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

05/14/2013

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

FROM: Plan Amendment Program Specialist

SUBJECT: Deschutes County Plan Amendment
DLCD File Number 010-12

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. 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: Wednesday, May 29, 2013

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

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

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

Cc: Will Groves, Deschutes County
Jon Jinings, DLCD Community Services Specialist
Karen Swirsky, DLCD Regional Representative

<paa> YA

FORM 2 DLCD Notice of Adoption

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

DATE STAMP
☐ In person ☐ electronic ☐ mailed
DEPT OF
MAY 09 2013
LAND CONSERVATION AND DEVELOPMENT
For Office Use Only

Jurisdiction: DESCHUTES COUNTY
Local file number: TA-12-3
Date of Adoption:
Date Mailed: 5-8-13

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? ☑ Yes ☐ No Date: 12/21/12

☐ Comprehensive Plan Text Amendment
☐ Comprehensive Plan Map Amendment
☑ Land Use Regulation Amendment
☐ Zoning Map Amendment
☐ New Land Use Regulation
☐ Other:

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

AMEND DCC 19.04 AND 19.16 TO ALLOW 2.5:1 RATIO OF OVERNIGHT TO RESIDENTIAL UNITS IN A DESTINATION RESORT AS ALLOWED UNDER ORS 197.445(6).

Does the Adoption differ from proposal? Please select one

No

Plan Map Changed from: N/A to:
Zone Map Changed from: N/A to:
Location: BEND URBAN AREA RESERVE Acres Involved:
Specify Density: Previous: New:
Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
☑	☑	☐	☐	☐	☐	☐	☑	☐	☐	☐	☑	☐	☐	☐	☐	☐	☐	☐

Was an Exception Adopted? ☐ YES ☑ NO
Did DLCD receive a Notice of Proposed Amendment... YES
35-days prior to first evidentiary hearing? ☑ Yes ☐ No
If no, do the statewide planning goals apply? ☐ Yes ☐ No
If no, did Emergency Circumstances require immediate adoption? ☐ Yes ☐ No

DLCD file No. 010-12 (19644)

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

Local Contact: Will Groves	Phone: (541) 388-6518 Extension:
Address: 117 NW Lafayette	Fax Number: - -
City: Bend Zip: 97701	E-mail Address: willg@deschutes.org

ADOPTION SUBMITTAL REQUIREMENTS

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

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light **green paper if available**.
3. Send this Form 2 and **one complete paper copy** (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

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

9. **Need More Copies?** Please print forms on **8½ -1/2x11 green paper only if available**. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail **plan.amendments@state.or.us**.

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code 19.04.040 and 19.106.060(D), to Change the Ratio of Overnight to Residential Units in Destination Resorts.	* * *	ORDINANCE NO. 2013-003

WHEREAS, Weston Investment Co. LLC applied for a text amendment to Deschutes County Code ("DCC") Title 19, Section 19.04.040, Definitions and Section 19.106.060(D), Standards for Destination Resorts, to change the ratio of overnight to residential units in destination resorts; and

WHEREAS, after notice was given in accordance with applicable law, a public hearing was held on February 14, 2013 before the Deschutes County Planning Commission and, on February 28, 2013 the Planning Commission recommended approval of the text amendment; and

WHEREAS, the Board of County Commissioners considered this matter after a duly noticed public hearing on April 15, 2013 and concluded that the proposed changes are consistent with the County's Comprehensive Plan and that the public will benefit from changes to the land use regulations; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC 19.04.040, Definitions, is amended to read as described in Exhibit "A", attached and incorporated by reference herein, with new language underlined and deleted language set forth in ~~strikethrough~~.

Section 2. AMENDMENT. DCC Section 19.106.060(D), Standards for Destination Resorts, is amended to read as described in Exhibit "B", attached and incorporated by reference herein, with new language underlined and deleted language set forth in ~~strikethrough~~.

Section 3. FINDINGS. The Board adopts as its findings in support of this decision, Exhibit "C", attached and incorporated by reference herein.

///

Section 4. EMERGENCY. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this ordinance takes effect on its passage.

Dated this 6th of May 2013

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Alan Unger
ALAN UNGER, Chair

TAMMY BANEY, Vice Chair

ATTEST:

Bonnie Baker
Recording Secretary

TONY DEBONE, Commissioner

Date of 1st Reading: 6th day of May, 2013.

Date of 2nd Reading: 6th day of May, 2013.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Alan Unger	✓			
Tammy Baney	✓			
Tony DeBone	✓			

Effective date: 6th day of May, 2013.

**** Denotes text not amended by Ordinance 2013-003

19.04.040. Definitions.

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

A. The resort is located on a site of 160 or more acres;

B. At least 50 percent of the site is dedicated to permanent open space, excluding yards, streets, and parking areas;

C. A least $7 million (in 1993 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 spent on developed recreational facilities, and;

D. Visitor-oriented accommodations are provided, including meeting rooms, restaurants with seating for 100 persons and 150 separate rentable units for overnight lodgings. Accommodations available for residential use shall not exceed two and one-half such units for each unit of overnight lodging. However, the ~~rentable units~~ overnight lodging units may be phased in as follows:

   1. A total of 150 units of overnight lodging shall be provided as follows:
      a. At least 75 units of overnight lodging, not including any individually owned homes, lots or units shall be constructed or guaranteed through surety bonding or equivalent financial assurance prior to the closure of sale of individual lots or units, and;
      b. The remainder of the overnight-lodging units shall be provided as individually owned lots or units subject to deed restrictions that limit their use to overnight lodging units. The deed restrictions may be rescinded when the resort has constructed 150 units of permanent overnight lodging as required by DCC 19.04.040.
   2. The number of units approved for residential sale within the resort shall be not more than two and one-half units for each unit of permanent overnight lodging ~~provided under DCC 19.04.040(D)(1)(a).~~constructed or financially assured, and;
   3. The development approval shall provide for the construction of other required overnight-lodging units within five years of the initial lot sales.

E. Commercial uses allowed are limited to those types and levels necessary to meet the needs of visitors to the development. Industrial uses of any kind are not permitted.

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(Ord. 2013-013 §1; Ord. 99-001 §§2-4, 1999; Ord. 97-038 §1, 1997; Ord. 97-017 §1, 1996; Ord. 96-071 §1D, 1996; Ord. 95-045 §15, 1995; Ord. 94-027 §§1 & 2, 1994; Ord. 92-043 §1, 1992; Ord. 91-029 §§1, 8, 9 and 10, 1991; Ord. 91-001 §1, 1991; Ord. 90-038 §1, 1990; Ord. 90-007 §1, 1990; Ord. 88-042 §3, 1988; Ord. 86-058 §1, 1986; Ord. 86-055 §1, 1986; Ord. 86-033 §1, 1983; Ord. 86-032 §1, 1986; Ord. 86-017 §1 Exhibit a, 1986; Ord. 830945 §1, 1983; Ord. 83-041 §2, 1983; Ord. 80-217 §1 Exhibit A, 1980)

19.106.060. Standards for Destination Resorts.

The following standards shall govern consideration of destination resorts:

A. The destination resort shall, in the first phase, provide for and include as part of the CMP the following minimum requirements:
   1. At least 150 separate rentable units for visitor-oriented lodging;
   2. Visitor-oriented eating establishments for at least 100 persons and meeting rooms which provide eating for at least 100 persons;
   3. At least $7 million 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 spent on developed recreational facilities. The spending minimums provided for are stated in 1993 dollars; and
   4. The facilities and accommodations required by this DCC 19.106.060 must be physically provided or financially assured pursuant to DCC 19.106.110 prior to closure of sales, rental or lease of any residential dwellings or lots.

B. All destination resorts shall have a minimum of 160 contiguous acres of land. Acreage split by public roads or rivers or streams shall count toward the acreage limit, provided that the CMP demonstrates that the isolated acreage will be operated or managed in a manner that will be integral to the remainder of the resort.

C. All destination resorts shall have direct access onto a state, county, or city arterial or collector roadway, as designated by the Bend Urban Area General Plan.

D. A destination resort shall, cumulatively and for each phase, meet the following minimum requirements:
   1. The resort shall have a minimum of 50 percent of the total acreage of the development dedicated to permanent open space, excluding yards, streets and parking areas. Portions of individual residential lots and landscape area requirements for developed recreational facilities, visitor-oriented accommodations or multi-family or commercial uses established by DCC 19.76.080 shall not be considered open space; and
   2. Individually-owned residential units shall not exceed two and one-half such units for each unit of visitor-oriented overnight lodging constructed or financially assured within the resort. Individually-owned units shall be considered visitor-oriented lodging if they are available for overnight rental use by the general public for at least 45 weeks per calendar year through one or more central reservation and check-in service(s).

E. Phasing. A destination resort authorized pursuant to DCC 19.106.060 may be developed in phases. If a proposed resort is to be developed in phases, each phase shall be as described in the CMP. Each individual phase shall meet the following requirements:
   1. Each phase, together with previously completed phases, if any, shall be capable of operating in a manner consistent with the intent and purpose of DCC 19.106 and Goal 8;
   2. The first phase and each subsequent phase of the destination resort shall cumulatively meet the minimum requirements of DCC 19.106.060 and DCC 19.76.070, and;
   3. Each phase may include two or more distinct non-contiguous areas within the destination resort.

F. Dimensional standards:
   1. The minimum lot area, width, lot coverage, frontage and yard requirements and building heights otherwise applying to structures in underlying zones and the provisions of DCC 19.88.210 relating to solar access shall not apply within a destination resort. These standards shall be determined by the Planning Director or Hearings Body at the time of the CMP. In determining these standards, the Planning Director or Hearings Body shall find that the minimum specified in the CMP are adequate to satisfy the intent of the Bend Urban Area General Plan relating to solar access, fire protection, vehicle access, and to protect resources identified by LCDC Goal 5 which are identified in the Bend Urban Area General Plan. At a minimum, a 100 foot setback shall be maintained from all streams and rivers. No lot for a single-family residence shall exceed an overall project average of 22,000 square feet in size.
   2. Exterior setbacks and buffers.

a. A destination resort shall provide for the establishment and maintenance of buffers between the resort and adjacent land uses, including natural vegetation and where appropriate, fences, berms, landscaped areas, and other similar types of buffers.
b. Exterior setbacks shall also be provided to ensure that improvements and activities are located to minimize adverse effects of the resort on uses on surrounding lands.

G. Floodplain requirements. The Flood Plain Zone (FP) requirements of DCC 19.72 shall apply to all developed portions of a destination resort in an FP Zone in addition to any applicable criteria of DCC 19.106. Except for flood plain areas which have been granted an exception to LCDC goals 3 and 4, Flood Plain Zones shall not be considered part of a destination resort when determining compliance with the following standards;
1. One hundred sixty acre minimum site;
2. Open space requirements.
A conservation easement as described in DCC Title 19 shall be conveyed to the County for all areas within a flood plain which are part of a destination resort.

H. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland shall be a separate conditional use subject to all pertinent requirements of DCC Title 19.

I. Time share units not included in the overnight lodging calculations shall be subject to approval under the conditional use criteria set forth in DCC 19.100. Time share units identified as part of the destination resort's overnight lodging units shall not be subject to the time share conditional use criteria of DCC 19.100.

(Ord. 2013-003 §1; Ord. 99-001 §1, 1999)

Findings for Ordinance No. 2013-003
Change to the Ratio of Overnight to Residential Units in
Destination Resorts in the Bend Urban Area

1. Introduction

The Applicant, Weston Investment Company, LLC proposed minor amendments to the destination resort chapter of Title 19 of the Deschutes County Code ("DCC"). Chapter 19.106 governs resorts within the Urban Area Reserve ("UAR"). The applicant owns property within the Tetherow resort, which is the only destination resort currently entitled within the Urban Area Reserve. The amendments to DCC 19.106 change the ratio of residential units to overnight lodging units within a resort from 2:1 to 2-1/2:1, as allowed by the associated provisions of the Oregon Revised Statutes and Statewide Planning Goal 8. Overnight lodging units, as defined by DCC 19.04, include "permanent, separately rentable accommodations that are not available for residential use," or individually-owned residential units if such units are available for rental by the general public for 45 weeks per calendar year through a central reservation and check-in service.

ORS 197.445(4)(b)(E) governs the ratio between residential units for sale and overnight lodging units for rental in eastern Oregon as follows: "The number of units approved for residential sale may not be more than 2-1/2 units for each unit of permanent overnight lodging provided under this paragraph." Statewide Planning Goal 8 also contains this ratio (OAR 660-015-0000(8)). DCC 19.106 currently contains the ratio adopted with the original resort statutes (2:1). Although the Legislature subsequently changed the ratio to 2-1/2:1, Deschutes County has not yet adopted the new ratio. In order to update the mix of uses authorized within the Tetherow destination resort, the Applicant proposes minor amendments to DCC 19.106 to adopt the 2-1/2 to 1 ratio set forth in ORS 197.445 and Goal 8.

The Deschutes County Planning Commission held a hearing on TA-12-3 on February 14, 2013, and held the record open for a period of seven days. The Planning Commission held another hearing on February 28, 2013 and at that hearing voted 4 to 3 in favor of forwarding TA-12-3 to the Deschutes County Board of Commissioners (the "Board") with a recommendation of approval. The Board held a hearing on April 15, 2013, received oral testimony from the applicant and Paul Dewey on behalf of Central Oregon Landwatch.

The Board voted 3-0 in favor of approving TA-12-3 pursuant to an emergency clause. The Board adopted the amendments pursuant to the emergency clause for two primary reasons. First, the applicant cannot file CMP and FMP amendments until the ordinance is effective. The Board recognizes that the applicant. is eager to modify the CMP and amend the existing improvement agreement to establish long-term certainty with respect to the total number of overnight units

required and the associated bonding obligations. The Board believes that by providing long-term certainty with respect to the number of overnight units at Tetherow is in the best interest of the County, and that it is best to resolve that issue as soon as reasonably practical. Second, the Board recognizes that any amendment to the CMP or FMP is subject to appeal. Were the amendments to be effective in 90 days, any appeal of the CMP or FMP could result in a loss of the next building season while the applications are on appeal. The Board concludes that construction of overnight units sooner rather than later is in the best interest of the County and that a delay of 90 days could negatively impact the ability to construct overnight units during the next building season. Such a delay could then delay the potential for more influx of tourism dollars to the County. For these reasons, the Board has elected to adopt Ordinance 2013-003 by emergency.

2. Text Amendments to DCC 19.04 and 19.106

The amendments to DCC 19.04 and DCC 19.106 are set forth below. Additions are marked in underline text, and deletions are marked in ~~strikethrough~~ text.

A. DCC 19.04.040, Definitions

DCC 19.04.040 contains several definitions relating to the siting of destination resorts under Chapter DCC 19.106. To adopt the new ratio set forth in state law, the County has adopted the definition of "destination resort" as follows:

> "Destination resort" means a self-contained development that provides for visitor-oriented accommodations and developed recreational facilities in a setting with high natural amenities. To qualify as a "large destination resort" under Goal 8, a proposed development must meet the following standards:
>
> A. The resort is located on a site of 160 or more acres;
>
> B. At least 50 percent of the site is dedicated to permanent open space, excluding yards, streets, and parking areas;
>
> C. A least $7 million (in 1993 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 spent on developed recreational facilities, and;
>
> D. Visitor-oriented accommodations are provided, including meeting rooms, restaurants with seating for 100 persons and 150 separate rentable units for overnight lodgings. Accommodations available for residential use shall not exceed two and one-half such units for each unit of overnight lodging. However, the ~~rentable units~~ overnight lodging units may be phased in as follows:

1. A total of 150 units of overnight lodging shall be provided as follows:

a. At least 75 units of overnight lodging, not including any individually owned homes, lots or units–shall be constructed or guaranteed through surety bonding or equivalent financial assurance prior to the closure of sale of individual lots or units, and;

b. The remainder of the overnight-lodging units shall be provided as individually owned lots or units subject to deed restrictions that limit their use to overnight lodging units. The deed restrictions may be rescinded when the resort has constructed 150 units of permanent overnight lodging as required by DCC 19.04.040.

2. The number of units approved for residential sale within the resort shall be not more than two and one-half units for each unit of permanent overnight lodging ~~provided under DCC 19.04.040(D)(1)(a), and;~~ constructed or financially assured.

3. The development approval shall provide for the construction of other required overnight-lodging units within five years of the initial lot sales.

E. Commercial uses allowed are limited to those types and levels necessary to meet the needs of visitors to the development. Industrial uses of any kind are not permitted.

B. DCC 19.106.060, Standards for Destination Resorts

DCC 19.106.060 contains standards governing the construction and operation of resorts. The County has amended DCC 19.106.060(D) to adopt the 2-1/2:1 ratio set forth in state law, as shown below.

DCC 19.106.060(D), Minimum Resort Requirements

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

1. The resort shall have a minimum of 50 percent of the total acreage of the development dedicated to permanent open space, excluding yards, streets and parking areas. Portions of individual residential lots and landscape area requirements for developed recreational facilities, visitor-oriented accommodations or multi-family or commercial uses established by DCC 19.76.080 shall not be considered open space; and

2. Individually-owned residential units shall not exceed two and one-half such units for each unit of visitor-oriented overnight lodging constructed or financially-assured within the resort. Individually-owned units shall be considered visitor-oriented lodging if they are available for overnight rental use by the general public for at least 45 weeks per calendar year through one or more central reservation and check-in service(s).

3. Compliance with DCC 19.116.110, Amendments to Title 19

19.116.010. Amendments.

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

A. Text changes and legislative map changes may be proposed by the Board of County Commissioners on its own motion, by the motion of the Planning Commission, upon payment of a fee, by the application of a member of the public. Such changes shall be made pursuant to DCC 22.12 and ORS 215.110 and 215.060.

B. Any proposed quasi-judicial map amendment or change shall be handled in accordance with the applicable provisions of DCC Title 22.

That applicant submitted an application for the code amendments pursuant to DCC 19.116.1010(A), and the County processed the amendment consistent with DCC Title 22, as required by subsection (B). DCC 22.12.010 and .040 require a public hearing before the Planning Commission and then the Board of County Commissioners for all legislative changes. DCC 22.12.020 sets forth the basic notice requirements for the hearings. As discussed above, both the Planning Commission and the Board held the required hearings.

4. Compliance with County Comprehensive Plan and BAGP

Both the Deschutes County Comprehensive Plan and the Bend Area General Plan (BAGP) contain destination resorts goals and policies. However, neither plan contains any goals or policies related to the ratio between residential units and overnight lodging units. Rather, the Plan and BAGP primarily focus on destination resort mapping and direct the County to adopt code provisions to implement the siting standards of ORS 197.445 and Goal 8. Therefore, the detailed siting standards for resorts in the UAR, including the ratio, are set forth in DCC Title 19. As a result, there are no plan policies directly applicable to this text amendment, and the amendments to Title 19 do not require any concurrent amendments to the Comprehensive Plan or BAGP. The Board therefore finds that no goals or policies of the plan apply to these amendments. Further, the Board finds that the amendments are consistent with the Deschutes County Comprehensive Plan and that the amendments are not inconsistent with any goal or policy of the Deschutes County Comprehensive Plan.

5. Compliance with the Statewide Planning Goals

A. Statewide Planning Goal 1, Citizen Involvement

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

B. Statewide Planning Goal 2, Land Use Planning

Goal 2 requires the County to adopt and maintain land use plans and ordinances to implement the Goals. The Goal also requires the County to amend the plans and ordinances when appropriate,

following an opportunity for public notice and comment. The amendments are consistent with Goal 2 because the amendments will update the County's implementing ordinance to make the overnight lodging ratio in Title 19 consistent with the state land use planning statutes and Goal 8. As noted above, the amendments were subject to public review and comment, including public hearings before the Planning Commission and the Board of Commissioners.

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

Goals 3 and 4 concern agricultural and forest lands. The amendments affect Title 19, which governs the Urban Area Reserve. These lands are not zoned for agricultural or forest use. Therefore, because the amendments will change only the UAR chapter of the code, Goals 3 and 4 are not relevant to the amendments.

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

Consistent with Goal 5, DCC 19.106 already requires the preservation of designated Goal 5 resources on any destination resort tract through design techniques, open space dedication, or conservation easements. The amendments are focused solely on updating the ratio between residential units and overnight lodging units, and will not alter how DCC Title 19 complies with Goal 5.

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

As with Goal 5, DCC 19.106.070 already contains standards to ensure that destination resorts within the UAR will protect air, water and land resources. In addition, DCC 19.106.070 also contains standards limiting resort development in areas subject to natural hazards. These siting standards require the maintenance of important natural features, including streams, rivers, and significant wetlands. The standards also regulate alterations and uses within the 100-year floodplain and on slopes exceeding 25%, as required by Goals 7 and 8. The amendments to DCC 19.106 will not alter these standards. Rather, the amendments will only update the ratio between residential units and overnight lodging units. Therefore, Title 19 will remain consistent with Goals 6 and 7.

F. Statewide Planning Goal 8, Recreational Needs

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

G. Statewide Planning Goal 9, Economic Development

The amendments are consistent with Goal 9 because it is an economic policy of the State of Oregon to promote tourism through destination resort development (ORS 197.440(1) and (2)). The amendments will authorize the mix of residential and overnight lodging uses contemplated by ORS 197.445 and Goal 8, thereby ensuring that Title 19 continues to serve its purpose of fostering economic development through recreation and tourism.

H. Statewide Planning Goal 10, Housing

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

I. Statewide Planning Goal 11, Public Facilities and Services

In its current form, DCC 19.106 is consistent with Goal 11 because it requires resorts in the UAR to provide sewer and water facilities at the resort, or to connect to existing facilities if the resort bears the costs of extension. In addition, the lines extended to the resort must be sized to meet the needs of the resort only. The amendments will not alter compliance with Goal 11 because they do not change any code or plan standards regarding public facilities. Rather, the amendments focus solely on bringing the ratio between residential units and overnight lodging units into compliance with ORS 197.445 and Goal 8.

J. Statewide Planning Goal 12, Transportation

The administrative rules set forth in OAR 660-012 implement Goal 12. A local government must demonstrate compliance with OAR 660-12-0060 (the "Transportation Planning Rule," or "TPR") when adopting a plan or land use regulation amendment. The TPR requires the local government to determine whether the amendment would "significantly affect" an existing or planned transportation facility. If so, the government must put in place measures set forth in the rule to address the affects. As detailed below, the minor amendments adopted to change the overnight lodging ratio from 2:1 to 2-1/2:1 are consistent with Goal 12 and the TPR because the amendments will not significantly affect a transportation facility.

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

The amendments will only change the ratio governing the mix of dwelling units within a resort and will not change the functional classification of a transportation facility.

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

The amendments will only change the ratio governing the mix of dwelling units within a resort and will not change the standards implementing a functional classification system.

> *(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the*

amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

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

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

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

The amendments will change the ratio of residential units to overnight lodging units from 2:1 to 2-1/2:1. This change in itself will not result in any of the effects listed in paragraphs (A) through (C) above. Altering the ratio will not authorize greater density or more intense traffic-generating uses. Rather, it will simply change the mix of potential dwelling units within a resort.

The density of a resort, and the associated traffic impacts, are governed by the siting and approval criteria already set forth in DCC 19.106. For example, the criteria requiring a resort to contain 50% open space and to minimize impacts on surrounding lands and affected road systems ultimately dictate the number and density of dwelling units within a resort. It is these standards, not the ratio between residential dwellings and overnight lodging units, which shape the overall size and potential traffic impacts of a resort. The ratio merely determines how many units are available for rental to the general public for a specified number of weeks versus how many individually-owned dwellings are used as permanent units or vacation homes without a mandated rental schedule. Whether a unit qualifies as an overnight lodging unit does not alter the trip generation assigned to that unit for purposes of traffic impact analysis. Rather, the traffic analyses for resorts assign a single trip generation rate to all dwelling units.

Furthermore, from a practical perspective, the UAR lands that would be affected by this code change are quite limited. The UAR contains minimal DR-mapped lands, the majority of which are concentrated on the west side of Bend. (One small triangular piece of land along the southern edge of the City is mapped for resort development, but it is adjacent to a much larger tract of DR-mapped land outside of the City, which would be subject to DCC Title 18 (not Title 19) if it were to be developed as a resort). With respect to the properties on the west side of the City, half of the acreage is already approved and partially-developed with the Tetherow resort. The remainder of the acreage (north of Skyliners Road), is mapped but not approved for a resort. With respect to the undeveloped acreage to the north of Skyliners Road, the maximum density and associated trips counts for any future resort would be dictated by the existing approval criteria in DCC 19.106, as explained above. The new ratio would only change the potential mix of residential uses within that overall density, but not the total number of units that could generate traffic.

Finally, Tetherow, the only currently entitled resort within the UAR, already has a maximum density set by its CMP and FMP approvals. (County File Nos. CU-04-94, RC-05-01, M-05-2).

Specifically, Tetherow was subject to the West Bend Traffic Consortium Development Agreement, which set a maximum density and maximum number of trips for the resort. (Deschutes County Ordinance No. 2000-034; City of Bend Ordinance No. NS-1757). During the CMP approval, the developer proposed to construct a total of 889 residential units, and County found that the resort would remain under the authorized density and trip count if it developed at that density. As relevant to the TPR analysis, the County specifically found that development of the resort at that density would not "significantly affect" a transportation facility. (*CMP Decision*, File No. CU-04-94, pp. 28-29). In the CMP, the developer proposed to divide the residential units as follows: 589 single-family and multi-family dwellings (these units would be sold and could be rented to the general public, but would not be subject to the overnight lodging restrictions), and 300 overnight lodging units. This division complied with the 2:1 ratio in effect at that time of CMP approval.

Following the adoption of the code amendments, Tetherow could apply to amend its CMP and FMP to authorize the use of the 2-1/2:1 ratio. Tetherow could apply the new ratio in a number of ways. First, Tetherow could seek to maintain the number of residential units while reducing the number of overnight units. A reduction in the total number of units would reduce transportation impacts. Second, Tetherow could seek to adjust the number of both residential and overnight lodging units, while maintaining the 889-unit maximum but applying the new ratio. Such an adjustment would allow 635 single-family and multi-family units, and 254 overnight lodging units. This would not increase overall density or trip count within the resort, it would only change the number of units that are subject to the overnight lodging rental restrictions. The Development Agreement anticipated this type of evolution in the mix of uses as follows:

> "4.2 For the purposes of determining the amount and kind of Off-Site Transportation Impact Mitigation required of CHLP's Proposed Development and the rights of CHLP vested herein, CHLP agrees that the density of its Proposed Development shall not exceed 294 single-family dwellings, 198 multi-family dwellings, 96 condominiums, 15,000 square feet of retail, 18-hole golf course, 280-room resort hotel and 200-room conference hotel (collectively, the "Maximum Density"). The Maximum Density has been used by the Parties in the supporting Traffic Study to determine the estimated number of vehicle trips to be generated by the Proposed Development. To the extent that CHLP changes its mix of development to respond to market conditions but does not increase the number or distribution of estimated vehicle trips, CHLP shall not be deemed to have exceeded its Maximum Density."

Thus, the Development Agreement contemplated a change in the mix of uses, as would occur if Tetherow applied the new ratio to alter its residential mix. And, as noted above, the actual residential density approved in the CMP (889) was less than the maximum residential density allowed by the Development Agreement (1,068). Although the Development Agreement has expired by its terms, it provided a cap on development, above which additional transportation improvements could have been required.

The third way in which Tetherow could take advantage of the new ratio is by maintaining the required 300 overnight lodging units and increasing residential density to a maximum of 750 units. Such an application may be impractical due to the fact that little, if any, additional development land is available at Tetherow. Such an application would also be required to comply with County transportation development standards as part of the CMP amendment. For

the reasons stated below, even this type of CMP amendment which would be permitted by the present text amendments would not violate the TPR or result in a determination of significant effects.

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

Unlike Title 18, where density at resorts is capped at 1.5 single-family dwelling units per acre, there is no maximum density for Title 19 resorts either for single-family dwelling units or overnight lodging units. The consequence is that under the existing development code a resort may develop at whatever density it selects and may add an unlimited number of trips to the transportation system. As a practical matter, however, density is largely controlled by the size of the property, open space requirements and other factors. However, because there is no maximum density for Title 19 destination resorts, under the existing code, a resort could develop at 1 unit per acre, 10 units per acre or 100 units per acre. Similarly, a resort could elect to construct 150, 500, 2000 or 20,000 overnight dwelling units. While development of 20,000 overnight units is hardly practical, for purposes of TPR analysis for these amendments, it is important to note that an applicant has the current right to develop at any density. As a consequence, an applicant has the current right to add all transportation trips associated with such density to the transportation system. The present amendment, which only changes the ratio between single family and overnight dwelling units does not provide a resort the ability to develop at any greater density than is already permitted under the code or provide any ability to add trips to the transportation system in addition to what could be added under the current code. Because density is not limited, Tetherow could seek to add residential and overnight lodging density under the current code and could do so under the amended code. Because under either version of the code Tetherow has an unlimited ability to add density (and therefore trips to the system), the change in the ratio does not provide the ability to add trips to the system that is not already present. As a result, the amendment will not significantly affect any transportation facility. Although the TPR may not be triggered by the present amendment, any change to the CMP will be reviewed under the County's transportation standards to ensure compliance with such standards.

The change to the ratio would allow an existing resort to add additional single family dwellings while keeping the overnight dwelling units constant. This change would result in additional trips to the system, but these additional trips do not result in any issue under the TPR.

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

Overnight lodging units	**Maximum trip generation for overnight lodging units** ITE 330 .42 PM Peak Hour	**Maximum number of SFR units at 2:1 Ratio**	**Maximum trip generation for SFR units** ITE 210 1 PM Peak Hour	**Total number of PM Peak Hour trips**
500	210	1000	1000	1250

Overnight lodging units	**Maximum trip generation for overnight lodging units** ITE 330 .42 PM Peak Hour	**Maximum number of SFR units at 2.5:1 Ratio**	**Maximum trip generation for SFR units** ITE 210 1 PM Peak Hour	**Total number of PM Peak Hour trips**
500	210	1250	1250	1460

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

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

Overnight lodging units	**Maximum trip generation for overnight lodging units** ITE 330 .42 PM Peak Hour	**Maximum number of SFR units at 2:1 Ratio**	**Maximum trip generation for SFR units** ITE 210 1 PM Peak Hour	**Total number of PM Peak Hour trips**
1100	462	1000	1000	1462

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

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

Overnight lodging units	**Maximum trip generation for overnight lodging units** ITE 330 .42 PM Peak Hour	**Maximum number of SFR units at 2:1 Ratio**	**Maximum trip generation for SFR units** ITE 210 1 PM Peak Hour	**Total number of PM Peak Hour trips**
620	261	1240	1240	1501

The above examples demonstrate that the change to the ratio between overnight lodging units and single family dwelling units will not result in additional trips to the transportation system than are already permitted under the code. An unlimited number of trips could be added to the system under the existing code. For purposes of the TPR, because resorts may develop at any density they may select, and because that density is not affected by the present amendment, the amendment will not significantly affect any transportation facility.

Conversely, simply because the amendments are consistent with the TPR does not mean that an existing resort could avoid demonstrating consistency with County transportation standards at the time of development or an amendment to a CMP which increases overall density. In either instance, an applicant would be required to comply with all applicable county transportation standards. Stated differently, while a CMP or an amendment to a CMP *could* significantly affect a transportation system and require mitigation, the present amendments to Title 19 do not authorize additional trips to the system that could significantly affect a transportation system.

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

K. Statewide Planning Goal 13, Energy Conservation

Goal 13 encourages land development to be managed to maximize the conservation of all forms of energy, based upon sound economic principals. ORS 197.445 and Goal 8 define a destination resort as a "self-contained development that provides for visitor-oriented accommodations and developed recreational facilities in a setting with high natural amenities." Such developments maximize energy efficiency by providing a broad mix of uses within a single development (residential, overnight lodging, recreational, dining, etc.) The amendments are consistent with Goal 13 because they continue to promote efficient resort development within the UAR by updating the overnight lodging ratio in DCC Title 19.

L. Statewide Planning Goal 14, Urbanization

Goal 14 focuses on the provision of orderly and efficient transition from rural to urban land uses. Goal 8 specifically authorizes resorts to be sited on DR-mapped lands without taking an exception to several goals, including Goal 14. At the time of the adoption of DCC 19.106, the County and DLCD determined that it would be consistent with Goal 14 to allow resorts within certain mapped portions of the UAR. The amendments will not alter DCC 19.106's compliance with Goal 14 because the amendments merely change the overnight lodging ratio to match ORS 197.445 and Goal 8.

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

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

6. Opposition Testimony

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

The comments filed by 1000 Friends of Oregon include no substantive challenge to the amendments. Rather, the comments request that the County not adopt the changes because to do so would "not be good policy." The Board finds that the comments filed by 1000 Friends of

Oregon do not provide any basis to conclude that the amendments are inconsistent with any rule, law, goal or other applicable standard.

7. Conclusion

In conclusion, the Board concludes that the applicant has demonstrated that the amendments to DCC 19.04 and 19.106 to update the ratio between residential units and overnight lodging units from 2:1 to 2-1/2:1 is consistent with ORS 197.445, Goal 8, all other applicable Statewide Planning Goals and the Deschutes County Comprehensive Plan.

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