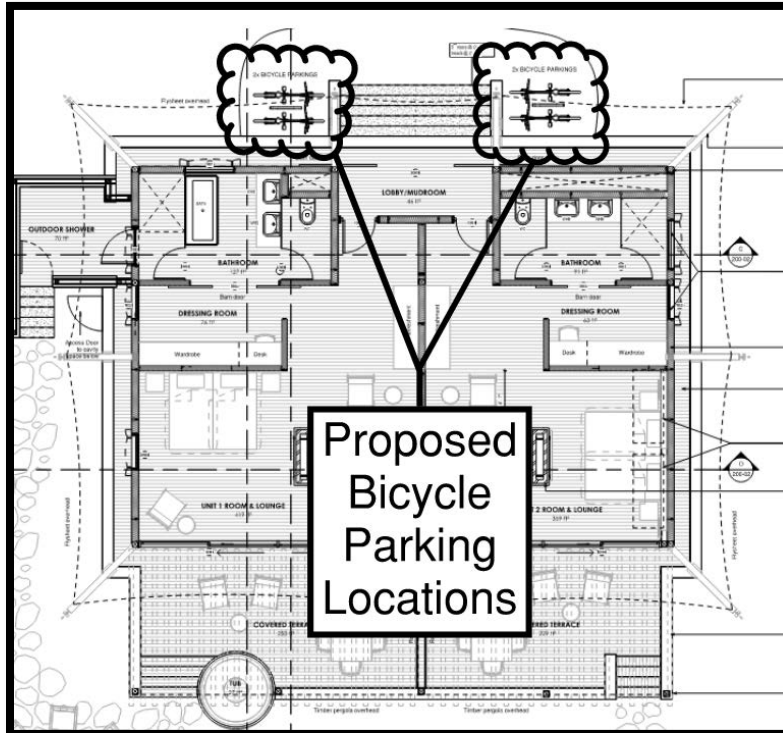


Figure 18 – Nature Villa Double OLU Bicycle Parking Location



2. **Location.**

- a. **Required bicycle parking that is located outdoors shall be located on-site within 50 feet of main entrances and not farther from the entrance than the closest motor vehicle parking space.**
 - i. **Bicycle parking shall be located in areas of greatest use and convenience to bicyclist.**
 - ii. **Such bicycle parking shall have direct access to both the public right of way and to the main entrance of the principal use.**
 - iii. **Bicycle parking shall not impede or create a hazard to pedestrians.**
 - iv. **Parking areas shall be located so as not to conflict with clear vision areas as prescribed in DCC 18.116.020.**

FINDING: Staff finds the proposed bicycle parking for each Nature Villa OLU will be located within 50 feet of the main entrance of each OLU. However, the proposed lock-off units within the Golf Cabin OLUs and Village Cabin OLUs do not consistently comply with these criteria. Based on the BOCC's Caldera Decision, each lock-off is required to have a separate entrance. Therefore, staff finds the proposed floor plans for lock-off configurations 2AN, 3A, and 4A do not show bicycle parking will be provided within 50 feet of the exterior entrance for each lock-off unit. Staff asks the Hearings Officer to verify if the proposed bicycle parking complies with these criteria.

- b. **Bicycle parking facilities shall be separated from motor vehicle parking and drive areas by a barrier or sufficient distance to prevent damage to the parked bicycle.**

FINDING: Staff finds the proposed bicycle parking locations are a sufficient distance to prevent damage to the parked bicycles.

- c. *Where bicycle parking facilities are not directly visible and obvious from the public right(s) of way, entry and directional signs shall be provided to direct bicyclists for the public right of way to the bicycle parking facility. Directions to sheltered facilities inside a structure may be signed, or supplied by the employer, as appropriate.***

FINDING: Staff finds the proposed bicycle parking for the Nature Villa OLUs will be directly visible and obvious. However, the Golf Cabin and Village Cabin lock-off unit layouts show some of the required bicycle parking will be located on the side or backside of the proposed structures. Staff asks the Hearings Officer to verify if directional signs are needed.

3. *Dimensional Standards.*

- a. *Each bicycle parking space shall be at least two by six feet with a vertical clearance of seven feet.***
- b. *An access aisle of at least five feet wide shall be provided and maintained beside or between each row of bicycle parking.***
- c. *Each required bicycle parking space shall be accessible without moving another bicycle.***

FINDING: The Applicant did not provide enough information for staff to confirm this requirement will be met. However, staff believes these requirements can be met as a condition.

Bicycle Parking Dimensional Standards. Prior to issuance of building permits, the applicant shall identify the required bicycle dimensional standards on the final site plan drawing for each structure.

- 4. *Surface. The surface of an outdoor parking facility shall be surfaced in the same manner as the motor vehicle parking area or with a minimum of one-inch thickness of aggregate material. This surface will be maintained in a smooth, durable, and well-drained condition.***

FINDING: The Applicant did not provide enough information for staff to confirm this requirement will be met. However, staff believes these requirements can be met as a condition.

Bicycle Parking Surface. Prior to issuance of building permits, the applicant shall identify the proposed surface for all outdoor bicycle parking facilities for the requested OLU(s). This surface will be the same surface as the motor vehicle parking, and be maintained in a smooth, durable, and well-drained condition.

5. *Security.*

- a. *Bicycle parking facilities shall offer security in the form of either a lockable enclosure in which the bicycle can be stored or a stationary***

object (i.e., a "rack") upon which the bicycle can be locked. Structures that require a user-supplied lock shall accommodate both cables and U-shaped locks and shall permit the frame and both wheels to be secured (removing the front wheel may be necessary). All bicycle racks, lockers, or other facilities shall be permanently anchored to the surface of the ground or to a structure.

- b. Lighting shall be provided in a bicycle parking area so that all facilities are thoroughly illuminated and visible from adjacent sidewalks or motor vehicle parking.**

FINDING: The Applicant provided the following response to these criteria their BoP:

Each building has covered areas, both porches and overhangs that provide for covered bicycle parking. Certain of these areas will have lockable racks permanently affixed to the building. Lighting will be provided along pathways into the covered areas so the facilities will be visible. See notes on SP LC 1-3. This criterion is met.

In addition, the Applicant provided the following additional information in their incomplete letter response dated March 1, 2022:

... Bicycle racks will be provided under eaves that will be anchored to the cabin (villa) walls or to the ground in similar location. As noted above, see pages, C2.0 and 2.1, LC 1-4, and BP 1, 5, 9, 11 and 13.

Staff finds the proposed anchoring satisfies the requirements of subsection (a). However, it is unclear whether the proposed bicycle parking located under eaves will be illuminated and visible from adjacent sidewalks or motor vehicle parking areas. Staff asks the Hearings Officer to verify if required bicycle parking lighting requirement is met.

- 6. Other means that provide the above level of bicycle parking may be approved by the Hearings Body or the Planning Director.**

FINDING: No alternative means of providing bicycle parking has been requested.

Section 18.116.035, Bicycle Commuter Facilities.

- A. Each commercial or public building having a work force of at least 25 people shall have bicycle commuter facilities consisting of shower(s) and changing rooms(s). For facilities with more than one building (such as a college), bicycle commuter facilities may be located in a central location.**
- B. This provision shall apply to (1) new development requiring off-street parking and (2) any construction, renovation or alteration of an existing use requiring a site plan review under DCC Title 18 for which planning approval is applied for after the effective date of Ordinance 93-005.**

FINDING: No commercial or public building having a work force of at least 25 people exists or is

proposed as part of this site plan review.

Section 18.116.310, Traffic Impact Studies.

FINDING: The Applicant provided the following response to the requirements of this DCC code section in their BoP:

The applicant complied with the requirement of the code to provide a traffic impact study when it obtained approval of the Resort's CMP based on a traffic impact study for the entire Resort. Issues addressed by this code section, with the exception of sight distance and clear vision areas, have been met by the CMP TIS. The CMP and FMP decisions assure that the impacts of development will be mitigated. A new study is not required. The applicant has also shown, by a trip debit letter from Chris Clemow, P.E. (See: Exhibit 19), that with the approval of this application that Resort development authorized to date will not exceed the volume of traffic projected by the TIS.

The following part of DCC 18.116.310 sets the relevant approval standard for sight distance for driveways and intersections in the resort:

H. *Operation and Safety Standards*

3. *The minimum sight distance for driveways and intersections is defined in AASHTO's "GEOMETRIC DESIGN OF HIGHWAYS AND STREETS" and the AASHTO "Design Guidelines for Very-Low Volume Local Roads (less than 400 ADT)."*

FINDING: No driveways are proposed with this application and therefore this criterion is not relevant.

The County Senior Transportation Planner also provided the following comments on the Traffic Study requirements:

"The proposal is consistent with the approved Conceptual Master Plan (CMP) and Final Master Plan (FMP) and no additional traffic analysis is required."

Based on these comments, staff finds no additional traffic analysis is required.

Chapter 18.124, Site Plan Review

Section 18.124.030. Approval Required.

- A. ***No building, grading, parking, land use, sign or other required permit shall be issued for a use subject to DCC 18.124.030, nor shall such a use be commenced, enlarged, altered or changed until a final site plan is approved according to DCC Title 22, the Uniform Development Procedures Ordinance.***
- B. ***The provisions of DCC 18.124.030 shall apply to the following:***
 1. ***All conditional use permits where a site plan is a condition of approval;***

2. ***Multiple family dwellings with more than three units;***
 3. ***All commercial uses that require parking facilities;***
 4. ***All industrial uses;***
 5. ***All other uses that serve the general public or that otherwise require parking facilities, including, but not limited to, landfills, schools, utility facilities, churches, community buildings, cemeteries, mausoleums, crematories, airports, parks and recreation facilities and livestock sales yards; and***
 6. ***As specified for Flood Plain Zones (FP) and Surface Mining Impact Area Combining Zones (SMIA).***
 7. ***Non-commercial wind energy system generating greater than 15 to 100 kW of electricity.***
- C. ***The provisions of DCC 18.124.030 shall not apply to uses involving the stabling and training of equine in the EFU zone, noncommercial stables and horse events not requiring a conditional use permit.***
- D. ***Noncompliance with a final approved site plan shall be a zoning ordinance violation.***
- E. ***As a condition of approval of any action not included in DCC 18.124.030(B), the Planning Director or Hearings Body may require site plan approval prior to the issuance of any permits.***

FINDING: The proposed use requires actions described in section (A), above, and falls within a use category described in section (B). Staff finds Site Plan review under DCC 18.124 is required.

Section 18.124.060. Approval Criteria.

Approval of a site plan shall be based on the following criteria:

- A. ***The proposed development shall relate harmoniously to the natural environment and existing development, minimizing visual impacts and preserving natural features including views and topographical features.***

FINDING: In *Father's House*, files 247-18-000061-CU, 247-18-000062-SP, 247-18-000624-A, and 247-18-000643-A, the Board of County Commissioners (Board) made the following finding regarding this standard.

The Board agrees that DCC 18.124.060(A) is subjective and, at times, difficult to apply as the Hearings Officer observed. However, as the Board interprets the provision, DCC 18.124.060(A) does not require a particularly onerous exercise. It requires an applicant to show that its proposed site plan relates "harmoniously" to the natural environment and existing development. Unlike the conditional use standards of DCC 18.128.015(B), this standard does not indicate harmony achieved with "surrounding properties." However, the Board understands that the standard implies that the proposed development shall relate harmoniously on and off the subject property and generally speaking, in the vicinity, by "minimizing visual impacts and preserving natural features including views and topographical features."

The code does not define what it means to “relate harmoniously.” The Hearings Officer reported that the online Oxford Living Dictionary defines “harmoniously” to mean arranging something “in a way that forms a pleasing or consistent whole.” Both parties in this case, provided various interpretations of the term “harmonious.” The Board is not adopting one interpretation of the term over another as each contributes equally to this evaluation. The Board concurs with the Hearings Officer that there is no “particularly useful case law defining or applying this term.” In addition, the Board agrees, that the Hearings Officer is correct that a site plan should be approved in light of this meaning of “harmonious,” so long as the proposed site plan does not create “more disharmony than other uses allowed by right or conditionally in the MUA-10 zone.” In this regard, the Board finds that this standard presumes the use is approved and evaluates only whether the site plan for the use “relates harmoniously.” The Board finds that the proposed church site plan meets the standard set forth in DCC 18.124.060(A).

Specifically, the Board interprets DCC 18.124.060(A) to mean that an applicant must demonstrate that the site plan has arranged the development in a way that evaluates the natural environment and existing development in the area and in the process has minimized visual impacts and reasonably preserved natural features including views and topographic features. Minimizing visual impact, as with this case, may include introduced landscaping, design layout, and specific design elements such as siding and roofing color and material. In doing so, this enables the County decision maker to find that the site plan’s impacts create no more disharmony than other uses allowed by right or conditionally in the MUA Zone.

The Board agrees, in part, with the Hearings Officer that this standard is considered differently when compared to the term “compatibility” and its associated standard of DCC 18.128.015(B). The chief differences between the two standards is that the DCC 18.128.015(B) compatibility standard evaluates the compatibility of the proposed use on existing and projected uses of surrounding properties and does so in light of specific factors that are not reproduced in DCC 18.124.060(A). The DCC 18.124.060(A) “harmonious” standard evaluates whether a proposed site plan “relates harmoniously to existing development and the natural environment” considering whether the site plan shows that the applicant has reasonably mitigated its impacts and reasonably preserved views. The Board observes that not every use that requires site plan approval also requires a conditional use permit. However, the Board finds that it is possible that a permitted or approved use is arranged so poorly on a site, that a proposed site plan must be denied under this standard. That is not the case here.

Staff understands the Board’s findings, cited above, to make clear the use itself is not the subject of review under this criterion. Rather, this criterion only evaluates whether the site plan for the use “relates harmoniously.” Staff reads *Father’s House* to require a demonstration, “...the site plan has arranged the development in a way that evaluates the natural environment and existing development in the area and in the process has minimized visual impacts and reasonably preserved natural features including views and topographic features.”

The Applicant, in relevant part, responded to this criteria as follows:

As the Board noted in Fathers House, the “harmonious” standard asks whether development has evaluated the natural environment and existing development in the area and minimized visual impacts and reasonably preserved natural features including views and topographic features. Minimizing visual impact, may include landscaping, design layout, and design elements such as exterior colors and materials.

The site plan shows that the OLUs will be located in high-quality, attractive buildings and landscaping that will complement the natural environment and thereby minimize the visual impacts of the development. When the CMP was developed, the entire Resort was designed to be harmonious with the environment, the natural features, and the surrounding areas. The project documents reflect the applicant’s commitment to retain that natural look and feel of the property, to preserve and enhance the land returning it to an old growth Juniper forest. The property has roughly 700’ of elevation change and the views are a primary focus of the project. The applicant went to great lengths during its planning to minimize the projects visual impacts, and to protect the views, both from within the property, and from outside the project looking upon it. The submitted site plans continue this approach.

The natural environment is a typical high-desert dry landscape with native sagebrush, bitterbrush and Juniper tree vegetation. The property has a number of old Juniper trees which are, to the extent practicable, being retained. The site is relatively level and the Board of Commissioners has determined in its decision approving the CMP “... that while there are resources worth preserving on the property, they do not rise to the level of ‘important natural features’ that must be protected to the exclusion of development.” See Exhibit 17: BOCC CMP Decision, Page 12. Proposed development will not require the removal of notable topographical features.

There is no existing development nearby with which to relate because adjoining properties outside the Resort are public open space lands and the OLUs will be located a significant distance from them. The site plan is designed to take advantage of views and does not destroy notable topographical features. Existing large trees are retained where feasible.

The site plan proposes buildings that fit within the area and with the character of the resort. They will use natural materials, colors and landscaping to blend into the natural environment. The site layout is consistent with the approved resort design concepts. Further, there is no existing development near this site plan. It is surrounded by undeveloped resort land at this time.

For the reasons mentioned above, the site plan is in harmony with the environment, is located so that it has evaluated the natural environment, blends into it, is located to minimize visual impacts, preserves natural features (if any), and has highlighted the views.

This site plan meets this criterion.

Staff finds the Applicant’s response demonstrates compliance with this criterion.

- B. The landscape and existing topography shall be preserved to the greatest extent possible, considering development constraints and suitability of the landscape and topography. Preserved trees and shrubs shall be protected.**

FINDING: The Applicant provided the following response to this criterion in their BoP:

This criterion is divided into two parts, or two sentences. During the appeal proceedings for the golf course and lakes site plan in front of the Board, the applicant provided substantial details how this issue was resolved by the far broader standards of the CMP and FMP, including the WMP/FWMP, the Natural Characteristics Report, the Wildlife and Habitat Report, the Open Space Management Plan. The applicant also showed that extensive planning and analysis was completed to comply with the CMP/FMP that assures that Resort development will meet this standard and that areas of natural and improved open space will be provided and protected. During those prior proceedings the Board found:

“Applicant has already met the related requirements of the CMP in 18.113.050 and 070 which are broader than those of 18.124.060(8). The CMP materials consistently state a concerted effort will be made to minimize the impacts to natural resources, which is carried into this current application, to protect the landscape and topography.”

See Exhibit 1: BOCC Golf Course Approval, Pg. 11. The OLU site plans also retain native landscape and topography to the greatest extent possible – a fact evident from a review of the site plan. Areas of native landscaping are provided on each lot. The size of parking areas has been held to a minimum to limit impacts on vegetation and topography. The lot coverage on each OLU lot is modest.

The second sentence, or part of the criterion, “preserved trees and shrubs shall be protected” is addressed here and on the site plan. The WMP desired a return to an old growth forest requiring the applicant to remove the smaller juniper trees, allowing native grasses to come back. As a result, we will remove many of the smaller trees from the site plan area. The removal of the smaller trees from the site will, unfortunately, result in removal of sagebrush or shrubs as well. Juniper trees will also be removed from within, and just outside of the building site to provide a firebreak in accordance with the resort’s Wildfire and Natural Hazards plan and the “Firewise” protocols. Wherever possible, the larger, old growth trees will be retained. The trees to be retained are shown on the landscape plans. See SP LC 1-3.

The landscape plans show the areas to be landscaped (See SP LC 1-3), the various plant species to be used and retained. See SP LC 4. This criterion will be met.

Staff finds, as proposed, this criterion will be met.

- C. The site plan shall be designed to provide a safe environment, while offering appropriate opportunities for privacy and transition from public to private spaces.**

FINDING: The Applicant provided the following response to this criterion in their BoP:

The site plan provides a safe environment. The different buildings offer both public areas and private spaces with appropriate transitions between them. The OLU lots are relatively level and free of natural hazards. The parking areas are small and do not create unsafe conditions. While the applicant acknowledges that a safe environment includes fire safety, the issues related to fire safety have been resolved in the CMP/FMP, and the resulting conditions of approval 4, 17, 19, and 24 will be met to achieve a safe environment. The property has been annexed into the Redmond Fire District boundaries, satisfying condition 24. Emergency access roads across BLM land that are required by Condition 4 have been built. Condition 17 requires actions be taken, namely the provision of access and fire water prior to the delivery of combustible materials for structures. Condition 24 was satisfied during the approval of the tentative plan for Phase A-1. Nothing further is required for fire safety at this time.

Pedestrian, bicycle, and vehicle safety are addressed under subsections (E) and (K) of this section. No other natural hazards are identified on the site.

This criterion is met.

Staff finds this criterion requires the Applicant to demonstrate the site plan is designed to address common safety hazards, including fire safety, and to address any site-specific natural hazards. Staff finds pedestrian, bicycle, and vehicle safety is addressed under sub-sections (E) and (K) of this section. With regard to fire safety, staff notes the Redmond Fire Department comments identified numerous deficiencies in the Applicant's initial submittal. To address these items, the Applicant provided detailed responses to each of the Redmond Fire Department comments. As noted above, Staff recommends a condition to ensure the Redmond Fire Department requirements are met. Lastly, staff finds that the site plan provides appropriate opportunities for privacy and transition from public (the resort generally) to private spaces through OLU specific streets, mostly unit specific parking areas, and landscaping that will provide additional buffering near the individual OLU units.

D. When appropriate, the site plan shall provide for the special needs of disabled persons, such as ramps for wheelchairs and Braille signs.

FINDING: The Applicant provided the following response to this criterion in their BoP:

ADA compliance is assured by the County's Building Division when construction drawings are filed for building permit review. The site plan provides for the needs of handicapped persons by providing ADA parking spots on up to 3 of the units. See SP C4.0: ADA Parking Option. Any ADA OLU's will meet ADA standards including accessible rooms, paths and ramps and all other requirements at the time construction drawings are submitted for review by the County Building Official. This criterion will be met. The ADA Parking Plan shows three potential parking areas ADA parking spaces and loading areas, located as follows: (a) in front of lot 217 in the golf cabins; (b) in front of building # 6 in the village cabins; and (c) in the parking area for the nature villas. The applicant retains the option to remove the ADA unloading space and to convert the ADA space to a standard parking space if such parking is not required at the time these units are constructed. The landscape plans, pages SP LC 1-3 show regular parking spaces but the landscape will be

replaced with the ADA parking in any lot used as ADA with ramps and walkways being adjusted accordingly. Any OLU used for ADA will be built to comply with the ADA standards.

The Deschutes County Building Division was sent a request for comment on this application. In the State of Oregon, ORS 455.720 and 447.210 through 447.992 are administered by the Deschutes County Building Safety Division. The Deschutes County Building Safety Division is required to determine if a structure is an Affected Building and if so, apply the appropriate sections of Chapter 11 and the American National Standards Institute code A117.1-2009. Consequently, the structures will comply with state and federal ADA requirements. If an Affected Building is approved, inspected and finalized by the Deschutes County Building Safety Division, it meets all code requirements as an accessible structure. Staff finds that such a review is required prior to the issuance of building permits.

E. The location and number of points of access to the site, interior circulation patterns, separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings and structures shall be harmonious with proposed and neighboring buildings and structures.

FINDING: Staff finds this criterion is met where the described facilities provide for a safe and efficient flow of vehicular, bicycle, and pedestrian traffic. In addition, such facilities must be “harmonious with proposed and neighboring buildings and structures”. Staff finds this means that such facilities must not significantly adversely impact on-site and/or neighboring proposed and existing buildings and structures.

The Applicant provided the following response to this criterion in their BoP:

The approximate location and number of points of access to the site were established by the Tentative Plan for Phase A-1. The OLU site plan adds further details on the access to the village cabins and nature villas in a manner that minimizes impacts to the natural landscape, yet provides a reasonable separation between the OLU units and the parking areas. This type of location is “harmonious.”

In all cases, the layout of access, parking, and internal circulation provides harmony with; the development, buildings, and the environment as defined by the Board in Fathers House. There the Board felt a site plan should be approved in light of this meaning of “harmonious,” so long as the proposed site plan does not create “more disharmony” than other uses allowed (layouts allowed). In other words, unless the parking creates more disharmony than other parking would the criterion for this site plan should be met. The proposed parking is harmonious, so the criterion is met.

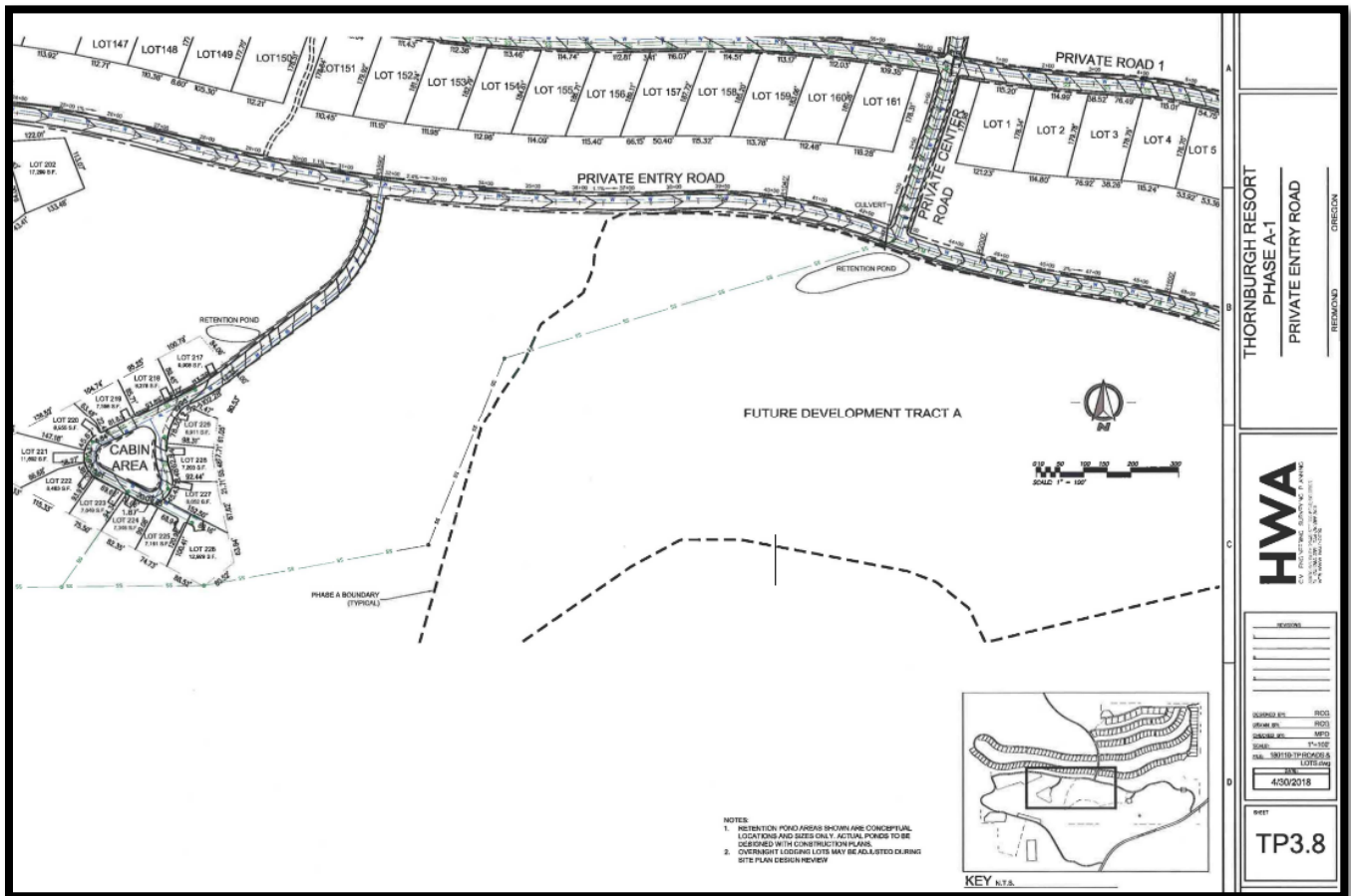
In addition, the Applicant provided the following response to these criteria in their incomplete letter response dated March 4, 2022:

Sheet C2.1 (attached hereto) provides additional detail regarding pedestrian pathways between the Nature Villas and the Village Cabins. C2.1 also shows the pedestrian pathway between the

Nature Villas parking area and the units themselves. Applicant has worked consistently with the County's building official regarding ADA compliance; however at this time no ADA Nature Villas are proposed; ADA units are generally reserved for other OLU's.

Staff finds only the access point and street layout for the proposed Golf Course Cabin OLU's was evaluated under the Phase A-1 Tentative Plan approval. As shown in Figure 19 below, the proposed development area for the Village Cabin OLU's and Nature Villa OLU's is identified as a "Future Development Tract A" and this figure clearly shows this area is not located within the "Phase A Boundary".

Figure 19 - Phase A-1 Tentative Plan Drawing



Staff finds the proposed roads and alleys shown on the Village Cabin OLU's and Nature Villa OLU's have not been reviewed as part of a Tentative Plat approval. Therefore, it is unclear to staff if the proposed roads and alley meet all of the applicable design requirements of DCC Title 17. Additionally, it does not appear the proposed alley access to Golf Cabin Lots 224-227 has been approved by the County.

The Applicant's proposal shows Village Cabin Road will extend more than 300 feet beyond the location of the proposed OLU's. Staff finds this proposed street segment is not necessary to serve the proposed OLU's and will disturb additional native vegetation on the site. Staff notes Sheet C6.0 shows the proposed road network adjacent to the proposed Village Cabin OLU's has the necessary

truck turning movement areas for firefighting equipment. For these reasons, staff finds this proposed circulation pattern does not have a clear nexus to the proposed OLU and does not appear to be necessary to support the proposed use. Moreover, staff finds to the extent this area is intended as an overflow parking area there is no pedestrian connectivity to the Village Cabin OLU, which creates an unsafe environment.

As noted earlier in this Staff Report, it is unclear to staff if the proposed road widths meet the minimum width requirement. Specifically, the proposed site plans do not appear to show any multi-use paths providing connectivity the other areas of the Resort. The submitted plans show a multi-use path will be located on the north side of the Main Access Road. However, the submitted site plans do not show any extensions of this path to create connectivity to the proposed OLU. Based on the submitted information, it is unclear to staff if the applicant has adequately addressed access to the proposed OLU, interior circulation patterns, and separations between pedestrians and moving and parked vehicles. For these reasons, staff asks the Hearings Officer to make specific findings on whether the Applicant has adequately addressed this criterion.

F. Surface drainage systems shall be designed to prevent adverse impacts on neighboring properties, streets, or surface and subsurface water quality.

FINDING: The Applicant provided the following response to this criterion in their BoP:

Applicant submitted an erosion control plan as part of the initial tentative plan (see TP4.1-4.7) and also with the golf course site plan in accordance with Condition 25. Further details on the surface drainage swales and infiltration standards specific to this site plan are included on pages SP C2.1. This ensures there are no adverse impacts to neighboring properties, streets, surface, or subsurface water quality. This criterion is met. To the extent Staff finds that engineered design and review is required to demonstrate compliance with this criterion as it did with the 80 OLU site plan, this criteria can be met with conditions.

Staff finds this criterion requires to the Applicant to demonstrate surface drainage systems (e.g. storm water management) associated with the proposed development are designed to prevent adverse impacts on neighboring properties, streets, or surface and subsurface water quality. Previous Tentative Plat approvals did not address this criterion as no OLU structures, driveways, landscaping, etc. were proposed or evaluated under these reviews. Staff finds engineered design and review is required to demonstrate compliance with this criterion. Staff recommends a condition be added to ensure compliance.

Surface Drainage System Design. Prior to initiation of use and/or issuance of a building permit, the Property Owner shall provide a written statement from a licensed professional engineer confirming the surface drainage systems have been designed to prevent adverse impacts on neighboring properties, streets, or surface and subsurface water quality.

Surface Drainage System Maintenance. The Property Owner shall maintain all surface drainage system in good working condition.

- G. Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking and similar accessory areas and structures shall be designed, located and buffered or screened to minimize adverse impacts on the site and neighboring properties.**

FINDING: The Applicant provided the following response to this criterion in their BoP:

All utilities are underground. Parking areas are designed and located to minimize the impacts to the site and neighboring properties. See SP LC 1-5. This criterion is met.

In addition, the Applicant provided the following response to this criterion in their incomplete letter response dated March 4, 2022:

Applicant has provided previous drawings (Sheet BP-1 and BP-5, for example) which show that all outdoor storage - including trash enclosures - are directly adjacent to the cabins. These areas will be screened using wood enclosures and natural color tones to limit visual impacts to surrounding units. BP-2 provides a visual representation of how these areas will appear. No additional outside storage areas is contemplated.

The only exception is the Nature Villas, where no outside trash or storage facilities are contemplated. This is because these units will have daily housekeeping services and so no outdoor trash facilities are necessary or required.

Staff finds the proposed landscaping adjacent to the parking areas will effectively buffer and screen these areas and the proposed daily housing keeping services for the Nature Villas will ensure refuse does not accumulate. All of the proposed utilities will be underground ensuring no adverse impacts on the sties and neighboring properties. However, staff finds drawing sheets B-1, B-5, or B-9, which are the floor plan drawings for the Golf Cabin and Village Cabin lock-off OLUs, do not include trash enclosures. Based on the submitted drawings, the proposed areas only appear to be covered, which will not buffer or screen the area to minimize adverse impacts on the site and neighboring properties. Given this design, staff asks the Hearings Officer to make specific findings on whether this criterion will be met.

- H. All above ground utility installations shall be located to minimize adverse visual impacts on the site and neighboring properties.**

FINDING: No above ground utility installations are proposed.

- I. Specific criteria are outlined for each zone and shall be a required part of the site plan (e.g. lot setbacks, etc.).**

FINDING: Specific criteria for each zone mapped on the subject property have been addressed above. Deschutes County's Destination Resort code imposes exterior setback criteria for resort properties. None of the proposed buildings or structures will be located in an exterior setback area. The required setbacks are:

- a. 350' for commercial development and parking areas;
- b. 250' for multi-family development and visitor-oriented accommodations (except for single-family residences) including associated parking areas;
- c. 150' for above-grade development other than commercial, multi-family and visitor-oriented accommodations;
- d. 100' for roads;
- e. 50' for golf courses;
- f. 50' for jogging trails and bike paths where they abut private developed lot and zero setback where abutting public roads and public lands, and;
- g. 250' setback from state highways.

This criterion is met.

J. All exterior lighting shall be shielded so that direct light does not project off site.

FINDING: The submitted application materials state all exterior lighting will be shielded and will project downward so that it will not project off site. Staff recommends a condition to ensure compliance.

Exterior Lighting. All exterior lighting shall be shielded so that direct light does not project off site.

K. Transportation access to the site shall be adequate for the use.

1. ***Where applicable, issues including, but not limited to, sight distance, turn and acceleration/deceleration lanes, right-of-way, roadway surfacing and widening, and bicycle and pedestrian connections, shall be identified.***
2. ***Mitigation for transportation-related impacts shall be required.***
3. ***Mitigation shall meet applicable County standards in DCC 18.116.310, applicable Oregon Department of Transportation (ODOT) mobility and access standards, and applicable American Association of State Highway and Transportation Officials (AASHTO) standards.***

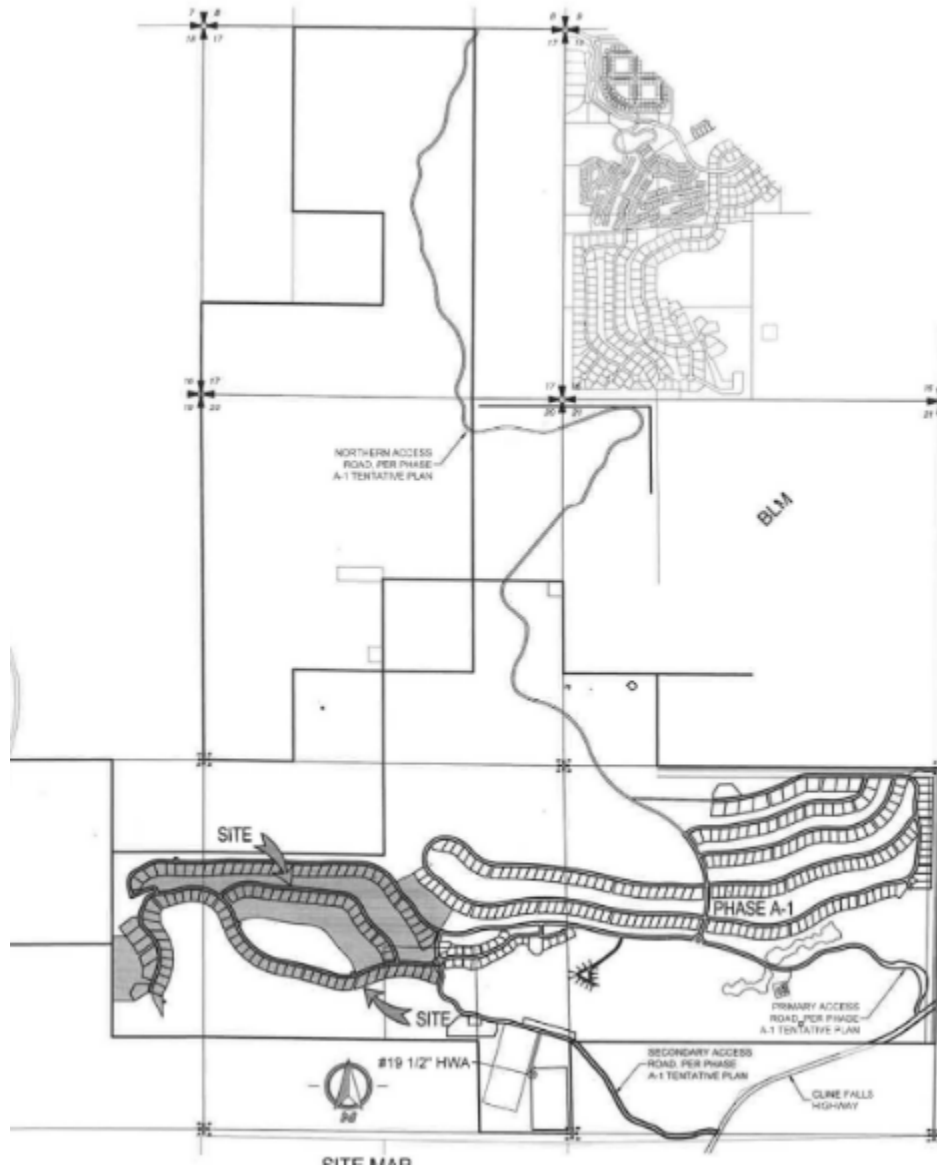
FINDING: The Applicant provided the following response to these criteria in their BoP:

The applicant is proposing to use the road system established by approval of the CMP/FMP and refined by the recently approved tentative plan A-1 and A-2 and the golf course and 80 OLU site plans for access. Mitigation for traffic impacts is provided by compliance with the transportation system mitigation requirements of the CMP/FMP and traffic impact agreements with ODOT. The applicant is enclosing an updated trip debit letter (See: Exhibit 19) from Professional Engineer Chris Clemow, that demonstrates the vehicle trips attributed to this site plan do not exceed the trips forecast by the Resort's approved transportation impact analysis. This criterion will be met.

Staff finds the roads serving the Golf Cabins OLUs were reviewed under Tentative Plan A-1. However, the A-2 Tentative Plan approval did not include any areas within the proposed OLU development areas and the relevance of this review, as part of the current proposal, is unclear (see Figure 20 below). Staff finds the proposed Village Cabin Road and Nature Villas Road have not been

reviewed as part of a Tentative Plan approval and do not appear to be laid out as shown on the FMP Master Development Plan. For these reasons, staff believes the applicant has not obtained the necessary approvals from the County to establish these roads as the County has not been afforded an opportunity to review and identify required sight distance, turn and acceleration/deceleration lanes, right-of-way, roadway surfacing and widening, or bicycle and pedestrian connections. Staff asks the Hearings Officer to make specific findings on this issue.

Figure 20 – Phase A-2 Tentative Plan Drawing



Section 18.124.070. Required Minimum Standards.

- A. Private or shared outdoor recreation areas in residential developments.**
 - 1. Private Areas. Other than a development in the Sunriver UUC Town Center District, each ground level living unit in a residential development subject to site plan approval shall have an accessible outdoor private space of not less**

than 48 square feet in area. The area shall be enclosed, screened or otherwise designed to provide privacy for unit residents and their guests.

FINDING: The proposed OLUs are not a residential development.

- 2. *Shared Areas. Usable outdoor recreation space shall be provided for the shared use of residents and their guests in any apartment residential development, as follows:***
 - a. Units with one or two bedrooms: 200 square feet per unit.***
 - b. Units with three or more bedrooms: 300 square feet per unit.***

FINDING: No apartment residential development is proposed.

- 3. *Usable outdoor recreation space shall be provided in the Sunriver UUC Town Center District on a district-wide basis as follows:***
 - a. A minimum of one hundred square feet of outdoor recreation space per Multi-family Dwelling unit or Townhome that is accessible to residents or guests staying in Multi-family Dwelling or Townhome units.***
 - b. Outdoor recreation spaces may include bicycle paths, plazas, play areas, water features, ice rinks, pools and similar amenities that are located outdoors.***
 - c. Outdoor recreation space must include recreation for children who are district residents, such as a maintained playground area with approved equipment such as swings or slides.***

FINDING: The proposal is not located in the Sunriver UUC Town Center District.

- 4. *Storage. In residential developments, convenient areas shall be provided for the storage of articles such as bicycles, barbecues, luggage, outdoor furniture, etc. These areas shall be entirely enclosed.***

FINDING: No residential development is proposed.

- B. *Required Landscaped Areas.***
 - 1. *The following landscape requirements are established for multi family, commercial and industrial developments, subject to site plan approval:***
 - a. A minimum of 15 percent of the lot area shall be landscaped.***

FINDING: The Applicant provided the following response to this criterion in their BoP:

This application is not located within a multi-family, commercial or industrial development so these criteria are not applicable. Instead, it is a destination resort development that has been required to provide natural and developed open space areas on 50% of the resort property. As discussed herein, and in the CMP/FMP approvals undeveloped areas will remain largely native,

although trees and underbrush in undeveloped areas will be thinned and removed.

As noted earlier in this Staff Report, staff finds the proposed OLU is a commercial use. For this reason, staff finds this criterion applies.

In any regard, over well over 15 percent of the lot area(s) for the subject application will include developed and natural landscaping. Staff notes that both undisturbed natural vegetation and improved areas meet the definition of "landscaping"¹⁶.

- b. All areas subject to the final site plan and not otherwise improved shall be landscaped.***

FINDING: The submitted landscaping plan shows all areas subject to the final site plan and not otherwise improved as landscaped. Staff notes such areas are "required landscaping" for the purposes of the DCC.

- 2. In addition to the requirement of DCC 18.124.070(B)(1)(a), the following landscape requirements shall apply to parking and loading areas:***
 - a. A parking or loading area shall be required to be improved with defined landscaped areas totaling no less than 25 square feet per parking space.***
 - b. In addition to the landscaping required by DCC 18.124.070(B)(2)(a), a parking or loading area shall be separated from any lot line adjacent to a roadway by a landscaped strip at least 10 feet in width, and from any other lot line by a landscaped strip at least five feet in width.***
 - c. A landscaped strip separating a parking or loading area from a street shall contain:***
 - 1) Trees spaced as appropriate to the species, not to exceed 35 feet apart on the average.***
 - 2) Low shrubs not to reach a height greater than three feet zero inches, spaced no more than eight feet apart on the average.***
 - 3) Vegetative ground cover.***
 - d. Landscaping in a parking or loading area shall be located in defined landscaped areas which are uniformly distributed throughout the parking or loading area.***
 - e. The landscaping in a parking area shall have a width of not less than five feet.***
 - f. Provision shall be made for watering planting areas where such care is required.***
 - g. Required landscaping shall be continuously maintained and kept alive and attractive.***

¹⁶ DCC 18.04.030 - "Landscaping" means trees, grass, bushes, shrubs, flowers, and garden areas, and incidental arrangements of fountains, patios, decks, street furniture and ornamental concrete or stonework and artificial plants, bushes or flowers.

h. Maximum height of tree species shall be considered when planting under overhead utility lines.

FINDING: The Applicant provided the following response to this criterion in their BoP:

As was noted in the CMP the applicant is retaining substantial areas of the native vegetation and using new landscape to accentuate and augment the native beauty. As is shown in the landscape plans new planting largely occurs next to the buildings themselves quickly transitioning to the native vegetation. Where the native vegetation has been disturbed the bulk of those areas will be re-vegetated in an effort to return substantially to the native state. Staff noted in the final decision approving the 80 OLU site plan that criterion 2(a) "requires 'defined landscaping'" and that "'defined landscaping' does not have a definition in the code. Merriam-Webster's dictionary of 'defined' is 'to show the shape, outline, or edge of (something) very clearly'. Thus this criterion cannot be met by un-differentiated natural landscaping." As such, and consistent with the condition imposed on the 80 OLU site plan, the applicant has proposed 25 feet of defined landscaping for each parking space, per-lot.

The parking areas have a minimum 5' strip between them and any adjoining property line. This meets the requirements of #2 (b-g) as shown on SP LC 1-5. The landscaping requirements by their terms apply only to parking areas; not to access aisles which cross property lines and connect to parking areas on each lot. The landscaping plan shown on SP LC 1-5 identifies vegetation in the landscaping strips that complies with criterion 2(c)-(d). There are no overhead utility lines on this site plan so (h) above is not applicable. This criterion will be met.

Staff finds the landscaping plans submitted by the Applicant as part of their incomplete letter response dated March 1, 2022 comply with this criteria. Staff recommends a condition of approval to ensure ongoing complies.

Landscaping Maintenance. The Property Owner shall provide for watering planting areas, where such care is required, and required landscaping shall be continuously maintained and kept alive and attractive.

C. Non-motorized Access.

- 1. Bicycle Parking. The development shall provide the number and type of bicycle parking facilities as required in DCC 18.116.031 and 18.116.035. The location and design of bicycle parking facilities shall be indicated on the site plan.**

FINDING: The Applicant provided the following response to this criterion in their BoP:

DCC 18.116.031 has been addressed above. DCC 18.116.035 is not applicable as no proposed building is a commercial or public building with at least 25 people. As shown above this criterion is met.

As noted earlier in this Staff Report, it is unclear to staff if the proposed development complies with all of the bicycle parking requirements under DCC 18.116.031. Staff asks the Hearings Officer to make specific findings on this issue.

2. Pedestrian Access and Circulation:

- a. Internal pedestrian circulation shall be provided in new commercial, office and multi family residential developments through the clustering of buildings, construction of hard surface pedestrian walkways, and similar techniques.**

FINDING: The Applicant provided the following response to this criterion in their BoP:

This code section does not apply because OLU's are commercial residential resort uses; not "commercial, office and multi-family residential developments." Walkways are provided from each building to the parking lot, and in the case of the Village Cabins to the sidewalk along the entrance road, and, in the case of the Nature Villas, between the buildings.

In addition, the Applicant provided the following response to this criterion in their incomplete letter response dated March 4, 2022:

Applicant has provided an updated C2.1, which provides for additional pedestrian pathways between the Nature Villas and the Village Cabins, as well as the pedestrian pathway between the Nature Villas parking area and the units themselves.

As noted earlier in this Staff Report, it is unclear to staff if the Applicant's proposal fully addresses internal pedestrian circulation requirements on all three OLU sites. Staff finds the proposed pedestrian walkways for the Nature Villas comply with these standards. However, the proposed parking area south of the proposed Village Cabin OLU's does not show pedestrian walkways connecting this parking area to the Village Cabin OLU's and there are no pedestrian sidewalks connecting the staff parking space shown on the Golf Cabin OLU. Moreover, the proposed site plans do not appear to have any pedestrian connectivity to other areas of the Resort. For these reasons, staff asks the Hearings Officer to make specific findings on this criterion.

- b. Pedestrian walkways shall connect building entrances to one another and from building entrances to public streets and existing or planned transit facilities. On site walkways shall connect with walkways, sidewalks, bikeways, and other pedestrian or bicycle connections on adjacent properties planned or used for commercial, multi family, public or park use.**

FINDING: The Applicant provided the following response to this criterion in their BoP:

This code section does not apply to the 13 individual lots where each lot will be developed with a single building and there are no walkways, sidewalks or bikeway on adjacent properties planned for commercial, multi-family, public or park use. In the case of the

Village Cabins, walkways go from the front of the buildings to the sidewalks along the street in front. The Nature Villas are connected by a walkway. No transit facilities are located anywhere near the subject property.

Staff finds the proposed parking areas are connected by pedestrian walkways to each OLU. It's unclear if this criterion would require connectivity between each OLU since the OLUs are not plated on separate lots. Staff also finds adjacent properties within the Resort include areas planned for commercial, public and/or park uses¹⁷. However, the Applicant's site plans do not include onsite walkways connecting the proposed development to the adjacent properties. For this reason, staff asks the Hearings Officer to make specific findings on this issue.

- c. Walkways shall be at least five feet in paved unobstructed width. Walkways which border parking spaces shall be at least seven feet wide unless concrete bumpers or curbing and landscaping or other similar improvements are provided which prevent parked vehicles from obstructing the walkway. Walkways shall be as direct as possible.***

FINDING: This criterion requires walkways to be paved and establishes minimum widths based on the walkway location. The site plan for the Nature Villa OLUs, submitted on March 4, 2022, shows all walkways will have at least a 5-foot width and the applicant proposes to establish a segment of the pedestrian walkway within the emergency access road. This segment of the walkway will have a 6-foot paved width and the remaining 14 feet of road surface will be grasscrete or sandcrete pavers. In the event of an emergency, it is unclear to staff if the joint use of this area will be safe. Additionally, it is unclear to staff if all of the proposed walkways will be paved or just the segment from the parking lot and along the emergency access road. For these reasons, staff asks the Hearings Officer if the Nature Villa OLU walkway designs meet the requirements of DCC 18.124 and this criterion.

The Applicant did not provide any information on the proposed walkway surface materials for the Village Cabins OLUs and Golf Cabin OLUs. It appears the walkway details for the Village Cabins OLUs and Golf Cabin OLUs are only shown on the conceptual landscape plans. Staff is not able to confirm this criterion will be met based on the submitted information. For this reason, staff asks the Hearing Officer to make specific findings on whether the Village Cabins OLUs and Golf Cabin OLUs comply with this criterion.

- d. Driveway crossings by walkways shall be minimized. Where the walkway system crosses driveways, parking areas and loading areas, the walkway must be clearly identifiable through the use of elevation***

¹⁷ Per DCC 18.04.030 "resort recreation facilities" means any combination of the following recreational amenities and their accessory uses: health and fitness facility, golf course (including development such as executive, Par 3 and pitch and putt golf course), golf course accessory uses, tennis court, park, playground, picnic and barbecue area, in-line skating area, recreational path, miniature golf facility, nature center, equestrian facility, swimming pool, basketball and volleyball court, running track, ball fields, ice skating rink, or similar use intended for sport or play, and community center.

changes, speed bumps, a different paving material or other similar method.

FINDING: No driveway crossings by walkways are proposed on the Village Cabins OLU site plan or Golf Cabin OLU site plan. As noted above, the proposed walkway connecting all of the Nature Villa OLU is partially established in the emergency access road. This criterion requires driveway crossings by walkways to be minimized. It is unclear to staff if the applicant's proposal satisfies this requirement. Additionally, this criterion establishes if a walkway system crosses driveways, parking areas and/or loading areas the walkway must be clearly identifiable through the use of elevation changes, speed bumps, a different paving material or other similar method. The applicant proposes to pave the walkway and the remaining areas of the road will be grasscrete or sandcrete. Staff asks the Hearings Officer if the proposed different paving materials ensure the walkway will be clearly identifiable.

- e. ***To comply with the Americans with Disabilities Act, the primary building entrance and any walkway that connects a transit stop to building entrances shall have a maximum slope of five percent. Walkways up to eight percent slope are permitted, but are treated as ramps with special standards for railings and landings.***

FINDING: The submitted application materials state no transit facilities¹⁸ are located anywhere near the subject property.

D. Commercial Development Standards:

1. ***New commercial buildings shall be sited at the front yard setback line for lots with one frontage, and at both front yard setback lines for corner lots, and oriented to at least one of these streets, except in the Sunriver UUC Business Park (BP) District and Town Center (TC) District and the La Pine UUC Business Park (LPBP) District. The building(s) and any eaves, overhangs or awnings shall not interfere with the required clear vision area at corners or driveways.***

FINDING: As note above, there are no front yard setbacks for commercial development in the approved Resort FMP.

2. ***To meet the standard in paragraph (1) of this subsection, buildings developed as part of a shopping complex, as defined by this title, and planned for the interior, rear or non-street side of the complex may be located and oriented toward private interior streets within the development if consistent with all other standards of paragraph (1) above and this paragraph. Interior streets***

¹⁸ Per DCC 18.04.030, "transit facility" means improvements at selected points along transit routes for passenger pick-up, drop-off and waiting. Facilities and improvements may include shelters, benches, signs and structures and other improvements to provide security, protection from the weather and access to nearby services and "transit route" means an existing or planned route for public service in the local or regional transportation plan.

used to satisfy this standard may have on-street parking and shall have sidewalks along the street in front of the building. Such sidewalks shall connect to existing or future sidewalks on public streets accessing the site. The master plan for the shopping complex shall demonstrate that at least one half of the exterior perimeter of the site that abuts each public street, will be developed with buildings meeting the standards of paragraphs (D)(1) or (D)(3) of this subsection.

FINDING: No shopping complex is proposed.

3. *An increase in the front yard setback may be allowed where the applicant can demonstrate that one or more of the following factors makes it desirable to site the new building beyond the minimum street setback:*
 - a. *Existing development on the site;*
 - b. *Lot configuration;*
 - c. *Topography of the lot;*
 - d. *Significant trees or other vegetative features that could be retained by allowing a greater setback;*
 - e. *Location of driveway access. Such an increase in the front yard shall be the minimum necessary to accommodate the reason for the increase.*
 - f. *Architectural features, driveways, landscaping areas equal to or greater than the depth of the structure, and outdoor commercial areas, when at least one half of the structure meets the minimum street setback.*

FINDING: No increase in the front yard setback has been requested.

4. *Off street motor vehicle parking for new commercial developments in excess of 10,000 square feet shall be located at the side or behind the building(s), except in the Sunriver UUC Business Park (BP) District and Town Center (TC) District. Off-street parking proposed with a shopping complex, as defined by this title, and intended to serve buildings located in the interior or rear of the complex may have parking in front of the building provided the overall master plan for the site satisfies paragraph (2) of this subsection.*

FINDING: No off street motor vehicle parking for new commercial developments in excess of 10,000 square feet is proposed.

Section 18.124.080, Other Conditions.

The Planning Director or Hearings Body may require the following in addition to the minimum standards of DCC Title 18 as a condition for site plan approval.

- A. *An increase in the required yards.*
- B. *Additional off street parking.*

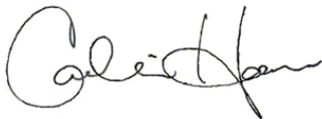
- C. Screening of the proposed use by a fence or landscaping or combination thereof.**
- D. Limitations on the size, type, location, orientation and number of lights.**
- E. Limitations on the number and location of curb cuts.**
- F. Dedication of land for the creation or enlargement of streets where the existing street system will be impacted by or is inadequate to handle the additional burden caused by the proposed use.**
- G. Improvement, including but not limited to paving, curbing, installation of traffic signals and constructing sidewalks or the street system that serves the proposed use where the existing street system will be burdened by the proposed use.**
- H. Improvement or enlargement of utilities serving the proposed use where the existing utilities system will be burdened by the proposed use. Improvements may include, but shall not be limited to, extension of utility facilities to serve the proposed use and installation of fire hydrants.**
- I. Landscaping of the site.**
- J. Traffic Impact Study as identified in Title 18.116.310.**
- K. Any other limitations or conditions that are considered necessary to achieve the purposes of DCC Title 18.**

FINDING: To the extent that any conditions of approval contained in this decision require improvement to the site beyond the minimum standards of DCC Title 18, staff finds such conditions are authorized by this section.

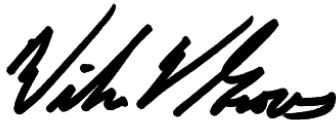
IV. OUTSTANDING ISSUES

Staff asks the Hearing Officer to focus his review on the issue areas identified by staff in this Staff Report.

DESCHUTES COUNTY PLANNING DIVISION



Written by: Caroline House, Senior Planner

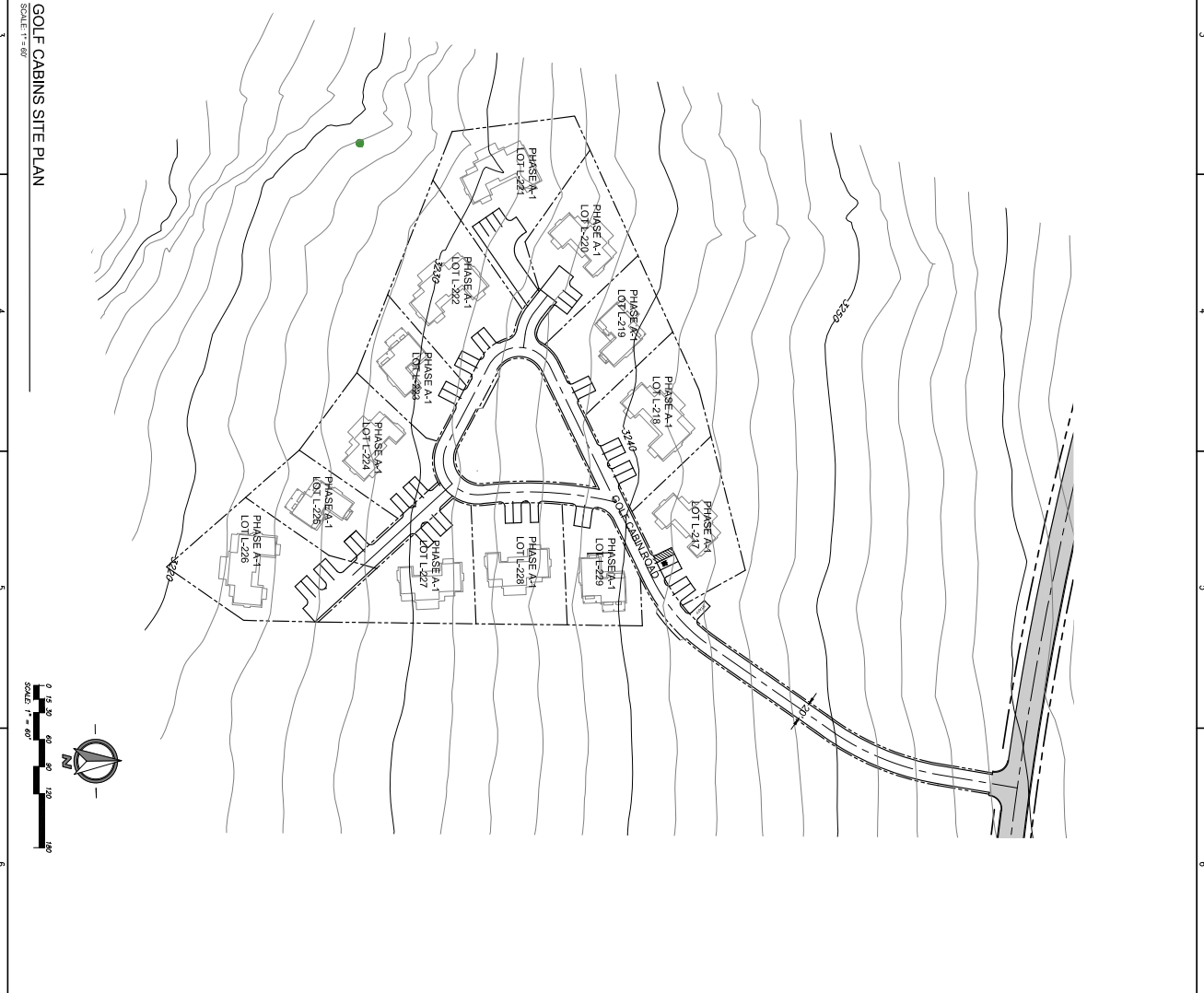


Reviewed by: Will Groves, Planning Manager

Attachments:

- Site Plan Sheet C1.0 (Dated 2/24/22)
- Site Plan Sheet C2.0 (Dated 2/24/22)
- Site Plan Sheet C2.1 (Dated 3/2/22)

NO.	DESCRIPTION	DATE	BY	CHKD.
1	ISSUED FOR PERMITS	02/24/2022	AS	AS
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MARK # 180110

C2.0

DATE: 02/24/2022

HWA

CIVIL ENGINEERING | SURVEYING | PLANNING

1000 N. W. 10th Ave., Ste. 100, Bend, OR 97701

PH: (503) 325-3300 FAX: (503) 325-3300

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THORNBURGH RESORT PHASE A-1

GOLF CABINS, VILLAGE CABINS, AND

NATURE VILLAS SITE PLAN

GOLF CABINS SITE PLAN

DESCHUTES COUNTY OREGON

DATE PLOTTED: 02/24/2022 10:01 AM

PROJECT: THORNBURGH RESORT PHASE A-1

CLIENT: HWA

SCALE: 1" = 60'



CERTIFICATE OF MAILING

FILE NUMBER: 247-21-001111-SP

DOCUMENT MAILED: Staff Report

MAP/TAX LOT NUMBER(S): 1512000007700 / 1512000007800 / 1512000007900

I certify that on the 30th day of March 2022, the attached document was mailed to the persons and addresses set forth below.

Dated this 30th day of March 2022

COMMUNITY DEVELOPMENT DEPARTMENT

By: Caroline House, Senior Planner

Central Land and Cattle Company, LLC Kameron DeLashmutt 2447 NW Canyon Redmond, OR 97756	J. Kenneth Katzaroff 1420 5th Ave Ste 3400 Seattle, WA 98101
Liz Fancher 2465 NW Sacagawea Ln Bend, OR 97703	



BEND DOWNTOWN
 61 NW OREGON AVE STE 103
 BEND, OR 97703-2739
 (800)275-8777

03/30/2022 05:15 PM

Product	Qty	Unit Price	Price
First-Class Mail® Large Envelope Redmond, OR 97756 Weight: 0 lb 8.20 oz Estimated Delivery Date Sat 04/02/2022	1		\$2.76
First-Class Mail® Large Envelope Bend, OR 97703 Weight: 0 lb 8.10 oz Estimated Delivery Date Sat 04/02/2022	1		\$2.76
First-Class Mail® Large Envelope Seattle, WA 98101 Weight: 0 lb 8.20 oz Estimated Delivery Date Mon 04/04/2022	1		\$2.76

Grand Total: \$8.28
 Cash \$20.00
 Change -\$11.72

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 Track your Packages
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 Refunds for guaranteed services only.
 Thank you for your business.

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 or scan this code with your mobile device.



or call 1-800-410-7420.

UFN: 400737-0702
 Receipt #: 840-59700282-2-6892454-2
 Clerk: 03