



Oregon

Theodore R. Kubongski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

3/24/2010

TO: Subscribers to Notice of Adopted Plan  
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: Marion County Plan Amendment  
DLCD File Number 010-07

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures\*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Tuesday, April 06, 2010

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

\*NOTE: The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Brandon Reich, Marion County  
Jon Jinings, DLCD Community Services Specialist

Gary Fish, DLCD Regional Representative

<paa> YA/



FORM 2

DLCD

# Notice of Adoption

This Form 2 must be mailed to DLCD within 5-Working Days after the Final Ordinance is signed by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

In person  electronic  mailed

DATE  
STAMP

**DEPT OF**

**MAR 17 2010**

**LAND CONSERVATION  
AND DEVELOPMENT**  
For Office Use Only

Jurisdiction: **Marion County**

Local file number: **ZC/CP/CU07-007**

Date of Adoption: **03/10/10**

Date Mailed: **03/16/10**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD?  Yes  No Date:

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

To change the zone from Timber Conservation to Public to amend the comprehensive plan designation from Forest Land to Public, with exceptions to Statewide Planning Goal 4 Forest Land

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from: Forest Land

to: **Public**

Zone Map Changed from: **Timber Conservation**

to: **Public**

Location: **18 Forest Service Rd NE** Acres Involved: **40 acre**

Specify Density: Previous:

New:

Applicable statewide planning goals:

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Was an Exception Adopted?  YES  NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes  No

If no, do the statewide planning goals apply?

Yes  No

If no, did Emergency Circumstances require immediate adoption?

Yes  No

**DLCD file No.** 010-07 (16479) [16055]



Please list all affected State or Federal Agencies, Local Governments or Special Districts:

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Local Contact: Sterling Anderson

Phone: (503) 588-5038 Extension: 5906

Address: PO Box 14500

Fax Number: - -

City: Salem

Zip: 97309

E-mail Address:

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### **ADOPTION SUBMITTAL REQUIREMENTS**

**This Form 2 must be received by DLCD no later than 5 days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)**  
per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting, please print this **Form 2** on light green paper if available.
3. Send this Form 2 and One (1) Complete Paper Copy and One (1) Electronic Digital CD (documents and maps) of the Adopted Amendment to the address in number 6:
4. **Electronic Submittals: Form 2 – Notice of Adoption will not be accepted via email or any electronic or digital format at this time.**
5. The Adopted Materials must include the final decision signed by the official designated by the jurisdiction. The Final Decision must include approved signed ordinance(s), finding(s), exhibit(s), and any map(s).
6. **DLCD Notice of Adoption must be submitted in One (1) Complete Paper Copy and One (1) Electronic Digital CD via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.** (for submittal instructions, also see # 5)] **MAIL the PAPER COPY and CD of the Adopted Amendment to:**

**ATTENTION: PLAN AMENDMENT SPECIALIST  
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
635 CAPITOL STREET NE, SUITE 150  
SALEM, OREGON 97301-2540**

7. Submittal of this Notice of Adoption must include the signed ordinance(s), finding(s), exhibit(s) and any other supplementary information (see ORS 197.615 ).
8. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) of adoption (see ORS 197.830 to 197.845 ).
9. In addition to sending the Form 2 - Notice of Adoption to DLCD, please notify persons who participated in the local hearing and requested notice of the final decision at the same time the adoption packet is mailed to DLCD (see ORS 197.615 ).
10. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518.

Updated December 22, 2009

**BEFORE THE BOARD OF COMMISSIONERS  
FOR MARION COUNTY, OREGON**

In the Matter of the	)	Case No. ZC/CP/CU07-7
	)	
Application of:	)	Clerk's File No. 5602
	)	
Breitenbush Hot Springs Retreat and Conference Center, Inc	)	Zone Change/Comprehensive Plan Amendment and Conditional Use

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. 1304

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

SECTION I. Purpose

This matter comes before the Marion County Board of Commissioners ("Board") on the application of Breitenbush Hot Springs Retreat and Conference Center, Inc., to change the zone from Timber Conservation (TC) to Public (P), to amend the Comprehensive Plan designation from Forest Land to Public, with exceptions to Statewide Planning Goal 4 (Forest Land), on a 40 acre portion of a 66.47 acre parcel and for a conditional use to expand the existing recreational retreat on both the 66.47 acre parcel and an 81.89 acre parcel in a TC and P zone located at 18 Forest Service Road NE, Detroit, Marion County, Oregon. (T9S; R3E; Section 20A; tax lots 100 and 300).

SECTION II. Procedural History

The Marion County Hearings Officer held duly noticed public hearing on this application on December 12, 2007, and January 16, 2008. Mailed notice was provided to all property owners within 750 feet of the subject property at least 20 days before the initial hearing. On November 21, 2008, the Hearings Officer issued a report recommending that the Board approve the requested Zone Change, Comprehensive Plan Amendment and Conditional Use if additional information was provided. The Board held duly noticed public hearing on the application on February 18, 2008, and April 8, 2009. The Board took official notice was taken of the Planning Division file and the Hearings Officer's recommendation, has considered the arguments of the parties and is otherwise fully advised in the premises.

SECTION III. Adoption of Findings and Conclusion

After careful consideration of all facts and evidence in the record, the Board adopts as its own the Findings of Fact and Conclusions of Law in Exhibit A, attached hereto, and by this reference incorporated herein.

SECTION IV. Action

The requested Comprehensive Plan change from Forest Land to Public is hereby **GRANTED**. The requested Zone Change from TC (Timber Conservation) to P (Public) zone and the requested Conditional Use are hereby **GRANTED** subject to the conditions identified in Exhibit B attached hereto, and by this reference incorporated herein.

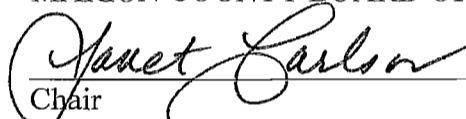
The property rezoned by this ordinance is described in Exhibit C attached hereto and by this reference incorporated herein. The Official Marion County Rural Zoning Map shall be changed pursuant to the Marion County Zone Code 17.110.660 to reflect the new zoning.

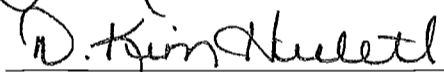
SECTION V. Effective Date

Pursuant to Ordinance 669, this is an Administrative Ordinance and shall take effect 21 days after the adoption and final signatures of the Marion County Board of Commissioners.

SIGNED and FINALIZED this 10<sup>th</sup> day of March,  
2010, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS

  
Chair

  
Recording Secretary

**JUDICIAL NOTICE**

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Ordinance becomes final.

**EXHIBIT A**  
**IV. Findings of Fact and Conclusions of Law**

The Board Of Commissioners, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. Two pieces of property are involved in this application. The original parcel, Tax Lot 300, (hereinafter "parcel 1") lies south of Breitenbush Road and consists of 81.89 acres. It is designated both "Public" and "Forest Land" in the Marion County Comprehensive Plan and correspondingly zoned P (PUBLIC) and TC (TIMBER CONSERVATION). The newer parcel, Tax Lot 100, (hereinafter "parcel 2") lies north of Breitenbush Road and consists of 66.47 acres and is zoned TC. Parcel 1 contains the Breitenbush retreat and conference center. Parcel 2 is adjacent to parcel 1 and the applicant has been restoring parcel 2 after the previous owner's occupation of the land. Parcel 2 contains two buildings and the applicant has not begun development of parcel 2.
2. The property is located approximately 10 miles northeast of the City of Detroit and is known as Breitenbush Retreat and Conference Center. In 1977, parcel 1 contained a lodge, hot spring pools, swimming pool, bathhouse, snack bar, residential cabins, a small camping area, and various outbuildings. Through a series of land use approvals (Conditional Use Cases 77-53, 81-30, 85-63, 92-23 and 99-25), the facility has expanded over the last thirty years.
3. All surrounding properties are situated in a TC zone, and most are under federal ownership as part of the Willamette National Forest. Devil's Creek summer homes to the south and the Lower Breitenbush Camp area to the west are on federal land under lease.
4. The applicant is requesting to change the zone from TC (Timber Conservation) to P (Public); to change the comprehensive plan designation from Forest Land to Public; for an exception to Statewide Planning Goal 4 (Forest Lands) on a 40 acre portion of parcel 2; and then for a conditional use to expand the existing recreational center on both parcels in a TC and P zone located at 18 Forest Service Road NE, Detroit (T9S; R7E; Section 20A; tax lots 100 and 300). The applicant is requesting this zone change because of the desire to expand the center and while the TC zone permits overnight camping, it does not permit intensively developed recreational uses such as hot springs soaking pools, stores, year round overnight guest cabins or conference facilities. The Public zone would permit these uses and allow an expansion of the types of uses already developed in the existing Public zone.



5. Marion County Public Works reviewed the proposal and provided the following comments:

"Approval of the proposed Zone Change, Comprehensive Plan Amendment, and Conditional Use would allow expansion of an existing recreational retreat on the subject property, resulting in additional traffic on Breitenbush Road and other roads in the area. Comments are based on this level of development; changes in development level may result in changes in requirements and/or mitigation measures. The Public Works Department has the following comments, requirements, and recommendations for the proposed Conditional Use:

1. Breitenbush Road is under the jurisdiction of the United States Forest Service (USFS). As a condition of approval, the applicant must meet USFS's requirements for issues such as access, frontage improvements, traffic analysis and mitigation, right-of-way, and permits. It is the applicant's responsibility to show that this condition has been met.
2. Driveways will need to meet fire district standards for emergency access.
3. Site grading shall not impact surrounding properties, roads, or drainage ways in a negative manner. Construction of improvements on the property shall not block historical or naturally occurring runoff from adjacent properties. The applicant will be required to submit a site drainage plan to demonstrate this lack of negative impact.
4. Public storm drainage improvements shall be built to appropriate standards, as determined by the agencies having jurisdiction over this area. Storm drainage shall be discharged to a suitable outlet and, where applicable, evidence provided that an adequate easement exists for transit of the water to such an outlet. The applicant will need to either a) show that downstream facilities can adequately handle the increased storm-water runoff that would be caused by this development, or b) provide storm-water retention systems that retain enough of the storm-water runoff on site so that there is no net increase in storm-water flow from the subject property. Acceptable drainage and detention systems must be in place prior to plat approval.
5. The subject property is within the unincorporated area of Marion County. Transportation Systems Development Charges may be assessed upon application for building permits.

6. Any work in the public right-of-way regulated by Marion County Public Works will require a permit.
7. A National Pollutant Discharge Elimination System (NPDES) permit is required for all construction activities that disturb one-acre or more. The NPDES permit is obtained through the Oregon Department of Environmental Quality.”
6. All other agencies contacted either failed to respond or stated no objection to the proposal at the time this report was written.
7. Applicants have the burden of proving that all relevant standards and criteria are met.
8. All comprehensive plan amendments and goal exceptions are subject to review by LCDC. LCDC was notified as required by state law but did not comment.

#### **COMPREHENSIVE PLAN AMENDMENT**

9. The comprehensive plan amendment must be consistent with the applicable MCCP goals and polices.
10. The MCCP plan amendments Policy 2 provides that:

The procedures which Marion County will use to consider Comprehensive Plan amendments in addition to the requirements in state law, is as follows:

##### **Individual Property or Quasi-Judicial Amendments:**

Plan changes directly involving five or less properties will be considered a quasi-judicial amendment. Quasi-judicial amendments may be initiated by the subject property owners with an application form supplied by the Marion County Planning Division. The amendment will be reviewed by the zone change procedure established in the Marion County Zoning Ordinance. A plan amendment application of this type may be processed simultaneously with a zone change request.

This comprehensive plan amendment application involves a single ownership of a 66.47 acre parcel. This is a non-legislative plan



amendment. The application includes a plan amendment and a zone change request as well as a request for conditional uses. In addition, the conditional use application also includes an 89.91 acre parcel under the same ownership.

11. The MCCP contains polices for forest land. However, the majority of those policies state that they should be consistent with OAR 660 division 6. OAR 660 division 6 is discussed elsewhere in this recommendation. Two of the three remaining policies concern subdivisions and lot line adjustments and neither are applicable to this matter. The criteria set out in the remaining policy, policy no. 8, are as follows:

Strict criteria should be applied to ensure that any dwellings and accessory to structures permitted on existing parcels will not interfere with accepted forest or farm management practices on adjacent lands, have adequate road access, fire protection and domestic water supply, and do not increase fire hazards.

As discussed through out the rest of the referral, the applicant has met forest land policy no. 8 and the forest land and farm/timber polices of the MCCP.

12. The applicant is seeking to have the comprehensive plan changed from forest land to public on a 40 acre portion of parcel 2. The general development policies applicable to rural lands in Marion County are:
  1. All land divisions should be reviewed by Marion County for their compatibility with County goals and policies.
  2. "Strip-type" commercial or residential development along roads in rural areas shall be discouraged.
  3. Rural industrial, commercial and public uses should be limited primarily to those activities that are best suited to a rural location and are compatible with existing rural developments and agricultural goals and policies.
13. This application does not deal with a land division but rather with the use of land. General development policy 1 is not applicable.
14. The applicant's focus is on preserving the environment and being environmentally friendly. There is simply no indication that the

applicant has any intention of developing a strip mall. General development policy 2 is not applicable.

15. The proposal is to expand the applicant's facilities and operations on to an adjacent parcel and to develop an educational demonstration model of sustainable practices, including clean energy production, green building practices, and the production of organic food. Geothermal resources are located on the applicant's property and are part of the retreat experience provided by the applicant. The ambiance of the resort is that of a natural setting and one of the guiding principles of the applicant is to be as environmentally friendly as possible. The use is suited to the rural location and resorts and retreats are allowed uses in rural areas. The uses are suited to this location because of their proximity to applicant's existing retreat and conference center and are planned as a continuation and expansion of the retreat and conference center. As this is an expansion of the current business of the applicant, the proposed use is compatible with the TC zone. General development policy 3 is met.

#### MCCP General Rural Service Policies

16. The general rural service policies applicable to rural lands in Marion County provide:
  1. The impact on existing services and the potential need for additional facilities should be evaluated when rural development is proposed.
  2. It is the intent of Marion County to maintain the rural character of the areas outside of urban growth boundaries by only allowing those uses that do not increase the potential for urban services.
  3. Only those facilities and services that are necessary to accommodate planned rural land uses should be provided unless it can be shown that the proposed service will not encourage development inconsistent with maintaining the rural density and character of the area.
  4. The sizing of public or private service facilities shall be based on maintaining the rural character of the area. Systems that cannot be cost effective without exceeding the rural densities specified in this Plan shall not be approved. The County shall coordinate with private utilities to ensure that rural development can be serviced efficiently.

5. Marion County shall participate in a regional solid waste program and shall develop a program providing adequate waste disposal service for rural areas.
  
17. The applicant currently provides most of its own services including geothermal heat, electricity from Breitenbush River, its own domestic water supply, and septic system. The road into the property is Forest Service Road 46 and applicant hires a local family to maintain the road during the winter as well as maintaining the roads in the community. Applicant maintains its own fire and emergency services. In addition, the applicant also provides for security on the property and the need for public law enforcement is minimized. Rural services policy 1 is met.
  
18. Rural services policy 2 is aspirational but there is no indication that the applicant's proposal will increase the need for urban services. Currently no off-site urban services are needed or provided and the proposed use will not increase the need for urban services. Rural services policy 2 is met.
  
19. The current level of on-site services is adequate for the current use. The applicant is a self-contained community and as the resort expands, the applicant has included new facilities such as expanded utility services, conference buildings, more bath areas and energy facilities as part of its 50 year master plan. The rural density and character will be maintained. Rural services policy 3 is met.
  
20. The applicant has demonstrated that part of its philosophy is to disturb nature as little as possible and maintain a sustainable environment. The applicant will provide nearly all of its own utility services. Rural services policy 4 is met.
  
21. Rural services policy 5 is a direction to Marion County and is not applicable to the applicant.

MCCP Rural Development Policies

22. There are nine rural development policies in the MCCP. However, only two of them are applicable to this application.

Policy 1 provides: Where there is a demonstrated need for additional commercial uses in rural Marion County they should be located in designated unincorporated communities.



Policy 4 provides: Public facilities in rural service centers should be designed to service low-density rural development and not encourage urbanization.

The proposed use is dependent upon being located in a forested area and is not appropriate for an urban setting. The proposal is an expansion of an existing business, not a new commercial use. The resort provides its own water and sewer service. The road leading to the resort is a paved forest service road and is adequate to meet the needs of the proposal. The rural development policies are satisfied.

#### MCCP Energy Policies

23. There are a number of energy policies but most of them are aspirational rather than criteria driven. One of applicant's stated main objectives is to be self-sufficient energy wise and to maximize energy efficiency and conservation. Applicant currently accommodates approximately 25,000 overnight guests annually and employs 50 full-time and 30 seasonal employees. The primary onsite energy needs are met by using hydroelectric and geothermal resources that are present on applicant's property. In order to meet future energy needs, the applicant proposes to develop alternative energy sources, such as geothermal, water, wind and solar energy sources rather than use public energy services. The applicants Energy Plan is a part of the Record. As stated, the applicant can meet the intent of the MCCP energy goals and policies.

#### MCCP Parks and Recreation Policies

24. The parks and recreation policies state that the criteria and policy recommendations are flexible and should be applied on a case by case basis. The general parks and recreation policies are:
  1. Site selection should take into consideration topographical and physical features of the area including water areas, wooded areas, hiking trails.
  2. There shall be a balance between day use facilities for social interactions and natural scenic areas for serenity and solitude.
  3. Whenever possible, public agencies should consider leasing land to private enterprises for public activities which are compatible with the area and open to and for the benefit of the public.

4. Parks and open space areas should retain natural vegetation as much as possible to provide habitat for wildlife.
  
25. The adjoining property is ideally suited for the proposed use because it has the resources needed for the applicant's business. It is located deep in the forest with at least two nearby waterways and hot springs. The applicant strives to retain as much of a natural setting as possible with its resort. Communal bathing and restroom facilities are used. The applicant actively engages in restoration projects to return the area to its natural habitat, to lessen or eliminate invasive species and restore native species. The applicant provides for or will provide for several areas for overnight tenting, meditation, and sustainability education. The applicant plans to implement a reforestation project for that portion of the subject parcel, 27 acres, that will remain zoned TC. Staff conducted a site visit and reported that the natural vegetation has been preserved as much as possible and that there appeared to be no significant impact on wildlife. The applicant has demonstrated that its proposal will fall within the parks and recreation policies of Marion County.

#### MCCP Economic Goals and Policies

26. Like the energy policies and goals in the MCCP, the economic goals and policies are aspirational and there are no solid measurable criteria to address. However, the expansion of the existing retreat and conference center will generate approximately 45 more full-time and 22 more seasonal jobs. The applicant now is turning away overnight guests because of the lack of accommodations. The increase in the facility will help the applicant meet its needs and accommodate more overnight guests which in turn will generate not only more jobs, but more people coming to the eastern portion of the county and buying goods and services. In addition, the expansion of the current facilities will provide more tourism to the area by the increase in recreational and environmental learning facilities. The creation of new jobs in the eastern portion of Marion County will be particularly beneficial as the timber industry in that area has been declining.

The applicant's proposal is not to develop public uses on the entire 67 acre site but to leave 27 acres forested in a TC Zone as a natural buffer around the parcel. The applicant has demonstrated that its proposal will fall within the economic goals and policies of Marion County.

#### MCCP Fish and Wildlife Habitat Policies

27. The goals and polices of the MCCP is to protect fish and wildlife habitat in Marion County. The subject property is included in the fish and wildlife habitat inventory in the MCCP. The following policies are applicable:
2. Developments should retain vegetation along streams, lakes, reservoirs (and fence-rows) to provide for shelter, shade, food, and nesting.
  3. To maintain stream quality and protect sensitive waterfowl areas, land uses that require drainage, excessive removal of riparian vegetation, alternation of stream banks and filling shall be discouraged in these locations.
  4. Conflicts with wildlife (especially big game) shall be considered in land development. Development adjacent to streams, sensitive waterfowl areas and critical wildlife areas shall incorporate adequate setbacks and buffer zones.
  5. Development density shall be controlled so that significant wildlife habitat will not be adversely affected in the County's resource zones. The standards for dwelling density in big game habitat, as identified on the habitat maps, shall be: 1 dwelling unit/80 acres in major habitat; 1 dwelling unit/40 acres in peripheral habitat. If dwellings are clustered within 200 feet of each other these densities may be doubled.
  6. Off-road vehicle use should be controlled and seasonal roads should be closed to reduce harassment to big game animals during stress period of winter and early spring.
28. The impact that nearly doubling the resort retreat center may have on wildlife is an important consideration. The applicant states that ODFW has not identified or documented the subject property as providing essential habitat for any threatened species, or as designated winter range for big game, and it has not been identified as a migration corridor. However, the Breitenbush area is designated a big game habitat in the MCCP. In addition, the order in CU 84-55 states that the Breitenbush area is a winter range for elk and deer. The order further states that the United States Forest Service (USFS) manages the habitat area, but did not consider the wildlife habitat endangered by the proposal in CU 84-55. Greater weight was given to USFS's position in that case. The applicant in CU 84-55 was seeking to develop a forest and hot springs type campsite that included 23 recreational vehicles campsites, 50 tent campsites, horseback riding, picnic and play area,



hiking trails, pool and water slide, snack bar and changing area. The proposed use in the instant case is more intense.

The M CCP background and inventory report states the big game habitat areas are generally located about 2,500 feet and are areas where deer, elk and other animals congregate during the winter months. ODFW suggested that in order to preserve the big game habitat, off road vehicle use in these areas should be controlled during the winter and early spring. Both parcels are located in the identified big game habitat.

The applicant points out that parcel 2 has been abused and neglected since at least 1983 by a prior owner so that any adverse impact on fish or wildlife would have already occurred. Most of the buildings and activities on parcel 1 where the resort is currently located have existed since the 1920's so any effects on wildlife have already been realized.

During the 30 plus years that the applicant has operated the retreat center on parcel 1, it has reestablished groundcover, eliminated tree cutting except for hazard trees, posted the property as a wildlife refuge, and prohibited hunting and fishing. Because of these efforts, parcel 1 now has an abundance of birds, raptors, and small animals on and around the property. Deer are often observed grazing within the retreat area.

The applicant states that it has worked closely with ODFW to restore and preserve the natural habitat of the property. A \$600,000 fish passage way was installed by the applicant in the Breitenbush River to divert fish away from the hydroelectric facility. The applicant has installed \$300,000 in rip rap along the river to help stop seasonal erosion and maintain riparian areas and riverbank habitat. The applicant has also created a Conservation Easement for parcel 2 that maintains a minimum setback of 100 feet from Mansfield Creek, identifies riparian areas as no-build zones, limits tree cutting for construction, prohibits pets and livestock, establishes a 50 foot buffer around ponds, and encourages restoration of natural habitat.

The applicant has met the M CCP Fish and Wildlife Policies 2, 3 and 4 over the 30 years applicant has operated the resort/retreat center. The commitment to setbacks, a Conservation Easement and maintaining the natural setting demonstrates the ability to continue to comply with these policies.

Use of off-road recreational vehicles, including ATVs and snowmobiles, could have adverse impacts on wildlife habitat in the area. The

applicant does not allow their use on the property although the USFS does permit their use on surrounding lands. With a condition limiting off-road vehicle use the applicant meets the criteria of Policy 6.

The current proposal, which includes development of parcel 2, includes increasing the capacity from 256 overnight lodging guests to 469; and the number of full-time staff from 60 to 105; seasonal staff increases from 27 to 49 positions; and overnight camping increases by 61. Thus at maximum capacity numbers increase by 344 from 343 to 687. The applicant experiences maximum capacity a few times annually when large groups reserve Breitenbush for popular annual workshops or gatherings. A typical "full house" in summer would be closer to 66% of these figures.

The applicant proposes to build future staff housing on parcel 2 rather than continue to build in the existing staff cabin area that has some potential for flooding. The applicant may also seek to move a few staff cabins from parcel 1 to parcel 2 to relieve some crowding in the current staff village.

The current proposal represents an increase of at a potential 344 people when fully implemented. In addition to structures and utilities to accommodate this number of people, the current proposal is to increase the number of resort activities, including an eco village with greenhouses and gardens. A majority of the new development will take place on the parcel north of the river. The applicant also proposes to develop wind, solar, geothermal and hydro electric energy sources on the property.

The applicant states that this increase will have little or no impact on the wildlife because any negative impacts would have been felt during the '80's as to parcel 2 when the prior land owner was attempting to put in an RV park and campground. The applicant also states that there have been no adverse impacts on wildlife so far and that any impacts would have been realized by now. However, the proposal is to nearly double the size of the resort and to expand the resort on to another piece of property that currently is undeveloped.

MCCP Fish and Wildlife Policy 5 should be considered. The clear intent of MCCP Policy 5 is to insure that significant wildlife habitat will not be adversely affected in this area. Up to two dwellings would be allowed outright in this case. Additional dwellings and development are subject to other regulations that make allowance for their conditional use.

The "primary use" of parcel 1 and proposed for parcel 2 is a "recreational resort and retreat". ORS 197 addresses this directly stating that this use is appropriately situated in rural areas. The siting criteria allows "placement in rural areas where recreational resources exist," citing among other resources, "a hot spring."

ORS 197.435(5)(a) provides for "overnight lodging... including hotel rooms, cabins... permanent, separately rentable accommodations that are not available for residential use."

ORS 197.435 (7) (e) provides "...residential uses must be limited to those necessary for the staff and management of the resort."

Subsequently, Marion County Zoning Ordinance 171 allows for the same uses. MCZO 171.030(E) lists "recreational resorts and retreats" as a "primary conditional use" in a Public Zone in a TC area. Further, MCZO 171.050(B) allows "new residential dwellings... when accessory to a primary use." Thus, the state and county rules and ordinances provide that the facilities and dwellings proposed by the applicant are allowable if significant wildlife habitat is not adversely affected.

The wildlife habitat impact determinations are within the purview of ODFW and USFS as the public agencies with jurisdiction. The applicant engaged in meetings to review the proposal as well as conduct onsite surveys of the area proposed for development with staff of ODFW and USFS. It was concluded by those agencies and agreed upon by the applicant that significant wildlife habitat impacts will be avoided by the following measures:

1. A condition that Forest Road 46 easterly of Forest Road 46.050 will not be plowed between December 1 and April 15.
2. A proposed small hydroelectric facility on Mansfield Creek will be designed and engineered to ODFW standards.
3. Four structures within the flood plain habitat of the Breitenbush River will be deleted from the proposal including a conference building (L9), aquatic body works buildings (H8 and H9) and a bridge located between U1 and R24.

Letters from ODFW and USFS addressing the above agreement have been entered in the Record. The applicant has met the criteria set out in Policy 5.



The applicant has met the criteria for M CCP Fish and Wildlife Habitat Policies.

M CCP Natural Areas Policies

29. Breitenbush Hot Springs is a designated natural area in the M CCP. The M CCP states that Breitenbush is privately owned, and that a lodge and cabins have been located near the springs since the 1920's with no apparent effect on the value as a natural area so that no additional protection is necessary. The only natural area policy that is applicable is as follows:

1. When land use changes are proposed in the vicinity of identified natural areas, possible conflicts shall be identified and evaluated as to their social, economic, environmental and energy consequences. Significant conflicts shall be resolved in accordance with state land use Goal 5 requirements.

The proposal calls for expanding the resort on to the adjacent parcel to the north and greatly increasing its size. There does not appear to be any significant social consequences from the proposed development. The applicant is expanding the use onto parcel 2. Both parcel 1 and 2 include property in the TC zone. The property that is currently zoned P and the proposed property to be zoned P are surrounded by the TC zoned property which would act as a natural buffer to most of the activity at the resort. As the applicant points out, it is currently the largest private employer in that part of the county and if the request is granted, new jobs will be created. In addition to more jobs, there will be a ripple down effect to the other businesses in that part of the county because more people will be coming to the resort and will patronize various businesses in the eastern part of the county. The proposal will increase traffic in the area, but as the economy in the area has been in a down turn for sometime, the area infrastructure should be able to handle the additional traffic and any adverse impact should be negated by the economic boost the resort will provide to the community.

The resort has existed for many years and the applicant states that it intends to develop the resort in such a manner as to be carbon neutral. The applicant has an established history of being environmentally conscious and plans to build a sustainable community that will be a model for the general public. Emphasis will be on clean energy production, green building practices, and organic growing. Camp fires will not be allowed in the camping area and smoking will only be allowed in very limited designated areas. The applicant points out that

it has worked closely with ODFW in restoring native habitat and restoring riparian corridors. The applicant has reforested some of the property and has plans to continue its reforestation efforts. A conservation easement is in place on a portion of the property.

An identifiable aspect of applicant's expansion would be the significant increase in the human population and associated living requirements on the property. The affects of the increase in human occupation will be somewhat negated by the mitigation efforts of the applicant. The mitigation efforts include larger stream setbacks than required by county ordinance, not allowing camp fires, having communal bathhouses and kitchens. The applicant states that it has had the largest septic drain field in Marion County for the last 20 years with no negative consequences. Another septic field is planned for parcel 2 near the northern border of the property and under the BPA power lines. The proposal also includes detailed provisions for the development of solar, water, wind, methane, and geothermal energy. The applicant currently generates all of its own power and plans to do so as the resort expands. The applicant's proposed energy plan, with conditions, should not conflict with the natural area. The energy plan is addressed more fully in the conditional use portion of this ordinance.

The proposal meets the criteria of the MSCP Natural Areas Policies.

#### **GOAL EXCEPTIONS**

30. Statewide Planning Goal 2 provides a mechanism for exceptions to Statewide Planning Goals. In this instance, the applicant is requesting an exception to Goal 4, Forest lands.
31. There are three types of exceptions to statewide planning goals. The first type of exception is based on the concept that the property itself is too "physically developed" to be available for resource use. The second exception is based on the concept that the land surrounding the subject property is developed to such an extent that the property is "irrevocably committed" to uses other than resource use. The third type of exception requires the county to show other "reasons" why a goal exception is appropriate. Applicant proposes a reasons exception to goal 4.

#### Reasons Exceptions

Only the portions of the OAR's applicable to this application are discussed.

32. OAR 660-004-0018(4) provides:

- (a) When a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception;
- (b) When a local government changes the types or intensities of uses or public facilities and services within an area approved as a "Reasons" exception, a new "Reasons" exception is required;
- (c) When a local government includes land within an unincorporated community for which an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022 was previously adopted, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that were justified in the exception or OAR 660-022-0030, whichever is more stringent.

33. ORS 197.732(1)(c) provides that a local government may take exception to a goal if the following standards are met:

- (A) Reasons justify why the state policy embodied in the applicable goals should not apply;
- (B) Areas which do not require a new exception cannot reasonably accommodate the use;
- (C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and
- (D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

34. These standards are further clarified in the relevant Oregon Administrative Rules:

660-004-0020, Reason Exception Requirements:

- (1) If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the

comprehensive plan as an exception.

- (2) The four factors in Goal 2 Part II(c) required to be addressed when taking an exception to a Goal are:
  - (a) "Reasons justify why the state policy embodied in the applicable goals should not apply": The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations including the amount of land for the use being planned and why the use requires a location on resource land;
  - (b) "Areas which do not require a new exception cannot reasonably accommodate the use":
    - (A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use, which do not require a new exception. The area for which the exception is taken shall be identified;
    - (B) To show why the particular site is justified, it is necessary to discuss why other areas which do not require a new exception cannot reasonably accommodate the proposed use. Economic factors can be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under the alternative factor the following questions shall be addressed:
      - (i) Can the proposed use be reasonably accommodated on non-resource land that would not require an exception, including increasing the density of uses on non resource land? If not, why not?
      - (ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to non-resource uses, not allowed by the applicable Goal, including resource land in existing rural centers, or by increasing the density of uses on committed lands? If not, why not?
      - (iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?

- (iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?
- (C) This alternative areas standard can be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception, unless another party to the local proceeding can describe why there are specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described with facts to support the assertion that the sites are more reasonable by another party during the local exceptions proceeding.
- (c) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception. The exception shall describe the characteristics of each alternative areas considered by the jurisdiction for which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include, but are not limited to, the facts used to determine which resource land is least productive; the ability to sustain resource uses near the proposed use; and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts include the effects

of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts;

- (d) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts. The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

35. The applicant desires to expand the retreat and conference center on to 40 acres of adjacent land. The land where the retreat is currently located is zoned P. The applicant's 50-year master development plan calls for increasing the overnight capacity from 343 to 623. This figure includes increases in both guest and staff structures. The large increase in overnight capacity will generate a need for more parking spaces, energy consumption, and services. When the applicant acquired the adjacent parcel, it had been used as a dump site for a variety of items, including toxic waste and several hundred culverts. In addition, the ground had been torn up for development by the previous owner by developing a rock quarry; a large system of rocked roadways; RV sites; and parking lots. A major portion of the forested area was removed for the development. However, the development was never completed. Over time, the applicant has taken restorative steps on the subject property, including working with the Department of Environmental Quality (DEQ). The applicant intends to continue restorative efforts on the riparian area on the subject parcel. While the applicant proposes a large expansion of its business over time, the prior development of roadways, parking lots, RV sites and geothermal resources will be utilized to greatly reduce further changes to the proposed site. The site will remain a self-contained resort retreat emphasizing clean energy production, green building practices, organic food production, and natural resource conservation.

36. The Breitenbush resort and retreat has been in existence for over 80 years and an exception was taken when MCCP was acknowledged for parcel 1. Parcel 2 is adjacent to the retreat and conference center. All lands surrounding the current retreat location are zoned TC. All other properties in the county that are zoned P are too small, or are already developed or are not forested. The nearest P zoned property is over 10



miles away and is slated for another use. The applicant as a matter of process analyzed the eastern Marion County real estate market area. In the area from Mill City eastward some 30 miles there is very limited land available in a public zone and none of a size or nature that could feasibly accommodate the proposed use. Other lands are either TC or committed to other uses.

Due to the restorative efforts of the applicant, the proposed site can offer recreational facilities and services the applicant needs for its business expansion. Importantly, the adjacent property containing the current business use has geothermal hot springs and geothermal wells that have already been developed. Hot springs are an integral part of the services provided to the applicant's guests and are needed for the expansion of their business. The ambiance of the business and the desire to provide educational opportunities relating to sustainable living practices for the applicant's guests make it necessary to locate the expansion in a forested area rather than inside an urban growth boundary (UGB) or on lands zoned rural residential. The applicant will provide its own facilities and services and will not need any public services. The uniqueness of the hot springs and geothermal activity in a forested setting adjacent to the applicant's business makes the proposed location the only feasible location for an expansion of the applicant's business.

37. Developing another site to expand this recreational use would be an extreme and unreasonable expense and the applicant has not been able to find another location containing geothermal resources and natural hot springs surrounded by forest, which is a cornerstone of the use. In addition, new services such as roadways and utilities as well as duplication of many guest facilities and accessory structures would be needed on another site, whereas the applicant's proposal to expand on adjacent land would allow the applicant to utilize the services that are currently available on the developed parcel. The present lodge and facilities have been in existence for many years and have been compatible with surrounding land uses, resources and productivity. It does not appear that the proposed use could reasonably be accommodated elsewhere. With conditions the development will not impact surrounding uses and environment any more than would take place with developing another site. It would seem to lessen impacts.

The proposal will reduce the amount of timber production but the proposed 40 acre parcel was heavily logged by the prior owner. In addition to logging the parcel, the parcel was used as a dump site and part of the parcel was torn up and graveled for use as roadways, RV sites and parking lots that never were developed. Some forest remains on the subject property and the applicant will reforest the parcel where

possible. The applicant points out that the loss in productive forest on the proposed 40 acre P zone will be greatly outweighed by the added estimated annual revenue forecast in current value of approximately \$1.5 million per year and the creation of 45 new full-time jobs and 22 new part-time jobs.

38. The applicant's existing facilities have been at the current location for many years with little or no impact on the adjacent lands. The subject parcel is adjacent to the present lodge and guest facilities and will be integrated with that parcel. The rest of the land surrounding the subject parcel is all zoned TC and is part of the Willamette National Forest with some summer homes to the south and the Lower Breitenbush Camp area to the west. Those developments are located on federal land and are under lease. The applicant is not requesting an irrevocably committed exception even though there is considerable evidence of committed development by the prior owners establishment of a rock quarry, heavy logging, a network of roadways, parking lots and RV sites. The prior owner developed geothermal resources on the property by drilling three deep wells. These energy sources are extremely important to the applicants expansion and successful development of the resort and retreat as a recreational use. In the applicant's 50-year master plan, the need to negate a carbon footprint is discussed along with measures on how to achieve this goal including limiting the use of carbon based fuels for energy, using hydroelectric and geothermal heating, having their own hydropower plant for electricity, and using eco-friendly and recycled building materials as much as possible. The applicant's long range goals include the restoration of damaged areas on the subject property to their natural state. As a conditional use permit will be required, limitations could be placed on the new development to mitigate impact on surrounding lands.

### **Conclusion**

A number of reasons are a part of the record that justify why Goal 4, Forest Lands designation can be changed to a Public designation on 40 acres of the 67 acre parcel 2. The applicant has owned and operated the resort and retreat facilities on the adjacent parcel for 31 years and has substantiated needs to expand. The proposed parcel has already been logged and developed for recreational use and the applicant can utilize that development without altering more forest uses. The site contains developed geothermal resources that do not exist elsewhere in the county and these features are an essential part of the applicant's recreational uses. The geothermal resource is also the primary energy source which allows the proposed use to operate and be available to the public year round. There are no available properties of suitable size within a reasonable distance that could accommodate the proposed

use. The proposed site will have the least impact on resource land; require fewer public services than other lands; and be compatible with surrounding uses. Its use would not have environmental, economic, social, or energy consequences more adverse than would typically result from being located on another site requiring a goal exception. Resorts and retreats are allowable in a TC zone and may be located by a resource such as a golf course, as in the Elkhorn development case, or hot springs. All the elements necessary to establish a self-contained resort and retreat development are present for that use. The applicant has demonstrated that it can meet the criterion of 660-004-0200, Goal 2 Part II (c). "Reasons justify why the state policy embodied in the applicable goal should not apply."

The applicant has demonstrated that it can meet the criteria of OAR 660-004-0020.

39. 660-004-0022, Reason Exception Requirements:

An exception Under Goal 2, Part II (c) can be taken for any use not allowed by the applicable goal(s). The types of reasons that may or may not be used to justify certain types of uses not allowed on resource lands are set forth in the following sections of this rule:

- (1) For uses not specifically provided for in subsequent sections of this rule or in OAR 660-012-0070 or chapter 660, division 14, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:
  - (a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19; and either
  - (b) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this subsection must include an analysis of the market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or
  - (c) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.

40. State Land Use Goals 8, 9, and 13 contain requirements that the applicant demonstrate the need for the proposed use. Goal 8, Recreational Needs, seeks to satisfy the needs of citizens and visitors by providing for the siting of developed recreational facilities with overnight lodgings and open spaces with trails, winter sports and water related activities. The applicant has proposed the expansion because the popularity of the Breitenbush resort and conference center has increased steadily, both domestically and internationally, to the point that over the last ten years demand cannot be accommodated during the summer and most weekends throughout the year. Potential guests seeking the unique offerings of this facility are being turned away in growing numbers. The need for expansion of the business is great but there is no more room for expansion on the current parcel. By allowing an extension of the business onto the adjacent parcel, the applicant will not only be able to meet its current needs, but its needs projected into the future. The need for developed recreation sites of this nature satisfies Goal 8 objectives.

State Land Use Goal 9 seeks to provide adequate economic opportunities for a variety of activities taking into consideration the health of the current economic base. The eastern portion of Marion County in the Santiam Canyon region has experienced a significant economic downturn over time with the decline in timber industry jobs and facilities. The Breitenbush resort has become the largest private employer in the region and draws tourism to the area to the benefit of other area businesses. The proposed expansion of the facility will enhance the economic base for this region. Goal 9, Economic Development, demonstrates a need for the proposed activity and use and suggests that sites be made available for this purpose.

State Land Use Goal 13, Energy Conservation, directs that land shall be managed and controlled so as to maximize the conservation of all forms of energy, based on sound economic principles. This goal is eminently necessary in development today and it demonstrates both the need for the proposed use or activity as well as the necessity to locate the use on the site proposed. The applicant has the ability to further develop this facility utilizing 100% clean energy from sources on the land to provide electricity, heat, domestic water and for septic disposal. The energy sources include solar, small hydroelectric, wind turbines, and geothermal for both heat and electricity. It is notable that the use of the facility by guests represents an example of carbon neutral daily activity or tourism. During the average 2.5 days stay per guest, their vehicles are idle in the parking lots and their homes are powered down. An element of the proposal is to make educational displays and feature workshops for guests to encourage wider use of

alternative energy sources. The applicant's energy plan is a part of the record.

The applicant satisfies the requirements of 660-004-0022(1)(a) by demonstrating the need for the recreational use proposed based on requirements in Goals 8,9, and 13.

41. The proposed site has resources upon which the proposed use is dependent and the use or activity requires a location near that resource. Although the resort and retreat with the lodge, guest cabins and staff cabins have been present for over 80 years, the business was known to fluctuate and changed ownership twice due to the unpredictability and limited income to support the facility which was open only in the summer months. The resort was popular for its hot springs pools and forested mountain setting but had not yet explored its geothermal potential. The present ownership purchased parcel 1 in 1977 and in 1978 began drilling deep wells to access the geothermal resource that would provide heat to over 80 structures. The geothermal resource along with the ability to source electricity from a small hydroelectric facility on parcel 1 has permitted the resort to stay open year round and has proven the ability to stay profitable and grow in popularity each year. Those resources are not available on other land that might be considered.

If Breitenbush had to relocate its uses and facilities to other land not containing these resources it most likely would fail in its present state of operation due to the radically increased expense of developing and/or purchasing public utility resources. Breitenbush serves a market with a broad spectrum of people, many of whom are in mid to lower income levels, that can come here and benefit from the recreational offerings and rich forested setting at a reasonable cost. Resorts usually must charge much higher prices to stay open and thus are available to a limited population. The applicant intentionally chooses to operate on an income level at which other like resorts have long ago failed. The resources available on the proposed site are ideally suited both to maintaining the resort's viability and reasonably providing a needed recreational activity.

42. The proposed use and activity does have special features and qualities that necessitate its location on the proposed exception site. The applicant's retreat and conference center provides year round recreational activities including hot springs that provide for therapeutic hot pools and saunas; daily recreational and learning programs such as meditation and yoga; forest and water activities; educational opportunities; massage and hydrotherapy; all tied into a forested retreat setting. The applicant provides access to mountain trails, scenic roads,

and all non-motorized winter sports. The business is not suited for an urban area. Because of the nature of applicant's business, which has existed on this land for over 80 years, it must be located in this forested area near natural hot springs, geothermal resources and the recreational amenities expected for a resort and retreat use. The proposed use for the adjacent parcel 2 is an expansion of the present use to accommodate a substantial demand for expanded facilities and increased availability of overnight accommodations. Parcel 2 is the only other tract in Marion County known to have geothermal resources along with the other natural setting qualities. Other sites would also require more land be taken out of timber production to reproduce the development that has already taken place on the proposed parcel.

## CONCLUSION

The evidence in the record supports a Reasons Exception. The exception area can accommodate increased recreational needs. The proposed use satisfies state land use goals regarding recreation, economic development and energy conservation in the County without impacting wildlife habitat or adjacent forest uses. The uses and activity proposed depends upon a forested location with hot springs and geothermal activity that are found only in this area. The applicant has developed and successfully operated a hot springs resort and retreat at this location for 31 years. There is no other suitable land or location that could reasonably accommodate the proposed use or activity. Hot springs resorts and retreats are allowable uses in rural forested areas. Therefore, the applicant satisfies the Reasons Exception requirements in 660-004-0022 for an exception to State Land Use Goal 4, Forest Lands.

43. Exception from one goal does not excuse compliance with all other statewide land use goals. OAR 660-004-0018(1). The remaining goals are addressed below.

Goal 1: Citizen Involvement. Notice of a public hearing was provided as required and citizens were provided an opportunity to provide oral or written testimony. Goal 1 is satisfied

Goal 2: Land Use Planning. The subject application has been examined under the implementing regulations for this goal.

Goal 3: Agricultural Lands. The subject property is not agricultural land and Goal 3 does not apply.

Goal 4: Forest Lands. Goal 4 applies to the subject site. As discussed above, the applicant is seeking an exception to goal 4 to expand it's



Public zone in order to further develop the resort and retreat use area and has provided sufficient evidence to grant a Goal 4 Exception.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources. The Breitenbush River and Mansfield Creek flow through the property and both are designated sensitive headwaters in the MCCP but there is no indication that special precautions need be taken other than those mentioned herein. In 2005, the applicant, in cooperation with the Oregon Department of Fish and Wildlife (ODFW), began the first phase of a multi-year project to add a fish diversion to the hydroelectric and water treatment flume intake. The applicant plans to continue working with ODFW in order to protect the waterway, the fish and the natural habitat. A conservation easement (CE) is in place that protects the northern parcel land surrounding the waterways, including three existing ponds on the subject property. The CE provides for extensive buffers around the waterways. The CE states that no significant alterations or developments will take place within 30 feet of the mean high water mark of the perennial or seasonal streams on the property. In addition the easement calls for 100 foot no-development buffer zone on both sides of Mansfield Creek with an exception taken for development of the existing geothermal resources as an energy source. The proposal is compatible with Goal 5.

Goal 6: Air, Water and Land Resources Quality. Marion County has regulations in effect to achieve this goal, and the property is subject to those regulations. The applicant has complied with regulations over time.

Goal 7: Areas Subject to Natural Disasters and Hazards. Marion County has regulations in effect to achieve this goal, and the property is subject to those regulations. There is no indication that the property is subject to natural disasters or that there are any natural hazards on the property. The proposed use with regulations in place does not conflict with this goal..

Goal 8: Recreational Needs. The facility has been established as a recreational use for over 80 years and currently more than 25,000 overnight guests a year visit the facility. The facility is located in the middle of a national forest and has access to hot springs, mountain trails, hot springs, scenic roads and winter sports. The resort has cabins as well as tent areas available for overnight lodging. Breitenbush has long been a destination recreational site and the applicant states that it cannot accommodate the increasing demand for its overnight facilities and the recreational opportunities it provides. The proposal is to expand the facility onto the adjacent property now owned by the applicant. It is an expansion and continuation of the current business rather than the

development of a new business and the proposed use is compatible with this goal. This goal demonstrates the need for the use described in the proposal and is a reason for the exception.

Goal 9: Economic Development. According to the applicant, the surrounding area was largely dependent on the forest industry for employment and when that industry declined, the area economy went into a downward spiral. The proposed development will provide notable economic benefit in Eastern Marion County. The applicant states that the current facility is the largest private employer in the surrounding area with 50 full-time and 30 plus additional seasonal workers. The proposed use, when fully implemented, is projected to provide an additional 45 full-time employees and 22 seasonal employees. The proposed use does not conflict with Economic Development Goals and appears to be compatible with this goal. This goal demonstrates the need for the proposed use and for its siting in this area and is a reason for the exception.

Goal 10: Housing. The goal is not applicable as it pertains to providing land in urban or urbanizable areas for residential housing. The proposed use is appropriately situated in a rural setting and is not suited to an urbanizable area.

Goal 11: Public Facilities and Services. The existing and proposed expansion is a "self-contained development." The Marion County Sheriff's office currently provides law enforcement to the area. The property is under the jurisdiction of the State Forestry Fire district. The applicant maintains a Fire Hazard Mitigation program. In 2000 the applicant, working in conjunction with the Oregon Department of Forestry, prepared a Fire and Emergency Plan to provide preventative measures, and emergency guidelines and procedures. In addition, the applicant has Breitenbush Fire Department and is a member of the Oregon Firefighters Association. The fire department consists of 12 people trained to work with both structural and wildland fires, and fire suppression equipment. In addition, some of the residents are trained in emergency medical services, including persons trained as wilderness first responders, who are on call and provide services not only to their own community, but to the surrounding community. The applicant provides its own security services. Water and sewer are provided on site and there is no indication that there will be a need for public water and sewer. The proposed new uses will not increase the need for added public facilities and services and the proposal is compatible with goal 11.

Goal 12: Transportation. The access roadway, a paved highway, is a USFS road and not subject to Marion County jurisdiction. There is no

indication that the access roadway is inadequate to accommodate the present and forecasted needs of the development nor usual public use of that highway. As a condition of approval, the applicant should provide proof of compliance with USFS requirements. The applicants use is consistent with goal 12.

Goal 13: Energy Conservation, directs that land shall be managed and controlled so as to maximize the conservation of all forms of energy, based on sound economic principles. This goal is eminently necessary in development today and it demonstrates both the need for the proposed use or activity as well as the necessity to locate the use on the site proposed. The applicant has the ability and plans to further develop this facility to utilize energy sources found only on this land to provide electricity, heat, domestic water and for septic disposal. At the same time the use of the facility by guests represents an example of carbon neutral daily activity or tourism. During the average 2.5 days stay per guest, guest vehicles are idle in the parking lots and their homes are powered down. The applicants energy plan details the planned energy sources with a timeline for their implementation. The energy plan is a part of the Record. The proposal meets the requirements of the goal and is a reason for the exception.

Goal 14: Urbanization. The application is not to transition from rural to urban land use but rather is an expansion of an existing resort and retreat area which is best situated in and an allowable use in a forested rural area. There is no indication that the proposal creates a rural residential zone or setting. There will be no residential uses, strip malls or commercial uses other than a small store and café designed to meet the needs of the resort guests during their stay. There will be no urban population or uses.

Residential housing would be considered an urban use not allowable in a resource zone. However, the proposed use and the dwellings associated with that use are clearly allowable. Recreational resorts and retreats are an allowable "primary use" on resource lands as described in County Ord. 171.030(E). Dwellings are provided under 171.050(B) which allows dwellings as an "accessory use."

ORS197 established siting criteria that allows resort and retreat placement in rural resource zones where recreational resources exist, citing among other resources "a hot spring." ORS 197.435(5)(a) also defines and provides for "overnight lodging....permanent, separately rentable accommodations that are not available for residential use...including hotel rooms, cabins..." ORS 197.435(7)(e) states "residential uses must be limited to those necessary for the staff and management of the resort."

The Breitenbush development may be compared to the Elkhorn development where it is established that resorts and retreats are built next to or in an area that supports what they do, i.e.: camping areas, golf courses, hot springs, trails, skiing areas. The proposed development does not conflict with Goal 14 and an exception to this goal is unnecessary

Goals 15 (Willamette River Greenway), 16 (Estuarine Resources), 17 (Coastal Shore Lands), 18 (Beaches and Dunes), and 19 (Ocean Resources), are not applicable, because the subject site is not within the Willamette River Greenway or near any ocean or coastal related resources.

44. The proposal meets the requirements of all applicable Statewide Land Use Goals. An exception to Goal 4 is justified and applicant's request for an amendment to the MCCP is also justified.

#### **ZONE CHANGE**

45. The proposal is to change the zoning on 40 acres of the 67 acre parcel from TC to P. The stated purpose and intent of the Public zone is as follows:

To provide regulations governing the development of lands appropriate for specific public and semi-public uses and to ensure their compatibility with adjacent uses. It is intended that this zone be applied to individual parcels shown to be an appropriate location for a certain public or semi-public use. If the use existing at the time the P zone is applied is discontinued or if a proposed use is not established, it is the intent that the land be rezoned to conform to surrounding zoning or be devoted to permitted uses. It is not intended that a property zoned Public for one type of use be allowed to change without demonstrating that the proposed conditional use will be compatible with adjacent uses and the property is better suited for the proposed use than alternative locations.

46. MCZO 123.060 sets forth the following required findings for a zone change:

- (a) The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and the description and policies for the applicable land use classification on the Comprehensive Plan; and

- (b) The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and
  - (c) Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; and
  - (d) The other lands in the County already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors; and
  - (e) If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the new zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.
47. Applicant requests a zone change from Timber Conservation to Public. In addition, zone changes should be consistent with the purpose and intent of the proposed zone. Adequate services should be available to serve the uses allowed in the proposed zone, and the zone should not allow uses that would conflict with adjacent land uses.
48. The applicant currently operates a recreational resort and retreat on the adjacent property to the south of the subject property. Parcel 1 consists of 89.81 acres. Forty five acres of Parcel 1 are zoned P and the remaining area is zoned TC. Applicant's operation is an enclave surrounded by forest.

The property proposed for rezoning, Parcel 2, although zoned TC, has little marketable timber on it because the prior owner engaged in extensive logging of the 67 acre parcel as well as building a network of roadway excavation, pond construction and leveled areas. The former owner also stored and dumped surplus materials on the parcel. The items dumped, in addition to a number of culverts and scrap metal, included approximately 200 barrels of paint. DEQ became involved and the applicant has been working with DEQ to clean up the site. The applicant is seeking to have 40 acres of the parcel zoned P with the remaining 27 acres remaining TC. The applicant plans to engage in extensive reforestation to reclaim the natural habitat of the remaining 27 acres.

Because parcel 2 is adjacent to the current operations of the applicant, it is an ideal location for the expansion of the business and should have

little if any effect on the surrounding area. The current operation has been compatible with the surrounding properties. The P zone allows resorts and the proposed use is an expansion of the current operations of the applicant. MCZO 123.060(a) is satisfied.

49. There is no indication that an expansion of the business would have a significant impact on the surrounding areas and uses. The current operation has existed for many years with little significant impact on the surrounding parcels, all of which are zoned TC and nearly all are part of the Willamette National Forest. MCZO 123.060(b) is satisfied.
50. As mentioned above, the resort is very self-sustaining and does not rely on or require the use of many public services because it provides its own services, including security in the summer months, electricity, geothermal heated buildings, domestic water, septic, emergency medical services, and fire protection. The Marion County Sheriff provides law enforcement services to the area. MCZO 123.060(c) is satisfied.
51. As stated above, the resort is unique in that it needs to be located in the forest to provide the amenities to its guests, including hot tubs and saunas from natural sources. Other areas zoned P are miles away and would be not be economically or locationally practical for the proposed use. MCZO 123.060(d) is satisfied.
52. The expansion of uses requires a conditional use review to ensure that the uses are compatible with the surrounding less intense uses. The applicant has submitted a conditional use application with this request. The P zone is the only zone appropriate for the public MCCP designation. As discussed below, the conditional use can be granted subject to conditions and MCZO 123.060(e) can be satisfied.
53. The applicant has demonstrated that the criteria for a zone change have been met.

#### **CONDITIONAL USE**

54. Under MCZO 119.070, before granting a conditional use, the Director, Planning Commission or Hearings Officer shall determine:
  - (a) That it has the power to grant the conditional use;
  - (b) That such conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone;
  - (c) That any condition imposed is necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.



55. Under MCZO 119.100 the director has the power to forward a conditional use application directly to the hearings officer or planning commission for the initial decision. In this instance, the conditional use application was made a part of the CP/ZC application. The BOC has original jurisdiction. The hearings officer has provided a recommendation to the BOC.
56. The hearings officer has authority to hear this matter. The applicant is seeking a 50 year conditional use permit. Determining exactly what those conditional uses are is difficult, probably because of the breadth of the application. The applicant requests that the zone be changed from TC to P on the northern parcel. A resort is allowed as a conditional use in the P zone but is not allowed in the TC zone. The applicant has the burden of proving compliance with all applicable criteria.
57. Over the years, parcel 1 has been the subject of several conditional use applications and subsequent requests for extensions of time to complete the conditional uses. On parcel 1 there are several uses that were allowed as conditional uses that have not been completed and the applicant is essentially seeking an extension of time to complete those uses. In addition, the applicant is requesting that the conditional uses that are existing on parcel 1 also be applied to parcel 2, the northern parcel, so that the applicant can expand the resort onto the northern parcel. The applicant is also requesting to use a hydroelectric plant and wind generation stations for power generation. The facilities for these sources will be located in the TC zoned portion of the property. The applicant is also seeking a conditional use for tent camping sights in the TC zone. The applicant originally requested a 50 year conditional use permit. However, at the hearing, the applicant's attorney stated that a 15 year conditional use permit with two 5 year extensions may be more appropriate.
58. In CU 77-53, the first conditional use case, the resort consisted of a lodge, approximately 55 cabins, some outbuildings and a small camping area. All were located on what is now parcel 1 and the area was zoned Residential Agricultural Recreational (RAR). The resort was rundown and the applicant wanted to rejuvenate the resort. No new construction was proposed with the exception of some small facilities.

In CU 81-30 the portion of the property surrounding the lodge was zoned P and the conditional use application was for the relocation of old cabins from the Lower Breitenbush Camp to the P zoned property for resort expansion. A store was to be located in the lodge to provide goods for the increasing number of guests.

CU 84-55 involved parcel 2 and at the time of the application, the property was owned by the Heidgerkens. There were no structures on the property and the property was zoned TC. The application included exploratory drilling for geothermal water, development of private power generation facilities, and development of private campground services to serve the public. The order specifically stated that no dwellings, other than those needed for seasonal staff housing necessary for the operational needs of the campground would be allowed.

CU/V 85-63 involved parcel 1 and the application was to expand the existing resort in the P zone. A number of structures were proposed. The uses sought were allowed in the P zone as conditional uses.

CU 92-23 was for parcel 1 and sought to remodel and expand the resort again. A number of structures were again proposed including additional staff housing, utility structures, a larger kitchen and dining room, etc.

ADM 98-2 involved parcel 2 and sought a vested rights determination resulting from CU84-55 or the granting of an extension of the implementation period of CU84-85. At this juncture, the applicant in the current case had acquired this piece of property so that Breitenbush Hot Springs Retreat and Conference Center owned both tax lot 300 and 100.

CU 99-25 was for the remodeling and expansion of the resort on parcel 1. The application was to increase the number of structures in the P zone, remodel some of the existing structures including a yurt, and to increase the number of saunas and hot tubs.

Most of the conditional use permits were for a five year period with extensions for completion being granted. Historically, some of the conditional uses were never implemented, some were modified, and some were completed.

The proposed and existing uses on both parcels of property along with a key are attached and incorporated into this referral. The map for the southern parcel is attachment A, the map for the northern parcel is attachment B and the key is attachment C.

59. There are a significant number of proposed uses and structures for the public zoned portions of the northern parcel 2 and several proposed structures and uses for the public zoned portion of the southern parcel 1. As noted, the southern parcel contains the current lodge and resort. The northern parcel currently contains two structures.

## PUBLIC ZONE

60. MCZO 171.010 provides:  
The purpose and intent of the public zone is to provide regulations governing the development of lands appropriate for specific public and semi-public uses and to ensure their compatibility with adjacent uses.
61. Under MCZO 171.030(E) recreational resorts and retreats are allowed as conditional uses in the public zone with size limitations on commercial uses set forth in MCZO 171.040(A).
62. MCZO 171.040 provides:
- (A) New commercial uses in conjunction with public uses may be established up to a maximum of 3,500 square feet of floor area.
  - (B) Lawfully established commercial uses existing as of the date of adoption of this ordinance up to 3,500 square feet of floor area, or an additional 25% of the floor area that existed as of the date of adoption of this ordinance, whichever is greater.
  - (C) Except as established in (B), for commercial use to exceed the square foot limitations requires taking an exception to Goal 14. Such exception shall be processed as an amendment to the Marion County Comprehensive Plan.
63. The current commercial uses on parcel 1 are a small store and gift shop. A larger store is proposed to replace the existing store on parcel 1 and it would be placed in another location on parcel 1. A café is proposed on parcel 1 (K3 on map). A store and café are proposed on parcel 2. There do not appear to be any new commercial uses planned for parcel 1. The applicant is allowed up to 3,500 square feet of commercial use. As a condition of approval, the applicant will be allowed to use up to 3,500 square feet for commercial uses. The request to build a store/office was granted in a prior conditional use application but the project was not completed and the applicant is again requesting that it be allowed to build a store and office. The applicant states that all of the commercial uses are tied to the resort and retreat business and that there is no current plan to create commercial uses other than stores and cafés as stated above. As a condition of approval no other commercial use beyond the 3,500 square feet will be allowed without a new conditional use application.
64. Pursuant to MCZO 171.030 and applicable to this application the following uses permitted in the P zone are:
- (D) Dwelling for the caretaker or watchman; housing for the staff required for an approved conditional use;

- (E) Golf courses, public parks and playgrounds, recreational resorts and retreats, related camping and related commercial uses subject to 171.040;
  - (F) Churches, public and private schools and related conference and residence facilities;
  - (J) Public service buildings, structures and uses, (e.g. field offices, outdoor storage of equipment, reservoir, water tower, pump station, sewage treatment plant, solid waste disposal site, power generation) except fire, police and emergency service stations.
  - (K) Fire and emergency services stations and police substations; training facilities, administrative offices and living quarters for fire, emergency, and police services exceeding 20 full-time persons and 200 day-use visitors.
65. MCZO 171.050 lists prohibited structures within the P zone. The ordinance provides:
- (A) Uses of structures and land not specifically permitted in the Public zone.
  - (B) New residential dwellings except when accessory to a primary use. However, a dwelling which legally existed at the time of adoption of this ordinance shall not be a nonconforming use, and may be remodeled, expanded, or replaced.
  - (C) Lawfully established commercial and industrial uses that existed prior to zoning or established through the applicable land use process on or before the date of this ordinance, not otherwise listed in the zone, are allowed outright and shall not be classified as non-conforming uses.
  - (D) All other lawfully established, existing uses and structures not specifically permitted in the Public zone shall be considered nonconforming uses subject to the provisions of Chapter 114.
66. The conditional use application sets out a variety of uses including a new conference center, guest and staff cabins, fuel sheds, child care facilities, additional pools and saunas, a sanctuary, teaching facilities, etc. Past CU orders have listed the uses separately. However, in this instance the uses are part of a 50 year master plan and are numerous. Attachments to the ordinance identify the specific structures and uses requested. According to the planning report, the uses can be grouped into types of uses with a limitation by square footage. There is no

discernable provision in the zoning ordinance for allowable square footage based on use in the P zone. However, there is no prohibition of using square footage as limitation on the number of structures or uses allowed in a public zone. Given the uniqueness of the application, the size of the property involved, and the number of uses sought, the use of allowable square footage per use seems practical.

Existing uses can be grouped as follows:

- residential and related accessory facilities (such as staff residences, guest residences, bathrooms), 20,500 square feet,
- retreat facilities (pools, saunas, hot tubs, play areas, conference facility, sanctuary, arts buildings, dining hall, kitchen), 10,525 square feet;
- utility facilities (storage buildings, laundry facilities, fuels sheds, power generation, fish diversion structure), 16,450 square feet.

The applicant is proposing the following uses:

- residential 49,750 square feet
- retreat facilities 48,525 square feet
- commercial 3,500 square feet
- utility 42,725 square feet

As a condition of approval, the applicant will be limited to the following:

Residential Uses: 50,000 square feet (existing 20,500 plus proposed 29,250 square feet)  
Retreat Facilities: 50,000 square feet (existing 10,525 plus proposed 38,000 square feet)  
Commercial Uses: 3,500 square feet  
Utility Uses: 45,000 square feet (existing 16,450 square feet plus 26,275 square feet)

Any changes in the 50 year master plan, a part of the Record, shall require a new site plan and approval. The applicant has also identified farming uses such as greenhouse in the P zone. Pursuant to MCZO 171.020(A) farm use is allowed outright in the P zone. There are no restrictions on the size of farm usage.

67. The applicant is seeking to site 17 tents for seasonal staff in the P zone near the permanent staff housing on the northern parcel 2. A previous owner received conditional approval for a campground for that portion

of the property when the property was zoned TC. Camping is an allowed conditional use in the P zone.

68. With conditions of approval outlined above, the applicant can meet the criteria for conditional uses in the public zone.

#### TIMBER CONSERVATION ZONE

69. MCZO 138.010 provides:

The TC zone places primary emphasis on forest use but compatible uses are also allowed. These include uses to conserve soil air, and water quality and to provide for fish and wildlife resources, agriculture and recreational opportunities appropriate in a forest environment. Also included are locationally dependent uses such as communication towers, and mineral and aggregate resources.

70. MCZO 138.040 provides:

The following uses may be permitted in a TC zone subject to obtaining a conditional use permit and satisfying the criteria in Section 138.050(a) and any additional criteria, requirements and standards specified in this section. Only the uses that are applicable to this application are listed.

- (e) The following utility uses:

- (1) Water intake facilities, related treatment facility, pumping stations and distribution lines.
- (2) Television, microwave and radio communication facilities and transmission towers.
- (3) Power generation facility provided an exception is taken under OAR 660, Division 4 if it precludes more than 10 acres from commercial forest use.
- (4) Aids to navigation and aviation.
- (5) New electric transmission lines—within a right-of-way not greater than 100 feet wide as specified in ORS 772.210.
- (6) New distribution lines (e.g. gas, oil, geothermal)—within a right-of-way 50 feet or less in width.

- (g) The following recreation uses:

- (1) Private parks and campgrounds subject to Section 138.050(c) with filing of the Declaratory Statement in Section 138.060(b).
- (2) Private seasonal accommodations for fee hunting or fishing operations subject to Section 138.050(d) with filing of the Declaratory Statement in Section 138.060(b).
- (3) Public parks and playgrounds including only those uses specified under OAR 660-034-035 and consistent with ORS 195.120 and with filing of the Declaratory Statement in Section 138.060(b).
- (4) A "youth camp" may be established in compliance with OAR 660-006-0031. The purpose is for the establishment of a youth camp that is generally self-contained and located on a parcel suitable to limit potential impacts on nearby and adjacent land and to be compatible with the forest environment. This ordinance applies to youth camps established after July 12, 1999 and shall meet the criteria in Section 138.050 (e).
- (h) Disposal site for solid waste for which the Oregon Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operations.
- (l) Reservoirs and water impoundments with filing of the Declaratory Statement in Section 138.060(b).
- (l) Fire stations for rural fire protection.
- (m) Cemeteries.

71. MCZO 138.050 provides that the uses identified in Section 138.040 shall satisfy the criteria in the applicable subsections below.

- (a) The following criteria apply to all conditional uses in the TC zone:
  - (1) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels in exception areas approved under ORS 197.731, or in an acknowledged urban growth boundary.

- (2) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.
  - (3) Adequate fire protection and other rural services are or will be available when the use is established.
  - (4) The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, and air and water quality.
  - (5) Any noise associated with the use will not have a significant adverse impact on nearby land uses.
  - (6) The use will not have a significant adverse impact on potential water impoundments identified in the comprehensive plan, and not create significant conflicts with operations included in the comprehensive plan inventory of significant mineral and aggregate sites.
- (c) Private parks and campgrounds shall meet the following criteria:
- (1) Campgrounds in private parks shall only be those allowed by this subsection.
  - (2) Except on a lot or parcel contiguous to a lake or reservoir, campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.71 and OAR Chapter 660, Division 4.
  - (3) It shall be devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground.
  - (4) A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation and other natural features between campsites.
  - (5) A camping site shall only be occupied by a tent, travel trailer or recreational vehicle. Private campgrounds may provide yurts for overnight camping subject to the following:



- (A) No more than one-third or a maximum of 10 campsites, whichever is smaller may include yurts;
  - (B) The yurt shall be located on the ground or on a wood floor with no permanent foundation.
- (6) Separate sewer, water or electric service hook-ups shall not be provided to individual campsites.
  - (7) It shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.
  - (8) Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period.

#### Energy

72. The applicant states that it has to develop its own energy sources. It has already developed a small power house that generates 40 kilowatts of electricity from the Breitenbush River. The generator used was brought to the southern property around 1927 and has been restored to use. In essence, its use was grand-fathered in. The applicant now would like to develop more electricity including a small hydroelectric power plant on or west of Mansfield Creek. In addition it is looking into developing geothermal, solar, wind, and methane as energy sources. The applicant's proposed energy uses and a timeline for its development is a part of the Record.

In CU 84-55, a permit concerning the northern parcel 2, three geothermal wells were in existence. The permit allowed a maximum of six geothermal wells. The order stated that the applicant had provided no specific drilling plans but that the actual drilling was regulated by several state agencies. The order in CU 84-55 placed restrictions on the number, nature, and area for geothermal exploration. Breitenbush does not seek to do any new drilling beyond the six geothermal wells allowed in CU 84-55.

73. OAR 660-06-0025 sets out uses allowed in forest zones. OAR 660-06-0025(4)(j) provides:

Utility facilities for the purposes of generating power. A power generation facility shall not preclude more than ten acres from use as a commercial forest operation unless an exception is taken pursuant to OAR chapter 660 division 4.

In this instance, the total combined acreage needed for power generating purposes is less than 10 acres. By conditioning the total acreage for utility use to no more than 10 acres, the applicant can meet this criterion.

#### Campground

74. The applicant is seeking a conditional use to develop tent areas in the TC zone. Order 84-55 regarding parcel 2 allowed 50 tent sites and 23 RV sites. The use was not exercised by the prior owner. The applicant now proposes to develop only 25 tent sites and no RV sites in the TC zone on parcel 2. The tent camping area (NT2) is shown on the site map for parcel 2. Overnight camping will not be permitted between December 1 and April 15 on parcel 1 or parcel 2.
75. CU 99-25 regarding parcel 1 allowed tent and RV camping in four areas (T1, T2, T3 and N2) shown on the site map for parcel 1. This use was developed and exercised with 47 campsites in use. Seasonal staff tents accounted for 17 of those campsites and are being relocated to parcel 2 as described in 67 above. In the proposed conditional use for parcel 1, camping will be maintained on the sites shown as T1, T2 and T3. Included will be 10 RV sites and 29 tent sites, all in the TC zone.

The total number of camping sites proposed in the new conditional use for both parcels is 81 sites. This is a reduction of 39 sites from the 120 sites allowed by the prior conditional uses 84-55 and 99-25. This represents a reduction in potential impacts on the TC zone.

The applicant provides its own fire protection service, has a fire hazard mitigation program, and plans to build a fire station, an allowed use in the zone. Campfires are not allowed in the camping areas. Fire protection has adequately been addressed.

The designated camping areas are located at least 100 feet from any streams or waterways. They are located in a big game habitat area; however, ODFW and USFS cite no impacts to habitat as stated in letters in the Record. Setbacks have been established around the camp sites to restrict any associated noise from traveling onto adjacent lands.

76. The applicant meets the criteria for a comprehensive plan amendment, zone change and conditional use.

## **EXHIBIT B**

The Marion County Board of Commissioners adopts the following conditions in ZC/CP/CU 07-7/ Breitenbush Hot Springs Retreat and Conference Center, Inc.

### **CONDITIONS OF APPROVAL:**

Pursuant to the Marion County Rural Zoning Ordinance Chapter 123.070, the following conditions apply to the P (Public) zoning and conditional uses granted in this action. These conditions are reasonably related to the specific development proposed, will serve the public interest of reducing land use conflicts, and are based upon standards adopted by the County. The P zoning and conditional uses significantly intensifies the use of the land. The conditions are necessary for the public health, safety and welfare.

1. The applicant shall submit a site development plan for review and approval by the Planning Manager. Any variation in the location of the proposed structures approved herein shall be obtained through the filing of a subsequent site plan amendment. Sizes of development for structures requiring building permits are limited by category of use as follows:
  - residential: 50,000 square feet
  - retreat facilities: 50,000 square feet
  - commercial: 3,500 square feet
  - utility: 45,000 square feet
  - farm: no size limits

Any expansion of the size of development greater than 10% of the size permitted within each category of use, or for a new type of use, will require county review and approval through a separate conditional use application.

2. The applicant shall obtain all necessary permits required by Marion County Building Inspection.
3. Breitenbush Road is under the jurisdiction of the United States Forest Service (USFS). As a condition of approval, the applicant must meet USFS's requirements for issues such as access, frontage improvements, traffic analysis and mitigation, right-of-way, and permits. It is the applicant's responsibility to show that this condition has been met.
4. Driveways will need to meet fire district standards for emergency access.
5. Site grading shall not impact surrounding properties, roads, or drainage ways in a negative manner. Construction of improvements on the property shall not block historical or naturally occurring runoff from adjacent properties. The applicant will be required to submit a site drainage plan to demonstrate this lack of negative impact.

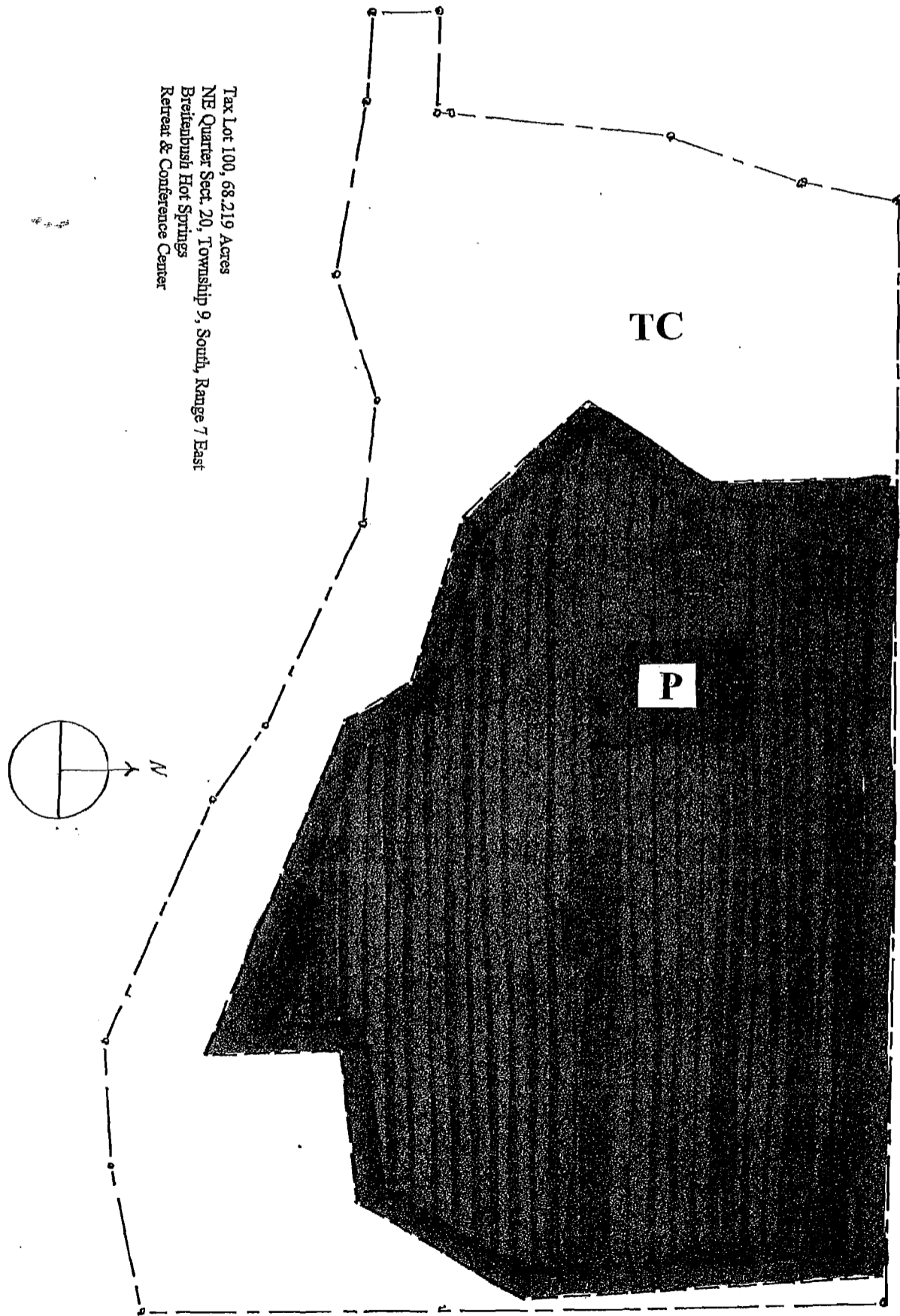
6. The subject property is within the unincorporated area of Marion County. Transportation Systems Development Charges may be assessed upon application for building permits.
7. Any work in the public right-of-way under their jurisdiction will require a permit from Public Works.
8. No paving of roads or parking lots will be allowed.
9. No structure shall be erected in the TC zone portion of the property unless specifically allowed under this application.
10. No new commercial uses are permitted unless specifically allowed under this application.
11. Public storm drainage improvements shall be built to appropriate standards, as determined by the agencies having jurisdiction over this area. Storm drainage shall be discharged to a suitable outlet and, where applicable, evidence provided that an adequate easement exists for transit of the water to such an outlet. The applicant will need to either a) show that downstream facilities can adequately handle the increased storm-water runoff that would be caused by this development, or b) provide storm-water retention systems that retain enough of the storm-water runoff on site so that there is no net increase in storm-water flow from the subject property.
12. A National Pollutant Discharge Elimination System (NPDES) permit is required for all construction activities that disturb one-acre or more. The NPDES permit is obtained through the Oregon Department of Environmental Quality.
13. The applicant shall obtain all necessary permits for sewage collection and water pollution control required by the Department of Environmental Quality and Marion County Building Inspection.
14. The applicant shall obtain all necessary permits from governmental agencies or provide proof that permits are not needed.
15. No new access shall be allowed to the forest service road.
16. The conditional use permit granted herein will expire if not exercised within fifteen years of the date this decision is final, unless a time extension is applied for prior to the expiration date. Two extensions of up to five years each may be granted if the extension request is received prior to the expiration date and the regulations under which this decision was granted have not changed since the original approval.

17. The applicant shall provide evidence of an on-going fire hazard and emergency services management plan or revision thereof for review and approval by the US Forest Service or Oregon Department of Forestry, taking into consideration the expanded facilities, services and capacity of the resort.
18. All parking (other than service and delivery vehicles) is restricted to designated parking areas, and the capacity of the resort (i.e., the number of people visiting or residing there at any one time) is therefore limited by and to the availability and capacity of designated parking area.
19. All improvements shall be located within the area of the property that is zoned Public, except utility uses and overnight tent camping in the TC zone as provided in this approval.
20. Any new construction shall maintain a minimum setback of 30 feet from the highwater mark of streams or rivers on the property, or from the top of the bank, whichever is greater, except for water dependent uses.
21. No recreational or residential facilities, including campsites, trails, picnic or play area, and parking, shall be permitted west of Mansfield Creek. All riparian and other natural vegetation shall be maintained in this area and along both banks of Mansfield Creek. Applicants are encouraged to work with Oregon Department of Fish and Wildlife and the Oregon Department of Forestry to appropriately re-vegetate along impacted stream banks.
22. Any new signs visible from off the property require planning approval.
23. Any power generation facility shall be designed to minimize noise impacts to surrounding property owners.
24. On the TC zoned property, any campground shall be designed and integrated into the rural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation and other natural features between campsites.
25. Campgrounds in the P zone shall have a natural buffer of at least 150 feet around them to reduce associated noises escaping onto the surrounding properties.
26. Except for staff housing, overnight camping shall be prohibited from December 1, through April 15.
27. Off-road recreational vehicles are prohibited. This condition shall not prohibit patrons of the campground from using off-road vehicles to enter or exit the campground by means of the access road to the USFS road.

28. The applicant shall maintain continuous compliance with all on-going conditions of previous conditional use approvals unless modified herein.
29. On the TC zoned property, overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period.
30. Guests on the P zoned property shall not stay more than 30 days in a 6 month period.
31. The applicant shall follow all other provisions of the MCZO not specifically addressed herein.
32. The operator of the facility shall not sell excess electrical output into a public grid by contracting or agreement with another public power supplier without first applying for a separate conditional use if such use becomes allowable by changes in existing rules.
33. To avoid impacting Winter Big Game Habitat, Forest Service Road 46 will not be plowed easterly of Forest Service Road 46.050 (the Breitenbush staff road entrance) during the period beginning December 1 and ending April 15.
34. The proposed small hydroelectric diversion on Mansfield Creek will be designed and engineered to Oregon Department of Fish and Wildlife standards necessary to avoid impacting protected trout species and their habitat.
35. Violations of the conditions contained herein may cause the conditional use approvals granted herein to be revoked. Any revocation could be appealed to the Hearings Officer for a public hearing.
36. The total combined area devoted to power generation facilities may not exceed 10 acres.

**Exhibit C**

The following described property is rezoned from TC (Timber Conservation) to P (Public) zone. ZC/CP/CU07-7/Breitenbush Community.





Clatsop County Planning Division  
Court St. NE, Room 2124  
Box 14500  
Hl, OR 97309

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STATE OF OREGON LCDC  
DENNIS MILLER  
635 CAPITOL ST NE SUITE 200  
SALEM OR 97301-6033

PRESORTED  
FIRST CLASS



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