

## Attachment 2: Proposed Findings 247-22-000835-TA

### FINDINGS

#### I. PROPOSAL

In October 2022, the applicant Central Oregon LandWatch (COLW), applied for a legislative amendment to Deschutes County's Destination Resort (DR) Combining Zone. The proposed amendments would add language from Oregon Revised Statute (ORS) 197.455(1)(a), which would limit residential uses to those necessary for the staff and management of the resort at any new Destination Resort allowed within 24 air miles of an urban growth boundary population of at least 100,000. This proposed amendment would only apply to newly proposed Destination Resorts and would not apply to existing or approved Destination Resorts. The applicable language from ORS 197.455(1)(a) is provided below:

*(1) A destination resort may be sited only on lands mapped as eligible for destination resort siting by the affected county. The county may not allow destination resorts approved pursuant to ORS 197.435 (Definitions for ORS 197.435 to 197.467) to 197.467 (Conservation easement to protect resource site) to be sited in any of the following areas:*

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

The County's spatial analysis of the distribution of DR-Zoned properties within Deschutes County indicates that most of the DR-Zoned properties are within 24 air miles of the City of Bend's urban growth boundary<sup>1</sup>. The only DR-Zoned properties outside of the 24-air mile buffer (approximately 20 parcels) appear to be located west and southwest of the City of La Pine's urban growth boundary, predominantly along the Little Deschutes River corridor.

#### II. BACKGROUND

Recently, the City of Bend's population exceeded 100,000 individuals<sup>2</sup>. Notice of the proposal was sent to all property owners within Deschutes County who are encumbered by the DR Zoning District on January 23, 2023. The Notice explained the scope of the proposal, provided a project-specific website related to the application, and gave meeting information for the upcoming public hearing on February 23, 2023<sup>3</sup>. Agency notice was sent to relevant agency partners on January 18, 2023, and several agency comments were received. County staff notified the Department of Land Conservation and Development (DLCD) about the proposal on January 11, 2023 through DLCD's

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<sup>1</sup> <https://dial.deschutes.org/Real/InteractiveMap>

<sup>2</sup> <https://www.pdx.edu/population-research/population-estimate-reports>

<sup>3</sup> <https://www.deschutescounty.gov/cd/page/247-22-000835-ta-destination-resort-text-amendment>

online PAPA submittal<sup>4</sup>. Additionally, printed notice was published in the Bend Bulletin newspaper on February 7, 2023<sup>5</sup>.

### III. REVIEW CRITERIA

Deschutes County lacks specific criteria in DCC Titles 18, 19, 22, or 23 for reviewing a legislative text amendment. Because the proposal is applicant-initiated, the applicant (COLW) bears the responsibility for justifying that the amendments are consistent with Statewide Planning Goals and its existing Comprehensive Plan. The applicant has provided the following responses to relevant criteria (also outlined in the applicant's application materials, attached):

### IV. FINDINGS

#### CHAPTER 18.136, AMENDMENTS

##### Section 18.136.010 Amendments

***DCC Title 18 may be amended as set forth in DCC 18.136. The procedures for text or legislative map changes shall be as set forth in DCC 22.12. A request by a property owner for a quasi-judicial map amendment shall be accomplished by filing an application on forms provided by the Planning Department and shall be subject to applicable procedures of DCC Title 22.***

**FINDING:** The applicant offers the following response to this criterion in their submitted application materials:

*The applicant proposes amendments to DCC Title 18 as set forth in DCC 18.136 and will follow procedures for text changes as set forth in DCC 22.12. Because the proposed amendments would apply to the many properties within 24 air miles of the City of Bend UGB, the request is for a legislative text amendment and not a quasi-judicial amendment.*

*Determining whether a land use decision is legislative or quasi-judicial requires an inquiry into three factors: "(1) Whether the process is bound to result in a decision, (2) preexisting criteria, and (3) closely circumscribed factual situation or a relatively small number of persons." Heitsch v. City of Salem, 65 Or LUBA 187, 193 (2012) (citing Strawberry Hill 4 – Wheelers v. Board of Comm'ns of Benton County, 287 Or 591, 601 P2d 769 (1977)). The third factor asks whether "the land use consequences are disproportionately concentrated on a relatively small pool of persons, as opposed to a larger region or the general population." Van Dyke v. Yamhill County, \_\_ Or LUBA \_\_, slip op. at 4, LUBA No. 2018-061 (December 20, 2018).*

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<sup>4</sup> [https://db.lcd.state.or.us/PAPA\\_Online/Account/Login?ReturnUrl=%2fPAPA\\_Online](https://db.lcd.state.or.us/PAPA_Online/Account/Login?ReturnUrl=%2fPAPA_Online)

<sup>5</sup> Based on email confirmation with Bend Bulletin's Inside Sales Executive, Julius Black dated January 23, 2023

*This application requests a legislative amendment. As to the first factor, this request is likely, although not bound, to result in a decision as to whether to amend the DCC as proposed herein. There are no statutory timelines under which the County must make a decision on a legislative text amendment application. Both the second and third factors clearly indicate that the proposed amendments are legislative. The County lacks preexisting criteria for text amendments, as opposed to specific standards and criteria applicable to quasi-judicial map amendments found at DCC 18.136.020. Most instructive is the third factor. The amendments involve a large number of circumscribed factual situation pertaining to one or a handful of properties. The land use consequences of the proposed amendments would be proportionately distributed on a large pool of people across this large region of Deschutes County.*

Staff agrees that the subject application constitutes a legislative text amendment and is not quasi-judicial in nature.

***The applicant for a quasi-judicial rezoning must establish that the public interest is best served by rezoning the property. Factors to be demonstrated by the applicant are:***

- A. That the change conforms with the Comprehensive Plan, and the change is consistent with the plan's introductory statement and goals.***
- B. That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification.***
- C. That changing the zoning will presently serve the public health, safety and welfare considering the following factors:***
  - 1. The availability and efficiency of providing necessary public services and facilities.***
  - 2. The impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan.***
- D. That there has been a change in circumstances since the property was last zoned, or a mistake was made in the zoning of the property in question.***

**FINDING:** The applicant offers the following response to these criteria in their submitted application materials:

*As discussed above in the response to DCC 18.136.010, the proposed amendments are legislative and not quasi-judicial, and this section does not apply.*

Staff agrees that the subject application constitutes a legislative text amendment and is not quasi-judicial in nature.

Section 18.136.030 Resolution Of Intent To Rezone

- A. If from the facts presented and findings and the report and recommendations of the Hearing Officer, as required by this Section, the County Commission determines that the public health, safety, welfare and convenience will be best served by a proposed change of zone, the County Commission may indicate its general approval in principal of the proposed rezoning by the adoption of a "resolution of intent to***

- rezone." This resolution shall include any conditions, stipulations or limitations which the County Commission may feel necessary to require in the public interest as a prerequisite to final action, including those provisions that the County Commission may feel necessary to prevent speculative holding of property after rezoning. Such a resolution shall not be used to justify "spot zoning" or to create unauthorized zoning categories by excluding uses otherwise permitted in the proposed zoning.*
- B.** *The fulfillment of all conditions, stipulations and limitations contained in the resolution on the part of the applicant shall make such a resolution a binding commitment on the Board of County Commissioners. Upon completion of compliance action by the applicant, the Board shall, by ordinance, effect such rezoning. The failure of the applicant to substantially meet any or all conditions, stipulations or limitations contained in a resolution of intent, including any time limit placed in the resolution, shall render the resolution null and void automatically and without notice, unless an extension is granted by the Board.*
- C.** *Content of Site Plan. Where a site plan is required pursuant to Chapter 19.92, it shall include location of existing and proposed buildings, structures, accesses, off street parking and loading spaces and landscaping; existing and proposed topography; mechanical roof facilities, if subject property is so oriented as to become part of the view from adjacent properties; architectural perspective, layout and all elevations drawn without exaggerations, except where noted, including locations, area and design of signs and all landscaping.*

**FINDING:** The applicant offers the following response to these criteria in their submitted application materials:

*This section applies to quasi-judicial rezoning of property. As discussed above in the response to DCC 18.136.010, the proposed amendments are legislative and not quasi-judicial, and they do not propose rezoning any property. This section does not apply.*

Staff agrees with the applicant's statement.

Section 18.136.040 Record of Amendments

**All amendments to the text or map of DCC Title 18 shall be filed with the County Clerk.**

**FINDING:** The applicant offers the following response to these criteria in their submitted application materials:

*Upon adoption, the proposed amendments will be filed with the County Clerk.*

Staff agrees that, if adopted, the proposed amendment will be filed with the County Clerk.

## **CHAPTER 19.116, AMENDMENTS, APPEALS AND PROCEDURES**

Section 19.116.010 Amendments

**DCC Title 19 may be amended by changing the boundaries of zones or by changing any other provisions thereof subject to the provisions of DCC 19.116.**

- A. Text changes and legislative map changes may be proposed by the Board of County Commissioners on its own motion, by the motion of the Planning Commission, upon payment of a fee, by the application of a member of the public. Such changes shall be made pursuant to DCC 22.12 and ORS 215.110 and 215.060.**
- B. Any proposed quasi-judicial map amendment or change shall be handled in accordance with the applicable provisions of DCC Title 22.**

**FINDING:** The applicant offers the following response to these criteria in their submitted application materials:

*The proposed amendments to DCC Title 19 are being made by the application of a member of the public as allowed by DCC 19.116.010(A). The amendments are proposed pursuant to DCC 22.12 Legislative Procedures, addressed below. The amendments are made pursuant to ORS 215.110, which provides that a planning commission and governing body may recommend and enact ordinances intended to implement the comprehensive plan. The Deschutes County Comprehensive Plan (DCCP), at Section 3.9 Destination Resort Policies, includes Policy 3.9.3(a)(1):*

*"Policy 3.9.3 Mapping for destination resort siting.*

- a. To assure that resort development does not conflict with the objectives of other Statewide Planning Goals, destination resorts shall pursuant to Goal 8 not be sited in Deschutes County in the following areas:*
  - 1. within 24 air miles of an urban growth boundary with an existing population of 100,000 or more unless residential uses are limited to those necessary for the staff and management of the resort;"*

*The proposed amendments are made pursuant to ORS 215.110 and will implement DCCP Policy 3.9.3(a)(1). The amendments are also made pursuant to ORS 215.060, which provides that a county shall conduct one or more public hearings on actions on the comprehensive plan. Public hearings on the proposed amendments will be held by both the Planning Commission and Board of County Commissioners.*

Staff confirms that the subject application appears to comply with the amendment process outlined above.

Section 19.116.020 Standards For Zone Change

**The burden of proof is upon the applicant. The applicant shall in all cases establish:**

- A. That the change conforms with the Comprehensive Plan. Specifically, the change is consistent with the plan's intent to promote an orderly pattern and sequence of growth.**

- B. That the change will not interfere with existing development, development potential or value of other land in the vicinity of the proposed action.**
- C. That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification.**
- D. That the change will result in the orderly and efficient extension or provision of public services. Also, that the change is consistent with the County's policy for provision of public facilities.**
- E. That there is proof of a change of circumstance or a mistake in the original zoning.**

**FINDING:** The applicant offers the following response to these criteria in their submitted application materials:

*No zone change is proposed as part of this application. This section is inapplicable.*

Staff agrees with the applicant's statement.

Section 19.116.030 Record of Amendments

***The signed copy of each amendment to the text of Title 19, including the legal description of all lands rezoned legislatively or quasi-judicially, shall be maintained on file in the office of the County Clerk. A record of such amendments shall be maintained in a form convenient for the use of the public by the Planning Director, including a map showing the area and date of all amendments hereto. The County Clerk shall keep the map of DCC Title 19 as originally enacted. Every five years after the enactment hereof, a map showing the cumulative amendments hereto for that period shall be filed with the County Clerk. In case of inconsistencies, the controlling record shall be first the original map filed with the County Clerk, and its five-year updates, if any. The Planning Director's map shall control as to map amendments not shown on the original for changes less than five years old.***

**FINDING:** The applicant offers the following response to these criteria in their submitted application materials:

*A signed copy of these amendments will be provided to the County Clerk. No lands will be rezoned by this application and the zoning map for Title 19 will not be amended.*

Staff agrees with the applicant's statement.

Section 19.116.040 Resolution of Intent to Rezone

***If, from the facts presented and findings and the report and recommendations of the Hearings Officer, as required by DCC 19.116.040, the County Commission determines that the public health, safety, welfare and convenience will be best served by a proposed change of zone, the County Commission may indicate its general approval in principal of the proposed rezoning by the adoption of a "resolution of intent to rezone." This resolution shall include any conditions, stipulations or limitations which the County Commission may***

***feel necessary to require in the public interest as a prerequisite to final action, including those provisions which the County Commission may feel necessary to prevent speculative holding of property after rezoning. The fulfillment of all conditions, stipulations and limitations contained in said resolution, on the part of the applicant, shall make such a resolution a binding commitment on the County Commission. Such a resolution shall not be used to justify spot zoning or create unauthorized zoning categories by excluding uses otherwise permitted in the proposed zoning. Upon completion of compliance action by the applicant, the County Commission shall, by ordinance, effect such rezoning. The failure of the applicant to substantially meet any or all conditions, stipulations or limitations contained in a resolution of intent, including the time limit placed in the resolution, shall render said resolution null and void automatically and without notice, unless an extension is granted by the County Commission upon recommendation of the Hearings Officer.***

***A. Content of Site Plan. Where a site plan is required pursuant to DCC 19.92, it shall include location of existing and proposed buildings, structures, accesses, off-street parking and loading spaces and landscaping; existing and proposed topography; mechanical roof facilities, if subject property is so oriented as to become part of the view from adjacent properties; architectural perspective, layout and all elevations drawn without exaggerations, except where noted, including locations, area and design of signs and all landscaping.***

***B. Resolution on Intent Binding. The fulfillment of all conditions, stipulations and limitations contained in the resolutions of intent on the part of the applicant shall make the resolution binding on the County Commission. Upon compliance with the resolution by the applicant, the County Commission shall, by ordinance, effect such reclassification.***

**FINDING:** The applicant offers the following response to these criteria in their submitted application materials:

*No zone change is proposed as part of this application. This section is inapplicable.*

Staff agrees with the applicant's statement.

## **CHAPTER 22.12, LEGISLATIVE PROCEDURES**

Section 22.12.010.

### ***Hearing Required***

**FINDING:** The applicant offers the following response to this criterion in their submitted application materials:

*The proposed amendments will be reviewed by both the Planning Commission and the Board of County Commissioners, and will include public hearings.*

Staff agrees that this criterion will be met because a public hearing will be held before the Deschutes County Planning Commission and Board of County Commissioners.

Section 22.12.020, Notice

**Notice**

**A. Published Notice**

- 1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.**
- 2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.**

**FINDING:** The applicant offers the following response to this criterion in their submitted application materials:

*This criterion will be met with notice to be published in the Bend Bulletin newspaper for the Planning Commission public hearing, and the Board of County Commissioners' public hearing.*

Staff agrees that this criterion will be met by notice being published in *The Bend Bulletin* newspaper.

**B. Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.**

**FINDING:** The applicant offers the following response to this criterion in their submitted application materials:

*Notice will be posted if determined to be necessary by the Planning Director.*

Posted notice is only required under ORS 203.045(5)(a) under specific circumstances described in that section. No such posting is required in this case.

**C. Individual notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.**

**FINDING:** The applicant offers the following response to this criterion in their submitted application materials:

*Individual notice will be sent if determined to be necessary by the Planning Director. Given the proposed legislative amendments do not apply to any specific property, no individual notices are anticipated. The applicant conferred with County staff as to whether notice to affected property owners pursuant to ORS 215.203, also known as "Measure 56 notice," need be provided. Staff agreed in an email dated October 19, 2022 that this proposal "will not require Measure 56 notice*



*as the proposed addition of language referencing state law is not a "change to the zoning" that would require M56 notice." Exhibit F*

Ultimately, County staff (in coordination with County administration and legal counsel) found that the proposal would require individual notice pursuant to ORS 215.503 to provide ample public notice to affected properties and property owners about the subject proposal. The proposed amendments are legislative and do not apply to any specific property. In compliance with ORS 215.503, notice was sent to individual property owners who may be affected by the proposed amendments.

***D. Media notice. Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.***

**FINDING:** Notice was provided to the County public information official for wider media distribution. This criterion has been met.

Section 22.12.030 Initiation of Legislative Changes.

***A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of County Commissioners.***

**FINDING:** The application was initiated by Central Oregon LandWatch (COLW), and the Deschutes County Planning Division has received the required fees. This criterion has been met.

Section 22.12.040. Hearings Body

***A. The following shall serve as hearings or review body for legislative changes in this order:***

- 1. The Planning Commission.***
- 2. The Board of County Commissioners.***

***B. Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.***

**FINDING:** This criterion will be met because a public hearing will be held before the Deschutes County Planning Commission and subsequently the Board of County Commissioners.

Section 22.12.050 Final Decision

***All legislative changes shall be adopted by ordinance***

**FINDING:** The proposed legislative changes included in file no. 247-22-000835-TA will be implemented by ordinances if approved and adopted by the Board. This criterion will be met.

## Statewide Planning Goals and Guidelines

Goal 1: Citizen Involvement: The amendments do not propose any changes to the County's citizen involvement program. Notice of the proposed amendments were provided to the *Bulletin* for each public hearing.

Goal 2: Land Use Planning: The applicant offers the following response to this criterion in their submitted application materials:

*Goals, policies, and processes related to this application are included in the Deschutes County Comprehensive Plan, Title 23 and Deschutes County Code, Title 19 and Title 22. Compliance with these processes, policies, and regulations are documented within this application. Goal 2 is met.*

Staff notes that an Oregon Land Conservation and Development Department 35-day notice was initiated on January 11, 2023. Public hearings before both the Planning Commission and the Board of County Commissioners will be held. This Findings document provides the applicant's basis for the proposed amendments.

Goal 3: Agricultural Lands: The applicant offers the following response to this criterion in their submitted application materials:

*Goal 3 is to "preserve and maintain agricultural lands." No lands will be rezoned as part of this application. Some lands in the DRZ are designated Agriculture and zoned Exclusive Farm Use pursuant to Goal 3. The proposed amendments would reduce the amount of nonfarm residential development allowed on EFU land by ensuring certain lands in the DRZ conform with ORS 197.455(1) and Goal 8. Goal 3 is met.*

Adverse impacts to farming practices are not anticipated under these amendments and no such impacts have been identified in the record. The proposed amendments appear to be consistent with Goal 3.

Goal 4: Forest Lands: The applicant offers the following response to this criterion in their submitted application materials:

*Goal 4 is "to conserve forest lands[.]" No lands will be rezoned as part of this application. Some lands in the DRZ are designated Forest and zoned F1 or F2 pursuant to Goal 4. The proposed amendments would reduce the amount of residential development allowed on Forest zoned land by ensuring certain lands in the DRZ conform with ORS 197.455(1) and Goal 8. Goal 4 is met.*

Adverse impacts to forests and forest practices are not anticipated under these amendments and no such impacts have been identified in the record. The proposed amendments appear to be consistent with Goal 4.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources: The applicant offers the following response to this criterion in their submitted application materials:

*Similar to the previous two goals, the proposed amendments would reduce the amount of residential development allowed on certain lands in the DRZ, ensuring conformance with ORS 197.455(1) and Goal 8. Some lands in the DRZ include inventoried Goal 5 resources, including mineral and aggregate resources, scenic views, riparian areas, floodplains, and wildlife habitat. The effect of the proposed amendments would be to provide greater protection for these resources, as the amount of potential residential development (a conflicting use) on certain lands in the DRZ would be reduced. In any event, the proposed amendments do not create or amend a Goal 5 resource list or and land use regulation adopted to protect a Goal 5 resource, they do not allow new uses that could be conflicting uses with a Goal 5 resource, and they do not amend an acknowledged UGB. OAR 660-023-0250(3). Goal 5 is met.*

Goal 5 is to protect natural resources and conserve scenic and historical areas and open spaces. OAR 660-023-0250(3) states that local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. The proposed amendment is not seeking to change any requirements in the Wildlife Area overlay zone which protects inventoried wildlife resources. This zone protects scenic resources through additional aesthetic requirements. The code provision will remain unchanged. Staff finds that the amendments appear to be consistent with Goal 5.

Goal 6: Air, Water and Land Resources Quality: The applicant offers the following response to this criterion in their submitted application materials:

*The proposed amendments will likely not impact the quality of the air, water and land resources. If anything, the reduced potential for residential development on certain lands in the DRZ will benefit the quality of associated air, water, and land resources by reducing the potential for solid waste, water waste, noise and thermal pollution, air pollution, and industry-related contaminants on those resources. Goal 6 is met.*

The proposed text amendments do not propose to change the County's Plan policies or implementing regulations for compliance with Goal 6. Staff finds that the proposed amendments appear to be consistent with Goal 6.

Goal 7: Areas Subject to Natural Disasters and Hazards: The applicant offers the following response to this criterion in their submitted application materials:

*To the extent that lands in the DRZ are in areas subject to natural disasters and hazards, the proposed amendments mitigate that risk by reducing the potential for residential development on certain lands in the DRZ, in accordance with ORS 197.455(1) and Goal 8. Goal 7 is met.*

The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding natural disasters and hazards. Staff finds that the proposed amendments appear to be consistent with Goal 7.

Goal 8: Recreational Needs: The applicant offers the following response to this criterion in their submitted application materials:

*The proposed amendments are specifically intended to implement Goal 8, as described in the response to Deschutes County Comprehensive Plan Chapter 3, Resource Management, Section 3.9 Destination Resorts, Goal 1, above. Goal 8 is met.*

The text amendments do not propose to change the County's Plan or implementing regulations regarding recreational needs. Staff finds that the proposed amendments appear to be consistent with Goal 8.

Goal 9: Economic Development: The applicant offers the following response to this criterion in their submitted application materials:

*Goal 9 is only applicable to urban areas and therefore is not applicable here. Port of St. Helens v. Land Conservation & Development Comm'n, 165 Or App 487, 996 P2d 1014 (2000), rev den, 330 Or 363 (2000).*

Goal 9 and its implementing regulations focus on economic analysis and economic development planning required in urban Comprehensive Plans to ensure there is adequate land available to realize economic growth and development opportunities. The proposed amendments apply to rural lands and do not propose to amend the Comprehensive Plan. Compliance is met.

Goal 10: Housing: The applicant offers the following response to this criterion in their submitted application materials:

*Goal 10 is "to provide for the housing needs of citizens of the state" on "buildable lands for residential use." "Buildable lands" are defined in statute as "lands in urban and urbanizable areas that are suitable, available and necessary for residential uses." ORS 197.295(1). "Buildable Lands" are described in administrative rule as "residentially designated land within the urban growth boundary, including both vacant and developed land likely to be redeveloped, that is suitable, available and necessary for residential uses." OAR 660-008-0005(2). The proposed amendments largely do not affect lands in urban and urbanizable areas inside urban growth boundaries, making Goal 10 inapplicable to the majority of lands in the DRZ that the proposed amendments would affect.*

*A small portion of lands inside the south and west portion of the City of Bend UGB, and in the north portion of the City of La Pine UGB, are also in the County's DRZ. To the extent that that these are "buildable lands for residential use" to which Goal 10 applies, the proposed amendments comply with Goal 10. The City of Bend, upon amending its UGB in 2016, adopted policies and Goal 10 findings into its comprehensive plan. One of those policies, at City of Bend Comprehensive Plan Policy 5-57 states that "Properties that are eligible for destination resort development will lose that eligibility upon inclusion into the UGB." Exhibit D (Chapter 5 of the Bend Comprehensive Plan, Housing). Therefore, any lands inside the City of Bend UGB are already ineligible for siting of destination resorts, and the proposed amendments do not affect the City's Goal 10 compliance. The proposed amendments also will not affect the City of La Pine's compliance with Goal 10. The La Pine comprehensive plan reports that, as of 2018, its UGB contains about "1284.4-acres of*

*vacant or re-developable land to respond to a calculation of about 182 – acres of need.” Exhibit E at 134-135 (La Pine Comprehensive Plan). The City’s Goal 10 Housing policies and goals do not rely on destination resort development to meet the Goal. Additionally, ORS 197.445(7) requires a site of at least 20 acres for a destination resort, and the land zoned DRZ in the City of La Pine UGB is less than 20 acres. Goal 10 is met.*

Adverse impacts to residential housing in the County are not anticipated under these amendments and no such impacts have been identified in the record. The proposed amendments appear to be consistent with Goal 10.

Goal 11: Public Facilities and Services: The proposed text amendments do not propose to change the County’s Plan or implementing regulations regarding public facilities and services.

Goal 12: Transportation: The applicant offers the following response to this criterion in their submitted application materials:

*By restricting certain residential uses in destination resorts within 24 air miles of the Bend UGB, the proposed amendments will reduce impacts to transportation facilities by lessening potential new trip generation in the rural county. This reduces the likelihood that transportation facilities could be significantly affected in Deschutes County. Goal 12 is met.*

Goal 12 is to provide and encourage a safe, convenient and economic transportation system. The proposed text amendments will not change the functional classification of any existing or planned transportation facility or standards implementing a functional classification system. Compliance with Goal 12 is met.

Goal 13: Energy Conservation: The proposed text amendments do not propose to change the County’s Plan or implementing regulations regarding energy conservation. Therefore, compliance with Goal 13 is established.

Goal 14: Urbanization: The applicant offers the following response to this criterion in their submitted application materials:

*Goal 14 concerns the provision of urban and rural land uses to ensure efficient use of land and livable communities. The proposed amendments do not amend an urban growth boundary. Although Goal 8 allows urban land uses on rural land in destination resorts in certain circumstances, the proposed amendments are intended to ensure the DCC complies with Goal 8 and ORS 197.455, which limit the type of resort development that is allowed on certain lands near certain urban growth boundaries. The effect of the amendments will be to promote Goal 14’s distinction between urban and rural levels of development, pursuant to Goal 8 and statute. Goal 14 is met.*

The proposed text amendments do not propose to change the County’s Plan or implementing regulations regarding urbanization. Therefore, compliance with Goal 14 is established.

Goals 15 through 19 are not applicable to the proposed text amendments because the County does not contain these types of lands.

## **Deschutes County Comprehensive Plan**

Chapter 1, Comprehensive Planning: The applicant did not provide a direct response to this criterion in their submitted burden of proof. This chapter sets the Goals and Policies of how the County will involve the community and conduct land use planning. As described above, the proposed regulations will be discussed at work sessions with the Board of County Commissioners, as well as to the Planning Commission, which is the County's official committee for public involvement. Both will conduct separate public hearings.

Section 1.3, Land Use Planning Policies. The applicant did not provide a direct response to this criterion in their submitted burden of proof. Goal 1 of this section is to "maintain an open and public land use process in which decisions are based on the objective evaluation of facts." Staff, the Planning Commission, and the Board will review the proposed text amendments.

### Chapter 3, Resource Management

#### Section 3.9 Destination Resorts

##### Goals and Policies

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

**FINDING:** The applicant offers the following response to this criterion in their submitted application materials:

*The proposed amendments are specifically intended to provide for the development of destination resorts in Deschutes County consistent with Goal 8. Exhibit C. Goal 8 includes the same language as ORS 197.455(1)(a):*

#### *"Eligible Areas*

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

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

*The Oregon legislature in adopting ORS 197.455(1)(a), and LCDC in adopting Goal 8, have decided that resorts within 24 air miles of certain urban growth boundaries are limited to residential uses only necessary for staff and management of a resort. The proposed amendments would ensure that destination resorts on lands mapped as eligible by Deschutes County, but a resort that includes residential uses for people other than staff and management of a resort could not be sited within 24 air miles of the Bend urban growth boundary.*

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

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

**FINDING:** The applicant offers the following response to these goals in their submitted application materials:

*The proposed amendments will not change the existing process for siting of destination resorts described in these two goals. The amendments also will not change the map of lands determined to be eligible by Deschutes County. What will change is the type of destination resort that could be sited through the County's existing process, in order to comply with Goal 8 and ORS 197.455(1)(a). Consistent with state law, recreational facilities will still be allowed in destination resorts within 24 air miles of the Bend UGB, providing for continued enhancement and diversification of recreational opportunities.*

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

**FINDING:** The applicant offers the following response to this goal in their submitted application materials:

*By restricting certain residential uses in destination resorts within 24 air miles of the Bend UGB, the proposed amendments will reduce impacts to transportation facilities by lessening potential new trip generation in the rural county. This reduces the likelihood that transportation facilities could be significantly affected in Deschutes County, consistent with Goal 12.*

Staff notes that there is no indication that the proposed amendments would result in adverse impacts to transportation facilities and no evidence in the record indicating the potential for such impacts. This goal appears to be met for the purposes of the subject application.

Policy 3.9.1: Destination resorts shall only be allowed within areas shown on the "Deschutes County Destination Resort Map" and when the resort complies with the requirements of Goal 8, ORS 197.435 to 197.457 and Deschutes County Code 18.113.

**FINDING:** The applicant offers the following response to this policy in their submitted application materials:

*Destination resorts will continue to only be allowed within areas shown on the “Deschutes County Destination Resort Map”. The proposed changes to the DCC will ensure that any such resorts comply with the requirements of Goal 8 and ORS 197.435 to 197.457. Goal 8 and ORS 197.455(1)(a) include the language limiting destination resorts with 24 air miles of certain UGBs that this proposed code amendment would implement.*

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

**FINDING:** The applicant offers the following response to this policy in their submitted application materials:

*The proposed amendments are not an application to amend the Deschutes County Destination Resort Map. This policy is inapplicable.*

Staff concurs that the subject application is for a legislative text amendment, and not for a Comprehensive Plan amendment.

Policy 3.9.3: Mapping for destination resort siting

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

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

**FINDING:** The applicant offers the following response to this policy in their submitted application materials:

*The proposed amendments are intended specifically to implement and conform the Deschutes County Code to this comprehensive plan section. Upon adoption of the proposed amendments, destination resorts shall, pursuant to Goal 8, not be sited in Deschutes County within 24 air miles of an urban growth boundary with an existing population of 100,000 or more unless residential uses are limited to those necessary for the staff and management of the resort. The proposed amendments comply with this policy.*

## **Oregon Revised Statute (ORS) 197.455**

ORS 197.455(1)

A destination resort may be sited only on lands mapped as eligible for destination resort siting by the affected county. The county may not allow destination resorts approved pursuant to ORS 197.435 (Definitions for ORS 197.435 to 197.467) to 197.467 (Conservation easement to protect resource site) to be sited in any of the following areas:

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



**FINDING:** The applicant offers the following response in their submitted application materials:

*Similar to the response to Deschutes County Comprehensive Plan Policy 3.9.3, above, the proposed amendments are intended specifically to implement and conform the Deschutes County Code to this statute. Upon adoption of the proposed amendments, destination resorts may not be allowed to be sited in Deschutes County within 24 air miles of an urban growth boundary with an existing population of 100,000 or more unless residential uses are limited to those necessary for the staff and management of the resort. The proposed amendments comply with this statute.*

Staff concurs that the proposed amendment language is derived directly from ORS 197.455(1)(a) and would limit the residential uses allowed for newly-proposed destination resorts within 24 air miles of the City of Bend's Urban Growth Boundary.

- (b) (A) On a site with 50 or more contiguous acres of unique or prime farmland identified and mapped by the United States Natural Resources Conservation Service, or its predecessor agency.
- (B) On a site within three miles of a high value crop area unless the resort complies with the requirements of ORS 197.445 (6) in which case the resort may not be closer to a high value crop area than one-half mile for each 25 unites of overnight lodging or fraction thereof.
- (c) On predominantly Cubic Foot Site Class 1 or 2 forestlands as determined by the State Forestry Department, which are not subject to an approved goal exception.
- (d) In the Columbia River Gorge National Scenic Area as defined by the Columbia River Gorge National Scenic Act, P.L. 99-663.
- (e) In an especially sensitive big game habitat area:
  - (A) As determined by the State Department of Fish and Wildlife in July 1984, and in additional especially sensitive big game habitat areas designated by a county in an acknowledged comprehensive plan; or
  - (B) If the State Fish and Wildlife Commission amends the 1984 determination with respect to an entire county and the county amends its comprehensive plan to reflect the commission's subsequent determination, as designated in the acknowledged comprehensive plan.
- (f) On a site which the lands are predominantly classified as being in Fire Regime Condition Class 3, unless the county approves a wildfire protection plan that demonstrates the site can be developed without being at a high overall risk of fire.

**FINDING:** The applicant offers the following response in their submitted application materials:

*The proposed amendments will not affect Deschutes County's compliance with the remaining sections of ORS 197.455(1), making these criteria inapplicable.*

ORS 197.455(2)

In carrying out subsection (1) of this section, a county shall adopt, as part of its comprehensive plan, a map consisting of eligible lands within the county. The map must be based on reasonably available information and may be amended pursuant to ORS 197.610 (Submission of proposed comprehensive plan or land use regulation changes to Department of Land Conservation and Development) to 197.625 (Acknowledgment of comprehensive plan or land use regulation changes), but not more frequently than once every 30 months. The county shall develop a process for

collecting and processing concurrently all map amendments made within a 30-month planning period. A map adopted pursuant to this section shall be the sole basis for determining whether tracts of land are eligible for destination resort siting pursuant to ORS 197.435 (Definitions for ORS 197.435 to 197.467) to 197.467 (Conservation easement to protect resource site).

**FINDING:** The applicant offers the following response in their submitted application materials:

*Deschutes County's existing map of lands eligible for destination resorts will not be amended as part of this application. This criterion is inapplicable.*

Staff concurs that the subject application is for a legislative text amendment, and not for a Comprehensive Plan amendment.