

February 23, 2023

via hand delivery and email: tarik.rawlings@deschutes.org

Deschutes County Planning Commission
c/o Tarik Rawlings, Associate Planner
117 NW Lafayette Ave
Bend, Oregon 97703

Re: File No. 247-22-000835-TA Destination Resort Text Amendment

Dear Chair Kieras and Planning Commissioners,

Thank you for hearing testimony on File No. 247-22-000835-TA, an application to amend the Deschutes County Code (DCC) to comply with Oregon statute, statewide land use planning Goal 8, and the Deschutes County Comprehensive Plan (DCCP).

Central Oregon LandWatch is the applicant in this file. We submit these written comments to supplement the burden of proof and to respond to a few of the comments on the application received by the County so far.

I. The application does not propose a map amendment

In a letter dated February 8, 2023, commenter Kenneth Katzaroff argues that the application is a veiled attempt to change the County's destination resort map. The proposed amendments are specifically not an amendment to the map of lands eligible for destination resorts. No boundaries of the County's Destination Resorts Zone would be changed by this application; no property would be added to the Zone; no property would be removed; no property would be rezoned. Every property currently in the Destination Resorts Zone would remain in that zone, and would continue to have eligibility for destination resort development. The type of resort allowed in that zone would change, consistent with ORS 197.455(1)(a), Goal 8, and the DCCP.

There is a statutory process, at ORS 197.455(2), for amending a destination resort eligibility map and Deschutes County has adopted a process into the DCC at DCC Chapter 22.23. Amending the destination resort map via that process would not accomplish the intent of this text amendment. The intent of the amendments is not to disallow destination resort development on any lands currently mapped as eligible; the intent is to amend the DCC to comply with ORS 197.455(1)(a), Goal 8, and the DCCP. The only way to accomplish that intent is through a text amendment. Adding or removing properties from the map would not result in limiting destination resort development in the manner called for by ORS 197.455(1)(a), Goal 8, and the DCCP.



We also note that the County has amended the text of DCC Chapter 18.113 before without amending the destination resort map. See Exhibit A, Ordinance No. 2013-008 Change to the Ratio of Overnight to Residential Units. That text amendment shared the intent of the current text amendment to conform the DCC to state law.

Caselaw from LUBA specifically confirms that the method to implement ORS 197.455(1)(a) is to place a condition that limits residential uses of any resort on a site that is closer than 25 [sic] miles to an UGB with a population of 100,000 or greater, to those necessary for the staff and management of any resort on the site

“Nothing in the text or context of ORS 197.455(1) or (2) prohibits adding lands described in ORS 197.455(1)(a), (b)(B) and (f) to the map of eligible lands, subject to a condition or restriction of some kind adopted as part of the mapping decision to ensure that a site will not be developed with a resort unless the relevant exception is satisfied. Indeed, it is difficult to imagine how the exceptions in ORS 197.455(1)(a) and (b)(B) could be satisfied in any other way.

For example, to satisfy the exception in ORS 197.455(1)(a) at the mapping stage, the county could impose a condition on the mapping decision that limits residential uses of any resort on a site that is closer than 25 miles to an UGB with a population of 100,000 or greater, to those necessary for the staff and management of any resort on the site.”
(*Central Oregon LandWatch v. Deschutes County*, 66 Or. LUBA 192, 202 (2012))

This is precisely what the proposed text amendments seek to do – not to change the map of eligible lands, but to place a condition destination resort development on those eligible lands that satisfies ORS 197.455(1)(a).

II. Clarity for existing destination resorts

Representatives of Juniper Preserve submitted a comment saying that they do not oppose the proposed text amendments. They do, however, request the proposed text amendment be modified to clarify the applicability of the amendments:

“Withing 24 air miles of an urban growth boundary with an existing population of 100,000 or more, residential uses are limited to those necessary for the staff and management of the resort, **provided that this provision applies only to new proposed destination resorts and not to existing developments approved as destination resorts.**” (bold text is additional text proposed by Juniper Preserve)

LandWatch does not believe Juniper Preserve’s proposed modification is necessary, because the standards in DCC 18.113 would only apply to a new destination resort application anyways. Existing destination resorts do not need to apply to the County under DCC 18.113.030 or DCC 18.1113.060, so the proposed text amendments would not be applicable criteria.



If the Planning Commission does recommend incorporating Juniper Preserve’s proposed amendments, LandWatch in turn requests their proposed language be modified. To further clarify how ORS 197.455(1)(a) applies to existing developments approved as destination resorts, LandWatch proposes language to clarify that the proposed amendments would apply to any applications to expand existing destination resorts:

“Withing 24 air miles of an urban growth boundary with an existing population of 100,000 or more, residential uses are limited to those necessary for the staff and management of the resort, **provided that this provision applies only to new proposed destination resorts or expansions of existing destination resorts, and not to existing developments approved as destination resorts.**” (bold text is additional text proposed by Juniper Preserve, *bold and italic* text is additional text proposed by LandWatch)

III. February 9, 2023 Planning Commission work session comments

Two issues were raised at the February 9, 2023 Planning Commission work session that we briefly address. The first concerns Measure 49, a ballot measure passed by voters in 2007. One section of Measure 49 provides that a property owner is entitled to just compensation when a new land use regulation restricts use of their property. ORS 195.305(1). The proposed text amendments do not request a new land use regulation. The relevant land use regulation here, ORS 197.455(1)(a), has been on the books since 1987. There has been no change in law that would trigger Measure 49. There has only been a change of circumstances – the population of the City of Bend UGB surpassing 100,000 – that makes ORS 197.455(1)(a) applicable in Deschutes County. No Measure 49 claims arise from the proposed text amendment because no new land use regulation is proposed. The only thing new is a change in circumstances; the law found in ORS 197.455(1)(a), Goal 8, and the DCCP are not new.

The second issue raised at the work session concerns recent caselaw. The limitation on destination resort development at ORS 197.455(1)(a) has been raised in recent appeals before LUBA. LUBA found that ORS 197.455(1)(a) did not apply at the site plan application stage of a destination resort development that had a conceptual master plan approved prior to Bend’s population reaching 100,000. *Gould v. Deschutes County*, LUBA No. 2022-013 (2022). That holding does not affect the proposed text amendment here, which would affect future destination resort applications.

IV. Other support for the proposed text amendment

In addition to DCCP Policy 3.9.3, which includes the ORS 197.455(1)(a) limitation that is the subject of this application, another DCCP Policy will be implemented by adoption of the proposed text amendment:



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

The referenced statutes, ORS 197.435 to 197.467, are inclusive of ORS 197.455(1)(a) and its limitation on resort development within 24 air miles of UGBs with a population of 100,000.

The language of the purpose statement for DCC Chapter 18.113 also supports the proposed text amendments:

“18.113.010 Purpose

(A) The purpose of the DR Zone is to establish a mechanism for siting destination resorts to ensure compliance with LCDC Goal 8 and the County Comprehensive Plan. The destination resort designation is intended to identify land areas which are available for the siting of destination resorts, **but which will only be developed if consistent with the purpose and intent of DCC 18.113 and Goal 8.**

□

(C) It is the intent of DCC 18.113 to establish procedures and standards for developing destination resorts while **ensuring that all applicable County Comprehensive Plan policies are achieved.**

□

(E) **It is not the intent of DCC 18.113 to site developments that are in effect rural subdivisions, whose primary purpose is to serve full-time residents of the area.** (emphasis added)

Two of the purposes of DCC Chapter 18.113 are that destination resort development to be consistent with Goal 8 and be consistent with the DCCP. Both Goal 8 and the DCCP also include the same language found ORS 197.455(1)(a) and its limitation on resort development within 24 air miles of UGBs with a population of 100,000. The purpose statement of DCC Chapter 18.113 also support the proposed text amendments.

Thank you for your consideration of these comments in addition to LandWatch’s burden of proof in support of the proposed text amendment application. We respectfully request that the Planning Commission recommend approval of the proposed text amendments.

Regards,



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Attachment
Exhibit A Findings for Ordinance No. 2013-008 Change to the Ratio of Overnight to Residential Units



Findings for Ordinance No. 2013-008
Change to the Ratio of Overnight to Residential Units
in Destination Resorts in the Bend Urban Area

1. Introduction

The Applicant, Pronghorn Resort LLC, proposed minor amendments to the destination resort chapter of Title 18 of the Deschutes County Code (“DCC”). Chapter 18.113 governs resorts outside the Urban Area Reserves of the respective urban areas. The applicant owns property within the Pronghorn Resort. The amendments to DCC 18.113 change the ratio of residential units to overnight lodging units within a resort from 2:1 to 2 ½:1, as allowed by the associated provisions of the Oregon Revised Statutes and Statewide Planning Goal 8. Overnight lodging units, as defined by DCC 18.04.030, “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.

ORS 197.445(4)(b)(E) governs the ratio between residential units for sale and overnight lodging units for rental in eastern Oregon as follows: “The number of units approved for residential sale may not be more than 2-1/2 units for each unit of permanent overnight lodging provided under this paragraph.” Statewide Planning Goal 8 also contains this ratio (OAR 660-015-0000(8)). DCC 18.113 currently contains the ratio adopted with the original resort statutes (2:1). Although the Legislature subsequently changed the ratio to 2 ½:1, Deschutes County has not yet adopted the new ratio. In order to update the mix of uses authorized within the Pronghorn destination resort, the Applicant proposes minor amendments to DCC 18.113 to adopt the 2 ½ to 1 ratio set forth in ORS 197.445 and Goal 8.

The Deschutes County Planning Commission held a hearing on TA-13-1 on March 14, 2013, and held the record open for a period of 7 days. The Planning Commission held another hearing on March 28, 2013, and at that hearing voted 3 to 3 in favor of / against the proposed text amendment, and all members agreed to forward TA-13-1 to the Deschutes County Board of Commissioners (the “Board”). The Board held a hearing on April 29, 2013, received oral testimony from the applicant and Paul Dewey on behalf of Central Oregon Landwatch and Steve Hultberg on behalf of Caldera Springs Resort.

The Board voted 3 - 0 in favor of approving TA-13-1 pursuant to an emergency clause. The Board adopted the amendments pursuant to the emergency clause for three primary reasons. First, the applicant cannot file CMP and FMP amendments until the ordinance is effective. Second, the Board recognizes that any amendment to the CMP or FMP is subject to appeal. Were the amendments to be effective in 90 days, any appeal of the CMP or FMP could result in a loss of the next building season while the applications are on appeal. The Board concludes that construction of overnight units sooner rather than later is in the best interest of the County and that a delay of 90 days could negatively impact the ability to construct overnight units during the next building season. Such a delay could then delay the potential for more influx of tourism dollars to the County. Third, the Board recognizes that this change brings the Deschutes County Code into compliance with state law. For these reasons, the Board has elected to adopt Ordinance 2013-003 by emergency, with a 30-day delay to effectiveness. The Board recognizes that the applicant is eager to modify the CMP and amend the existing improvement agreement to establish long-term certainty with respect to the total number of overnight units required and the associated bonding obligations. The Board believes that by providing long-term certainty with respect to the number of overnight units at Pronghorn is in the best interest of the County, and that it is best to resolve that issue as soon as reasonably practicable.

2. Text Amendments to DCC 18.040.030 and 18.113

The amendments to DCC 18.040.030 and DCC 18.113 are set forth below. Additions are marked in underline text, and deletions are marked in ~~strikethrough~~ text.

A. DCC 18.04.030, Definitions

DCC 18.04.030 contains several definitions relating to the siting of destination resorts under Chapter 18.113 of the DCC. To adopt the new ratio set forth in state law, the definition of “destination resort” should be amended by the County as follows:

"Destination resort" means a self-contained development providing visitor-oriented accommodations and developed recreational facilities in a setting with high natural amenities. To qualify as a "major destination resort" under Goal 8, a proposed development must meet the following standards:

- A. The resort is located on a site of 160 or more acres.
- B. At least 50 percent of the site is dedicated to permanent open space, excluding yards, street and parking areas.
- C. At least \$7,000,000 (in 1993 dollars) is spent in the first phase on improvements for on-site-developed recreational facilities and visitor-oriented accommodations, exclusive of costs for land, sewer and water facilities and roads. Not less than one-third of this amount shall be spent on developed recreational facilities.
- D. Developed recreational facilities and key facilities intended to serve the entire development and visitor-oriented accommodations must be constructed or, where permitted by DCC 18.113, guaranteed through surety bonding or substantially equivalent financial assurances prior to closure of sale of individual lots or units. In phased developments, developed recreational facilities and other key facilities intended to serve a particular phase shall be constructed prior to sales in that phase or guaranteed through surety bonding.
- E. Visitor-oriented accommodations are provided, including meeting rooms, restaurants with seating for 100 persons, and 150 separate rentable units for overnight lodgings as described in DCC 18.113.060(A). Accommodations available for residential use will not exceed two and one-half such units for each unit of overnight lodging.
- F. Commercial uses limited to those types and levels necessary to meet the needs of visitors to the development. Industrial uses are not permitted.

B. DCC 18.113.050. Requirements for Conditional Use Permit and Conceptual Master Plan Applications

DCC 18.113.050 contains standards governing some of the requirements for land use approval of resorts. The County has amended DCC 18.113.050(B)(21) to adopt the 2-1/2:1 ratio set forth in state law, as shown below.

B. Further information as follows:

1. A description of the natural characteristics of the site and surrounding areas, including a description of resources and the effect of the destination resort on the resources; methods employed to mitigate adverse impacts on resources; analysis of how the overall values of the natural features of the site will be preserved, enhanced or utilized in the design concept for the destination resort; and a proposed resource protection plan to ensure that important natural features will be protected and maintained. Factors to be addressed include:

- a. Compatibility of soil composition for proposed development(s) and potential erosion hazard;
- b. Geology, including areas of potential instability;
- c. Slope and general topography;
- d. Areas subject to flooding;
- e. Other hazards or development constraints;
- f. Vegetation;
- g. Water areas, including streams, lakes, ponds and wetlands;
- h. Important natural features;
- i. Landscape management corridors;
- j. Wildlife.

2. A traffic study which addresses (1) impacts on affected County, city and state road systems and (2) transportation improvements necessary to mitigate any such impacts. The study shall be submitted to the affected road authority (either the County Department of Public Works or the Oregon Department of Transportation, or both) at the same time as the conceptual master plan and shall be prepared by a licensed traffic engineer to the minimum standards of the road authorities.

3. A description of how the proposed destination resort will satisfy the standards and criteria of DCC 18.113.060 and 18.113.070;

4. Design guidelines and development standards defining visual and aesthetic parameters for:

- a. Building character;
- b. Landscape character;
- c. Preservation of existing topography and vegetation;
- d. Siting of buildings; and

- e. Proposed standards for minimum lot area, width, frontage, lot coverage, setbacks and building heights.
5. An open space management plan which includes:
 - a. An explanation of how the open space management plan meets the minimum standards of DCC 18.113 for each phase of the development;
 - b. An inventory of the important natural features identified in the open space areas and any other open space and natural values present in the open space;
 - c. A set of management prescriptions that will operate to maintain and conserve in perpetuity any identified important natural features and other natural or open space values present in the open space;
 - d. Deed restrictions that will assure that the open space areas are maintained as open space in perpetuity.
 6. An explanation of public use of facilities and amenities on the site.
 7. A description of the proposed method of providing all utility systems, including the location and sizing of the utility systems;
 8. A description of the proposed order and schedule for phasing, if any, of all development including an explanation of when facilities will be provided and how they will be secured if not completed prior to closure of sale of individual lots or units;
 9. An explanation of how the destination resort has been sited or designed to avoid or minimize adverse effects or conflicts on adjacent lands. The application shall identify the surrounding uses and potential conflicts between the destination resort and adjacent uses within 660 feet of the boundaries of the parcel or parcels upon which the resort is to be developed. The application shall explain how any proposed buffer area will avoid or minimize adverse effects or conflicts;
 10. A description of the proposed method for providing emergency medical facilities and services and public safety facilities and services including fire and police protection;
 11. A study prepared by a hydrologist, engineering geologist or similar professional certified in the State of Oregon describing:
 - a. An estimate of water demands for the destination resort at maximum buildout, including a breakdown of estimated demand by category of consumption, including but not limited to residential, commercial, golf courses and irrigated common areas;
 - b. Availability of water for estimated demands at the destination resort, including (1) identification of the proposed source; (2) identification of all available information on ground and surface waters relevant to the determination of adequacy of water supply for the destination resort; (3) identification of the area that may be measurably impacted by the water used by the destination resort (water impact area) and an analysis supporting the delineation of the impact area; and (4) a statistically valid sampling of domestic and other wells within the impact area;

c. A water conservation plan including an analysis of available measures which are commonly used to reduce water consumption. This shall include a justification of the chosen water conservation plan. The water conservation plan shall include a wastewater disposal plan utilizing beneficial use of reclaimed water to the maximum extent practicable.

For the purposes of DCC 18.113.050, beneficial uses shall include, but are not limited to:

- i. Irrigation of golf courses and greenways;
- ii. Establishment of artificial wetlands for wildlife habitation.

12. An erosion control plan for all disturbed land, as required by ORS 468. This plan shall include storm and melt water erosion control to be implemented during all phases of construction and permanent facilities or practices for the continuing treatment of these waters. This plan shall also explain how the water shall be used for beneficial use or why it cannot be used as such;

13. A description of proposed sewage disposal methods;

14. Wildfire prevention, control and evacuation plans;

15. A description of interim development including temporary structures related to sales and development;

16. Plans for owners' associations and related transition of responsibilities and transfer of property;

17. A description of the methods of ensuring that all facilities and common areas within each phase will be established and will be maintained in perpetuity;

18. A survey of housing availability for employees based upon income level and commuting distance;

19. An economic impact and feasibility analysis of the proposed development prepared by a qualified professional economist(s) or financial analyst(s) shall be provided which includes:

- a. An analysis which addresses the economic viability of the proposed development;
- b. Fiscal impacts of the project including changes in employment, increased tax revenue, demands for new or increased levels of public services, housing for employees and the effects of loss of resource lands during the life of the project.

20. A solid waste management plan;

21. A description of the mechanism to be used to ensure that the destination resort provides an adequate supply of overnight lodging units to maintain compliance with the 150-unit minimum and 2 and one-half to 1 ratio set forth in DCC 18.113.060(D)(2). The mechanism shall meet the requirements of DCC 18.113.060(L);

22. If the proposed destination resort is in a SMIA combining zone, DCC 18.56 shall be addressed;

23. If the proposed destination resort is in an LM combining zone, DCC 18.84 shall be addressed;

24. A survey of historic and cultural resources inventoried on an acknowledged Goal 5 inventory;
25. Other information as may reasonably be required by the Planning Director to address the effect of the proposed development as related to the requirements of DCC Title 18.
(Ord. 2007-005 §2, 2007; Ord. 92-004 §13, 1992)

C. DCC 18.113.060. Standards for Destination Resorts.

DCC 18.113.060 contains standards governing the construction and operation of resorts. The County has amended DCC 18.113.060 (A), (D), and (L) to adopt the 2-1/2:1 ratio set forth in state law, as shown below. The following standards shall govern consideration of destination resorts:

A. The destination resort shall, in the first phase, provide for and include as part of the CMP the following minimum requirements:

1. At least 150 separate rentable units for visitor-oriented overnight lodging as follows:
 - a. The first 50 overnight lodging units must be constructed prior to the closure of sales, rental or lease of any residential dwellings or lots.
 - b. The resort may elect to phase in the remaining 100 overnight lodging units as follows:
 - i. At least 50 of the remaining 100 required overnight lodging units shall be constructed or guaranteed through surety bonding or equivalent financial assurance within 5 years of the closure of sale of individual lots or units, and;
 - ii. The remaining 50 required overnight lodging units shall be constructed or guaranteed through surety bonding or equivalent financial assurance within 10 years of the closure of sale of individual lots or units.
 - iii. If the developer of a resort guarantees a portion of the overnight lodging units required under subsection 18.113.060(A)(1)(b) through surety bonding or other equivalent financial assurance, the overnight lodging units must be constructed within 4 years of the date of execution of the surety bond or other equivalent financial assurance.
 - iv. The 2 and one half to 1 accommodation ratio required by DCC 18.113.060(D)(2) must be maintained at all times.
 - c. If a resort does not choose to phase the overnight lodging units as described in 18.113.060(A)(1)(b), then the required 150 units of overnight lodging must be constructed prior to the closure of sales, rental or lease of any residential dwellings or lots.
2. Visitor-oriented eating establishments for at least 100 persons and meeting rooms which provide seating for at least 100 persons.
3. The aggregate cost of developing the overnight lodging facilities, developed recreational facilities, and the eating establishments and meeting rooms shall be at least \$ 7,000,000 (in 1993 dollars).

4. At least \$2,333,333 of the \$7,000,000 (in 1993 dollars) total minimum investment required by DCC 18.113.060(A)(3) shall be spent on developed recreational facilities.
5. The facilities and accommodations required by DCC 18.113.060(A)(2) through (4) must be constructed or financially assured pursuant to DCC 18.113.110 prior to closure of sales, rental or lease of any residential dwellings or lots or as allowed by DCC 18.113.060(A)(1).

D. A destination resort shall, cumulatively and for each phase, meet the following minimum requirements:

1. The resort shall have a minimum of 50 percent of the total acreage of the development dedicated to permanent open space, excluding yards, streets and parking areas. Portions of individual residential lots and landscape area requirements for developed recreational facilities, visitor-oriented accommodations or multi-family or commercial uses established by DCC 18.124.070 shall not be considered open space;
2. Individually-owned residential units that do not meet the definition of overnight lodging in DCC 18.04.030 shall not exceed two and one-half such units for each unit of visitor-oriented lodging if they are available for overnight rental use by the general public for at least 38 weeks per calendar year through one or more central reservation and check-in service(s) operated by the destination resort or by a real estate property manager, as defined in ORS 696.010.

a. The ratio applies to destination resorts which were previously approved under a different standard.

L. The overnight lodging criteria shall be met, including the 150-unit minimum and the 2 and one half to 1 ratio set forth in DCC 18.113.060(D)(2).

1. Failure of the approved destination resort to comply with the requirements in DCC 18.113.060(L)(2) through (6) will result in the County declining to accept or process any further land use actions associated with any part of the resort and the County shall not issue any permits associated with any lots or site plans on any part of the resort until proof is provided to the County of compliance with those conditions.

2. Each resort shall compile, and maintain, in perpetuity, a registry of all overnight lodging units.

a. The list shall identify each individually-owned unit that is counted as overnight lodging.

b. At all times, at least one entity shall be responsible for maintaining the registry and fulfilling the reporting requirements of DCC 18.113.060(L)(2) through (6).

c. Initially, the resort management shall be responsible for compiling and maintaining the registry.

- d. As a resort develops, the developer shall transfer responsibility for maintaining the registry to the homeowner association(s). The terms and timing of this transfer shall be specified in the Conditions, Covenants & Restrictions (CC&Rs).
 - e. Resort management shall notify the County prior to assigning the registry to a homeowner association.
 - f. Each resort shall maintain records documenting its rental program related to overnight lodging units at a convenient location in Deschutes County, with those records accessible to the County upon 72 hour notice from the County.
 - g. As used in this section, “resort management” includes, but is not limited to, the applicant and the applicant’s heirs, successors in interest, assignees other than a homeowners association.
3. An annual report shall be submitted to the Planning Division by the resort management or home owners association(s) each February 1, documenting all of the following as of December 31 of the previous year:
- a. The minimum of 150 permanent units of overnight lodging have been constructed or that the resort is not yet required to have constructed the 150 units;
 - b. The number of individually-owned residential platted lots and the number of overnight-lodging units;
 - c. The ratio between the individually-owned residential platted lots and the overnight lodging units;
 - d. The following information on each individually-owned residential unit counted as overnight lodging.
 - i. Who the owner or owners have been over the last year;
 - ii. How many nights out of the year the unit was available for rent;
 - iii. How many nights out of the year the unit was rented out as an overnight lodging facility under DCC 18.113;
 - iv. Documentation showing that these units were available for rental as required.
 - e. This information shall be public record subject to ORS 192.502(17).
4. To facilitate rental to the general public of the overnight lodging units, each resort shall set up and maintain in perpetuity a telephone reservation system.
5. Any outside property managers renting required overnight lodging units shall be required to cooperate with the provisions of this code and to annually provide rental information on any required overnight lodging units they represent to the central office as described in DCC 18.113.060(L)(2) and (3).

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

- a. Documentation demonstrating compliance with the 2 and one half to 1 ratio as defined in DCC 18.113.060(D)(2);
- b. Documentation on all individually-owned residential units counted as overnight lodging, including all of the following:
 - i. Designation on the plat of any individually owned units that are going to be counted as overnight lodging;
 - ii. Deed restrictions requiring the individually-owned residential units designated as overnight lodging units to be available for rental at least 38 weeks each year through a central reservation and check-in service operated by the resort or by a real estate property manager, as defined in ORS 696.010;
 - iii. An irrevocable provision in the resort Conditions, Covenants and Restrictions (“CC&Rs) requiring the individually-owned residential units designated as overnight lodging units to be available for rental at least 38 weeks each year through a central reservation and check-in service operated by the resort or by a real estate property manager, as defined in ORS 696.010;
 - iv. A provision in the resort CC&R’s that all property owners within the resort recognize that failure to meet the conditions in DCC 18.113.060(L)(6)(b)(iii) is a violation of Deschutes County Code and subject to code enforcement proceedings by the County;
 - v. Inclusion of language in any rental contract between the owner of an individually-owned residential unit designated as an overnight lodging unit and any central reservation and check-in service or real estate property manager requiring that such unit be available for rental at least 38 weeks each year through a central reservation and check-in service operated by the resort or by a real estate property manager, as defined in ORS 696.010, and that failure to meet the conditions in DCC 18.113.060(L)(6)(b)(v) is a violation of Deschutes County Code and subject to code enforcement proceedings by the County.

(Ord. 2007-05 §2, 2007; Ord. 92-004 §13, 1992)

3. Compliance with DCC 18.136.010, Amendments to Title 18

DCC Title 18 may be amended as set forth in DCC 18.136. The procedures for text or legislative map changes shall 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. (Ord. 95-050 §2, 1995; Ord. 91-020 §1, 1991)

Applicant submitted an application for the code amendments pursuant to DCC 18.136.010 and the County processed the amendment consistent with DCC Title 22, as required. DCC 22.12.010 and .040 require a public hearing before the Planning Commission and then the Board of County Commissioners for all legislative changes. DCC 22.12.020 sets forth the basic notice requirements for the hearings. As discussed above, both the Planning Commission and the Board held the required hearings.

4. Compliance with County Comprehensive Plan

The Deschutes County Comprehensive Plan contains destination resorts goals and policies. However, the plan contains no goals or policies related to the ratio between residential units and overnight lodging units. Rather, the Plan primarily focuses on destination resort mapping and directs the County to adopt code provisions to implement the siting standards of ORS 197.445 and Goal 8. Therefore, the detailed siting standards for resorts in the County, including the ratio, are set forth in DCC Title 18. As a result, there are no plan policies directly applicable to this text amendment, and the amendments to Title 18 do not require any concurrent amendments to the Comprehensive Plan. The Board therefore finds that no goals or policies of the plan apply to these amendments. Further, the Board finds that the amendments are consistent with the Deschutes County Comprehensive Plan and that the amendments are not inconsistent with any goal or policy of the Deschutes County Comprehensive Plan.

5. Compliance with the Statewide Planning Goals

A. Statewide Planning Goal 1, Citizen Involvement

The amendments are consistent with Goal 1 because the County processed the application consistent with the procedural standards for code amendments. The standards provide for public comment and hearings, thereby promoting the citizen involvement policies of Goal 1.

B. Statewide Planning Goal 2, Land Use Planning

Goal 2 requires the County to adopt and maintain land use plans and ordinances to implement the Goals. The Goal also requires the County to amend the plans and ordinances when appropriate, following an opportunity for public notice and comment. The amendments are consistent with Goal 2 because the amendments will update the County's implementing ordinance to make the overnight lodging ratio in Title 18 consistent with the state land use planning statutes and Goal 8. As noted above, the amendments were subject to public review and comment, including public hearings before the Planning Commission and the Board of Commissioners.

C. Statewide Planning Goals 3 and 4, Agricultural Lands and Forest Lands

Goals 3 and 4 concern agricultural and forest lands. The amendments affect Title 18, which governs the areas of Deschutes County not suited for these resource uses. These lands are not classified as high value resource lands. Therefore, because the amendments will change only the destination resort chapter of the code, Goals 3 and 4 are not relevant to the amendments.

D. Statewide Planning Goal 5, Natural Resources, Scenic and Historic Areas, Open Spaces

Consistent with Goal 5, DCC 18.113 already requires the preservation of designated Goal 5 resources on any destination resort tract through design techniques, open space dedication, or conservation easements. The amendments are focused solely on updating the ratio between

residential units and overnight lodging units, and will not alter how DCC Title 18 complies with Goal 5.

E. Statewide Planning Goal 6, Air, Water, and Land Resources Quality; Goal 7, Areas Subject to Natural Hazards

As with Goal 5, DCC 18.113 already contains standards to ensure that destination resorts within the County will protect air, water and land resources. In addition, DCC 18.113 also contains standards limiting resort development in areas subject to natural hazards. These siting standards require the maintenance of important natural features, including streams, rivers, and significant wetlands. The standards also regulate alterations and uses within the 100-year floodplain and on slopes exceeding 25%, as required by Goals 7 and 8. The amendments to DCC 18.113 will not alter these standards. Rather, the amendments will only update the ratio between residential units and overnight lodging units. Therefore, Title 18 will remain consistent with Goals 6 and 7.

F. Statewide Planning Goal 8, Recreational Needs

Goal 8 governs recreation, including destination resorts. As explained above, Goal 8 currently contains a 2 ½:1 ratio between residential units and overnight lodging units. The amendments will implement this standard, thereby maintaining compliance with Goal 8.

G. Statewide Planning Goal 9, Economic Development

The amendments are consistent with Goal 9 because it is an economic policy of the State of Oregon to promote tourism through destination resort development (ORS 197.440(1) and (2)). The amendments will authorize the mix of residential and overnight lodging uses contemplated by ORS 197.445 and Goal 8, thereby ensuring that Title 18 continues to serve its purpose of fostering economic development through recreation and tourism.

H. Statewide Planning Goal 10, Housing

Destination resorts provide for a variety of housing in a recreational setting. The amendments are consistent with Goal 10 because they will authorize the ratio of housing types currently allowed by ORS 197.445 and Goal 8.

I. Statewide Planning Goal 11, Public Facilities and Services

In its current form, DCC 18.113 is consistent with Goal 11 because it requires resorts to provide sewer and water facilities at the resort, or to connect to existing facilities if the resort bears the cost of extension. The amendments will not alter compliance with Goal 11 because they do not change any code or plan standards regarding public facilities. Rather, the amendments focus solely on bringing the ratio between residential units and overnight lodging units into compliance with ORS 197.445 and Goal 8.

J. Statewide Planning Goal 12, Transportation

The administrative rules set forth in OAR 660-012 implement Goal 12. A local government must demonstrate compliance with OAR 660-12-0060 (the “Transportation Planning Rule,” or

“TPR”) when adopting a plan or land use regulation amendment. The TPR requires the local government to determine whether the amendment would “significantly affect” an existing or planned transportation facility. If so, the government must put in place measures set forth in the rule to address the effects.

As detailed below, the minor amendments adopted to change the overnight lodging ratio from 2:1 to 2 ½:1 are consistent with Goal 12 and the TPR because the amendments will not significantly affect a transportation facility. OAR 660-012-0060 states:

(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in adopted plan);

The amendments will change only the ratio governing the mix of dwelling units within a resort and will not change the functional classification of a transportation facility because all other transportation compliance and mitigation requirements in the code remain.

(b) Change standards implementing a functional classification system; or

The amendments will change only the ratio governing the mix of dwelling units within a resort, and, for the same reasons stated for subsection (a) above and (c) below, will not change the standards implementing a functional classification system.

(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on the projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

The amendments will change the ratio of residential units to overnight lodging units from 2:1 to 2 ½ :1. This change in itself will not result in any of the effects listed in paragraphs (A) through (C) above. This is because the density of a resort, and the associated traffic impacts, are governed by the siting and approval criteria already set forth in DCC 18.113. For example, the criteria requires a resort to contain 50% open space, establishes a maximum density of one and one-half dwelling units per acre, and requires a resort to minimize impacts on surrounding lands and affected road systems. These requirements ultimately dictate the number and density of dwelling units within a resort. It is these standards, not the ratio between residential dwellings and overnight lodging units, which shape the overall size and potential traffic impacts of a resort. The ratio merely determines how many units are available for rental to the general public for a specified number of weeks versus how many individually owned dwellings are used as permanent units or vacation homes without a mandated rental schedule. Whether a unit qualifies as an overnight lodging unit does not alter the trip generation assigned to that unit for purposes of traffic impact analysis. Rather, the traffic analyses for resorts assign the single-family home trip generation rate from the Institute of Traffic Engineers (ITE) manual to all dwelling units.

Following the adoption of the code amendments, Pronghorn, for example, could apply to amend its CMP and FMP to authorize the use of the 2 ½:1 ratio. Such an amendment would require traffic analysis to comply with DCC 17.16.115 and/or 18.124.080(J). In other words, the text amendment only offers the potential to possibly change the total trips from a development due to a different mix of permanent and overnight homes or lodging. The CMP sets the number of units; the text amendment merely offers an avenue to change the residential mix, but does not generate traffic by itself. The Improvement Agreement, executed in January of this year, expressly contemplated a change in the mix of uses, as would occur if Pronghorn applied the new ratio to alter its residential mix.

The record contains correspondence from the County's senior transportation planner, Peter Russell, regarding compliance with the TPR. Mr. Russell's comments suggest that the amendments require additional analysis to ensure consistency with the TPR. Additionally, although not specific, the comments filed by Central Oregon Landwatch also suggest that additional study may be required under the TPR. In response, the Board adopts the following additional findings:

Title 18 caps density at resorts at 1.5 single-family dwelling units per acre. The consequence is that under the existing development code, a resort may not exceed this density, and combined with the requirements for open space and other infrastructure requirements, is severely limited as to development intensity.

The present amendment, which changes only the ratio between single family and overnight dwelling units does not provide a resort the ability to develop at any greater density than is already permitted under the code or provide any ability to add trips to the transportation system in addition to what could be added under the current code. As a result, the amendment will not significantly affect any transportation facility.

The change to the ratio would allow an existing resort to apply to add additional single family dwellings while keeping the overnight dwelling units constant. The ratio change, combined with amendment of the Conceptual Master Plan or Final Master Plan could result in

additional trips to the system, but these additional trips do not result in any issue under the TPR as the text amendment is already approved. The County’s code, however, would require traffic to be analyzed under DCC 17.16.115 and DCC 17.16.115(E) specifically requires a 20-year analysis for any destination resort development.

The following tables show the different trip generation potential for a 500 overnight lodging unit resort under the 2:1 and 2.5:1 ratios:

Overnight lodging units	Maximum trip generation for overnight lodging units ITE 330. 0.42 PM peak hour	Maximum number of SFR units at 2:1 Ratio	Maximum trip generation for SFR units ITE 210 1PM peak hour	Total number of PM peak-hour trips
500	210	1000	1000	1210

Overnight lodging units	Maximum trip generation for overnight lodging units ITE 330. 0.42 PM peak hour	Maximum number of SFR units at 2.5:1 Ratio	Maximum trip generation for SFR units ITE 210 1PM peak hour	Total number of PM peak-hour trips
500	210	1250	1250	1460

The change in the ratio from 2:1 to 2.5:1 could result in an additional 250 trips to the system. For this reason it was suggested that additional analysis under the TPR was warranted. This potential addition of the trips to the system, however, does not trigger additional analysis under the TPR. The reason for this is that under the existing Development Code, with no change to the ratio, a resort could already add 210, 500, or 1000 additional trips to the system. This could be done in two different ways:

First, the resort could add additional overnight lodging units to the resort while keeping the single family dwelling unit count constant:

Overnight lodging units	Maximum trip generation for overnight lodging units ITE 330.42 PM peak hour	Maximum number of SFR units at 2:1 Ratio	Maximum trip generation for SFR units ITE 210 1PM peak hour	Total number of PM peak-hour trips
1100	462	1000	1000	1462

Under this example, the resort has added 252 additional trips to the system, while maintaining the same number of single family units. The addition of these trips is permitted under the existing code.

Second, the resort could increase both the overnight lodging units and single family dwelling units, while maintaining the 2:1 ratio:

Overnight lodging units	Maximum trip generation for overnight lodging units ITE 330.42 PM peak hour	Maximum number of SFR units at 2:1 Ratio	Maximum trip generation for SFR units ITE 210 1PM peak hour	Total number of PM peak-hour trips
620	261	1240	1240	1501

The above examples demonstrate that the change to the ratio between overnight lodging units and single family dwelling units will not result in additional trips to the transportation system, because such additional trips are already permitted under the code. They are not an inherent effect of the text amendment. An unlimited number of trips could be added to the system under the existing code so long as traffic impacts mitigation is proposed, as required by County Code, at the time of CMP or CMP amendment approval. Therefore, for purposes of the TPR, the amendment will not significantly affect any transportation facility.

Further, simply because the amendments are consistent with the TPR does not mean that an existing resort could avoid demonstrating consistency with County transportation standards at the time of development or an amendment to a CMP/FMP that increases overall density. In either instance, an applicant would be required to prove compliance with all applicable county transportation standards. Stated differently, while a CMP/FMP or an amendment to a CMP/FMP *could* significantly affect a transportation system and require mitigation, the present amendments to Title 18 do not authorize additional trips to the system that could significantly affect a transportation system.

In conclusion, for the reasons set forth above, the code amendments are consistent with Goal 12 and the TPR because the amendments will not significantly affect a transportation facility.

K. Statewide Planning Goal 13, Energy Conservation

Goal 13 encourages land development to be managed to maximize the conservation of all forms of energy, based upon sound economic principles. ORS 197.445 and Goal 8 define a destination resort as a “self-contained development that provides for visitor-oriented accommodations and developed recreational facilities in a setting with high natural amenities.” Such developments maximize energy efficiency by providing a broad mix of uses within a single development (residential, overnight lodging, recreational, dining, etc.). The amendments are consistent with Goal 13 because they continue to promote efficient resort development by updating the overnight lodging ratio in DCC Title 18.

L. Statewide Planning Goal 14, Urbanization

Goal 14 focuses on the provision of orderly and efficient transition from rural to urban land uses. Goal 8 specifically authorizes resorts to be sited on DR-mapped lands without taking an exception to several goals, including Goal 14. At the time of the adoption of DCC 18.113, the

County and DLCD determined that it would be consistent with Goal 14 to allow resorts on rural lands. The amendments will not alter DCC 18.113's compliance with Goal 14 because the amendments merely change the overnight lodging ratio to match ORS 197.445 and Goal 8.

M. Statewide Planning Goals 15, 16, 17, 18, and 19

Goals 15, 16, 17, 18, and 19 concern resources that are not present within the area affected by this amendment (Willamette River Greenway, Estuarine Resources, Coastal Shorelands, Beaches, and Dune, and Ocean Resources).

6. Opposition Testimony

The comments filed by Central Oregon Landwatch generally contain policy arguments as to why the County should not approve the amendments and suggest that the County adopt additional text amendments. The Board declined to adopt the recommended text changes. The only possible substantive challenge raised by Central Oregon Landwatch is that Goal 12 and TPR require additional transportation analysis. As set forth above, the County has undertaken such additional analysis and concluded that the amendments do not significantly affect any transportation facilities due to the fact that the amendments will not result in the addition of any additional trips to the transportation system than are already permitted under the existing code. With or without the present amendments, the applicant has the ability to send an unlimited number of trips to the system. Again, even though the amendments will not significantly affect a transportation facility, any amendment to a CMP or a new CMP will require compliance with the County's transportation standards.

The comments filed by 1000 Friends of Oregon include no substantive challenge to the amendments. Rather, the comments request that the County not adopt the changes because to do so would "not be good policy." The Board finds that the comments filed by 1000 Friends of Oregon do not provide any basis to conclude that the amendments are inconsistent with any rule, law, goal or other applicable standard.

7. Conclusion

In conclusion, the Board concludes that the applicant has demonstrated that the amendments to DCC 18.04 and 18.113 to update the ratio between residential units and overnight lodging units from 2:1 to 2 ½:1 is consistent with ORS 197.445, Goal 8, all other applicable Statewide Planning Goals and the Deschutes County Comprehensive Plan.