



# Oregon

Theodore R. Kulongoski, 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

01/24/2011

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 013-07

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: Friday, February 04, 2011

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. 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: Sterling Anderson, Marion County  
Jon Jinings, DLCD Community Services Specialist  
Steve Oulman, DLCD Regional Representative  
Matt Crall, DLCD Transportation Planner

<paa> YA/I





FORM 2

DLCD

# Notice of Adoption

In person  electronic  mailed

DATE STAMP

**DEPT OF**

**JAN 18 2011**

**LAND CONSERVATION AND DEVELOPMENT**

For Office Use Only

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

Jurisdiction: **MARION COUNTY**

Local file number: **SUB07-012**

Date of Adoption: **01/12/11**

Date Mailed: **01/13/11**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD?  Yes  No Date: 1/12/2011

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other: **Goal Exception**

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

Implement the conceptual approval granted for Elkhorn Estates Planning Unit Development in Plat 879 and Marion County Ordinance 677 which includes subdividing 65.3 acres into 153 lot (150 single family dwelling lots, 1 condominium lot and 2 commercial lot) and exceptions to Statewide Planning Goals 11 (Public Facilities) and 14 (Urbanization)

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

Plan Map Changed from: \_\_\_\_\_ to: \_\_\_\_\_

Zone Map Changed from: \_\_\_\_\_ to: \_\_\_\_\_

Location: **32295 North Fork Rd SE** Acres Involved: **65.3**

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 type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" 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"/> |

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.** 013-07 (16535) [16486]

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

Local Contact: **STERLING ANDERSON**

Phone: (503) **588-5147** Extension: \_\_\_\_\_

Address: **PO BOX 14500**

Fax Number: **503-589-3284**

City: **SALEM**

Zip: **97309**

E-mail Address: \_\_\_\_\_

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

In the Matter of an Ordinance readopting )	Case No. SUB 07-12
Ordinance 1278 along with amended )	
findings in response to the LUBA decision )	Clerk's File No. 5577
remand of the application of )	
Elkhorn Golf and Resort LLC )	SUBDIVISION

AN ADMINISTRATIVE ORDINANCE

**ORDINANCE NO. 1312**

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 Elkhorn Golf and Resort LLC for detailed approval to implement the conceptual approval granted for Elkhorn Estates Planned Development in Plat Case No. 879 and Marion County Ordinance No. 677, which includes subdividing 65.3 acres into 153 lots (150 single family dwelling lots, 1 condominium lot, and 2 commercial lots), and exceptions to Statewide Planning Goals 11 (Public Facilities) and 14 (Urbanization), on a total of 464 acres in an AR-LU (Acreage Residential - Limited Use Overlay), P (Public), and TC (Timber Conservation) zone located at 32295 North Fork Road SE, Lyons. [T9S; R3E; (Section 10; tax lots 200, 500, 600, 700, and 800) and (Section 11; tax lots 400, 401, and 500)].

**SECTION II. Procedural History**

The Marion County Planning Commission held duly noticed public hearings on this application on October 16, 2007, and December 18, 2007. During deliberations on February 8, 2008, it deferred the decision to the Marion County Board of Commissioners with recommendations on conditions of approval if the application was granted.

The Board held a duly noticed public hearing on the subject application on June 18, 2008. Mailed notice was provided to all property owners within 750 feet of the property, and others requesting notice, at least 20 days prior to the hearing, and required notice was provided to the Department of Land Conservation and Development. The hearing was closed and the record was open for written testimony until July 23, 2008. At its regular session on October 15, 2008, the Board considered the Planning Division's and Clerk's files and Planning Commission recommendation and granted the request. On December 3, 2008, the Board adopted Order 08-155, Ordinance 1278 and Findings of Fact and Conclusions in a decision granting approval of the request. On December 23, 2008, the Board's decision was appealed to the Land Use Board of Appeals (LUBA). In its Final Opinion and Order, LUBA No. 2008-225, dated August 6, 2009, LUBA remanded the decision for the County. LUBA's decision was then appealed to the Court of Appeals and on February 3, 2010, the Court affirmed LUBA's decision. On October 29, 2010, the applicant submitted a letter requesting the

Board take action on the remand. On December 29, 2010, the Board held a duly notice public meeting on the remand.

The Board has considered all the evidence and all arguments of the parties in the record, 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 Facts and Conclusions contained in Exhibit A, attached to Order No. 11-1 adopted this day and by this reference incorporated herein.

SECTION IV Action

The requested exceptions to Statewide Planning Goals 11 (Public Facilities) and 14 (Urbanization) are hereby GRANTED and Ordinance 677, Exhibit C, Conditions, are amended to read:

"1. The golf course and other improved recreation facilities may be owned separately from the remainder of the development, provided that the residential home owners association (HOA) and the golf course HOA shall be joined in a master HOA.

"7. The uses and related activities to be allowed on the subject site are limited to those uses which are requested by the applicant in the detailed plan proceeding and as otherwise allowed by Ordinance No. 677, as modified and subject to conditions of approval."

SECTION V. Effective Date

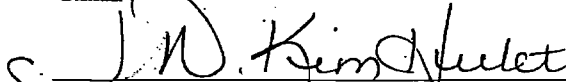
Pursuant to Ordinance 669, this is an Administrative Ordinance and shall take effect 21 days after the adoption and final signatures of the Marion County Board of Commissioners.

SIGNED and FINALIZED this 13<sup>th</sup> day of January 2011 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.



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

In the Matter of an Order reapproving	)	Case No. SUB 07-12
Order 08-155 along with amended findings	)	Clerk's File No. 5577
in response to the LUBA decision remand	)	SUBDIVISION
of the application of:	)	
Elkhorn Golf and Resort LLC	)	

**ORDER 11-1**

This matter comes before the Marion County Board of Commissioners ("Board") on the application of Elkhorn Golf and Resort LLC for detailed approval to implement the conceptual approval granted for Elkhorn Estates Planned Development in Plat Case No. 879 and Marion County Ordinance No. 677, which includes subdividing 65.3 acres into 153 lots (150 single family dwelling lots, 1 condominium lot, and 2 commercial lots), and an exception to Statewide Planning Goals 11 (Public Facilities) and 14 (Urbanization), on a total of 464 acres in an AR-LU (Acreage Residential – Limited Use Overlay), P (Public), and TC (Timber Conservation) zone located at 32295 North Fork Road SE, Lyons. [T9S; R3E; (Section 10; tax lots 200, 500, 600, 700, and 800) and (Section 11; tax lots 400, 401, and 500)].

The Marion County Planning Commission held duly noticed public hearings on this application on October 16, 2007, and December 18, 2007. During deliberations on February 8, 2008, it deferred the decision to the Marion County Board of Commissioners with recommendations on conditions of approval if the request was granted.

The Board held a duly noticed public hearing on the subject application on June 18, 2008. Mailed noticed was provided to all property owners within 750 feet of the property, and others requesting notice, at least 20 days prior to the hearing, and required notice was provided to the Department of Land Conservation and Development. The hearing was closed and the record was open for written testimony until July 23, 2008. At its regular session on October 15, 2008, the Board considered the Planning Division's and Clerk's files and Planning Commission recommendation and granted the request. On December 3, 2008, the Board adopted Order 08-155, Ordinance 1278 and Findings of Fact and Conclusions in a decision granting approval of the request. On December 23, 2008, the Board's decision was appealed to the Land Use Board of Appeals (LUBA). In its Final Opinion and Order, LUBA No. 2008-225, dated August 6, 2009, LUBA remanded the decision for the County. LUBA's decision was then appealed to the Court of Appeals and on February 3, 2010, the Court affirmed LUBA's decision. On October 29, 2010, the applicant submitted a letter requesting the Board take action on the remand. On December 29, 2010, the Board held a duly noticed public meeting on the remand.

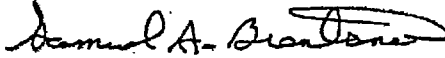
The Board considered the evidence and arguments of the parties in the record and was otherwise fully advised in the premises; now, therefore,

IT IS HEREBY ORDERED that, after careful consideration of all facts and evidence in the record, the Board adopts as its own the Findings of Facts and Conclusions in Exhibit A, attached hereto, and by this reference incorporated herein.

IT IS FURTHER ORDERED that requested detailed subdivision approval is hereby GRANTED subject to the conditions identified in Exhibit B, attached hereto and by this reference incorporated herein.

DATED at Salem, Oregon this 13<sup>th</sup> day of January 2011.

MARION COUNTY BOARD OF COMMISSIONERS



Chair



Commissioner

Commissioner

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.

**FINDINGS OF THE MARION COUNTY  
BOARD OF COMMISSIONERS**

**I. INTRODUCTION**

This document supports the decision of the Marion County Board of Commissioners in File No. SUB 07-12, which adopts exceptions to Statewide Planning Goals 11 and 14, and approves the detailed plan for a subdivision known as Elkhorn Valley Estates. This decision approves the implementation of the 1982 Conceptual Plan Approval for Elkhorn Valley Estates.

**II. BACKGROUND**

The original application for a planned development subdivision was made to Marion County in 1980. Concurrent with the consideration of the planned development subdivision application, the Planning Commission and Board of County Commissioners ("Board") considered legislative amendments to the Marion County Comprehensive Plan and Zoning Ordinances for conformance with the LCDC Statewide Planning Goals that would make the proposed planned development subdivision feasible. LCDC subsequently acknowledged the Goal 4 exception for the subject property.

The planned development subdivision that was conceptually approved was a resort that included an 18-hole golf course and accessory uses, 150 single-family dwellings, 46 condominiums, and small commercial area. The Conceptual Plan for this project was originally approved as "Elkhorn Valley Estates, Plat Number 879, Clerk's File No. 2950-P2" in 1982. The Board finds a substantially similar subdivision is deemed approved and that additional goal exceptions, to the extent they are necessary, have been met and are adopted for this proposed resort.

**III. APPLICANT**

The application was submitted by Elkhorn Golf & Resort, LLC (the "applicant"). The subject property is owned by the applicant.

**IV. DESCRIPTION OF SITE AND PROPOSAL**

The subject property is located on North Fork Road approximately 36 miles east of Salem and 4 miles north of Gates. The property is identified as Tax Lots 200, 500, 600, 700 and 800 on Marion County Tax Assessors Map #9-3E-10, and Tax Lots 400, 401, and 500 on Marion County Tax Assessors Map #9-3E-11. The existing golf course has a site address of 32295 North Fork Road, Lyons, Oregon 97358.

The property extends from the North Fork of the Santiam River at the lowest point. The existing Elkhorn Valley Golf Course and a private residence are located in the flattest portion of the site, north of North Fork Road. South of North Fork Road, the property slopes up to the south, with steeper rock faces along the road, and more level plateaus above. The general habitat type in the area is Douglas fir forest. Vegetation on the site is composed of replanted Douglas fir seedlings, with a thick undergrowth of brush and small trees. There is extensive riparian forest along the river. The property is not within the big game winter range habitat designated by Marion County. Existing development in the area includes several single-family dwellings. The Opal Creek Ancient Forest Center is located approximately 10 miles east of the property, and a number of campgrounds are located along North Fork Road.

The applicant proposes to develop a subdivision resort incorporating the existing golf course, including 150 single-family dwellings, 46 condominiums, and a small commercial area, including a clubhouse,

fitness center, and restaurant. The proposed subdivision resort will support and enhance the Marion County economy by providing a unique resort experience that will allow residents to enjoy nearby recreation and allow tourists to stay near the golf course and the Opal Creek Recreation Area. In order to provide the requisite resort experience and implement the 1982 Conceptual Plan Approval for Elkhorn Valley Estates, the subdivision resort must be located adjacent to the existing golf course, as approved by the County in 1982.

## **V. COUNTY PROCEDURES**

The application was filed on August 15, 2007. An initial public hearing was held before the County Planning Commission on October 16, 2007, at which hearing the applicant, its representatives, and many interested individuals presented testimony to the Planning Commission. The hearing was continued in order to allow all parties the opportunity to submit additional written materials. The Planning Commission heard further testimony at its December 18, 2007 hearing. At the close of the public testimony, the Planning Commission held the record open for all parties to submit additional evidence into the record, and for the applicant to provide final written argument, which the applicant submitted on January 10, 2008.

After receiving a recommendation of approval from the Planning Commission, the Board of Commissioners held a public hearing on June 18, 2008 and heard testimony from the applicant, its representatives, and other interested parties. The Board of Commissioners held the record open for all parties to submit additional evidence into the record, and for the applicant to provide final written argument, which the applicant submitted on July 30, 2008. On October 15, 2008, the Board of Commissioners deliberated and ultimately approved the application.

Subsequently, opponents of the application filed an appeal of the County's decision with the Land Use Board of Appeals (LUBA). On August 9, 2009, LUBA remanded the decision with respect to distinct Marion County Comprehensive Plan (MCCP) policies related to transportation and habitat. Specifically, LUBA remanded the decision for the County to address MCCP Transportation System Management Policy 7, MCCP Transportation Development and Access Policies 7 and 8, as well as MCCP Fish and Wildlife Habitat Policies 4 and 5. On December 29, 2010, the Board held a duly noticed public meeting to consider the decision on remand. The Board of County Commissioners deliberated and ultimately approved the application.

## **VI. APPLICABLE STANDARDS AND CRITERIA**

This application involves amendments to acknowledged county comprehensive plan provisions and land use regulations, as well as exceptions to Statewide Planning Goals 11 and 14. Under Oregon's land use statutes and goals, this application must be found to comply with a multitude of standards and criteria, including the following:

### **A. Statutes**

1. ORS 197.340(1) – Goals provided equal weight.
2. ORS 197.610 and 197.615 – Post-acknowledgment amendment procedures.
3. ORS 197.712(2)(g) – Economic development obligation to provide reasonable opportunities for economic development on lands outside urban growth boundaries.
4. ORS 197.732 – Goal exception standards.
5. ORS 197.763 – Notice and procedures for quasi-judicial hearings.



**B. Statewide Planning Goals**

1. Goal One – Citizen Involvement.
2. Goal Two – Land Use Planning.
3. Goal Three – Agricultural Lands.
4. Goal Four – Forest Lands.
5. Goal Five – Open Spaces, Scenic and Historic Areas and Natural Resources.
6. Goal Six – Air, Water and Land Resource Quality.
7. Goal Seven – Areas Subject to Natural Disasters and Hazards.
8. Goal Eight – Recreational Needs.
9. Goal Nine – Economic Development.
10. Goal Ten – Housing.
11. Goal Eleven – Public Facilities and Services.
12. Goal Twelve – Transportation.
13. Goal Thirteen – Energy Conservation.
14. Goal Fourteen – Urbanization.

**C. State Agency Rules**

1. OAR Chapter 660, Division 4 – Interpretation of Goal 2 Exception Process:
  - OAR 660-004-000 Purpose.
  - OAR 660-004-005 Definitions.
  - OAR 660-004-0010 Application of the Goal 2 Exception Process to Certain Goals.
  - OAR 660-004-0015 Inclusion as Part of the Plan.
  - OAR 660-004-0018 Planning and Zoning for Exception Areas.
  - OAR 660-004-0020 Goal 2, Part II(c), Exception Requirements.
  - OAR 660-004-0022 Reasons Necessary to Justify an Exception Under Goal 2, Part II(c).
  - OAR 660-004-0030 Notice and Adoption of an Exception.
2. OAR Chapter 660, Division 12 – Transportation Planning:
  - OAR 660-012-0060 Plan and Land Use Regulation Amendments.
  - OAR 660-012-0065 Transportation Improvements on Rural Lands.
3. OAR Chapter 660, Division 14 – Application of the Statewide Planning Goals to Newly Incorporated Cities and to Urban Development on Rural Lands:
  - OAR 660-014-0040 Establishment of New Urban Development on Undeveloped Rural Lands.
4. OAR Chapter 660, Division 18 – Plan and Land Use Regulation Amendment Review.

**D. Marion County Comprehensive Plan Provisions**

The following Marion County Comprehensive Plan provisions are implicated by this application:

1. Rural Residential Policies.
2. Rural Services Policies.
3. Urban Growth Policies.

**E. Marion County Code Provisions**

The following Marion County Code provisions are implicated by this application:

1. Chapter 113: Lot Area, Yards and Height Restrictions.
2. Chapter 117: Residential Structures.
3. Chapter 118: Off-Street Parking and Loading.
4. Chapter 128: AR Acreage Residential Zone.
5. Chapter 171: P Public Zone.

6. Chapter 172: Subdivision and Partition Requirements.
7. Chapter 176: Limited Use Overlay Zone.

**F. 1982 Conceptual Approval Conditions of Approval**

The 31 conditions of approval for the 1982 Conceptual Plan Approval for Elkhorn Valley Estates Subdivision are implicated by this application.

**G. Overlapping Requirements, Exceptions, and Roadmap to Findings.**

The above-referenced land use standards and criteria require demonstration of compliance with a broad array of state and local provisions. It is not always easy to determine which specific statutory, goal, rule, plan and/or code provisions apply to a given proposal. Nor is it easy to resolve all of the inherent conflicts and interpretative issues that arise out of these frequently overlapping and occasionally inconsistent regulations.

This application merely implements the county's prior approvals of the Elkhorn Valley Estates subdivision and related goal exceptions in 1982. The applicant has elected to demonstrate compliance with subsequently adopted rules regarding exceptions to Goals 11 and 14 and the Board finds that the approval criteria for such exceptions has been met. An exception to Goal 4 was previously approved by the county and subsequently acknowledged by the Land Conservation and Development Commission ("LCDC") as part of the conceptual approval in 1982. The county's approval of these goal exceptions under the applicable state statutes and rules authorize the proposed development despite the fact that the amendments would otherwise conflict with the goals.

In these findings, applicable standards and criteria are set forth in bold-face headings and/or italicized type followed by the county's findings including facts, reasons and legal conclusions. These findings are organized so that the analysis begins with state law and proceeds to local law. Thus, the next section deals with state statutes and their implementing administrative rules, followed by a section addressing the Statewide Planning Goals and their implementing administrative rules, and a section addressing the standards for goal exceptions. Those sections are followed by sections addressing applicable standards and criteria from the county comprehensive plan and zoning ordinance. Often the same or similar criteria are found in more than one source. These findings attempt to minimize repetition and redundancy, using cross-references where possible and adding or repeating material only where necessary.

## **VII. STATE STATUTES**

**A. ORS 197.610 and 197.615 – Post-acknowledgement Amendments**

ORS 197.610(1) and OAR 660-018-0020 require the county to forward a proposal to amend its acknowledged comprehensive plan or land use regulations to the DLCD director at least 45 days prior to the initial hearing. The county sent the requisite notice of the proposed amendments to DLCD on November 16, 2007. DLCD participated in the proceedings and submitted a letter regarding the application.

After final approval and adoption of amendments to a comprehensive plan or land use regulation, ORS 197.615(1) and OAR 660-018-0040 require the county to submit a copy of the text of the amendment and supporting findings to DLCD within five business days after the final decision is adopted. The county must also provide notice of the adopted amendment to persons who participated in the local proceedings and requested in writing that they be provided such notice. The county will comply with these requirements upon final adoption of these findings.

**B. ORS 197.712(2)(g) – Economic Development Obligation**

This statute requires the county to provide "reasonable opportunities to satisfy local and rural needs for residential and industrial development and other economic activities on appropriate lands outside urban growth boundaries, in a manner consistent with conservation of the state's agricultural and forest land bases." The fact that this subdivision is consistent with this purpose is demonstrated by the findings addressing Goal 9 in Section VIII.I of these findings, and by the findings justifying an exception to Goal 14 in Section IX below.

**C. ORS 197.732 – Goal Exceptions**

The requirements established by ORS 197.732 for goal exceptions, as well as the identical requirements of Goal 2, Part II and OAR 660 Divisions 4 and 14, are addressed in Section IX of these findings.

**D. ORS 197.763 – Quasi-Judicial Land Use Hearing Procedures**

The county provided mailed notice of the application to all owners of record within 750 feet of the subject property more than ten days prior to the first evidentiary hearing on the application, as required by ORS 197.763(2)-(3). More than ten days prior to the hearing before the Planning Commission, the county provided notice to all owners of record within 750 feet of the subject property and to all interested parties identified during the initial evidentiary hearing. The county held evidentiary hearings on the application before the Planning Commission on October 16, 2007 and December 18, 2007, and before the Board of Commissioners on June 18, 2008.

During the course of the proceedings, all documents and evidence submitted to the county by the applicant and other parties were available to the public for review at the County Planning Department offices, as required by ORS 197.763(4)(a). All county staff reports were available at least seven days prior to the hearing for which they were prepared, as required by ORS 197.763(4)(b). The Planning Commission held the record open after the close of the hearings to allow parties the opportunity to provide new evidence and respond to new evidence, as provided by ORS 197.763(6).

**VIII. STATEWIDE PLANNING GOALS**

The Board finds that the requested amendments are consistent with all of the applicable Statewide Planning Goals, as addressed below.

**A. Goal 1 - Citizen Involvement**

Goal 1 requires local government to develop a citizen involvement program to ensure the opportunity for citizens to be involved in all phases of the planning process. Because Goal 1 establishes a requirement for local government to develop a program, it is not directly applicable to this decision. However, the county's citizen involvement plan has been adopted by the county and acknowledged by the Land Conservation and Development Commission. The hearings and county evaluation process for this case has been governed by that acknowledged program. For this particular request, multiple public hearings have been held by the county. The Board finds that Goal 1 has been met generally by the county and specifically in this instance.

**B. Goal 2 - Land Use Planning**

Part I of Goal 2 requires the establishment of the land use planning and policy framework as a basis for all decisions and actions. Part II of Goal 2 relates to the exception process that must be followed when an applicant or local jurisdiction requests an exception to a Statewide Planning Goal. The first part of

Goal 2 has been met by acknowledgement of the county's comprehensive plan by LCDC. With respect to Part II, findings regarding the applicable exception criteria are set forth in Section IX below.

**C. Goal 3 – Agricultural Lands**

Goal 3 relates to the preservation of agricultural lands. The application requests detailed plan approval of a rural subdivision on lands that are within Rural Residential and Public plan map designations with a Limited Use overlay zone. A conceptual plan approval was granted for this subdivision in 1982, and therefore, the Board finds that Goal 3 has been met.

**D. Goal 4 – Forest Lands**

Goal 4 relates to the preservation of forest lands. An exception to this goal was previously adopted by Marion County and acknowledged by LCDC, effective on March 31, 1985. Therefore, LCDC has advised that a new exception to this goal is unnecessary and the Board can find that Goal 4 has been met.

**E. Goal 5 – Open Spaces, Scenic and Historic Areas and Natural Resources**

No Goal 5 natural resources (wetlands, riparian areas, wildlife habitat, etc.) are present on the subject property.

**F. Goal 6 – Air, Water and Land Resources Quality**

Goal 6 addresses waste and process discharges from future development and requires local governments to determine that the future discharges, when combined with existing development, would not threaten to violate or violate applicable state or federal environmental quality statutes, rules and standards. The applicant has submitted evidence establishing that it will comply with any applicable state and federal environmental laws and regulations all down the line. Therefore, Goal 6 will be met.

**G. Goal 7 – Area Subject to Natural Disasters and Hazards**

No such areas have been identified on the site; therefore, Goal 7 is not applicable.

**H. Goal 8 – Recreational Needs**

The area is not identified as a recreational resource by the county, and the application does not request approval as a destination resort; therefore, Goal 8 is not applicable.

**I. Goal 9 – Economic Development**

Goal 9 requires that local government provide adequate opportunities for a variety of economic activities vital to the health, welfare and prosperity of the citizens of Oregon. The new resort will encourage economic development in Marion County by stimulating the tourism industries in the County, and providing new employment opportunities at the resort. The construction of the resort will also result in a number of temporary construction jobs that will benefit the county. The Board finds that the subdivision is consistent with Goal 9.

**J. Goal 10 – Housing**

Goal 10 relates to housing needs, and is not applicable to this application.

**K. Goal 11 – Public Facilities and Services**

Goal 11 requires local governments to plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development. Goal 11 does not allow the provision of urban services outside the UGB. The applicant has requested an exception

to Goal 11 and compliance with the Goal 11 exception criteria is addressed below in Section IX of the findings, which conclude that the applicable exception criteria are satisfied.

**L. Goal 12 – Transportation**

Goal 12 requires a safe, convenient, and economic transportation system. The Traffic Impact Study ("TIS") prepared by DKS Associates dated August 2007 demonstrates that the proposed subdivision will not have significant adverse impact on the county transportation plan nor will it prevent the county from meeting any of its citizens' transportation needs.

Goal 12 is implemented by the Transportation Planning Rule (TPR), which is set forth at OAR Chapter 660, Division 12. The TPR creates specific requirements for compliance and coordination among affected units of local government for the preparation, adoption, refinement, implementation and amendment of transportation system plans and local comprehensive plans and land use regulations.

The TPR requires that any amendments to comprehensive plans or land use regulations that "significantly affect a transportation facility" must assure that the allowed land uses "are consistent with the identified function, capacity and performance standards of the facility." An amendment "significantly affects" a transportation facility if it would: (1) change the functional classification of an existing or planned transportation facility; (2) change standards implementing a functional classification system; (3) allow types land uses or levels of development that are inconsistent with the functional classification of an existing or planned transportation facility; (4) reduce the performance standards of an existing or planned facility below minimally acceptable levels identified in the local transportation system plan; or (5) worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the Transportation System Plan or comprehensive plan. OAR 660-012-0060(1). For the proposed amendments to demonstrate compliance with the TPR, the Board must conclude that the traffic impacts from the proposed resort are either within the performance standards of the impacted transportation facility or that adverse impacts are mitigated.

The Board finds that the applicant has provided a TIS prepared by DKS Associates dated August 2007 and a supplemental memorandum dated June 18, 2008. These DKS materials demonstrate compliance with Goal 12 and the TPR. The Board expressly adopts and incorporates into its findings the DKS Associates TIS dated August 2007 and the supplemental TIS dated June 18, 2008. To the extent there is any discrepancy between the DKS Associates materials adopted by the Board and these findings, the express findings of the Board shall govern.

Regarding compliance with the TPR, the DKS memorandum dated June 18, 2008 demonstrates that the only intersection that does not meet the applicable performance standards in the applicable horizon year of 2025 is the Highway 22/North Fork Road intersection. However, with the recommended mitigation measures in place for that intersection (a channelized right-turn lane from North Fork Road onto westbound Highway 22 and a corresponding acceleration lane), conditions at that intersection will be improved over what they otherwise would have been in 2025. Therefore, the applicable TPR standards are satisfied.

**M. Goal 13 – Energy Conservation**

Goal 13 requires that land uses maximize conservation of all forms of energy based on sound economic principles. Goal 13 is implemented by local plans and regulations that control location,



orientation and density of development to minimize net energy consumption. The Board finds that it is feasible for the proposed project to meet all regulations designed to minimize net energy consumption.

**N. Goal 14 – Urbanization**

Compliance with the Goal 14 exception criteria is addressed below in Section IX.A of the findings, which conclude that the applicable exception criteria are satisfied.

**O. Goal 15 – Willamette River Greenway**

This Statewide Planning Goal is not applicable to this application.

**P. Goal 16 – Estuarine Resources**

This Statewide Planning Goal is not applicable in Marion County.

**Q. Goal 17 - Coastal Shorelands**

This Statewide Planning Goal is not applicable in Marion County.

**R. Goal 18 – Beaches and Dunes**

This Statewide Planning Goal is not applicable in Marion County.

**S. Goal 19 – Ocean Resources**

This Statewide Planning Goal is not applicable in Marion County.

For the reasons stated above, the Board finds that the proposed amendments are consistent with all applicable Statewide Planning Goals.

**IX. GOAL EXCEPTIONS**

Goal exceptions are authorized under statewide planning statutes, goals and administrative rules in order to provide flexibility for situations in which a departure from the strict application of the goals is justified based on site-specific and project-specific conditions. Approval of a goal exception does not establish precedent for allowing future goal exceptions. Goal 2 defines the term "exception" as follows:

"Exception means a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:

- "(a) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;
- "(b) Does not comply with some or all goal requirements applicable to the subject properties or situations; and
- "(c) Complies with standards for an exception."

There are three types of exceptions: (1) "developed" exceptions are justified where the property is physically developed to the point where resource use is no longer practicable; (2) "committed" exceptions are justified where the nature of nearby physical development makes resource use impracticable; and (3) "reasons" exceptions are justified where there is a need for development at the site in question and where the applicant establishes that reasons justify why the policy embodied in the applicable goals should not apply, the site compares favorably with other possible locations for the proposed development, and the proposed use is compatible with other adjacent uses or can be made compatible through measures designed to reduce impacts.

**A. Goal 14 Exception — OAR 660-014-0040**

For the reasons stated below, the Board finds that the applicant has established that sufficient reasons exist under Goal 2 and the Division 14 rules to justify the necessary exceptions to Goals 11 and 14. OAR 660-014-0040(2) provides that one means by which a county can justify a Goal 14 exception is to provide reasons that justify why the policies in Goals 3, 4, 11 and 14 should not apply, including findings that urban levels of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource. However, the rule expressly states that reasons supporting the Goal 14 exception "can include, but are not limited to" such findings. Thus, the rule expressly allows that this is not the exclusive basis on which a Goal 14 exception may be justified, and that other reasons not set forth in the rule may be relied upon in support of the exception. Because the rule does not expressly enumerate other types of reasons that are sufficient to support an exception, the county is necessarily afforded considerable discretion in adopting findings regarding the existence of other valid reasons, so long as the remaining criteria set forth in OAR 660-014-0040(3) are also met. As contemplated by OAR 660-014-0040(2), the Board finds that other reasons exist that are sufficient to justify the requested exception to Goal 14. The primary reasons for allowing the Goal 14 exception stem from the county's prior approval of this planned development subdivision in 1982, together with the related exception to Goal 4 that was specifically approved for purposes of the proposed development that is the subject of this application. The Board also finds that the rule does not prohibit consideration of increased economic development opportunities that will be provided by the proposed development as additional reasons to justify the exception. Some of the specific economic benefits that will result from the proposed development are outlined in the Economic & Fiscal Benefits Assessment prepared by E.D. Hovee & Company, LLC, dated June 15, 2007, which is adopted and incorporated as part of these findings.

The original application for a planned development subdivision was submitted to Marion County in 1980. Concurrent with the consideration of the planned development subdivision application, the Planning Commission and Board of County Commissioners considered legislative amendments to the Marion County Comprehensive Plan and Zoning Ordinances for conformance with the LCDC Statewide Planning Goals that would make the proposed planned development feasible. LCDC subsequently acknowledged the county's approved Goal 4 exception for the subject property. The planned development subdivision that was approved in 1982 was a resort that included an 18-hole golf course and accessory uses, 150 single-family dwellings, 46 condominiums, and small commercial area. The Conceptual Plan for this project was approved as "Elkhorn Valley Estates, Plat Number 879, Clerk's File No. 2950-P2." The Board finds that this application proposes development of substantially the same subdivision that was conceptually approved in 1982 and that additional goal exceptions may not be necessary for this proposed resort.

Additional reasons in support of the Goal 14 exception are provided in the exception that was previously approved for this golf resort development project by the county. The county's prior findings are equally relevant today, and include a detailed analysis of the need for the proposed development and the reasons that support the proposed development on rural land. Specifically, the county's findings identify a need for outdoor recreation and resort opportunities in Marion County, stating that "private destination resorts closer to urban areas are consistent with the intent of the goals to foster more energy efficient but satisfying recreational experiences. The county considers the proposed resort development as the vanguard in attempts by private enterprise to meet a real need." Goal 4 Exception Approval, page 48.

The county's findings go on to provide "compelling reasons why a destination resort of this particular type is needed in this region." Those findings are set forth at pages 49 through 55 of the exception document, and include findings regarding the increasing demand for outdoor recreational opportunities, projected population increases, and increases in demand for second homes. The county's findings conclude that "there is a need in Marion County and the surrounding region for the type of destination resort proposed for the Elkhorn Valley." Goal 4 Exception Approval, page 55. The Board hereby adopts and incorporates by reference the previous conceptual approval documents and Goal 4 Exception Approval document, including their findings. In the event of a discrepancy between the incorporated conceptual approval documents, Goal 4 Exception Approval document and these findings, the express findings of the Board in this document shall govern.

Presently, the conceptual plan approved in 1982 remains uncompleted, and the golf course lacks any related amenities. The proposed resort will generate significant economic benefits to the county by increasing tourist-related income. A resort of this type will fill a particular niche of overnight accommodation need near the golf course that has never been met by Marion County. The Board finds that this situation creates one of the "reasons" that justifies the proposed exception.

The Board finds that this application provides Marion County with a significant and timely opportunity for economic development by providing a major boost to the golf course and the recreational tourist industry in general. The Board finds that approval of this application furthers economic development in Marion County, consistent with the requirements of Goal 9, which requires the county to provide adequate opportunities for a variety of economic activities vital to the health, welfare and prosperity of the citizens of Oregon. The new resort will encourage economic development in Marion County by stimulating the golf and recreational tourism industries in the county, and providing new employment opportunities at the resort. The construction of the proposed resort will also result in a number of temporary construction jobs that will benefit the county. Lastly, the applicant will fund extensive transportation improvements to the area in the following amounts:

\$527,000 for a proportional share of pavement overlay costs on the North Fork Road from the project site to Oregon Highway 22 as provided by Marion County Department of Public Works in their memorandum addressed to Joe Fennimore on September 19, 2007 and referenced as well in the planning staff recommendations to the Commission dated September 26, 2007 in item 4(i) on page 24;

\$300,000 for a channelized right-turn lane from North Fork Road onto Highway 22 and for repair and maintenance of North Fork Road as needed, again as recommended by staff on September 26, 2007 in item 4(i) on page 24; and

\$470,000 in transportation and parks System Development Charges, based upon input provided by Marion County Department of Public Works.

The Board also finds that ORS 197.340(1) must be considered in this application. ORS 197.340(1) provides that local governments, as well as both DLCD and LCDC, "shall give the goals equal weight in any matter in which the goals are required to be applied." The Board finds this to mean that Goal 9 has as much weight as Goals 4, 11 or 14 in this proceeding. The Board finds, based on substantial evidence in the whole record, that the economic development potential of this application for the county overrides any concerns regarding Goals 4, 11 or 14. Specifically, the significant economic advantages associated with the proposed resort are significantly more beneficial than the impact of placing an "urban" use on rural land.

Additional reasons supporting the development of the proposed resort and the required goal exceptions are set forth in the applicant's materials, specifically, the application binder submitted on August 15, 2007 and the binder submitted to the Board on June 18, 2008, which the Board adopts and incorporates by reference. In the event of a discrepancy between the incorporated applicant materials and these findings, the express findings of the Board in this document shall govern.

*"(3) To approve an exception under section (2) of this rule, a county must also show:*

*"(a) That Goal 2, Part II(c)(1) and (c)(2) are met by showing that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities;*

As explained above, the Board finds that the previous conceptual approval and related goal exception require the commercial and residential components of the subdivision to be built in conjunction with the existing 18-hole golf course. The approval includes findings regarding locating the proposed development in an area already committed to recreational development. It concludes that there are no alternative sites in Marion County that meet the minimum locational requirements that would not require taking a goal exception. The reasoning of the previous approval is even more persuasive today because the golf course and related facilities are fully developed at this location. The residential uses that were approved as part of the 1982 conceptual approval require location in the immediate proximity of the golf course and, therefore, can only reasonably be accommodated at this location. Additionally, there is no evidence in the record establishing that suitable alternative sites that are already committed to golf course development have become available inside an existing UGB or in existing rural communities between 1982 and the present.

Further, the proposed golf resort development has specific locational requirements that inherently cannot be accommodated in an urban area or an existing rural community. The type of accommodations required to meet the needs of the targeted golf and recreational tourists include proximity to the existing golf course and a quiet, rural setting. The Board agrees with evidence submitted by the applicant that the proposed resort requires a quiet and scenic rural setting, which provides privacy and serenity, as well as close proximity to the existing golf course and related recreational uses that are compatible with a relaxing golf resort experience.

The subject property is unique in that it provides all of the necessary site-related requirements. The subject property is adjacent to the existing golf course, is large enough to meet the site size requirement, and was previously approved as the site for the conceptual subdivision plan. The property also provides a quiet rural setting, and includes enough acreage to ensure that the resort will be surrounded by landscaping, open space, and other resource-related uses that will be compatible with the needs of the resort guests. Any site that did not include these features would not provide the necessary features to meet the required need and would not result in a successful project. Additionally, the Board finds that approving a Goal 14 exception for the subject property allows the proposed resort to be developed without taking any viable forestry lands out of production, since the land is already subject to a Goal 4 exception.

For the reasons described above, and additional reasons provided by the applicant in the record as a whole, the Board agrees that the proposed development could not be reasonably accommodated in or through expansion of existing UGBs, or in existing rural communities. The applicant proposes to

complete the development that was approved by the county in 1982, which obviously requires it to occur in the location for the golf resort previously approved and already developed with the existing golf course facility.

*(b) That Goal 2, Part II(c)(3) is met by showing that the long-term environmental, economic, social and energy consequences resulting from urban development 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 on other undeveloped rural lands, considering:*

*(A) Whether the amount of land included within the boundaries of the proposed urban development is appropriate, and*

*(B) Whether urban development is limited by the air, water, energy and land resources at or available to the proposed site, and whether urban development at the proposed site will adversely affect the air, water, energy and land resources of the surrounding area.*

The Board finds that the long-term environmental, economic, social and energy (ESEE) consequences resulting from locating the proposed golf resort development on the subject property will not be significantly more adverse than locating the development on other undeveloped rural lands. The Board notes that this rule does not create a particularly high standard, but simply requires a determination that the ESEE consequences resulting from the proposed development "are not *significantly* more adverse" than would result from the development being placed on other undeveloped rural lands.

The proposed commercial and residential components of the resort must be built in conjunction with the existing golf course. The proposed development is completely dependent on being located on the proposed site for which the ESEE consequences have already been reviewed and approved by the county. The previous findings addressed the impacts of the proposed resort and concluded that they would be no greater than the impacts of any other resort and are outweighed by the benefits of the development. The Board finds that the long-term environmental, economic, social and energy consequences resulting from locating the resort on the subject property will not be significantly more adverse than locating the resort on other undeveloped rural lands. The Board finds that the amount of land being included in the proposed development is appropriate because it is consistent with the amount of land previously approved for this use by the county. The Board finds that the site is not limited by soil, air, water or energy capacity nor will the proposed use adversely affect air, water, energy and land resources of the surrounding area.

*(c) That Goal 2, Part II(c)(4) is met by showing that the proposed urban uses are compatible with adjacent uses or will be so rendered through measures designed to reduce adverse impacts considering:*

*(A) Whether urban development at the proposed site detracts from the ability of existing cities and service districts to provide services; and*

*(B) Whether the potential for continued resource management of land at present levels surrounding and nearby the site proposed for urban development is assured.*

The Board finds that the proposed resort will be compatible with adjacent uses, or will be rendered compatible through measures designed to reduce any adverse impacts. The proposed resort will only require approximately 65 acres of the 464-acre property. As indicated on the applicant's proposed site



plan, the resort will be located toward the center of the parcel, away from surrounding adjacent uses, which will create buffers that will minimize external impacts. The Board is also imposing conditions of approval that will reduce potential impacts.

Regarding potential impacts from traffic, access to the site will be from Gates Hill Road and North Fork Road. As concluded in the TIS prepared by DKS Associates, the impacts of the project are relatively small, proposed Highway 22/North Fork Road intersection improvement mitigates the proportional impacts of the project and the intersection experiences better operation with the project than it would without the project. TIS, p. 25. The Board finds that with the proposed improvements, any impacts caused by the project will be mitigated and all performance standards are met.

- (d) *That an appropriate level of public facilities and services are likely to be provided in a timely and efficient manner.*

The Board finds that the applicant has established that any necessary public services are available and that water and waste treatment systems will be provided through private systems. The Board finds that it is feasible for the applicant to provide an appropriate level of water and sewer service to the proposed resort, and relies on the letter from Steven Shropshire, dated July 23, 2008, which demonstrates that the applicant has already received a basin program exception under the Willamette Basin Program. The applicant worked with the Oregon Water Resources Department ("OWRD") to develop a mitigation approach to offset the projected pumping impacts, which was endorsed by OWRD staff and the Commission. Since the mitigation plan required in the review of the groundwater permit is the same plan that was endorsed as part of the basin program exception approval, the Board finds that it is feasible and likely that the applicant will receive an approved groundwater permit. Additionally, the Board relies on the letters from Tracy Cork, dated December 10, 2007 and June 12, 2008, which demonstrate that the wastewater collection and treatment methodology for the proposed resort will meet or exceed Oregon Department of Environmental Quality ("DEQ") requirements and will utilize state of the art technology. The Board also finds that compliance with the agencies' regulations is assured through appropriate conditions of approval. Therefore, the Board finds that testimony from the applicant and its consultants supports a finding that it is feasible to provide appropriate levels of public facilities for the proposed use in a timely and efficient manner. The Board finds that any other necessary public facilities and services, including fire protection, can also be readily provided.

The Board finds that OAR 660-014-0040(3)(e) is not applicable, because no urban growth boundary or establishment of a new city is proposed.

#### **B. Goal 11 Exception — OAR 660-004-0020(4)**

Goal 11 generally prohibits the extension of sewer lines outside of UGBs and the establishment of new sewer systems outside of UGBs. Regarding the requested exception to Goal 11, OAR 660-004-0020(4) and Goal 2, Part II(c) establish four factors to be addressed when taking a "reasons" exception. Those factors and related responses are set out below. The Board also adopts and incorporates by reference the reasons set forth in its findings in Section IX.A above regarding the Division 14 rules as part of its findings addressing the Division 4 rules.

- (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.*

The state policy contained in Goals 11 and 14 provide that urban development remain in urban areas and the provision of an urban level of public services remain within an urban growth boundary. Nevertheless, the Board finds that the findings adopted in 1982 for the Goal 4 exception are equally applicable to a Goal 11 exception, and that the same reasons that justified the original exception also justify the construction of a sewer system to serve the development that was previously approved by the county. In fact, an exception to Goal 11 is required by the prior approvals, which include a condition that a community sewer system must be provided for the development. Because the residential and commercial components of the subdivision require a location adjacent to the existing Elkhorn Valley golf course, it is not possible to site the development where a system already exists. The proposal provides the county with significant and timely opportunities for economic development and satisfaction of a long-existing need for additional residential and recreational development on land that is already designated for this particular non-resource use as a golf resort.

The Board finds that the policies embedded in Goal 11 regarding provision of urban services should not apply to this proposed development, which has already been reviewed and approved by the county and acknowledged by LCDC. The proposed resort is inherently dependent on the existing golf course and therefore can only be developed in the proposed location with a new sewer system.

The Board finds that this application provides Marion County with a significant and timely opportunity for economic development and a major boost to the county's tourism industry in general. The Board finds that the policies embedded in Goal 11 and Goal 14 regarding urban levels of development and services remaining within an urban growth boundary should not apply to this proposed development, because it is a locationally dependent use that can only be sited in the proposed location adjacent to the existing golf course.

*(b) Areas which do not require an exception cannot reasonably accommodate the use.*

This portion of the rule requires consideration of possible alternative locations for the use that would not require a new exception; in other words, existing exception areas or other locations inside an existing UGB. The rule provides that "economic factors can be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas." Regarding the required scope of the alternatives analysis, OAR 660-004-0020(2)(b)(C) provides as follows:

"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."

First, it is important to note that the subject site is an appropriate location for a project that requires Goal 11 and Goal 14 exceptions because the corresponding Goal 4 exception, which would be required in other rural areas, has already been approved and acknowledged at this location. The consideration

of alternative sites is not necessary in this instance because the property has already been granted a Goal 4 exception. There is no reason to consider other sites not requiring an exception when one has already been granted for this location.

Secondly, regarding Goal 11 and Goal 14, it is important to note the specific purpose of this decision, which is to implement the initial conceptual plan approval for an integrated golf course and residential development. To this end, the subject application proposes and has demonstrated consistency with all aspects of the conceptual approval for the site, although only the golf course portion of the project has been developed to date. The objective of this decision cannot reasonably be accommodated anywhere else because the project, as initially envisioned and approved, requires the residential portion of the project to be in the immediate vicinity of the golf course.

In other words, the applicant is merely requesting final development approval of a prior subdivision that was specifically approved in *this* location, for *this* golf course resort. The residential and commercial components of this application merely complete the second phase of the prior county approvals, which specifically contemplate an integrated golf course and residential resort development in the proposed location at Elkhorn Valley Golf Course. There is no alternative site that involves an existing preliminary subdivision approval adjacent to an existing golf course. This is an undeniably unique situation that is not duplicated elsewhere in the county. The Elkhorn Estates Planned Development, approved by the county in 1982, obviously cannot be "reasonably accommodated" in the alternative locations suggested by the opponents. The Board finds that no other parcels in Marion County could reasonably accommodate the proposed resort where the residential and commercial components of the resort have already been conceptually approved and are required to be located in the immediate vicinity of the existing and fully developed golf course component of the resort, and where a Goal 4 exception has already been taken. To the extent there is any discrepancy between the above-referenced materials adopted by the Board and these findings, the express findings of the Board shall govern.

- (c) *The long-term environmental, economic, social and energy consequences resulting from the use of 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 area considered by the jurisdiction for which an exception might be taken, the typical advantages and disadvantages of using the area for 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.*

The analysis required by this section of the rule is provided above in Section IX.A of these findings addressing OAR 660-014-0040(3)(b), and in supplemental information submitted by the applicant. The Board notes that all this rule requires is a determination that the ESEE consequences resulting from the proposed resort "are not *significantly* more adverse" than would result from the resort being placed in another undeveloped rural area that would also require an exception. This rule does not create a particularly high standard. For the same reasons set forth above in Section IX.A of these findings, the Board finds that the long-term ESEE consequences resulting from developing the resort on the proposed site are not significantly more adverse than would result from the resort being placed in another undeveloped rural area that would also require a goal exception, particularly with the stated conditions of approval and other identified measures designed to reduce adverse impacts.

- (d) *The proposed uses are compatible with other adjacent uses or will be rendered through measures designed to reduce adverse impacts. The exception shall describe how the proposed use will be compatible with the 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.*

The analysis required by this section of the rule is provided above in Section IX.A of these findings addressing OAR 660-014-0040(3)(c). For the same reasons set forth in Section IX.A of these findings, the Board finds that the proposed uses are compatible with other adjacent uses, particularly with the stated conditions of approval and other identified measures designed to reduce adverse impacts. The proposed resort will be situated on only approximately 65 acres of the 464-acre site, and will be buffered from adjacent uses by open space and forestland.

### **C. OAR 660-004-0022**

This administrative rule supplements OAR 660-004-0020 by providing examples of the types of reasons that may be relied upon to justify an exception to Goal 11 for certain types of uses.

- (a) *For uses not specifically provided for in subsequent sections of 660-004 or 660-014 the reasons shall justify why the state Policy embodied in the applicable goal should not apply. Such reasons include but are not limited to the following:*
- (1) *There is a demonstrated need for the proposed use or activity based on one or more of the requirements of Statewide Goals 3 to 19; and either*
  - (2) *A resource upon which the proposed use or activity is dependent can be reasonably obtained only if 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 and 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*
  - (3) *The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.*

The demonstrated need for this proposed use is established above in Section IX.A of these findings, which are incorporated here by reference. The need for the use was demonstrated in the 1982 approval in findings adopted by Marion County and acknowledged by LCDC, and is even more relevant today since the golf course component of the proposed resort has been fully developed at this location pursuant to those earlier acknowledged decisions. With the completion and ongoing operation of the golf component of the project, the only location at which the remainder of the project can reasonably be accommodated is immediately adjacent to the golf course facility. Therefore, pursuant to OAR 660-004-0022(a)(3), the developed golf course constitutes the "special features or qualities" that necessitates locating the residential and commercial component of the proposed resort immediately adjacent to the existing golf course.

Additionally, OAR 660-004-0022(1) provides that one example of a reason that can be relied upon to establish the justification for an exception is that the exception will enable a local government to meet one or more of its planning obligations. Such obligations can be found in both the Statewide Planning

Goals and in the county's acknowledged comprehensive plan. The requested exceptions are necessary to allow a use that has been identified as an essential means by which the county can meet its requirements under Goal 8 and Goal 9, and implementing policies of the Marion County Comprehensive Plan, in order to provide needed outdoor recreational opportunities and to achieve the county's goals of diversification and stabilization of the local economy. The Board finds that the requested exceptions are necessary in order to provide needed outdoor recreational opportunities and to achieve the county's goals of diversification and stabilization of the local economies.

## **X. COMPREHENSIVE PLAN POLICIES**

Under Marion County Code 172.70, the issuance of conceptual approval for this proposed development in 1982 indicates that this subdivision, in the general manner and density proposed, is deemed consistent with the Comprehensive Plan. Consistency of this detailed plan with the previously approved conceptual plan assures that this application complies with the applicable Marion County Comprehensive Plan policies. Additionally, for the reasons set forth below, the Board finds that the application complies with the applicable Marion County Comprehensive Plan policies.

### **Rural Residential Policies**

*1. Marion County will cooperate with the Marion County Housing Authority and other agencies to develop programs and funding sources to increase the level of support for maintenance and rehabilitation of existing housing in rural areas.*

*2. Marion County will cooperate with governmental agencies and housing authorities within the region to promote unified housing policies and to ensure an equitable distribution of assisted housing units throughout the County.*

These county policies are intended to ensure an adequate supply and mix of housing types in rural areas. The Board finds that the proposed development provides a type of housing not otherwise met in Marion County. The Board also finds that these policies do not create mandatory approval criteria in any event.

*3. Marion County will attempt to keep development requirements to a minimum so that the cost of rural residential housing can be kept as low as possible consistent with public safety and health requirements thereby helping to make rural housing a viable housing choice available to low and moderate income families.*

The Board finds that the proposed development is consistent with this policy. For the reasons explained in Section IX of these findings, the resort can only be developed on the proposed site, as previously approved by the county. As also explained in Section IX of these findings, water service for the resort is feasible, and the Board has conditioned its approval on the applicant's ability to provide an adequate water supply and to obtain the necessary permit for a well. The Board finds that for the reasons stated elsewhere in these findings, the proposed development does not require the extension of costly utilities to the site, and does not impose inordinate additional net costs on public services such as police and fire protection.

*4. Marion County will encourage rural residential housing that takes maximum advantage of renewable energy resources and use of innovative technology in order to make rural housing as energy efficient and self-sustaining as possible to reduce the public cost of providing basic utility services to rural housing.*



The Board finds that this county policy is not stated as mandatory approval criteria, but creates aspirational goals directing the county to "encourage" rural residential housing that takes maximum advantage of renewable energy resources; as such, this general planning policy designed to "encourage" use of renewable energy and "green" practices in a certain location cannot be relied upon by the county as a means to deny the present subdivision application. In any event, the Board finds that the proposed development will be self-sufficient as to its water and septic needs and will not impose inordinate additional net costs on public services.

*5. Marion County considers rural residential living a distinct type of residential experience. The rural life style involves a sacrifice of many of the conveniences associated with urban residences and the acceptance of lower levels of governmental services, narrow roads and the noises, smells and hazards associated with rural living and accepted farm and forest management practices. Marion County finds that it is financially difficult, not cost effective and inconsistent with maintaining a rural life style for government to reduce or eliminate the inconveniences caused by lower levels of public services or farming and forest management practices. When residences are allowed in or near farm or forest lands, the owners shall be required to agree to filing of a declaratory statement in the chain of title that explains the County's policy giving preference to farm and forest uses in designated resource lands.*

The Board adopts and imposes the same condition of approval No. 10 set forth in the previous 1982 conceptual approval requiring each residential lot in the subdivision to file a declaratory statement in the deed to explain the county's policy for giving preference to farm and forest uses in designated areas.

*6. Where designated rural residential lands are adjacent to lands protected for resource use a reasonable dwelling setback from the resource land shall be required, and any other means used, to minimize the potential for conflicts between accepted resource management practices and rural residents.*

The Board finds that the proposed development will meet all setback standards required by the Marion County Code. The Board also finds that the various management plans developed in conjunction with ODFW adequately provide other means to minimize the potential for conflicts between the proposed development and adjacent lands.

*7. Lands available for rural residential use shall be those areas developed or committed to residential use or significant areas unsuitable for resource use located in reasonable proximity to a major employment center.*

This policy limits designation of land for rural residential uses to those areas which are subject to Goal 4 or Goal 4 exceptions. Since the subject site is already an acknowledged Goal 4 exception area, the Board finds that this policy is met.

*8. Since there is a limited amount of area designated Rural Residential efficient use of these areas shall be encouraged. The minimum lot size in Rural Residential areas existing on October 4, 2000, shall not be less than two acres allowing for a range of parcel sizes from 2 to 10 acres in size unless environmental limitations require a larger parcel. Areas rezoned to an Acreage Residential zone after October 4, 2000, shall have a 10-acre minimum lot size unless an exception to Goal 14 (Urbanization) is granted.*

The Board has adopted findings identifying the reasons why the policies and standards of Goal 14 should not apply to the present application, and explaining why the proposed development meets the applicable exception criteria. Therefore, this policy implementing Goal 14 is not relevant to this application. Additionally, the record indicates that this minimum lot size was adopted after the 1982 conceptual plan was approved, which is the basis for the current detailed plan. The previously issued conceptual approval is still valid and controls over the subsequently enacted minimum lot size. The Board finds that the lot size for the requested subdivision is established by the Limited Use Overlay Zone and the 1982 conceptual approval as a 6,000 square foot minimum; therefore, the Board finds that this policy is met.

*9. When approving rural subdivisions and partitionings each parcel shall be approved as a dwelling site only if it is determined that the site: 1) has the capacity to dispose of wastewater; 2) is free from natural hazards or the hazard can be adequately corrected; 3) there is no significant evidence of inability to obtain a suitable domestic water supply; and 4) there is adequate access to the parcel.*

*10. All residential uses in rural areas shall have water supply and distribution systems and sewage disposal systems which meet prescribed standards for health and sanitation.*

*11. Rural residential subdivisions shall be required to have paved streets.*

The Board finds that these policies have been addressed elsewhere in these findings, including in conformance with applicable Marion County Code standards. Also, the proposed hotel will not be located in a natural hazard area and has adequate access. As explained in Section IX of these findings, the Board has found that water service for the hotel is feasible, and has conditioned its approval on the applicant's ability to provide adequate water supply and to obtain the necessary permit for a well.

*12. Where a public or community service district exists, the extension of services within designated rural residential areas may be permitted. The district may be allowed to provide service extensions to lands outside the designated residential areas if necessary for health and safety reasons but the district shall only annex lands designated for residential use.*

*13. Where the use of community water supply systems are cost effective and there is not a service district able to provide the service they may be allowed. The availability of community water services shall not be considered justification for increasing the density of development beyond two acres per dwelling.*

The Board finds that these county policies are not relevant to this application because the applicant is not requesting annexation into a community service district. Additionally, the Board has adopted findings identifying the reasons why the policies and standards of Goal 14 should not apply to the present application, and explaining why the proposed development meets the applicable exception criteria.

*14. In rural residential areas within one mile of an urban growth boundary, a redevelopment plan may be required as a condition of land division. The plan shall demonstrate that reasonable urban density development is possible should the urban growth boundary need to be expanded in the future.*

The proposed development is not within one mile of a UGB.

*15. Where parcels of 20 acres or larger are suitable for rural residential development and previous nearby development does not create a precedent for conventional subdivision development, the*

*developer shall be encouraged to cluster the residences through the planned development process to retain any resource use potential, preserve significant blocks of open space and wildlife habitat and to provide buffers between the residences and nearby resource uses and public roadways.*

The Board finds that this county policy is not stated as mandatory approval criteria, but creates aspirational goals directing the county to "encourage" clustering of residences to retain any resource use potential; as such, this general planning policy designed to "encourage" clustering in a certain location cannot be relied upon by the county as a means to deny the present subdivision application. In any event, the Board finds that the proposed development, through management practices created in conjunction with ODFW and other state and federal agencies, adequately preserves resources and wildlife habitats and provides sufficient buffers between residences and nearby resources and public roadways. The Board also finds that the development furthers the policy of clustering residences since it is constrained to an approximate 65-acre parcel with lots averaging 12,359 square feet in size.

*16. The Acreage Residential (AR) zone will be the predominant zone applied to the lands designated Rural Residential. A numerical suffix may be used to indicate the minimum lot size allowed in the zone.*

The Board finds that the majority of the rural residential development in this proposed subdivision is located within the AR zone and, therefore, this policy is met.

*17. In rural areas mobile homes and manufactured dwellings will be allowed on the same basis as conventional site built single-family housing.*

The Board finds that this policy is not relevant to the proposed development because the applicant is not requesting mobile homes or manufactured dwellings.

### **Rural Services Policies**

*Rural service facilities are those services and facilities necessary to provide basic support systems for rural development. Rural development includes farm and forest related development, acreage residential development and rural commercial and industrial uses.*

### General Policies

*1. The impact on existing services and the potential need for additional facilities should be evaluated when rural development is proposed.*

The Board finds that the applicant has evaluated the impact on existing services and the potential need for additional facilities and also finds that the proposed development does not require the extension of costly utilities to the site, and does not impose inordinate additional net costs on public services such as police and fire protection.

*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.*

This county policy is intended to implement Goal 11 and Goal 14 by requiring urban levels of development to occur within urban areas and not allowing urban services outside of urban growth boundaries. The Board has adopted findings in Section IX above, identifying the reasons why the policies and standards of Goal 11 and Goal 14 should not apply to the present application, and

explaining why the proposed development meets the applicable exception criteria. Therefore, this policy implementing Goal 11 and Goal 14 is not relevant to this application.

*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 solid waste disposal service for rural areas.*

The Board finds that, for the reasons stated elsewhere in these findings, the proposed development does not require the extension of costly utilities to the site, does not impose inordinate additional net costs on public services such as police and fire protection, and will maintain the rural character of the area. Further, the Board has included conditions of approval requiring the applicant to obtain an adequate water supply for the resort as well as adequate septic and wastewater treatment facilities. The state permitting process will require consideration of water availability and impacts on the carrying capacity of the groundwater resource.

#### Private Facility Policies

*1. Marion County shall identify and protect watershed areas and reservoir sites that provide domestic water supplies.*

The Board finds that this county policy is not stated as mandatory approval criteria, but creates aspirational goals directing the county to "identify and protect" watershed areas and reservoir sites that provide domestic water supplies; as such, this general planning policy designed to "identify and protect" such areas cannot be relied upon by the county as a means to deny the present subdivision application. This aspirational policy is implemented by regulations contained within the Marion County Code. In any event, the Board concurs with the letter from Steven Shropshire, dated January 10, 2008, and finds that all development activities on the resort will be subject to DEQ permitting requirements which are designed to ensure water quality protection and compliance with this policy.

*2. Where evidence is presented during development review that significant difficulty may exist with use of individual wells for water supply, the developer shall be required to demonstrate that adequate water supply is available.*

The Board finds that there has been no evidence that significant difficulty exists with use of individual wells for water supply. In any event, the Board adopts and imposes the same condition of approval No. 4 as that in the previous conceptual approval requiring that the private water system meet the quality, storage, and distribution system requirements of the State Health Division and the Department of Public Works.

3. *In areas outside urban growth boundaries in Marion County where rural residential development is appropriate, the use of private sewage treatment plans and community water systems will be allowed if the developer provides the following evidence:*

*(a) The amount and type of development of all proposed development phases is large enough to make the proposed system cost effective.*

*(b) Maximum development densities as outlined in the Marion County Comprehensive Plan are not exceeded.*

*(c) Assessments and bonding requirements imposed for the facilities are approved by Marion County to ensure adequate funds are available for maintenance and operation of the facility.*

*(d) All affected property owners are proportionately represented on the body that is responsible for operating and maintaining the system.*

*(e) All plant operators are adequately trained and certified through County recognized programs.*

*(f) Design, placement, construction and maintenance plans for each facility are to be approved by the Department of Environmental Quality for sewage treatment plants. Community water systems shall be approved by the State Health Department.*

The Board finds that the proposed development meets the requirements for use of a community water system and sewage treatment plant, and also adopts and imposes the same conditions of approval No. 4 and No. 5 as in the previous conceptual approval requiring that the private water system meet the quality, storage, and distribution system requirements of the State Health Division and the Department of Public Works, and that the community sewer system meet the requirements of the State Department of Environmental Quality.

### **Urban Growth Policies**

*In defining urbanizable land areas with urban growth boundaries, it is necessary to provide implementation measures to affect their purpose. Urban Growth Policies can provide guidance in making the land use decisions that will direct the future of the urbanizable land areas. The mutual agreement of the cities and the County to these policies is vital to the effective coordination and cooperation necessary to implement each urban growth program. The following are urban growth policies that should guide the conversion of the urbanizable areas adjacent to each city to urban uses. In addition, the Urban Growth Management Framework provides policies and coordination guidelines that focus on specific growth issues pertaining to transportation, environment, economic development and housing to guide cities in evaluating future land needs and land use decisions.*

*7. Urban densities shall be established only within recognized urban growth boundaries unless an exception to Goal 14 (Urbanization) is obtained.*

The Board has adopted findings identifying the reasons why the policies and standards of Goal 14 should not apply to the present application, and explaining why the proposed development meets the applicable exception criteria. Therefore, this policy implementing Goal 14 is not relevant to this application.

*9. Sufficient developable land shall be made available to provide choices in the market place.*

The Board finds that the application is consistent with this policy. As explained in the applicant's alternatives analysis, and as set forth in the findings in Section X.A above, the proposed resort use can only be located in a rural setting, rather than an urban setting, and other sites that do not require

exceptions cannot reasonably accommodate the proposed use. Additionally, the proposed subdivision will complete the previous conceptual approval for this specific use on this specific property.

### **Transportation and Development and Access Policies**

7. *Land use changes that could result in increased development levels and thus higher traffic levels will be assessed for their impact to current and future traffic volume and flow, and these impacts must be appropriately mitigated (as determined by the Public Works Director in accordance with applicable standards and practices) in order for the development to be allowed.*

The Board finds that the application is consistent with this policy. The Board finds that the applicant has provided a TIS dated August 2007 and a Supplemental TIS dated June 18, 2008, prepared by DKS Associates. These DKS materials demonstrate compliance with this policy. The Board expressly adopts and incorporates into its findings the DKS Associates TIS dated August 2007, and the Supplemental TIS dated June 18, 2008. To the extent there is any discrepancy between the DKS Associates materials adopted by the Board and these findings, the express findings of the Board shall govern.

As explained in the DKS Associates materials, and as set forth in the findings in Section VIII.L, above, any impact to current and future traffic volume and flow caused by the development will be mitigated by providing transportation improvements, including a channelized right-turn lane from North Fork Road onto westbound Highway 22 and a corresponding acceleration lane. In accordance with the Marion County Department of Public Works' recommendations as detailed the memorandum from Mike McCarthy of the Public Works Engineering Division to Joe Fennimore, dated September 19, 2007, and in the Staff Report dated September 26, 2007, the applicant will also provide other transportation improvements to mitigate impacts. Development of such transportation improvements are ensured through Condition of Approval No. 5, which requires that such improvements comply with the Department of Public Works' standards.

### **Transportation and Development and Access Policies**

7. *To prevent exceeding the function and capacity of any component of the transportation system, the County will consider roadway functional classification, capacity and current conditions as primary criteria for proposed changes in land use designations and proposed land use developments. In addition, present and anticipated safety issues shall also be significant criteria.*

The Board finds that the application is consistent with this policy. As detailed in the DKS Associates materials, the roadway functional classification, capacity, existing conditions, and safety issues relating to the study area for the development were considered. The Board finds that the DKS Associates materials, referenced in the response to the policy above and in Section VIII.L, above, demonstrate compliance with this policy. The Board expressly adopts and incorporates into its findings the DKS Associates TIS dated August 2007, and Supplemental TIS dated June 18, 2008. To the extent there is any discrepancy between the DKS Associates materials adopted by the Board and these findings, the express findings of the Board shall govern.

8. *The County shall review land use actions, development proposals and large transportation projects in the region for impacts to the transportation system and facilities. If the impacts are deemed significant by the County and cannot be mitigated to the County's satisfaction, the action shall be denied or modified until the impacts are acceptable. \*\*\**

The Board finds that the application is consistent with this policy. The Board finds that the DKS Associates materials, referenced in the response to the policy above and in Section VIII.L, above, demonstrate compliance with this policy. The Board expressly adopts and incorporates into its findings the DKS Associates TIS dated August 2007, and Supplemental TIS dated June 18, 2008. To the extent there is any discrepancy between the DKS Associates materials adopted by the Board and these findings, the express findings of the Board shall govern.

As explained in the DKS Associates materials, and as set forth in the findings in Section VIII.L, above, any transportation impacts caused by the development will be mitigated by providing transportation improvements, including a channelized right-turn lane from North Fork Road onto westbound Highway 22 and a corresponding acceleration lane. Additional transportation improvements recommended by the Marion County Department of Public Works will also be provided. Such transportation improvements are ensured through Condition of Approval No. 5. The Board finds such transportation mitigation improvements to be satisfactory.

#### **Fish and Wildlife Habitat Policies**

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.*

The Board finds that the application is consistent with this policy. The applicant has provided a Wildlife Habitat Mitigation Plan, as well as an Elkhorn Resort Wildlife Management Plan, dated June 6, 2008, and prepared by Pacific Habitat Services, Inc. ("PHS"). These PHS materials demonstrate compliance with this policy. The Board expressly adopts and incorporates into its findings the Wildlife Habitat Mitigation Plan, and appendices, dated June 6, 2008, including the Elkhorn Resort Wildlife Management Plan. To the extent there is any discrepancy between the PHS materials adopted by the Board and these findings, the express findings of the Board shall govern.

As detailed in the PHS materials, conflicts with wildlife, including big game, were considered in the development of the subject resort and impacts to wildlife habitat are avoided, minimized or mitigated by various design measures incorporated into the development. Such measures include the provision of adequate setbacks and buffer zones. Adequate setbacks and buffer zones for development adjacent to streams, sensitive waterfowl areas and critical wildlife areas are ensured through Conditions of Approval Nos. 16 and 34.

Contrary to opponents' assertions, the Board finds that this application is not subject to the requirements of OAR 635-415-0020 regarding implementation of habitat mitigation requirements. By its own terms, Oregon Department of Fish and Wildlife's (ODFW) Fish and Wildlife Mitigation Policy only applies when ODFW is implementing its own development actions. OAR 635-415-0015. When development actions are undertaken by local agencies, ODFW's Fish and Wildlife Mitigation Policy is



only a recommendation. *Id.* Unlike the circumstances in *Gould v. Deschutes County*, 216 Or App 150 (2007), the Marion County Code does not require submittal of a wildlife mitigation plan nor does it require that mitigation result in “no net loss” of fish and wildlife resources. The Board finds that conflicts with wildlife have been considered and that impacts will be satisfactorily mitigated, in part by the provisions of 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.*

The Board finds that the application is consistent with this policy. Development will not occur in the County’s resource zones and the dwelling density of the development is consistent with the prior conceptual approval. As part of the 1984 goal exceptions and amendment of the Marion County Comprehensive Plan for this development (Ordinance 677), the County applied a Limited Use Overlay (“LU”) zone concurrent with adoption of the Acreage Residential zone for the subject property. The specific terms of the LU overlay applied to the subject property are set forth in Exhibit C of Ordinance No. 677. The application of the LU overlay serves to limit the uses approved by the conceptual plan to those specific uses approved herein, as further defined in the Goal 11 and Goal 14 exception findings. As noted in Section XII, below, Condition No. 7 to the 1982 approval of this development limits the number of dwellings to 196. The Board finds that development density is controlled so that significant wildlife habitat is not adversely affected in the County’s resource zones.

## **XI. ZONING ORDINANCE PROVISIONS**

Pursuant to various chapters of the Marion County Code, a subdivision may be authorized provided that the applicant demonstrates compliance with the following criteria:

### *Chapter 113: Lot Area, Yards, and Height Restrictions*

*113.020 Lots Not to be Reduced Below Minimum. No lot or parcel of land held under separate ownership at the effective date of this ordinance shall be separated in ownership or reduced in size below the minimum lot width or lot areas required by this ordinance, nor shall any lot or parcel of land held under separate ownership at the effective date of this ordinance, which has a width or an area less than required by this ordinance, be further reduced in any manner.*

The Board finds that the lot size for the requested subdivision is established by the Limited Use Overlay Zone and the 1982 conceptual approval as a 6,000 square foot minimum and no minimum lot size for other uses. The Board also finds that to the extent the zoning requires a two-acre minimum lot size, the record indicates such minimum lot size was adopted after the 1982 conceptual plan was approved, which is the basis for the current detailed plan. The previously issued conceptual approval is still valid and controls over the subsequently enacted minimum lot size. The Board finds that this criterion is met.

*113.030 Lot or Yard Areas Not to be Separated From the Lot Containing the Building. No portion of a lot necessary to provide the required area per dwelling unit shall be separated in ownership from the portion of the lot on which the building containing dwelling units is located. No required yard or other open space around an existing building shall be separated in ownership from the portion of the lot upon which the building is located.*

The Board finds that as shown on the revised site plans submitted to the Board by the applicant on June 18, 2008, no portion of a proposed lot will be owned separately from the portion of the lot on which the single-family dwelling unit is located.

*113.050 Yards Apply Only to One Building. No required yard or other open space or required driveway provided around or for any building or structure for the purpose of complying with the provisions of this ordinance shall be considered as providing a yard or open space for any other building, nor shall any yard or other required space on an adjoining lot be considered as providing a yard or open space on the lot whereon the building is to be erected.*

The Board finds that as shown on the revised site plans submitted to the Board by the applicant on June 18, 2008, each yard on the lot applies to the building located on the lot; therefore, this criterion is satisfied.

*113.060 Yards to be Unobstructed. Every required front, side, and rear yard shall be open and unobstructed by buildings or structures from the ground to the sky except for those projections and accessory structures permitted by this ordinance.*

The Board finds that with the exception of zero lot line units as permitted under the Marion County Code, proposed yards will be unobstructed; therefore, this criterion is satisfied.

#### *Chapter 172: Subdivision and Partition Requirements*

#### ROADS, STREETS AND EASEMENTS

*172.16 Dedication or Deeding of Roadway No person shall dedicate for public use, or deed to Marion County, a parcel of land which is used or proposed to be used as a roadway without first obtaining the approval of the Board and delivering the deed to the Board for its endorsement. No dedication is effective unless the property is accepted by the Board and recorded with the Marion County Clerk's Office.*

The applicant proposes to construct private streets. However, the dedication of right-of-way may be required on North Fork Road or Gates Hill Road to provide deceleration lanes or other improvements. If so, the applicant will comply with deed requirements.

*172.18 Dead-End Streets When it appears necessary to continue streets to an adjacent acreage, the streets shall be platted to the boundary or property line of the proposed subdivision without a turnaround. In all other cases, dead-end streets shall have a turnaround with a configuration approved by the Marion County Department of Public Works.*

There are three cul-de-sacs proposed, with turn-around areas that comply with Public Works standards.

*172.20 Radius at Street Intersections The property line radius at street intersections shall be to the Marion County Public Works Department's standards.*

All street intersections comply with County standards.

*172.30 Utility Easements Utility easements meeting the approval of the Marion County Department of Public Works shall be provided to all newly created lots.*

Five-foot wide utility easements will be provided on both sides of the private roads, as required by Condition No. 6 of the conceptual development plan approval.

### LOTS

*172.36 Lot Size All lots approved under this Chapter shall have sufficient area to be consistent with the intent of the Comprehensive Plan and to provide adequate area for the intended structures and uses, all setbacks, access and spacing required for water supply and waste water disposal.*

Condition No. 7 of the conceptual development plan required that the minimum lot size shall be 6,000 square feet in area and that each lot have a minimum of 20 feet of frontage on a private road. As shown in the applicant's application submittals, the average lot size is 12,359 square feet. Lots range in size from 6,308 square feet to 44,840 square feet. Each lot has a minimum of 20 feet of frontage on a private road. The Board finds that this criterion is satisfied.

### SEWAGE, WATER AND UTILITIES

*172.40 Sewage Disposal. All lots or parcels shall be served by an authorized sewage disposal system. Subsurface sewage disposal for individual parcels shall meet the requirements of the Department of Environmental Quality (DEQ) and the Marion County Building Inspection Division. Those subsurface sewage systems that are used by a community, sanitary district, industry, or incorporated area must be authorized by the Department of Environmental Quality (DEQ) via the Marion County Building Inspection Division. Installation and maintenance shall be in accordance with the Department of Environmental Quality's regulations and requirements.*

As required by the county's 1982 approval, the applicant will provide a community sewer system that meets all applicable county and DEQ specifications. The Board relies on the testimony by the applicant and its consultants and the letters from Tracy Cork, dated December 10, 2007 and June 12, 2008, which demonstrate that the wastewater collection and treatment methodology for the proposed resort will meet or exceed DEQ requirements and will utilize state of the art technology. Therefore, the Board finds that this criterion is met.

*172.42 Water Supply All lots or parcels shall be served by an authorized public or private water supply system or individual private wells.*

*(a) Public or Private Systems: Public or private systems shall meet the requirements of the Oregon State Health Division with reference to chemical and bacteriological quality. In addition, such systems must meet the quantity, storage, and distribution system requirements of the State Health Division and the Marion County Department of Public Works.*

The applicant proposes to upgrade an existing water well to provide a safe reliable water supply; construct a chlorine gas disinfection and monitoring facility; construct a community water distribution system including approximately 20,000 linear feet of eight to four-inch C-900 PVC water main, 47 fire hydrants, and 63 isolation valves; pressure booster system for 10 homes; and minimum 100,000 gallon water storage reservoir that meets Stayton Fire District fire flow requirements and provides two days of emergency storage. The Board relies on the testimony by the applicant and the letter from Steven Shropshire, dated January 10, 2008, and finds that this criterion is met.

*172.44 Underground Utilities Easements Underground easements for utilities and overhead utility facilities shall be provided by the subdivider and set forth on the final plat. When possible, such easement shall be centered on or bordering a lot line. The subdivider shall provide easements on both sides of all road or street rights-of-way of 60 feet or less.*

Five-foot wide utility easements will be provided on both sides of the private roads, as required by Condition No. 6 of the conceptual development plan approval.

#### *Chapter 176: Limited Use Overlay Zone*

*176.020 Overlay Zone Requirements. When the Limited Use Overlay zone is applied, the uses identified in the underlying zone shall be limited to those permitted or conditional uses specifically referenced in the ordinance adopting the Limited Use Overlay zone. Until the Overlay zone has been removed or amended the only uses permitted on the property shall be those specifically referenced in the adopting ordinance. Uses that would otherwise be permitted, or permitted subject to a conditional use permit, may only be allowed if the list of permitted or conditional uses in the Limited Use Overlay Zone is amended or the Limited Use Overlay Zone is removed.*

The portion of the subject planned development that is zoned AR was made subject to the Limited Use (LU) Overlay Zone at the time that the AR zoning was adopted. The intent of applying the LU overlay was to ensure that the resort accommodations and related commercial services provided as part of the conceptual plan approval would meet the minimum qualifications of a destination resort, as defined by LCDC in the 1984 Draft Destination Resort Rule. The following conditions were placed on the project by the conceptual plan approval, and the Board finds that compliance with these conditions meets this criterion:

*1. The 150 acre portion of the proposed development lying south of Little North Fork Road shall not be owned separately from the golf course and other improved recreation facilities provided on lands north of the County road.*

This condition conflicts with Condition No. 8 of the Conditional Use Permit for the golf course, which states that: *"The golf course may be held in separate ownership from other common open space in the planned development but shall always be considered a part of the planned development. The owner of the golf course shall be a member of the planned development owners association and shall cooperate with the association in maintenance and use of the treated wastewater storage pond and irrigation system."*

The Board finds that separate ownership of the golf course and related facilities will be beneficial in order to effectively implement and manage the Elkhorn project. As part of this decision, the Board approves a condition of approval resolving the discrepancy between such conditions and allowing the golf course and other improved recreation facilities to be owned separately from the remainder of the development, provided that the residential home owners association ("HOA") and the golf course HOA shall be joined in a master HOA.

*2. The golf course and related open space, and other natural areas designated on the approved site plan shall remain as dedicated permanent open space and shall represent at least 50 percent of the resort ownership.*

The golf course and other open space will remain as dedicated open space. Natural (unimproved) open space constitutes approximately 58% (272 acres) of the property. The golf course constitutes another 26% (122 acres).

*3. At least \$2 million (in 1984 dollars) shall be spent on improvements for on-site developed recreational facilities and visitor-oriented accommodations exclusive of costs for land, sewer, and water facilities and roads. Not less than one-third of this amount shall be spend on developed recreation facilities.*

The applicant has provided evidence that the value of the improved facilities are valued in a fair market transaction to be \$3,500,000; thereby satisfying the requirement as it pertains to recreational facilities.

*4. Visitor-oriented accommodations including meeting rooms, restaurant with seating for 100 persons, and 150 separate rentable units of overnight lodging shall be provided.*

The applicant will provide meeting rooms and a 100-person restaurant as part of the golf course clubhouse ("lodge"). In addition, the lodge will offer five units of overnight accommodation. A minimum of 150 dwelling units will be available for overnight rental via a centralized booking service. In addition, a small inn is proposed as part of the commercial use that will provide 40 rooms of overnight lodging.

*5. Commercial uses provided are limited to types and levels necessary to meet the needs of visitors to the development. Industrial uses are not permitted.*

No industrial uses are proposed. The commercial uses will be limited to an inn and gift shop, canteen, exhibit space, welcome center, front desk check-in, adventure center for booking events and similar or other uses serving the ancillary and visitor needs of visitors to the resort. In addition, the golf course clubhouse will include a pro shop and gift shop, general store, five overnight accommodations, spa/wellness center, fitness center, restaurant, grill/lounge, front desk check-in and other potential amenities that serve the needs of guests and owners of the resort such as a swimming pool, tennis courts, volleyball, croquet, horseshoes, bocce ball, performing arts center, kid's day camp, and maintenance facilities, etc.

*6. The terms "Developed Recreation Facilities, Self Contained Development, Visitor Oriented Accommodations, Recreation Areas, Facilities and Opportunities, and Recreation Needs" shall have the meanings prescribed in the proposed amendments to Goal 8 dated June, 1984. The terms in this narrative are used as defined in the 1984 draft Goal 8 amendment.*

## **XII. 1982 Conditions of Approval For Elkhorn Valley Estates Subdivision**

The 1982 conceptual approval included conditions imposed on the planned development subdivision. Practically, these conditions are more reasonably to be required at the time of final plat approval. Accordingly, these conditions are addressed below as follows:

*1. The subdivider shall include in all sales representations preliminary and earnest money agreements, contracts of sale and any other form of conveyance, a statement that Marion County is in no manner obligated, nor does the County intend, to maintain the roads within the planned development.*

The Board relies on the evidence in the record, including the testimony by the applicant, and finds it is feasible for the applicant to comply with this condition for new roads and improvements, with the exception of any improvements within the right-of-way of North Fork Road or Gates Hill Road, which are County roads. To ensure compliance, the Board imposes Condition No. 11.

2. *Prior to the occupancy of any residential unit or lot, the phase of the planned development containing said unit or lot shall be completed including the provision of community sewer and water service, street and path improvements. The boundaries of any phases shall be approved by the Planning Director and the Department of Public Works.*

The Board adopts and incorporates by reference the Proposed Phasing Table included in the narrative of the application and finds that it is feasible for the applicant to comply with this condition. The Board also relies on evidence in the record, including the testimony by the applicant, that infrastructure will be in place for each phase prior to occupancy and finds that it is feasible for this condition to be met.

3. *The improvement specifications for the private streets and pedestrian paths shall be approved by the Planning Director prior to construction. The private streets and paths shall be improved and maintained to these specifications. The private streets, drainage, paths, gates, common open spaces, and community water and sewer systems shall be maintained by a single homeowners association representing all residential owners, the chapel, commercial development and golf course. Property owners within the planned development shall automatically be members of the association. The homeowners association shall have a maintenance agreement which shall be approved by County Counsel and the Public Works Director.*

The Board adopts and incorporates by reference the proposed street and pathway specifications included as an exhibit attached to the applicant's application narrative. The Board relies on the evidence in the record, including the testimony of the applicant that there will be an Owners Association with CC&Rs, including a maintenance agreement and that the CC&Rs will be recorded with the Final Plat. The Board finds that it is feasible for this condition to be met. To ensure compliance, the Board imposes Condition No. 12.

4. *The private water system shall meet the requirements of the Oregon State Health Division with reference to chemical and bacteriological quality and meet the quality, storage and distribution system requirements of the State Health Division and the Department of Public Works.*

The Board relies on the evidence in the record, including the testimony of the applicant, stating that it met with the Department of Environmental Quality, the County Public Works Department and the Stayton Fire District to discuss the proposed water distribution system. The Board finds that the applicant proposes to upgrade an existing water well to provide a safe reliable water supply; construct a chlorine gas disinfection and monitoring facility; construct a community water distribution system including approximately 20,000 linear feet of eight to four-inch C-900 PVC water main, 47 fire hydrants, and 63 isolation valves; pressure booster system for 10 homes; and minimum 100,000 gallon water storage reservoir that meets Stayton Fire District fire flow requirements and provides two days of emergency storage. The complete system will be incrementally disinfected and pressure tested prior to placement in service.

The Board relies on the evidence in the record, including the testimony by the applicant and the letter from Steven Shropshire, dated January 10, 2008, and finds that it is feasible for this condition to be met. To ensure compliance, the Board imposes Condition No. 13.

5. *The community sewer system shall meet the requirements of the State Department of Environmental Quality.*

The Board relies on the evidence in the record, including the testimony of the applicant, stating that it has met with the Department of Environmental Quality and the County Public Works Department to discuss the proposed wastewater collection, treatment and disposal system. To provide wastewater treatment and disposal for initial development, a community septic tank drainfield is proposed. The Board finds that as development occurs and warrants, the following improvements will be constructed: individual septic tank drainfield systems for two houses, a community wastewater collection system consisting of approximately 18,000 linear feet of eight-inch gravity sewer main, 80 manholes, 3,100 linear feet of 4-inch pressure main, 50,000 gallon per day membrane bioreactor wastewater treatment plant, effluent storage lagoon and effluent irrigation / disposal system. Standby emergency, electric power generation will be included in the wastewater treatment plant to ensure continuous wastewater treatment and storage.

The Board relies on the evidence in the record, including testimony by the applicant and the letter from Steven Shropshire, dated January 10, 2008 and the letters from Tracy Cork, dated December 10, 2007 and June 12, 2008 and finds that it is feasible for this condition to be met. To ensure compliance, the Board imposes Condition No. 2.

6. *All utilities shall be placed underground. Five-foot utility easements shall be provided on both sides of all private roads and in other locations requested by the telephone and power companies.*

The Board relies on the evidence in the record, including the testimony by the applicant, stating that all utilities will be placed in easements located alongside private roads and that these easements will be shown on the Final Plat for each phase. The Board finds that it is feasible for this condition to be met.

7. *The maximum number of dwelling shall be 196. The 150 single-family lots proposed on the 137 acres shall not be less than 6,000 square feet in area and have at least 20 feet of frontage on a private road. The location of the lots shall generally conform to the conceptual development plan. A final development plan showing the location of buildings, parking, access, drainage, and landscape area shall be approved by the Department of Public Works and Planning Director prior to construction. If any portion of the 12 acres is divided into smaller lots to be owned by someone other than the homeowners association, the proposed lot sizes and configurations shall be subject to detail subdivision approval. The number of single-family or condominium units may be adjusted within the established total by up to 15 units provided a revised plan showing the new sites is approved by the Planning Director. Otherwise the revision must be approved by the Board of County Commissioners.*

The Board finds that the location of the lots generally conforms to the conceptual development plan, in that single-family dwellings, condominiums, commercial uses, and golf course uses are located in the same portions of the property as conceptually approved by the County in 1982. Additionally, the revised site plan submitted to the Board on June 18, 2008 shows a cross-hatched orange area where eight (8) of the single-family lots could be converted to up to fifteen (15) condominium units.



The Board finds that the plans submitted with the application shows the location of the proposed condominium unit buildings and the commercial buildings, as well as the street/path system, parking and open spaces, and that it is feasible for this condition to be met.

8. *The developer shall file with the Board of Commissioners a memorandum of understanding, approved by County Counsel, acknowledging that the County may, when evidence shows that facilities are not meeting state or county requirements, cause the maintenance of the private streets, drainage, paths, common open spaces and community water, sewer, and water protection facilities with the expense becoming a lien against all property in the planned development.*

The Board acknowledges the applicant's concurrence with this criterion, stating that it agrees to create a memorandum of understanding to this effect, as a condition of approval, to be signed prior to Final Plat approval, and finds that it is feasible for this condition to be met. To ensure compliance, the Board imposes Condition No. 15.

9. *All buildings shall meet the setback requirements of Sections 6, 7, and 8 of the Marion County Subdivision and Partitioning Ordinance or the Marion County Ordinance, whichever is lesser.*

The Board relies on the evidence in the record, including the testimony by the applicant, and finds that it is feasible for this condition to be met by the proposed project layout, except for the inclusion of water tanks within the building setback, inclusion of parking and circulation within the Forest Reserve Setback to limit grading and to accommodate required sight distances, and inclusion of non-habitable buildings, not to exceed 7,000 square feet of structure, within the land adjacent to the Little North Fork River. The Board interprets this condition as allowing such limited exceptions and finds that the project layout complies with this condition. To ensure compliance, the Board imposes Condition Nos. 16 and 34.

10. *Applicant concurrence in filing a declaratory statement in the deed for every residential lot in the planned development, the chapel site, the commercial development parcel and the golf course.*

The Board acknowledges the applicant's concurrence that such statement will be filed providing that owners of dwellings within 500 feet of the forest area (TC Zone) will file a Declaratory Statement as described in Section 139.070(b) of the Marion County Code:

"The property herein described is situated in or near a farm or forest zone or area in Marion County, Oregon where the intent is to encourage, and minimize conflicts with, farm and forest use. Specifically, residents, property owners and visitors may be subjected to common, customary and accepted farm or forest management practices conducted in accordance with federal and state laws which ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantees, including their heirs, assigns and lessees do hereby accept the potential impacts from farm and forest practices as normal and necessary and part of the risk of establishing a dwelling, structure or use in this area, and I/we acknowledge the need to avoid activities that conflict with nearby farm or forest uses and practices I/we will not pursue a claim for relief or course of action alleging injury from farming or forest practice for which no action is allowed under ORS 30.936 or 30.937."

To ensure compliance with this previous condition, the Board imposes Condition No. 10. Therefore, the Board finds that it is feasible for this condition to be met.

11. *No structures to be located closer than 200 feet to any land designated as Forest land in the Marion County Comprehensive Plan. A forest reserve shall be provided within 100 feet of the adjacent parcels in forest use wherein all natural vegetation and timber shall be retained except as provided in the fire hazard management plan or approved by Marion County.*

A 200-foot setback for portions of the property adjacent to forest land has been designed into the project. Within this setback, the outer 100 feet will be left in natural timber and under-story vegetation except as described in the Fire Hazard Management Plan. The site topography does require slight encroachment of roadways and parking lots into the 100-foot natural area to provide circulation and access to the condominiums and single-family lots, for which approval is requested. Water tanks may also be placed within the buffer area. The Board finds that these encroachments will not compromise the protection of timber resources or the implementation of the Fire Hazard Management Plan. Therefore, the Board interprets this original condition of approval as allowing such limited exceptions and finds that it is feasible for the subdivision to comply with this condition. To ensure compliance, the Board imposes Condition No. 16.

12. *A fire truck and related equipment necessary to control structural fires shall be provided by the developer and maintained by the homeowners association. People trained in structural fire fighting and use of the equipment shall be available to respond to emergencies.*

The Board relies on the evidence in the record, including applicant's submittal, dated December 11, 2007, which included the "Elkhorn Golf Resort Fire Mitigation Plan" that has been approved by Oregon Department of Forestry and the Stayton Fire Department. The Board finds that it is feasible to meet this condition of approval.

13. *A forest fire management program shall be prepared and implemented continuously by the homeowners association. The program shall be approved by the State Department of Forestry and a copy be provided for the subdivision file.*

The Board relies on the evidence in the record, including the testimony of the applicant, that the Owners Association will prepare and implement a Community Wildfire Protection Plan (CWPP) based on the guidelines developed by the Oregon Department of Forestry to meet the requirements of the Healthy Forest Restoration Act (HFRA). The Board finds that it is feasible for this condition to be met. To ensure compliance, the Board imposes Condition No. 17.

14. *The northerly access point on the Little North Fork Road for the residential collector road serving the homesites east of the Gates-Elkhorn Road will be reevaluated by the Department of Public Works to determine if another location is necessary.*

The Board relies on the DKS TIS submitted with the application and finds that it is feasible for this condition to be met. The Board therefore imposes Condition No. 38.

15. *Vegetation within 50 feet of any stream in the 150-acre residential development area shall not be disturbed except at road and path crossings.*

The Board relies on the evidence in the record, including the testimony of the applicant, and finds that the project has been designed to incorporate 50-foot setbacks of all drainages and that it is

feasible that this condition can be met. To ensure that vegetation within 50 feet of any stream in the 150-acre residential development area shall not be disturbed, the Board imposes Condition No. 34.

16. *Fencing to keep elk out of residential areas or the expanded golf course shall be provided by the developer or homeowners association if they desire or at such time as deemed necessary by the State Department of Fish and Wildlife. If at any time there is evidence of trespassing from the development onto adjacent forest lands, the County may require installation of fencing.*

The Board finds that the Wildlife Habitat Management Plan, which must be reviewed and approved by ODFW, contains provisions that ensure compliance with this condition. The Board finds that it is feasible to comply with this condition. To ensure compliance, the Board imposes Condition Nos. 18, 19 and 20.

17. *Parking spaces for the townhouse/condominium units and access roads shall be paved. Fencing or landscaping approved by the Planning Director shall be provided to buffer the commercial and townhouse/condominium development from the separate ownership north of the commercial area.*

The Board relies on the evidence in the record, including the testimony of the applicant and the plans submitted with the application, which shows that all parking areas and roads will be paved and that landscaping will be included to buffer the commercial area from adjacent private property. The Board finds that it is feasible to comply with this condition. To ensure compliance, the Board imposes Condition No. 21.

18. *Prior to recording the Final Plat, a geologic investigation shall be performed by a consulting engineering geologist of the area south and east of County Road 960 to determine if proposed street, path, driveway and building construction will cause slippage or other land movements. Where potential problems exist, design modifications shall be provided or evidence submitted showing that a mechanism is available to overcome the problem.*

The Board relies on the evidence in the record, including the testimony of the applicant and the soils study provided as an exhibit to the application narrative and finds that the soils study raises no concerns and that it is feasible for this condition to be met. To ensure compliance, the Board imposes Condition No. 22.

19. *An overall storm drainage plan shall be developed and shall be subject to approval of the Department of Public Works with regard to drainage impacts on County roads.*

The Board relies on the evidence in the record, including the testimony of the applicant, that it has met with the Department of Public Works to discuss storm drainage and is committed to meeting all applicable design and construction standards, that impacts on County roads will be minimized where possible, and that all development influences to existing drainage and necessary development changes to existing drainage will be submitted to the Department of Public Works for approval. The Board finds that it is feasible to comply with this condition. To ensure compliance, the Board imposes Condition Nos. 5(n), 5(o), and 5(p).

20. *Developer shall dedicate additional right-of-way and widen County Road 960 to provide turning lane in both directions at access roads, Gates Hill Road and forest access road. Developer shall provide traffic generation studies to facilitate determination of what is necessary.*

The Board relies on the evidence in the record, including the testimony of the applicant and the DKS TIS submitted with the application, and finds that it is feasible to comply with this condition. To ensure compliance, the Board imposes Condition No. 5(a) and 5(q).

21. *Adequate sight distance in both directions shall be provided at intersections with County Road 960. Adjustments in location of intersections and/or substantial excavation may be required.*

The Board relies on the evidence in the record, including the testimony of the applicant and the DKS TIS submitted with the application, and finds that it is feasible to comply with this condition. To ensure compliance, the Board imposes Condition Nos. 5(g) and 5(h).

22. *As may be found necessary, developer shall provide improved and/or additional drainage facilities to protect the road.*

The Board relies on the evidence in the record, including the testimony of the applicant and application materials, and finds that it is feasible to comply with this condition by designing drainage facilities to protect the roads and limit erosion. To ensure compliance, the Board imposes Condition Nos. 5(n), 5(o), and 5(p).

23. *Locations and details of pedestrian/bicycle/equestrian paths intersecting and/or located within road right-of-way shall be subject to Department of Public Works approval.*

The Board relies on the evidence in the record, including the testimony of the applicant and the overall pedestrian and bicycle plan as shown on the Street Plan attached to the application. The Board finds that no equestrian trails are planned, no paths are proposed within the County rights-of-way except one crossing of Gates Hill Road and an underpass crossing of North Fork Road, and that it is feasible to comply with this condition. To ensure compliance, the Board imposes Condition Nos. 5(c) and 12.

24. *Developer shall provide necessary traffic signs and warning devices.*

The Board relies on the evidence in the record, including the testimony of the applicant and the DKS TIS submitted with the application, and finds that it is feasible to comply with this condition. To ensure compliance, the Board imposes Condition No. 5(m).

25. *Additional right-of-way shall be dedicated on Gates Hill Road as necessary, and the road shall be improved to County turnpike standards from County Road 960 to the most southerly intersection with development access roads.*

The Board finds that since the time of the conceptual plan approval, Gates Hill Road has been reconstructed by Marion County, so this condition is no longer appropriate. The Board finds that this condition has been met.

26. *Condition Nos. 21, 22, 23 and 24 shall apply to Gates Hill Road also.*

The Board relies on the evidence in the record, including the testimony of the applicant and the DKS TIS submitted with the application, and finds that it is feasible to comply with these conditions. To ensure compliance, the Board imposes Condition No. 5(a).

27. *The forest access road shall be dedicated and improved per item 5 of Department of Public Works memo of September 10, 1979.*

The Board relies on the evidence in the record, including the testimony of the applicant and the application materials, that state the forest access road will be improved to provide access to the condominium and commercial portions of the site. The Board finds that it is feasible to comply with this condition. To ensure compliance, the Board imposes Condition No. 5(q).

28. *An Improvement Agreement shall be signed by the developers as required by the Marion County Department of Public Works.*

The Board relies on the evidence in the record, including the testimony of the applicant that it agrees to sign any needed Improvement Agreements and finds it is feasible to meet this condition.

29. *The developer shall submit proof to the Marion County Department of Public Works that it is financially capable of fulfilling the requirements of the Improvement Agreement.*

The Board relies on the evidence in the record, including the testimony of the applicant and the application materials stating that Pacific Santa Fe Corporation, the managing partner of Elkhorn Golf & Resort, LLC, has a 20-year history of developing commercial, multi-family, single-family and resort planned communities and that it has demonstrated its ability to complete developments in many diverse communities throughout Oregon, as well as Washington, Idaho and California.

The Board finds that Pacific Santa Fe Corporation has secured funding to complete the entitlement process for the subject development and that an appraisal has been completed of the entitled value of the property that supports the necessary funding to complete the project. Therefore, this condition has been met.

30. *All assessments on the property shall be paid in full prior to filing the plat.*

The Board relies on the evidence in the record, including the testimony of the applicant and the application materials, stating that all assessments will be paid prior to filing the Final Plat and finds that it is feasible to meet this condition. To ensure compliance, the Board imposes Condition No. 6.

31. *Staff approval of all street names.*

The Board relies on the evidence in the record, including the testimony of the applicant stating that it has not yet selected street names, but will submit names to Marion County for staff approval once a selection has been made, and finds that it is feasible to comply with this condition. To ensure compliance, the Board imposes Condition No. 8.

### **XIII. RESPONSES TO ISSUES RAISED BY OPPONENTS**

The majority of issues raised by opponents that are relevant to applicable approval criteria are addressed in the findings set forth above. In addition to those findings, the Board adopts the following findings in response to specific issues raised by opponents.

#### **A. Transportation Issues**

Several opponents suggest that completion of the Elkhorn Resort will have a devastating impact on North Fork Road and Gates Hill Road. Contrary to the opponents' assertions, the Board finds that the evidence in the record demonstrates that approval of this project will infuse over \$1 million in transportation improvements to the area and, with the proposed mitigation, will improve the volume to capacity (v/c) ratio of the roads compared to what is anticipated without the project. The Board also finds that the TIS prepared by DKS Associates, dated August 2007 and adopted and incorporated into these findings by reference, demonstrates that the impacts of the project are relatively small, the proposed Highway 22/North Fork Road intersection improvement mitigates the proportional impacts of the project and that the intersection will experience better operations with the project than it would without the project.

More recently, the Willamette Law Clinic, on behalf of 1000 Friends of Oregon, submitted a letter arguing that approval of the proposed development would violate the Transportation Planning Rule ("TPR"). However, the applicant has submitted a supplemental memorandum prepared by DKS Associates, dated June 18, 2008, which contains a TPR analysis and is adopted and incorporated into these findings by reference. The DKS memorandum recommends mitigation at the Highway 22/North Fork Road intersection by a channelized right-turn lane on the north leg of North Fork Road and a corresponding acceleration lane with a taper section on the west leg of Highway 22, and demonstrates that the proposed transportation improvements will mitigate the impacts of the proposed development and meet all TPR requirements. By letter dated June 25, 2008, the Oregon Department of Transportation ("ODOT") confirmed that the proposed improvements are feasible when designed to ODOT standards. As stated above in the findings regarding Goal 12 and the MCCP transportation policies, the Board finds that with the proposed improvements, any impacts caused by the project will be adequately mitigated as contemplated by the TPR.

#### **B. Alternatives Analysis**

Concerns have been raised by opponents that the applicant has not considered other alternative sites where the opponents believe the development could be located in or through the expansion of existing UGBs. Specifically, opponents contend that the proposed residential resort development could be located on the old Woolen Mill site in Stayton, or on unidentified sites in or adjacent to Gates, Detroit, and Idanha. The Board finds that approval of this application would result in final development approval of a prior subdivision that was specifically approved in this location, for this golf course resort. The Board also finds that residential and commercial components of this application merely complete the second phase of the prior county approvals, which specifically contemplate an integrated golf course and residential resort development in the proposed location at Elkhorn Valley Golf Course. Therefore, there is no alternative site that involves an existing preliminary subdivision approval adjacent to an existing golf course. The Board finds that the Elkhorn Estates Planned Development, approved by the county in 1982, cannot be "reasonably accommodated" in the alternative locations suggested by the opponents.

#### **C. The Application Does Not Propose a "Destination Resort"**

Several opponents argued that the application requested the siting of a "small destination resort," and therefore should be denied under the destination resort criteria of ORS 197.445 and Goal 8. However,

the application does not propose a destination resort pursuant to ORS 197.435 - 467 or Goal 8 and this decision is not based on the criteria of ORS 197.435 - 467 or Goal 8. The site does not qualify as a destination resort location because it is not within the map of eligible lands adopted by Marion County pursuant to ORS 197.455. The application addresses all applicable subdivision approval criteria and is not subject to the requirements of the destination resort statute or Goal 8. The Board finds that opponents have not explained why the county should be required to treat an application as a "destination resort" where the application does not fit within the statutory criteria for such a resort and the applicant has not requested treatment as a destination resort under the county's plan and the applicable statutes. *See Doherty v. Morrow County*, 44 Or LUBA 141 (2003).

#### **D. Compliance With Goal 11 and Goal 14 Exception Criteria**

Opponents express general disagreement with the premise that the county may approve an "urban" resort with "urban" level of services on rural land under the applicable goal exception criteria. However, the Board finds that this is precisely what the Goal 11 and Goal 14 exception rules are designed to allow, so long as those criteria are satisfied. Opponents assert that the applicant may not be allowed to rely in part on a need for specific "rural" characteristics in order to satisfy the applicable criteria for a goal exception. However, the actual criteria set forth in the applicable state rules contain no such prohibition. Rather, the rules provide that the county may approve the requested exception if it finds that the proposed development cannot be "reasonably accommodated" within an urban area or through the expansion of a UGB. The applicant has submitted a significant amount of evidence on which the Board has adopted findings that the proposed use cannot be reasonably accommodated on urban land, or other land that would not require an exception, and that the applicable criteria for the requested exceptions are met.

The Board finds that the project complies with the criteria for exceptions to Goal 11 and 14.

#### **E. Environmental Issues**

Opponents assert that the project will result in adverse environmental consequences to elk herds, salmon and steelhead, and that the application violates MCCP Fish and Wildlife Habitat Policies 4 and 5. Opponents also assert that the proposed development would have a devastating impact on wildlife habitat and water quality. The Board relies on testimony by the applicant and its consultants, including the letters from Steven Shropshire, dated January 10, 2008 and July 23, 2008, as well as letters from Tracy Cork, dated December 10, 2007 and June 12, 2008, and finds that it is feasible to provide an appropriate level of water and sewer service to the proposed development. Additionally, the Board finds that development of the project will not pose any threat to human health or the health of aquatic species, and will provide enhancement to water quality.

As noted in Section X, above, the Board also finds that the Wildlife Habitat Mitigation Plan and Wildlife Habitat Management Plan, appropriately and sufficiently address wildlife issues raised by the opponents.

#### **F. There is No Need for Another Goal 4 Exception**

The previous planned unit development approval is a valid conceptual approval granted by the Marion County Board of Commissioners in 1982. The previous approval was based on a specific project, which specifically contemplated an integrated golf course and residential resort development in the proposed location at Elkhorn Valley Golf Course, and also included a valid Goal 4 exception that was subsequently acknowledged by the Land Conservation and Development Commission (LCDC). The Planning Commission found that approval of this application would result in final development approval of a prior subdivision that was specifically approved in this location, for this golf course



resort. The Planning Commission also found that residential and commercial components of this application merely complete the second phase of the prior county approvals. The Board agrees with the Planning Commission and finds that the current subdivision application conforms generally to the previous planned unit development proposal and, therefore, merely implements the earlier conceptual plan approval. The Board adopts the analysis of LCDC and finds that a Goal 4 exception has already been approved for this project and, therefore, another Goal 4 exception is not necessary.

**G. The Proposed Resort Complies with Goal 5.**

Opponents mistakenly assert that this application violates Goal 5. Under OAR 660-023-0250(3), a PAPA would affect a Goal 5 resource if it 1) creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or 2) allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list. This application does not create or amend a resource list. The proposed development was conceptually approved in 1982 and the County previously acknowledged a Goal 5 inventory, at which time this proposed use was identified and permitted. Since this application merely implements the previous conceptual approval, no new conflicting uses are allowed by this application and Goal 5 is therefore met. Moreover, the proposed development complies with the setback requirements of the Marion County Zoning Code, including the 50-foot setback from riparian corridors.

In addition, as previously discussed, the requirements under ORS 197.460 relating to destination resorts are inapplicable because the proposed resort is not a destination resort, as defined by statute. Therefore, the Board can find that the application complies with Goal 5.

**H. Response to DLCD Letter**

DLCD does not oppose this application. However, in correspondence dated December 17, 2007, DLCD raised a few issues regarding updating the Goal 14 and Goal 11 exception analyses and maintaining the floor area limitation for commercial uses. The Goal 14 and Goal 11 issues have been addressed in Section IX of these findings by updating the analyses to reflect the current existing conditions and needs of the area. Additionally, the issue regarding floor area limitation for commercial uses has been addressed by adding a condition of approval requiring that all buildings and commercial uses, except the hotel and existing golf course, will not exceed the 3,500 square foot floor area limitation. Additionally, the uses approved by this decision are limited to those uses allowed by the exceptions to Goal 11 and Goal 14 and the Board has imposed a condition of approval limiting allowed uses to those uses which are requested by the applicant in this proceeding and as otherwise allowed by the ordinance adopting this decision. The Board finds that all issues raised by DLCD have been adequately addressed.

**I. The Conceptual Approval is Valid and the Application Substantially Conforms to the Conceptual Plan.**

Opponents assert that the previous conceptual approval for the proposed resort is invalid. To the contrary, however, the County made a decision in Administrative Review Case No. 06-62, subject to Type II review with notice and an opportunity for comment, and determined that the previous conceptual approval for this project had been lawfully extended and can now be implemented. No appeal of the decision was timely filed; therefore, the decision became final on November 30, 2006. The Board therefore finds that the prior conceptual approval is valid.

Opponents also assert that this application does not conform to the conditions of the conditional use permit for commercial services imposed in conjunction with the prior conceptual approval. However, compliance with the conditional use permit is not required to gain detailed plan approval of the original

conceptual plan. Any conditions of the conditional use permit approval will be met at the time of development of such commercial services for which the conditional use permit was issued. As part of this decision, the Board does impose one condition of approval that is similar to a prior condition of the conditional use permit for commercial services. Condition No. 2 of the prior conditional use approval provides as follows:

2. *A development plan for the commercial service development area to be approved by the Department of Public Works and the Planning Department prior to the construction of any commercial facilities. No commercial development other than a sales office shall occur until 50 residences have been constructed. All uses shall be connected to the community water systems and be located within the area designated "Commercial Area" on the Development Plan.*

The Board interprets this condition as allowing some commercial development, other than a sales office, so long as it is developed in conjunction with the residential portion of the development. To ensure compliance, the Board imposes Condition No. 23. The Board finds that the proposal today substantially conforms to the previous conceptual approval and to the conditions of the previous conceptual approval. Through this decision, the Board implements the prior conceptual approval by completing the resort development.

#### **J. Limited Use Overlay Zone.**

As part of the 1984 goal exceptions and amendment of the Marion County Comprehensive Plan for this development (Ordinance No. 677), the County applied a Limited Use Overlay ("LU") zone concurrent with adoption of the AR zone for the subject property. The specific terms of the LU overlay as applied to the subject property are set forth in Exhibit C of Ordinance No. 677. The application of the LU overlay serves to limit the uses approved by the conceptual plan and assure compliance with OAR 660-004-0018 in that proposed uses that require an exception are limited to those specific uses approved herein, as further defined in the Goal 11 and Goal 14 exception findings. Pursuant to approval of the detailed plan for this development and the related exceptions to Goal 11 and Goal 14, the Board finds that it is necessary to amend the conditions of the LU overlay as applied to the subject site by including the following condition:

Condition No. 7: The uses and related activities to be allowed on the subject site are limited to those uses which are requested by the applicant in the detailed plan proceeding and as otherwise allowed by Ordinance No. 677, as modified and subject to conditions of approval.

The Board also finds that with this modification, compliance with OAR 660-004-0018 is assured.

#### **XV. CONCLUSION**

Based on all of the findings set forth above and all of the evidence in the record, the Board approves this application with the conditions of approval listed on Exhibit B, which are adopted and specifically incorporated by this reference.

## **EXHIBIT B**

### **Conditions of Approval**

1. If developed in phases, the order of each phase shall remain flexible, but the development must be consistent with the plan submitted with this request.
2. Prior to approval and recording the final plat for any phase, the applicants shall obtain approval from Marion County and DEQ for sewage disposal. This includes any individual septic systems and community wastewater collection system.
3. Prior to approval and recording the final plat applicant shall obtain a 1200 C permit from Oregon Department of Environmental Quality.
4. Prior to approval and recording the final plat for any phase, the applicant shall submit evidence of compliance with the development and access standards of the Stayton Fire District.
5. Prior to approval and recording of the final plat for any phase, the applicant shall submit evidence of compliance with the requirements recommended by Marion County Department of Public Works specifically as follows:
  - (a) In accordance with Chapter 172 of the Rural Zoning Ordinance of Marion County, the applicant shall show sufficient dedicated right-of-way on the plat to provide the public dedicated right-of-way half-width of 30 feet along North Fork Road and Gates Hill Road standard radius at curves and corners as well as provide for any cut or fill slopes, or roadside ditches, to be within the public right-of-way. Any dedications should be to the public, not Marion County.
  - (b) The developer shall improve North Fork Road along its frontage to applicable Public Works' standards including, but not limited to, pavement overlay, gravel shoulders, drainage work, slope work, and vegetation clearing. Any additional landscaping within the right-of-way of North Fork Road would need to be approved by the County and provisions would need to be made to ensure its active maintenance by a private entity associated with the proposed development.
  - (c) The developer is encouraged to provide grade-separation (bridges) for any trails crossing North Fork Road, and trails shall be designed to discourage random crossings of County roads. All proposed pedestrian/trail crossing improvements on or near County roads, including grade separated crossings, shall be located and designed in accordance with Public Works' standards.
  - (d) Roads serving the subdivision should be constructed in compliance with the County design standards for public roads. Easements should match standard right-of-way widths. Part of this planned unit development must include a homeowners' association or other entity that will take full responsibility for maintaining these roads. This will need to be officially created and documented to the satisfaction of the Public Works Department before final plat approval for the residential phase of the development.

- (e) In accordance with Marion County Ordinance #651 the applicant shall obtain access permits for each connection to public right-of-way, and make changes if necessary to establish safe and compliant access.
- (f) Driveways and roadways will also need to meet fire district standards for emergency access.
- (g) Prior to plat approval, the applicant will need to demonstrate to the satisfaction of Marion County that all proposed accesses to public roads (including trail accesses) will meet county standards for issues such as sight distance, safety, design, etc.
- (h) Vision easements may need to be purchased or established near intersections to ensure adequate sight distance is maintained.
- (i) The developer will be required to make a proportional share contribution to the cost of a pavement overlay of the North Fork Road pavement from the site to Oregon 22 (not including the slide area). This proportional share is estimated at \$527,829, and would be assessed at a per trip cost of \$390.70, (the calculation of daily trips assigned to each use shall be as discussed in the Traffic Impact Analysis (TIA) prepared by DKS. Associated dated August 2007 and the supplemental memorandum dated June 18, 2008) and collected on a pro rata basis at the time of issuance of each building permit. The funds may be used for a pavement improvement project (to be constructed soon after development buildout) on North Fork Road between the subject property and Oregon 22, or may be used to make needed repairs to North Fork Road or to improve access or an alternate emergency route.
- (j) The pavement of North Fork Road and Gates Hills Road is relatively thin and could be damaged by trucks carrying construction materials and equipment to or from the proposed development. In order to reduce repair costs and the public detriment associated with damaged roads caused by trucks carrying construction materials related to the development, the developer will be required to repair or replace these areas upon request of the County. The Public Works Department will review the road after issuance of building permits and prior to final inspection and will inform the developer and maintenance association of any damage attributable to site construction. The developer and/or maintenance association would then have 90 days (or other time frame as agreed to by Public Works) to repair the damage. If areas remain unrepaired after this time, final inspection may not be issued for the subject property until the damage has been repaired. The applicant shall provide an agreement that outlines a dispute resolution process to be followed in case of disagreement over the amount of damage caused by construction. The agreement shall be reviewed and approved by County Counsel prior to issuance of any building permits.
- (k) The developer shall design and construct a right turn lane on North Fork Road at the intersection with Oregon 22 to Marion County and ODOT standards. This includes tapers, appropriate storage length, channelization, signing, and acquiring any needed right-of-way. The existing accesses need to be considered when designing the improvement, and may need to be relocated. Engineered plans shall be submitted to Marion County for review and approval.

- (l) The developer shall design and construct an acceleration lane onto Oregon 22 westbound from North Fork Road to ODOT standards or other alternative transportation mitigation measures approved by ODOT.
  - (m) All additional or modified traffic control signing or markings required within 24 months of the completion of the improvements to public roads, that are attributed to the development, shall be funded by the developer under a private contract or work order, which must be in place prior to plat approval.
  - (n) The developer shall provide a storm water detention system. The system shall be sized so that it will detain the difference between a 5-year frequency storm with pre-development conditions and a 10-year frequency storm with development conditions.
  - (o) Site grading shall not significantly 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 shall provide a storm drainage plan for the site addressing drainage issues and detention elements. New or replaced culverts should be designed to meet applicable fish passage criteria. Acceptable drainage and detention systems must be in place prior to plat approval.
  - (p) Public storm drainage improvements shall be built to Marion County Engineering and Construction Standards. 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 developer will be required to either A) provide an engineering study showing that additional runoff from the subject property can be accommodated by area drainage facilities, 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.
  - (q) The applicant shall provide a dedicated right-of-way 60 feet wide along the forest access road that connects North Fork Road to a BLM road to the property line. The road shall be improved to Public Works' standards for a distance that includes the last curb cut to enter the residential portion of the development.
6. Prior to approval and recording the final plat for each phase, the applicant shall submit evidence that all property taxes due to Marion County have been paid in full.
  7. The applicant shall submit documentation satisfactory to the Marion County Surveyor accomplishing the final subdivision plat for each phase. The applicant is advised that a current or updated title report, that is no more than 15 days old at the time of approval of the plat, must be submitted with the final mylar.
  8. The new roadways shall be named and the approved names must be shown on the final recorded plat. The contract or work order for the street signs installation, with appropriate fee, must be submitted to Marion County Department of Public Works prior to the plat being recorded.

9. In accordance with Marion County ordinances and OAR 340-21-060, during the land clearing and road construction phase of this development, dust suppression measures such as water trucks shall be employed as necessary to prevent off-site deposition of dust generated by the construction activities or related vehicular traffic on adjacent properties.
10. Prior to issuance of a building permit on any of the resulting lots, the applicant shall sign and submit a Farm/Forest Declaratory Statement acknowledging there are nearby farm and forest uses in the area. This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
11. The subdivider shall include in all sales representatives' preliminary and earnest money agreements, contracts of sale and any other form of conveyance, a statement that Marion County is in no manner obligated, nor does the County intend, to maintain the roads within the planned development.
12. The improvement specifications for the private streets and pedestrian paths shall be in compliance with County standards and approved by the Planning Director prior to construction. The private streets and paths shall be improved and maintained to these specifications. The private streets, drainage, paths, gates, common open spaces, and community water and sewer systems shall be maintained by a single homeowners association representing all residential owners, the chapel, commercial service development and golf course. Property owners within the planned development shall automatically be members of the association. The homeowners association shall have a maintenance agreement that shall be approved by County Counsel and the Public Works Director.
13. The private water system shall meet the requirements of the Oregon State Health Division with reference to chemical and bacteriological quality and meet the quality, storage and distribution requirements of the State Health Division and the Department of Public Works.
14. Prior to approval and recording the final plat the applicant shall obtain Oregon Water Resources Department authorization to allow ground water or surface water appropriation or transfer as necessary to serve the project.
15. Prior to approval and recording the final plat for any phase, the developer or HOA shall file with the Board of Commissioners a memorandum of understanding, approved by County Counsel, acknowledging that the County may, when evidence shows that facilities are not meeting state or county requirements, cause the maintenance of the private streets, drainage, paths, common open spaces and community water, sewer and forest protection facilities with the expense becoming a lien against all property in the planned development. Developer or HOA will provide a maintenance bond, letter of credit or other form of financial security or assurance in a form acceptable to County Counsel and in an amount equal to ¼ of the yearly cost of maintenance for the purpose of reimbursing the County for costs incurred to perform necessary maintenance.
16. New development shall not be located within identified forest buffer areas on the perimeter, riparian floodplains as identified in the submitted Flood Plain Analysis and land northwest of the river, except the following areas:

- (a) As expressly allowed by the initial conceptual approval subject to adopted conditions;
  - (b) Within the building setback for domestic water storage tanks;
  - (c) Within the Forest Reserve Setback to accommodate parking and circulation in the commercial/condo area and at the forest road to limit grading and provide on-grade access to the residential areas;
  - (d) Within the Forest Reserve Setback to accommodate required sight distances for intersections at the connection to Gates Hill Road; and
  - (e) Subject to Condition 34, within the land adjacent to the Little North Fork River for non-habitable buildings only, not to exceed 7,000 square feet of structure.
17. Prior to approval and recording the final plat a forest fire hazard management program shall be prepared and implemented continuously by the homeowners association. The program shall be approved by the State Department of Forestry and the Stayton Fire District and a copy shall be provided for the subdivision file.
18. If it becomes necessary to fence the residential land, the homeowners association will coordinate with the Oregon Department of Fish and Wildlife (ODFW) for appropriate fence design and construction.
19. Applicant shall replace and relocate the existing Elk Fence with a new woven eight-foot (8') high wire fence and the western Elk Fence boundary shall be relocated to the bottom of the hillside adjacent to and at the edge of the golf course.
20. If it is determined that trespassing is occurring onto adjacent timberlands, developer or HOA shall provide fencing as required by the County.
21. All parking and loading areas shall be paved prior to final inspection for any structures in the commercial area or for the condominiums. The applicant shall submit, for review and approval of the Planning Director, a plan outlining the type and extent of landscape and fencing to provide a buffer from adjacent properties in compliance with County code.
22. Prior to issuance of building permits the applicant shall provide evidence of hiring a licensed geotechnical consultant to assure compliance with the Geologic Investigation conducted by GRI Geotechnical & Environmental Consultants.
23. Prior to issuance of permits for any of the development in the commercial area the applicant shall submit a development plan to be approved by the Department of Public Works and the Planning Division. No commercial development, other than a sales office and uses accessory to the golf course, shall be allowed unless the development plan includes Phase 1 of the residential portion of the development. Development of the commercial area uses shall be concurrent with the development of Phase 1 of the residential development. All commercial uses shall be connected to the community water systems and be located within the area designated "Commercial Area" on the Development Plan.
24. Advertising visible from North Fork Road is limited to a total of 200 square feet on each side of the road. No individual sign shall exceed 35 square feet in area or be more than 15 feet high. Any monument sign at the entrance to the resort shall be set back at least 15 feet from the edge of the pavement, be located out of the right-of-way, and not be located within the sight distance triangle or vision clearance area.



25. If the commercial development is completed in phases, sufficient paved parking and access shall be provided for each phase as approved by the Planning Director.
26. All buildings shall conform to a common architectural style consistent with all the architectural style of the condominiums and other residences in the planned development.
27. The area between the commercial buildings or paved parking and North Fork Road, or between the condominium development and the road shall be landscaped and maintained with plants common to the area. Landscaping shall also be included to break up any large areas of paving.
28. When the course is expanded or the new clubhouse is developed the access road and one-half of the required parking shall be paved.
29. The golf course shall remain open to the public except when the course is being used for a special golfing event.
30. In resolution of the discrepancy between conditions imposed in Plat Case 879 and Ordinance 677, the golf course and other improved recreation facilities may be owned separately from the remainder of the development, provided that the residential home owners association (HOA) and the golf course HOA shall be joined in a master HOA.
31. The habitat management plan submitted by the applicant shall be approved by ODFW and implemented by applying specific actions in order to uplift the value of the property and address the long term management and protection of mitigation sites.
32. Prior to approval and recording the final plat the applicant shall develop and implement a Golf Course Management Plan addressing water conservation, reduced use of pesticides and environmentally responsible maintenance practices, including a Pest Management Plan, approved by ODFW.
33. Prior to approval and recording the final plat the applicant shall obtain appropriate Army Corps and Engineers and DSL (Oregon Division of State Lands) permits and comply with DEQ Erosion Control standards, for all stream crossings.
34. With the exception of footpaths and road crossings, no development shall be located within fifty feet (50') from the centerline of all streams on or adjacent to the site.
35. Prior to approval and recording the final plat the applicant shall coordinate with ODFW to identify reaches of any tributaries that serve as fish habitat and upgrade culverts, if necessary and as appropriate, and where practical, to aid fish passage.
36. Prior to approval and recording the final plat the applicant shall develop and implement a program approved by ODFW to remove scotch broom and to introduce suitable deer and elk forage seed in the area along the Little North Fork River.
37. Prior to approval and recording the final plat the applicant shall develop a Permitted Plantings Plan for review and adoption by the Home Owners Association with prohibited and recommended plants approved by ODFW.

38. If approved by Marion County Public Works and ODFW, the applicant may relocate the proposed entry road into the residential area from the Forest Road to the existing unpaved road to take advantage of an existing stream crossing and thereby minimize impact to the existing stream and riparian area.
39. Applicant shall incorporate the language into the CC&Rs:
  - (a) Indemnification of the Oregon Department of Fish and Wildlife: The lots are located in an area of known big game and furbearer animal use. By accepting a deed to a lot, each owner expressly agrees to indemnify and hold harmless the Oregon Department of Fish and Wildlife for any damage and/or inconvenience caused by these animals to persons, real property and/or personal property. This section shall not be amended, modified or appealed without the prior written consent of the Oregon Department of Fish and Wildlife.
  - (b) Feeding and Hunting of Wildlife: Feeding and hunting of wildlife, other than bird feeders, is prohibited on the property. No owner shall feed or hunt wildlife, including big game species, within the property. All owners shall comply with this restriction and shall assure that their tenants, licensees, invitees and family members so comply.
40. Prior to approval and recording the final plat the applicant shall implement a light pollution reduction policy which ensures that all site and building luminaries produce a maximum initial luminance value no greater than 0.05 horizontal and vertical foot candles at the site boundary and beyond except as may be required to meet street/primary entry lighting and safety requirements. Lighting within the project shall be designed so that zero percent (0%) of the total fixture lumens are emitted at an angle of 90 degrees or higher from nadir (straight down).
41. Prior to approval and recording the final plat the applicant shall develop an Emergency Preparedness Plan, which includes construction of a helipad for community use, a Communication Center for use by the Stayton Fire District and the Marion County Sheriff's Office, and the maintenance and operation of back-up emergency generators.
42. The applicant may develop an education resource center as a part of the clubhouse on the property in conjunction with ODFW, the local private timber industry, and the Opal Creek Ancient Forest Center that will be open to the public.
43. The applicant shall provide on-site security staff approved by the Marion County Sheriff's Office.
44. The applicant shall contribute \$15,000 to Marion County for the construction of a six-foot (6') high chain link fence along both sides of the concrete bridge just northeast of the property to inhibit access to the Little North Fork River if MCDPW determines that this is an appropriate project.
45. The first phase of the final plat must be filed with the Director by the first day of the 24th month following effective date of this decision. Extensions may be approved by the Director upon submittal of written justification prior to the expiration of the time limit.

46. The uses and related activities to be allowed on the subject site are limited to those uses which are requested by the applicant in the detailed plan proceeding and as otherwise allowed by Ordinance No. 677, as modified and subject to these conditions of approval.

Marion County Planning Division  
555 Court St. NE, Room 2130  
PO Box 14500  
Salem, OR 97309

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