

BOCC DECISION MATRIX

COLW Destination Resort TEXT AMENDMENT Land Use File No. 247-22-000835-TA

	Issue Area	Applicable Approval Criterion	Applicant and Oppositional Responses	Planning Commission / Legal Counsel	Staff Comment
1	Is the proposed Text Amendment unlawful under ORS 197.455 such that amendment of the County's Comprehensive Plan's designation resort for resort overlay mapping first required?	The opposition asserts that destination resort mapping is part of the County's Comprehensive Plan and may only be amended through a Plan Amendment. Opposition cites ORS 197.455(1-2) and the map amendment process outlined under ORS 197.610-625 as basis for denial of the subject application. The Applicant cites case law at <i>Central Oregon LandWatch v. Deschutes County (2012)</i> as reasoning for why a Plan Amendment is not required for the subject application.	<p><u>The Applicant</u> asserts that ORS 197.455(1)(a) only allows for its implementation through a Text Amendment process and that ORS 197.455(1)(a) does not wholly prohibit all destination resorts. A Map/Plan Amendment would only be necessary if the implementing language of ORS 197.455(1)(a) explicitly prohibited destination resorts within the identified 24-airmile radius.</p> <p><u>Oppositional comments</u> assert that destination resort mapping is part of the County's Comprehensive Plan and may only be amended through a Plan Amendment. Opposition cites ORS 197.455(1-2) and the map amendment process outlined under ORS 197.610-625 as basis for rejecting the proposed amendment.</p>	<p>The Deschutes County Planning Commission did not raise the issue of whether a Map/Plan Amendment is required for the subject application and ultimately recommended approval of the proposal.</p> <p>Deschutes County Legal Counsel has offered that all DR-mapped properties in the County will retain their authority to potentially develop a new destination resort, provided the development limitations outlined in ORS 197.455(1)(a) apply. LUBA's rulings in LUBA No. 2020-095 (<i>Gould v. Deschutes County</i>) and LUBA No. 2022-013 (<i>Gould v. Deschutes County</i>) do not require the County to first adopt new or amended DR overlay maps.</p>	<p>The Board must determine whether the subject application requires a Map/Plan Amendment to lawfully address ORS 197.455.</p> <p>If the Board agrees with the Applicant's response, they may make findings that the subject application does not require a Map/Plan Amendment in order to comply with ORS 197.455.</p> <p>If the Board disagrees with the Applicant, they may find that a Map/Plan amendment is required and that the proposed Text Amendment is unlawful under ORS 197.455.</p> <p>If the Board finds that no Map/Plan Amendment is required for the subject proposal, the Board may proceed to the next item in this decision matrix.</p> <p>If the Board determines that a Map/Plan Amendment is required for the subject proposal, they may reject the proposed amendment for being unlawful under ORS 197.455. The applicant or other interested parties may consider submitting an application for Map/Plan Amendment pursuant to ORS 197.455(2) in the next 30-month cycle for consideration by the Board.</p>

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2	Does the Board wish to include recommended language modifications in the amendment responsive to economic concerns from Destination Resort representatives?	ORS 197.455(1)(a)	<p>Staff has received multiple public comments containing proposed language modifications to the subject Text Amendment from representatives of various existing Destination Resorts within Deschutes County. Staff has included these comments as Attachment 2 to the Board’s deliberation memo for consideration.</p> <p><u>The Applicant</u> does not believe any proposed text modifications are necessary and supports approval of their original proposed language.</p>	<p>Deschutes County Legal Counsel, in coordination with staff, has found no issues with the proposed text modifications submitted by existing Destination Resort representatives, as well as Kenneth Katzaroff and Garrett Chrostek, responsive to economic concerns or their compliance with ORS 197.455(1)(a).</p> <p>If the Board elects to include language modifications to the proposal, staff and Legal Counsel recommend utilizing the language proposed by Caldera Springs Real Estate based on its specificity and compliance with ORS 197.455(1)(a).</p> <p><u>The Caldera Springs Real Estate proposed text modification includes the following language:</u></p> <p><i>“Within 24 air miles of an urban growth boundary with an existing population of at least 100,000 or more, residential uses are limited to those necessary for the staff and management of the resort, provided that this provision shall apply only to newly proposed resorts seeking Conceptual Master Plan approval under DCC 18.113.050 or expansion proposals of existing developments under DCC 18.113.025.”</i></p>	<p>The Board must determine whether they wish to include recommended language modifications in the amendment responsive to economic concerns from Destination Resort representatives. Staff and County Legal Counsel offer that, of the proposed text modifications submitted to record containing specific example language, the Caldera Springs Real Estate text modification has been reviewed by the Applicant with minimal counter-edits. If the Board elects to include language modifications to the proposal, staff and Legal Counsel recommend utilizing the language proposed by Caldera Springs Real Estate based on its specificity and compliance with ORS 197.455(1)(a).</p> <p>If the Board elects to approve the subject application, the Board must determine whether the proposed text should be modified.</p> <p>If the Board agrees with the proposed text modification submitted on behalf of Caldera Springs Real Estate or other proposed text modifications included in record, they may adopt that modified text as the subject Text Amendment.</p> <p>If the Board disagrees with the proposed text modification submitted on behalf of Caldera Springs Real Estate or other Destination Resorts, they may adopt the Applicant’s original proposed text.</p> <p>If the Board disagrees with the proposed text modification submitted on behalf of Caldera Springs Real Estate, and the other proposed text modifications in record, and the Applicant’s original proposed language, they may reject the proposed amendment.</p>