

The Metolius Basin Area of Critical State Concern

*Subcommittee Draft—This draft reflects the initial direction of the subcommittee of the Land Conservation and Development Commission following the initial round of hearings in Deschutes and Jefferson counties. It is still a discussion draft – providing an opportunity for more focused public comment on the proposed Metolius Basin Area of Critical State Concern. It includes the elements required by the statute authorizing ACSCs; but whether to adopt the ACSC and (if so) the final content of the ACSC will be up to the full Land Conservation and Development Commission (LCDC) and the Oregon legislature to decide. If a final ACSC recommendation is made, it may differ from this draft. Please see the Discussion Points below for some of the questions the Commission is seeking input on. **The key operative parts of the proposed plan are in Section VI, beginning at page 31. To help people understand the intent of the proposed new provisions, we have included comments in the margins that explain some of the basis for the proposals.***

LCDC will be seeking public input on several key questions and alternatives, including the following, as part of its deliberations on the proposed ACSC:

(1) Should resorts and other large-scale development be allowed in the Metolius basin?

- What specific areas should be protected, if any, from large-scale development?
 - Should development be allowed to proceed under current rules?
 - Should large-scale development be prevented in the Upper Metolius basin (what about the portion in Deschutes County)?
 - Should large-scale development be prevented throughout the entire Metolius basin?
 - Should large-scale development be prevented both inside the entire Metolius basin, and in a buffer area around the basin? If so, what should the size of the buffer area be or how should its boundaries be set?

- If large-scale development is not allowed, what is "large-scale?"
 - Should only resorts be limited?
 - Should resorts and subdivisions be limited?
 - Should any development that is not allowed under current law on forest lands and in unincorporated communities (Camp Sherman) be limited?
- Should there be a buffer area around the basin where large-scale development is managed to limit its effects inside the basin? If so:
 - How large should the buffer be?
 - What use limitations should be included?
 - Should no use limitations be included?
 - Should only land uses that involve very low water use be allowed (no golf courses)?
 - What limitations are appropriate to protect water quantity or quality in the (upper/lower) Metolius?
 - What limitations are appropriate to protect restoration efforts in Whychus Creek?
 - What limitations are appropriate to protect deer winter range and/or elk habitat in or around the Metolius?
 - Should there be management tools to address effects of large-scale development on local roads or state highways?
 - Are there other adverse effects that should be managed through an ACSC?

(2) Should an ACSC assure that Jefferson County may proceed with some destination resort development? If so, where and in what form?

- This draft proposes a possible new resort area near Round Butte, outside of Madras and near Lake Billy Chinook. Are there reasons why this area is appropriate, or *not* appropriate, for destination resort development? If resort development is allowed in this area, should there be other limits to avoid or minimize conflicts with other land uses including agriculture?
- Are other areas more appropriate as alternative sites for resort development?

(3) Should an ACSC provide relief to property owners if they are unable to proceed with resort development as a result of the ACSC? If so, what form should relief take?

- o Is a smaller-scale, outdoor recreation-oriented resort with a small footprint a concept the state should encourage in other locations? If so, where?

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I. RECOMMENDATION: That the Metolius Basin Be Designated as an Area of Critical State Concern (MBACSC)

The Land Conservation and Development Commission recommends to the Oregon Legislature that the Metolius Basin and identified areas nearby the basin be designated as an Area of Critical State Concern. Furthermore, these identified areas should be subject to the Management Plan contained in this report.

II. INTRODUCTION

The Metolius Basin (the “Basin”) is part of the greater Deschutes River watershed, and includes portions of southwestern Jefferson County and northwestern Deschutes County. The Basin includes the unincorporated community of Camp Sherman, and is recognized for its unique natural resources, scenery, and recreational opportunities.

[INSERT AREA MAP]

A. The Basin as a Unique Site in Oregon

There is no doubt that the Metolius basin qualifies as an iconic example of the beauty of the Oregon Cascades, with natural resource and scenic values that have been noted for years. As early as 1913, a Bend Bulletin editorial called for preserving “a strip along the river” as a national park, and stating that

“if the outing possibilities of the Metolius are destroyed, there will be a void that cannot possibly be filled—there is only one such stream and one such place for recreation”

As recently as June 2007, an Oregonian editorial was captioned “Yes this river must be saved.” In weighing the methods by which protection for the

river should be considered, the editorial refers to the river as “one of Oregon’s natural wonders,” “precious,” “magical” and an “Oregon Treasure.”

What attributes of the river and basin give rise to these exceptional portrayals? The remarkably clear, cold waters that feed the river, certainly. The stands of yellow ponderosa pine that caused the Deschutes National Forest to recommend 640 acres of basin be protected as a Yellow Pine Museum in 1928, and in 1931 establishing a 1,400-acre Metolius Research area to study and protect old growth pine. And the deer and elk herds that caused the Land Conservation and Development Commission to consider designating the area as an Area of Critical State Concern as early as 1974.

In 1978 the Camp Sherman Area Plan was prepared by residents in anticipation of Jefferson County’s Comprehensive Plan adoption. It called out many of the resources of the area and the threat to them that were beginning to arise. The Recreation section of the plan states that “*The natural beauty of the area is its principal amenity. History tells us that the pressure on this amenity will continue to intensify. This plan should provide the measures which control and divert future development in a manner which is complementary to the natural beauty of the area.*”

Described as a “remarkable and state treasure” the Metolius was designated as a Wild and Scenic River in 1988 and added to the State Scenic Waterways Program the same year. The Scenic River Corridor encompasses 9,435 acres from near the Metolius headwaters to lake Billy Chinook. The purpose of the Wild and Scenic River designation is to ensure that:

“... certain selected rivers of the Nation, which with their environments, possess outstandingly remarkable scenic, recreation, geologic fish and wildlife, historic, cultural, or other similar values shall be preserved in free-flowing condition, and that they and their immediate environs shall be protected for the benefit and enjoyment of present and future generations.”

The 1990 Deschutes Forest Plan, which includes the Metolius Conservation Area states “*The Metolius is outstanding in the abundance of its resources*

and the depth of feeling with which they are held by all who visit this special place.”

B. Land Management in the Metolius Basin

The majority of the private lands in the Basin are planned and zoned for forest uses under Statewide Planning Goal 4 (*Forestlands*). This Goal, and the corresponding county zoning, limit uses to forest operations, recreation, certain conservation-related uses, and very limited forest-related dwellings. The Camp Sherman area is designated as an unincorporated community under OAR Chapter 660, Division 22, which allows for non forest-related residential and commercial activities. The majority of lands in the Basin are managed for the public by the United States Forest Service (USFS). Prominent natural features in the Basin include the Cascade Mountain Range at the Basin's western boundary and Green Ridge, which runs north-south through the middle of the Basin.

[INSERT AREA MAP, WITH ZONING LAYER FOR PRIVATE LANDS, SHOWING FOREST AND UNINCORPORATED COMMUNITIES]

The Basin is directly south of, and partially included in, the Warm Springs Reservation. The portion of the Basin located beyond the Reservation is included in the ceded territory of the Confederated Tribes of the Warm Spring Reservation of Oregon. According to the Tribes, the area includes traditional huckleberry gathering areas, village sites and other areas of tribal historical and spiritual significance. The Tribes holds treaty rights entitling members to hunting, fishing and gathering privileges. The importance of hunting to the Tribes causes great value to be placed on the Basin's mule deer herd that drifts between the Reservation lands and public and private lands south of the Reservation. Any conflicts to herd health or numbers, or limitations of the herd's ability to follow traditional migration routes would likely be viewed as a negative consequence by the Confederated Tribes of the Warm Springs Reservation.

All of the Deschutes National Forest lands within the Metolius Basin were ceded to the U.S. Government by the Tribes and Bands of Middle Oregon through the Treaty of 1855. The treaty reserves for the Tribes exclusive rights of “taking fish in the streams running through and bordering the reservation.” The Confederated Tribes also have the right of “hunting, gathering roots and berries, and pasturing their stock on unclaimed lands in common with citizens.” The interests of contemporary Native Americans include the protection of Indian burial grounds and other sacred sites and perpetuation of certain traditional activities, specifically root gathering and fishing.

The Confederated Tribes of the Warm Springs Reservation are consulted by Federal, State and local governments as required by the Archaeological Resources Protection Act of 1979, and as recommended by the Historic Preservation Act of 1966. The Forest Service and State also contact and consult with appropriate tribal representatives and resource specialists in the early stages of any project or activity planning on Forest Service or State administered lands that may affect Tribal interests, treaty rights or traditional use areas within ceded tribal lands. “The tribes are concerned with possible impacts to four types of land bases: The Reservation, ceded lands, usual and accustomed lands and ancestral lands. The Tribes have their own Wild and Scenic Code, which includes the Metolius as one of the Rivers to be protected for cultural and other values, and have said that a consistent Tribal goal is to keep the river corridor as primitive as possible.” (US. Forest Service Wild and Scenic River Management Plan)

The Basin’s current settlement pattern goes back over 100 years to the turn of the 19th century. Today the Metolius River corridor is served by a well-developed system of paved roads and nine public campgrounds. The Wizard Falls Fish Hatchery has been in operation by the Oregon Department of Fish and Wildlife since the 1940’s and continues to be a popular attraction. The Head of the Metolius, the location where the Metolius River begins as a surface water feature is supported by a well-maintained parking lot, restroom facilities and a paved trail to an observation deck overlooking the site. Commercial establishments serving visitors to the Basin are available in Camp Sherman and cabin rentals and other overnight accommodations may

be found at many locations in the immediate vicinity. Many paved and nonpaved Forest Service roads provide access to most of the Basin's public lands.

At the time Oregon's statewide land use program was established, in 1973 to the end of 1974, the state considered several areas for designation as Areas of Critical State Concern (ACSC). Jefferson County, faced with several large subdivision proposals, approached the state for assistance in planning to protect deer winter range in the Metolius area, and the Metolius basin was one of four areas seriously considered for such a designation. Ultimately, the Land Conservation and Development Commission (LCDC) decided not to recommend any ACSC designations to the legislature – instead, protecting many of the areas through special state goals. Deer winter range in the Metolius basin was protected to some extent through planning the lands for forest and farm uses, and limiting the amount of residential development that could occur. Winter range also received additional protection under statewide land use planning goal 5 (Natural Resources) and county land use regulations implementing that goal.

In 1988, Congress designated the upper reaches of the Metolius as a federal Wild and Scenic River. In the same year, the Oregon legislature designated the upper portion of the Metolius as a state scenic river. Under the federal designation the river is classified as recreational from near the headwaters to Bridge 99, and scenic from Bridge 99 to Lake Billy Chinook. The lower segment also is managed to provide a primitive recreational experience. The federal management plan for the river identifies a number of outstanding resource values, including the relatively stable year-round flow of extremely clean and cold water, and the fishery supported by the river.

[MAP OF W&S RIVER CORRIDOR AND USES, FROM USFS EIS FOR MANAGEMENT PLAN]

In 1990 the Deschutes National Forest established the Metolius Conservation Area.” The Conservation area contains ten management (sub)areas within an 86,000-acre designation. Included in the Area are Black Butte, the Metolius Basin between the wilderness boundary on the west and Green Ridge on the east, and the “Horn of the Metolius.” The ten management areas, many of which are unique, each have a specific goal and theme which describes the direction for management in the foreseeable future. Any project or initiative undertaken in the Metolius Conservation Area must conform in design and application to the appropriate standards and guidelines (Deschutes National Forest)

C. Destination Resorts and the Metolius Basin

In 2006 Jefferson County began a Destination Resort planning project under the provisions of ORS 197.435 and Statewide Planning Goal 8 (*Recreation*). After much work and many public hearings, the Jefferson County Board of Commissioners adopted a local program that included comprehensive plan provisions, zoning ordinance language and a map identifying two areas as eligible for destination resort development. The approval of the county's resort map is the first stage in siting such uses – in order to proceed the owners next must prepare conceptual master plans for their lands, and have them approved by the county. Once a master plan is approved, resorts typically proceed in phases, with specific plans for each phase being reviewed by the county.

The county's destination resort map identified two areas as eligible for destination resort approval. One property includes about 640-acres and is located entirely in the Basin just north of Suttle Lake. The other property includes several thousand acres of contiguous ownership laying both inside and outside of the Basin.

Jefferson County's destination resort map was appealed to the Oregon Land Use Board of Appeals (LUBA) shortly after it was adopted. On February 11, 2008, LUBA remanded the county's decision, finding that the county had failed to consider certain impacts of the development on deer winter range. That decision by LUBA was appealed to the Oregon Court of Appeals,

which affirmed LUBA on July 8, 2008. The parties to the appeal then sought review in the Oregon Supreme Court, which granted review, and where the appeal is still pending now.

In addition to the challenge to the county's decision through an appeal, legislation also was introduced during the 2007 legislative session (Senate Bill 30) that sought to ban any resort development in Jefferson County's portion of the Metolius Basin, as well as within three-miles of the Basin's boundary. The bill passed the Oregon Senate, but was not voted on in the Oregon House of Representatives. On June 22, 2007, Governor Kulongoski wrote a letter to the 2007 Legislature indicating concerns about Senate Bill 30, but also committing to ask three state agencies to evaluate the adequacy of existing laws to protect the resources of the Metolius Basin. The Governor concluded by stating:

"If the agencies advise me that additional laws are necessary or desirable to achieve these objectives [to protect the waters of the Metolius and the fish and wildlife resources in the basin], I will work with the legislature to develop those legislative changes so that we protect the natural treasure of the Metolius basin for generations to come."

The Oregon Department of Environmental Quality (DEQ), the Oregon Water Resources Department (OWRD) and the Oregon Department of Fish and Wildlife (ODFW) evaluated whether destination resort development in or near the Metolius Basin could result in negative consequences on the areas environmental resources. All three agencies had responded to the Governor's request by November, 2007. Their conclusion was that they could not determine that development would not harm the Metolius Basin's water resources and fish and wildlife populations. Important concerns were also raised by the US Forest Service.

In keeping with his commitment to work with the legislature to protect the Metolius in the event existing regulatory programs were not adequate, Governor Kulongoski asked the Land Conservation and Development Commission (LCDC) to consider using the one existing process designed for this type of situation – the Area of Critical State Concern process – to

develop a management plan for the basin, and to obtain broad public input into that plan. Before the plan may take effect, it must be approved by the Oregon legislature.

As things currently stand the Jefferson County destination resort map of eligible areas is not yet approved as complying with the statewide land use planning goals (due to the pending appeals). As a result, the county is not yet able to process applications for resort development within the two areas. If the Oregon Supreme Court upholds LUBA decision remanding the mapping for additional analysis, any subsequent decision responding to the remanded items may also be appealed.

Once final approval of the plan is achieved the county may begin review of a conditional use application to consider a specific destination resort development proposal. The county's decision to approve or deny a conditional use application could well ignite another round of appeals. Simply put, Jefferson County's ability to authorize development of a destination resort could be tied up in litigation for many more years. The Metolius Basin Area of Critical State Concern process could resolve destination resort development questions in a more timely fashion, protect the basin from large- scale development and enable Jefferson County and affected property owners to move forward with development more quickly and with far less uncertainty.

D. Resources of the Metolius Basin

The Metolius Basin contains a wide variety of unique environmental resources. It is a highly sensitive natural area that is ecologically and scientifically significant because of its unique hydrogeologic characteristics, wetlands and ground water resources. As noted above, the Metolius River was added to the federal Wild and Scenic River system in the Omnibus Oregon Wild and Scenic Rivers Act of 1988 because the federal government determined the river to be remarkable in all areas of evaluation.

The Basin attracts a large number of visitors as a result of its unique hydrology, natural beauty, and world-class fishing, hunting and other recreational opportunities. According to the U.S. Forest Service, the Basin sees several hundred thousand recreational-related visits every year. The Outstandingly Remarkable Values of the Metolius that serve as the basis for management of the wild and scenic corridor area of the Basin include:

- Geologic Features (the interplay of faults, volcanism, and ground water hydrology)
- Hydrologic Values (extremely high quality of water, and unique drop in water temperature from the headwaters down the river)
- Ecology (transition zone from Cascades to high desert and unique plant species)
- Fisheries (bull trout and historic chinook fisheries)
- Wildlife (northern spotted owl, mule deer and elk)
- Scenic Resources
- Heritage Resources
- Recreation Values

The Metolius River and its tributaries are home to sensitive and threatened species of fish, including Redband Trout and Bull Trout, and the Basin is critical to the restoration of anadromous fish populations, including Spring Chinook, Sockeye and Summer Steelhead. The Basin also contains highly sensitive ranges, including critical migration corridors, for wintering mule deer and elk.

The Metolius Conservation Area plan created and managed by the Deschutes National Forest, identifies a “unique ecosystem” containing a wide range of habitat, wildlife and natural resources which are variably featured in the management plans for its 10 sub areas including: stands of mature Ponderosa Pine, mature and multi-level forest canopy, old growth forest, sugar pine, bald eagles, spotted owls, deer and elk summer and winter habitat, habitat for bear and cougar, diversity of species, scenic views and maintaining naturally occurring ecosystems in unmodified conditions in some areas.

In addition to plans and analyses by the Deschutes National Forest, the reports provided by the Oregon Department of Fish and Wildlife (ODFW), Oregon Water Resources Department (OWRD) and the Oregon Department of Environmental Quality (ODEQ) document the Basin's important environmental features (attachments B-D). Similar findings regarding environmental and ecological significance are included in reports prepared by local, state and federal agencies and by the private sector.

The Basin provides a beautiful natural setting for outdoor recreation supported by a network of camping and low intensity residential and commercial facilities that have been enjoyed for generations.

E. The Economic Development Objectives of Jefferson County

Jefferson County includes 1,791 square miles and has a population of just over 22,000 citizens. These numbers make it the smallest of the three central Oregon counties both in terms of land mass and population. It is also the only central Oregon county with no destination resort development.

Additional employment opportunities are needed in Jefferson County. In 2007 Jefferson County was identified as "severely distressed" by the Oregon Department of Economic and Community development. In November 2008 the county had an unemployment rate of 12.0%, nearly 4% higher than to the statewide level of 8.1 %. With farming and forest products as traditional mainstays of the local economy, Jefferson County has been pushed to diversify and place greater emphasis in other areas such as tourism and less traditional measures like the Deer Ridge Correctional Facility. In addition to needing jobs, Jefferson County has found itself struggling, along with most Oregon counties, to find a replacement for the federal timber revenues that brought funds to the county budget.

The destination resort industry has been identified by Jefferson County as a possible replacement for jobs lost from the timber industry and a substantial potential tax base that could help off-set approximately \$500,000 that is expected to be lost in future reductions or elimination of federal timber payments. According to figures provided by Economic Development for

Central Oregon (EDCO) -- Sunriver, one of central Oregon's oldest resort communities had an assessed value of \$956,938,447 in 2004. This amount compared with an assessed value of \$207,155,344 for the city of Madras, the Jefferson County Seat. The 2008 Oregon Bluebook lists the assessed value for all of Jefferson County as \$1,344,354,858. These figures suggest that successful resort development could dramatically increase, perhaps more than double, the assessed value of Jefferson County. In addition, the areas mapped by the county for possible destination resort consideration fall within the Culver School District, which is a small rural school district that would stand to benefit from the tax revenues brought by a destination resort development.

Jefferson County has planned for destination resorts using the process described in state law. The county worked in good faith to apply the law correctly and elected to be more restrictive than state law requires in some respects. The county is understandably frustrated that the state is considering adoption of an Area of Critical State Concern, and concerned that its fiscal and economic interests be considered.

Destination resort development in the Basin could also have both positive and negative effects on the City of Sisters and the Sisters School District. Sisters functions as a service center for a reasonably large area surrounding the city. Although the population of the city is 1,875 (as of July 1, 2008), the Sisters School District, according to the city's Chamber of Commerce, draws from a population of about 14,000, which is as large or larger than most of eastern Oregon's biggest cities and is about two-thirds the size of the entire population of Jefferson County. Additional resort development on nearby lands could, possibly, bring additional employment and business development opportunities to the area. Such development also would likely require improvements to area roads and schools, and increase demand for police, fire and other public services.

While the Metolius Basin is a unique and special resource for the State of Oregon, Jefferson County's efforts to create economic opportunities for its citizens should also be considered. Using the ACSC process, it may be possible to identify opportunities for forms of resort development that avoid

adverse environmental and other effects, while still providing economic benefits to the county and residents of the county. This could mean both limiting development in sensitive areas, and allowing development in other areas where it would not otherwise be possible. For example, Jefferson County could site destination resorts nearer to the hub of the County, the City of Madras, where economic and job development will be derived totally within the county, and in the area of greatest need.

F. Private Property Interests

At least two private property owners could be directly affected by the MBACSC – the owners of the two properties that Jefferson County has mapped as eligible for siting destination resorts. Both owners acquired their properties as forest lands, after the statewide planning goals were adopted and the Jefferson County Comprehensive Plan was acknowledged, and prior to Jefferson County initiating a destination resort planning program. The current owners are not, nor were they ever, entitled to develop a destination resort or any other type of intensive development in the Basin. Under the zoning in effect when they acquired their property, and still in place today, the properties are zoned for timber management and forest-related uses. Depending on the specific area, new dwellings would be allowed, if allowed, only on parcels of between 240 and 320 acres or more.

Nevertheless, the Department recognizes that both property owners worked with Jefferson County to navigate the destination resort planning requirements in Oregon statute and Statewide Planning Goal 8 (*Recreation*). Both owners have invested significant time and resources to participate in the county planning process and to create their own respective development proposal.

An objective of the MBACSC is to include provisions that provide some relief to these two property owners. The types of relief that could be considered may supplant state and local laws that would otherwise apply. If an outcome different than that offered through the local planning process is created, the affected property owners may have an opportunity to receive some level of nonmonetary consideration. Part of the ACC process and

public discussion will be to help the Commission decide whether, and to what extent, those affected property owners should be compensated in some manner. Alternative approaches could include land purchases, land exchanges, transfer of development authorizations (approval to site development without a goal exception), or alternative development options that have lesser impacts.

III. OBJECTIVES

A. Protect the Basin. First, the MBACSC is designed to protect the Metolius Basin from large-scale development that would be inconsistent with the outstanding and unique environmental, cultural and scenic values and resources of the Basin. This is accomplished by prohibiting large-scale development in the basin itself, and by substantially limiting such development in a buffer area around the basin. The location and development limits of this buffer area have been planned carefully, based on the likely hydrological impacts of development and the location of important wildlife resources. Within this buffer area, the amount, location and type of development is limited to: (a) assure no long-term impact on water flows in the Metolius River; and (b) avoid adverse impacts on important fish and wildlife resources. The limitations would not affect existing development or the development of platted lots in Camp Sherman or the Three Rivers unincorporated communities.

B. Give Jefferson County a Clear Path to Allow Resort Development in a More Appropriate Location. The MBACSC also recognizes the economic development objectives of Jefferson County by identifying an alternative area where the county could approve destination resort development. The alternative area is in the vicinity of Round Butte, near the City of Madras and Cove Palisades State Park. The area has substantial potential for resort development due to its outstanding views and proximity to Lake Billy Chinook. A preliminary review indicates a low level of potential conflicts and development constraints. Resort development in this area, if carefully designed and sited, could provide significantly greater employment and other economic benefits to the county than the two areas

now mapped for resort development. At the same time, however, allowing resort development in this area would require waiving one of the current limitations on resorts – the prohibition on siting a resort within three miles of high value crop land. The proposed plan would allow Jefferson County a one-time exemption from this limitation, in recognition of the unique circumstances presented by the proposed MBACSC. To mitigate potential conflicts on farm operations in the high value crop land area, the amount development would be limited, and a mitigation fund would be established, funded, and administered to reduce the cost of farm operations in the surrounding area.

C. Provide a Fair Result for the Property Owners. The MBACSC provides fairness for the property owners that would be directly affected by the proposed management plan by giving them two options: (a) to proceed with very limited small-scale recreation-related development on their property (at a level reflecting both their potential claims under Measure 49, and the potential environmental conflicts that development would bring); or (b) to participate in resort development in the Round Butte area described above, either through a land exchange or through a transfer of their mapping interests. The proposed plan does not eliminate statutory claims for compensation the owners may (or may not) have under Measure 49.

IV. SUMMARY OF STATE AND LOCAL PROGRAMS

Several state programs apply in addition to Oregon’s Statewide Planning Program and the Jefferson County Comprehensive Plan.

A. Oregon Water Resources Department.

OWRD is responsible for administering the Deschutes Ground Water Mitigation Program, which was developed to provide for new ground water uses while maintaining scenic waterway and instream water right flows in the Deschutes Basin. The program is authorized under [ORS 537.746](#) and [House Bill 3494](#) (2005 Oregon Law) and implemented in Oregon Administrative Rules (OAR) Chapter 690, Divisions [505](#) and [521](#).

The goals of the [Deschutes Mitigation Program](#) are to:

- Maintain flows for Scenic Waterways and senior water rights, including instream water rights;
- Facilitate restoration of flows in the middle reach of the Deschutes River and related tributaries; and
- Sustain existing water uses and accommodate growth through new ground water development.

Every five years the Water Resources Commission (WRC) is required to evaluate the effectiveness of the mitigation program. The purpose of this evaluation is to ensure that scenic waterway and instream water right flows continue to be met on at least an equivalent or more frequent basis compared to flows within a representative base period.

The first five year evaluation of the [Deschutes Mitigation Program](#) has been completed.

B. Oregon Department of Environmental Quality (DEQ).

DEQ is responsible for water quality issues in the state of Oregon, which includes Total Maximum Daily Load (TMDL) and Water Quality Management Plan (WQMP) documents prepared for water bodies in Oregon designated as water quality limited on the [303\(d\) list](#). A TMDL is the calculated pollutant amount that a waterbody can receive and still meet [Oregon water quality standards](#). Some streams within the Metolius Basin are water quality limited.

C. Oregon Parks and Recreation Department (OPRD).

OPRD implements programs designed to protect state scenic water ways. Specific rules for the Metolius River Scenic Waterway have been codified at OAR 736-040-0056. The administrative rules pertaining to the Metolius River Scenic Waterway describe segments of the river designated Recreational River Areas and a River Community Area. The rules provide guidance for construction and standards for locating new structures, road and facility placement as well as timber harvesting and other similar uses.

D. Oregon Department of Fish & Wildlife (ODFW).

The mission of the Oregon Department of Fish & Wildlife (ODFW) is to protect and enhance Oregon's fish and wildlife and their habitats for use and enjoyment by present and future generations. ODFW regulates hunting and angling activities, and has a keen interest in activities that can affect fish and wildlife habitat. ODFW also is responsible for managing conflicts between wildlife and humans.

E. Oregon Department of Forestry (ODF).

ODF's Private Forests Program regulates [forest operations](#) on nearly 12 million acres of private nonfederal forestland. They guide forest landowners and operators on how to conduct forest operations and activities so they are in compliance with the [Forest Practices Act administrative rules](#). FPA rules apply to harvesting, [reforestation](#), road construction and repair, slash disposal (treetops, branches, brush and tree limbs left on the ground after a logging operation), [chemical use](#) and stream, lake and wetland protection. Sensitive resource sites, such as bird nesting and roosting locations, and threatened and endangered species sites are also protected under the rules.

F. Jefferson County-- Goal 5 Inventory.

Jefferson County conducted a Goal 5 inventory as part of its comprehensive Plan requirements. Goal 5 resources identified included the Head of the Metolius River, in its Natural Area Inventory. Wychus Creek and Fly Creek were not determined to be significant under statewide planning Goal 5 due to insufficient information. The Metolius River from the Deschutes National Forest to lake Billy Chinook was recognized as a federal wild and Scenic River. Reaches of the Metolius River, Lake Creek, Fly Creek and Wychus Creek are identified in the Riparian Corridors, Water Areas and Fish Habitat section of the inventory. Big game habitat was also mapped. However the timeliness of that mapping has been questioned, and the county itself notes:

Jefferson County completed inventories for Statewide Planning Goal 5 resources as part of the 1981 Comprehensive Plan. In 1997 as part of Periodic Review, the County was required to update its inventory of riparian corridors, wetland areas, federal wild and

scenic rivers , state scenic waterways and bird habitat. The other Goal 5 resources [including deer elk and pronghorn habitat] have not been reviewed since the original inventory in 1981. While the county recognizes that this inventory information should be revisited and updated, it was not part of the 2006 plan amendment. (excerpted from Jefferson County's Plan amendment, material in brackets added).

G. US Forest Service, Deschutes National Forest

The majority of lands within and adjacent to the basin are managed for the public by the United States Forest Service. The Forest Service has responsibility under the Wild and Scenic Rivers Act to prevent diminishment of the Outstandingly Remarkable Values of the Metolius River. These ORV's include fish, water quality and quantity. Wildlife, geology, scenery, cultural resources and recreation.

In 1990 the Deschutes National Forest established the Metolius Conservation Area. Within the 86,000-acre conservation area is the designation of ten management areas, including the Metolius Wild and Scenic River Corridor.

The Deschutes National Forest 2004 Metolius Watershed Analysis Update is an important source of information concerning current land management challenges in the basin and possible management strategies.

V. REASONS FOR ADDITIONAL STATE AND LOCAL REGULATION

In December of 2008, Governor Kulongoski requested that the Land Conservation and Development Commission undertake a study of the Metolius Basin for possible designation as an Area of Critical Concern. He believed state regulations were insufficient to protect the basin to increasing demands from large scale development. "After analyzing the potential effects of resort development in and near the Metolius Basin, the state agencies reported that existing laws do not fully protect the important natural resources of the Metolius Basin including water quantity, water quality and

fish and wild life.” These and other issues are analyzed in the following material.

A. Generalized Impacts on the Metolius Basin.

The destination resorts currently contemplated in and straddling the basin propose a total of approximately 3,500 overnight and residential units. This number of units can be compared to the approximately 300-400 people who live in the upper Basin, and the population of nearby Sisters at 1,800. Black Butte Ranch just outside the southern edge of the basin contains 1,251 dwellings. The scale of the proposed destination resorts is large in their absolute potential development and in their potential cumulative impact on the basin. The “2004 US Forest Service Metolius Watershed Analysis Update” portrays the basin as being at its limit of human impact. For example in the Summary of Social Findings section, the report states “*Human Use of the watershed is increasing, especially diversity and intensity of activities, traffic, access on roads, and demand for day use recreation*”. In a letter to LCDC at a hearing on the proposed MBACSC in Sisters—the Forest Service pointed out that “*During the Wild and Scenic River planning process in the mid-1990’s the Forest Service and the public recognized that the Metolius Basin was largely at maximum capacity for recreational use. Recreational use and the resulting impacts on the natural environment were the dominating issues during the planning process.*”

B. Wildlife Habit—Deer, Elk, Fish

The proposed destination resort areas are in or adjacent to Jefferson County mapped deer and elk summer and winter range habitat and transition habitat ranges. They are within areas mapped as important range by ODFW and the U.S. Forest Service.

In 2006 ODFW wrote to Jefferson County on a non-destination resort issue, describing threats to deer winter range. The department stated:

“ODFW conducts annual inventories of mule deer population trends on winter ranges, including the Metolius winter range in Jefferson County. Deer populations in the WMU remained near ODFW’s population objective level during the period 1985-1995. However between 1995 and the present the deer population has steadily declined to less than 40% of the population objective. There are likely several factors contributing to this decline, including factors related to residential and commercial developments on winter

range. Reduction of deer forage, hiding and thermal cover, travel corridors, barriers such as fences, roads, and traffic, and disturbance from increased human and domestic animal activity all pose additional risks to deer populations on winter range. ODFW has observed substantial mortality of deer to diseases such as adenovirus hemorrhagic disease (ADH) in recent years. ADH in deer appears to occur at higher levels in and adjacent to residential developments, likely due to additional stresses and risks posed for deer by such developments.”

In their response to Governor Kulongoski’s letter to state natural resource agencies’ concerning their ability to protect the Metolius basin, ODFW stated in part: *“ There have been a number of problems with implementation of mitigation requirements for destination resorts. These issues include lack of follow through by developers to implement agreed-upon mitigation actions; lack of county oversight to ensure agreed-upon mitigation measures are implemented; wildlife impacts are only assessed on site (adjacent off-site impacts are not included in any wildlife habitat impact analysis; and lack of cumulative impact assessment. The result has been a net loss of fish and wildlife habitat from all destination resorts in the state.”*

Although Jefferson County arguably took a cautious approach to its destination resort mapping with regard to deer and elk ranges, ODFW concluded in a December 2008 letter to the Jefferson County Board of Commissioners that a statement in the County’s Draft Supplemental ESEE: Big Game Habitat was incorrect when it stated that *“With respect to the Big Game Winter Range Goal 5 resource, the Board found ”Big Game habitat will not be affected by destination resort development, as the County has elected to exclude all big game habitat areas identified in its Goal 5 inventory from eligibility for destination resort development.(Ordinance No. O-03-07, p. 26.)”* ODFW continued: *“This statement is incorrect. Multiple studies have shown that human disturbance can have significant impacts on habitat use by big game over a mile away as well as impacts on other wildlife.”* The paragraph concluded *“Additionally, access routes to the proposed destination resorts in the Metolius basin will most likely travel through Goal 5 Big Game Winter Range as mapped by Jefferson County.”* In total, the ODFW letter offers 13 specific detailed responses/rebuttals to the Draft Supplemental ESEE, which raise important considerations for the likely impact of additional destination resorts in the Basin on big game.

C. Water

Water quantity and quality have been a particular and ongoing concern in the discussion of destination resorts in the basin. At issue is the hydrology of the surface and subsurface of the basin. Many commenters have noted that USGS and Oregon Department of Water Resources (OWRD) data point to water withdrawals outside the surface water basin likely impact water availability inside the basin. In response to Governor Kulongoski's letter to state natural resource agencies, the department wrote in October 31, 2007 *"Any new development would likely rely on groundwater to meet its water supply needs. The [USGS and OWRD] found that ground water is connected to surface water beyond the sub-basin boundary where the wells are constructed. This means that groundwater withdrawal outside the Metolius sub-basin could have an impact on stream flows in the Metolius Basin."* and *"While mitigation credits are available for most sub-basins, there are no mitigation credits currently available for the Metolius zone due to lack of historic water development in that area."*

Ponderosa Land and Cattle Company has filed an application (related to its proposed destination resort) for 8.8 cfs with a total volume of 2,422 acre-feet per year. Although the site for the withdrawal is outside of the surface area of the basin, it appears that the proposed withdrawal would affect surface water flows in the Metolius basin. The U.S. Forest raised these questions in a January 14, 2009 letter to OWRD, responding to Ponderosa's water right application. The letter cited "likely adverse impacts to flows in the Metolius River, Indian Ford Creek and Wychus Creek as a result of this proposed groundwater withdrawal." The letter also raises concerns that any mitigation necessitated by the water withdrawal "would not be alleviated by mitigation in the mainstream Deschutes. In fact the impacts to the resources adversely affected, particularly to anadromous fish, would be significantly compounded by the effects occurring in the tributaries where most spawning and rearing takes place."

The U.S. Forest Service pointed out in a 2009 letter in response to the water rights application of the Ponderosa, that "The Forest Service and many others have spent tremendous amounts of time and money to reintroduce salmon and steelhead to the

waters of the Metolius and Deschutes Rivers. We are concerned that those efforts will be threatened by low flows and poor water quality.”

D. Fire

Adding a substantial number of dwellings in or near the basin raises concerns about fire and safety. Although any new development would be required to have fire safety plans, the risk should be viewed in the context of findings from the USFS 2004 Metolius Watershed Analysis Update. This report reflects how dramatically the basin has been affected by fire in recent years.

“Between 1996 and 2003, eight wildfires have burned in the basin [affecting over seventy percent of the land area in the basin]. The B&B (91,000 acres) and the Eyerly (23,000 acres) wildfires are unprecedented in size compared to fires in the past century. The fires and subsequent highway closures and evacuations have had a tremendous impact on the Central Oregon economy.”

Name	Year	Size	Evacuations	Private Property Destroyed
Eyerly	2002	23,064-acres	Yes	Yes
Cache Mountain	2002	3,894-acres	Yes	Yes
B&B and Link	2003	95,492-acres	Yes	Yes
Black Crater	2006	9,400-acres	Yes	No
GW	2007	7,300-acres	Yes	No

The largest of these fires, the B&B Complex in 2003 burned over 90,000-acres and caused the Camp Sherman area to be evacuated twice. Black Butte Ranch was evacuated in 2002 when threatened by the Cache Mountain Fire, which eventually destroyed two homes. The Ranch was evacuated again in 2007 when pressed by the GW Fire. The Eyerly Fire of 2002 originated on the Warm Springs Reservations and swept south to destroy 18 homes and 19 structures in the Three Rivers area near Lake Billy Chinook and ultimately burned about 23,000-acres. The Black Crater Fire of 2006

burned about 9,400-acres and forced the evacuation of 1,500 citizens west of Sisters.

While the number and extent of fire activity in the last six years seems remarkable what is more striking is that in the 100-years proceeding 2002 only 29,449-acres in the Metolius Watershed had burned. Although the high numbers of recent fires compared with low numbers of fires during the previous 100-year period could be largely coincidental, we do know that suppression activities cost the public tens of millions of dollars (the B & B Complex alone cost \$38.7 Million). We also know that the existing forest settlement pattern placed human life and private investment in the path of danger forcing multiple evacuations and destroying at least 20-homes. Finally, we must know that there will be more fires, probably large fires in the Metolius Basin. The more citizens and private investment introduced into the Basin the greater the likelihood that more persons and private property will be put in danger and that the public costs of protecting private investment will increase.

Finally, The Metolius Watershed Update was created in part due to the massive fires that hit the basin in the 10 years prior to 2004. Some of the General Recommendations include

- Reduce road densities, especially riparian road densities and stream crossings,
- Prepare for the return of salmon to the Metolius River and Suttle Lake,
- Ensure consideration of big game needs including: cover, forage, security, mobility, access, landscape, increased road closures,
- Prevent spread and introduction of noxious weeds to protect forest habitats and biological diversity,
- Continue planning to reduce conflicts and resource damage from unintentional off road vehicle use.

E. Testimony and Other Input

VI. LAND USE MANAGEMENT PLAN

The land use management plan provisions identified in this Section apply in addition to and (in some cases) instead of other state and local land use statutes, rules, and regulations governing land uses within the proposed Area of Critical State Concern. The proposed Area of Critical State Concern consists of three subareas, as described immediately below. In the event that any state or local land use law, rule or regulation conflicts with this management plan, the plan will control upon approval by the Oregon legislature.

A. Management Plan Objectives: The proposed management plan for the Metolius Basin Area of Critical State Concern (“MBACSC”) is designed to achieve three important objectives:

1. **Protect the Basin.** First, the MBACSC is designed to protect the Metolius Basin from large-scale development that would be inconsistent with the outstanding and unique environmental, cultural and scenic values and resources of the Basin. This is accomplished by prohibiting large-scale development in the basin itself, and by substantially limiting such development in a buffer area around the basin. The location and development limits of this buffer area have been planned carefully, based on the likely hydrological impacts of development and the location of important wildlife resources. Within this buffer area, the amount, location and type of development is limited to: (a) assure no long-term impact on water flows in the Metolius River; and (b) avoid adverse impacts on important fish and wildlife resources. The limitations would not affect existing development or the development of platted lots in Camp Sherman or the Three Rivers unincorporated communities.
2. **Give Jefferson County a Clear Path to Allow Resort Development in a More Appropriate Location.** The MBACSC also recognizes the economic development objectives of Jefferson County by identifying an alternative area where the county could approve destination resort development. The alternative area identified in this draft is in the vicinity of Round Butte, near the City of Madras and Cove Palisades State Park.

Another possibility, which is not detailed in this draft but which is still under consideration is an area at the very southern edge of Jefferson County (directly north of the City of Sisters). The Round Butte area has substantial potential for resort development due to its outstanding views and proximity to Lake Billy Chinook. Resort development in this area, if carefully designed and sited, could provide significantly greater employment and other economic benefits to the county than the two areas now mapped for resort development. At the same time, however, allowing resort development in this area would require waiving one of the current limitations on resorts – the prohibition on siting a resort within three miles of high value crop land. The proposed plan would allow Jefferson County a one-time exemption from this limitation, in recognition of the unique circumstances presented by the proposed MBACSC. To mitigate potential conflicts with farm operations in the high value crop land area, the amount development would be limited, and a mitigation fund would be established, funded, and administered to address any adverse effects to farm operations in the surrounding area.

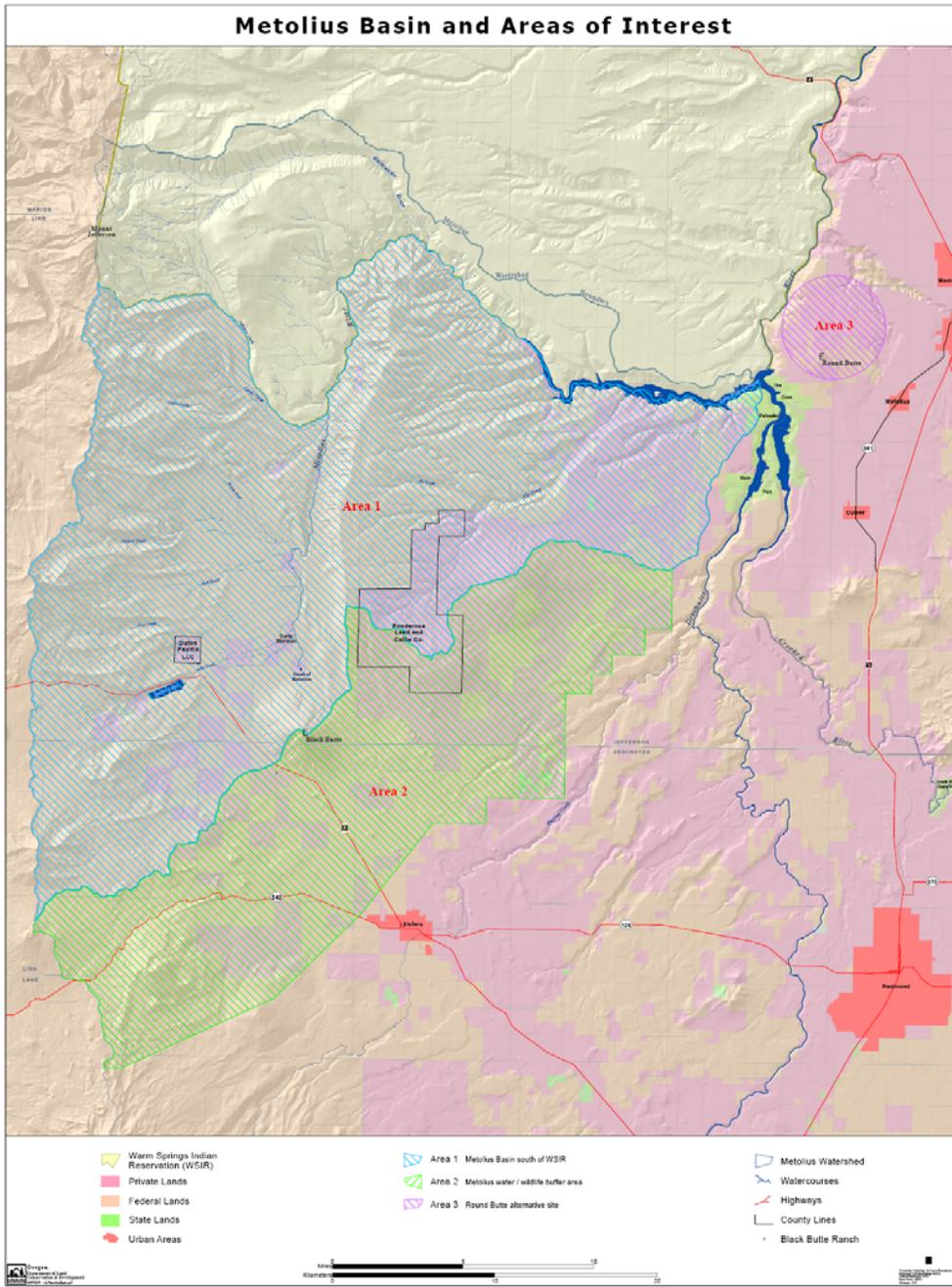
3. **Provide a Fair Result for the Property Owners.** The MBACSC would provide fairness for the property owners that would be directly affected by the proposed management plan by giving them two options: (a) to proceed with very limited small-scale recreation-related development on their property (at a level reflecting both their potential claims under Measure 49, and the potential environmental conflicts that development would bring); or (b) to participate in resort development in the Round Butte area described above, either through a land exchange or through a transfer of their mapping interests. The proposed plan does not eliminate statutory claims for compensation the owners may (or may not) have under Measure 49.

B. The Boundary of the Area of Critical Concern

The boundary of the Area of Critical Concern consists of three subareas: (a) the Metolius basin itself (defined by surface hydrology as mapped by the

Oregon Water Resources Department); (b) a buffer area along the edge of the basin located to include lands where groundwater use is likely to adversely effect surface water flows in the Metolius basin, or where large-scale development would interfere with deer or elk winter range; and (c) a third subarea near Round Butte (east of the Lake Billy Chinook) identified as an alternative location where destination resort development may be authorized by Jefferson County. These three subareas respond to each of the policy objectives described previously in this plan.

DRAFT



C. Metolius Basin Area of Critical State Concern Supplemental Land Use Regulations

1. Subarea 1: Metolius Basin. Subarea 1 is that area shown on Exhibit [].

Comment [w1]: Subarea 1 is the entire Metolius basin, as defined by surface hydrology and mapped by OWRD.

1.1. Prohibited Uses and Activities (Jefferson and Deschutes Counties).

In addition to the existing provisions of state statutes, statewide land use planning goals and rules, and the acknowledged¹ Jefferson County and Deschutes County Comprehensive Plans and land use regulations, the following uses and activities are prohibited on all lands in Subarea 1:

1.1.1. Any new destination resort described by Statewide Planning Goal 8 (*Recreation*) or ORS 197.435 to 197.467;

Comment [w2]: The typical total water use for planning purposes for a destination resort in Central Oregon is approximately 1250 acre-feet of water based on current resort requirements (1 golf course, 400 dwellings and 200 overnight accommodations). This quantity of water is slightly greater than the estimated current consumptive use of water in the Metolius basin. See comment 5, below.

1.1.2. Any new golf course;

Comment [w3]: The typical total water use for planning purposes for a golf course is 360 acre-feet of water. Golf courses are prohibited due to their likely water demand.

1.1.3. Any new residential development exceeding 10 dwelling units on a tract, regardless of whether an exception is taken;

Comment [w4]: The rule limits commercial and industrial uses in a variety of ways to assure they are compatible with the carrying capacity of the area.

1.1.4. Any new commercial or industrial development other than a small-scale, low impact use or a use allowed under Goal 3 or Goal 4, as provided in OAR 660-022-0030; and

Comment [w5]: According to the Oregon Water Resources Department, the total consumptive use of water in the Metolius basin is estimated to range between 0.32 cfs and 3.36 cfs in any month, or approximately 1,045 acre feet of water annually. The proposed limit on any new land use to an average annual consumptive use of 10 acre-feet would limit each new use to about 1 percent of the current basin-wide water use – a level where mitigation is reasonably likely to be possible. Ten acre-feet of water use translates to the typical total water use (consumptive and non-consumptive) of about twenty homes in Central Oregon. The Metolian resort projects an average annual water use of 160 acre-feet (for 450 homes and 180 overnight accommodations).

1.1.5. Any new uses of a tract of land that would have an average annual consumptive use of water in excess of 10 acre-feet.

¹ Jefferson County's destination resort map is not acknowledged, as it is still on appeal in the Oregon Supreme Court.

1.2. Special Land Use Provisions (Jefferson County). Notwithstanding paragraph 1.1. (including its subparts) of this section, Jefferson County may allow the following current and future uses within the portion of Subarea 1 within Jefferson County without amending its comprehensive plan or land use regulations:

1.2.1. All uses allowed by the applicable provisions of the current acknowledged county comprehensive plan and land use regulations² of Jefferson County including, without limitation, those uses allowed by the current provisions of the Blue Lake, Camp Sherman Vacation Resort, Camp Sherman Rural Service Center, Camp Sherman Rural Residential (3 acre and 5 acre), Three Rivers Recreation Area Waterfront, and Three Rivers Recreation Area Residential zones.

1.2.2. The development of up to ten recreational dwellings within the area mapped as eligible for destination resort development by Jefferson County in Township 13 South, Range 8 East, section 13. The county shall prohibit outdoor watering of lawns or gardens associated with such use, and shall require that the dwellings be sited, clustered and designed to minimize conflicts with wildlife in consultation with the Oregon Department of Fish and Wildlife, the U.S. Forest Service and the Confederated Tribes of the Warm Springs. In addition, the county shall require that the dwellings be sited, clustered and designed to minimize wildfire risk and the costs of protection from wildfire in consultation with the Oregon Department of Forestry and the U.S. Forest Service.

Comment [w6]: This provision is designed to provide the owners of this property with the *option* of proceeding with small-scale development on their property. See also, section 3 concerning a second option for resort development outside of the Metolius basin. The level of development is based on preliminary evaluations of possible development levels allowed under Measure 49, along with consideration of the likely environmental constraints on development in this location.

Comment [w7]: From 1990 to 2003, 71.5 percent of the Metolius watershed was burned by wildfire.

1.3. Special Land Use Provisions (Deschutes County). Notwithstanding paragraph 1.1. (including its subparts) of this section, Deschutes County may allow all uses allowed by the applicable provisions of its current acknowledged comprehensive plan and land use regulations within the portion of Subarea 1 within Deschutes County, including any conditional use of forest land allowed by its comprehensive plan and land use regulations.

1.4. Special Land Use Provisions (Jefferson and Deschutes Counties). In addition to the provisions of paragraphs 1.2. and 1.3, any new use of a tract of land within Subarea 1 likely to result in a net average annual consumptive

² Jefferson County's destination resort map is not acknowledged, as it is still on appeal in the Oregon Supreme Court.

use of water exceeding ten acre-feet shall be conditioned to require mitigation, such that there will be no adverse effect on surface flows of water in the portion of the Metolius River designated as wild and scenic. The county applying this provision shall consult with the Oregon Department of Water Resources, the Oregon Fish & Wildlife Department, the Confederated Tribes of the Warm Springs, and the U.S. Forest Service in determining the appropriate mitigation requirement.

2. Subarea 2: Metolius Water/Wildlife Buffer Area. Subarea 2 is that area shown on Exhibit [].

Comment [w8]: The proposed boundary of Subarea 2 was located based on two sets of criteria: (a) mapping of important wildlife areas by ODFW, the US Forest Service, and by Jefferson County; and (b) analysis of projected effects of groundwater withdrawals on surface water flows in the portion of the Metolius River designated as wild and scenic. In general, the southernmost portion of the boundary was based on groundwater impacts, while the southeastern edge was based on both wildlife and groundwater impacts, as well as potential threats to those resources.

2.1. Prohibited Uses and Activities (Jefferson and Deschutes Counties).

In addition to the existing provisions of state statutes, statewide land use planning goals and rules, and the acknowledged³ Jefferson County and Deschutes County Comprehensive Plans and land use regulations, the following uses and activities are prohibited on all lands in Subarea 2:

2.1.1. Any new destination resort described by Statewide Planning Goal 8 (*Recreation*) or ORS 197.435 to 197.467;

2.1.2. Any new golf course;

2.1.3. Any new residential development exceeding 25 dwelling units on a tract, regardless of whether an exception is taken; and

2.1.4. Any new uses of a tract of land that would have an average annual consumptive use of water in excess of 50 acre-feet.

Comment [w9]: A higher limit is placed on residential development in the buffer area, due to the lower impacts on water.

Comment [w10]: According to the Oregon Water Resources Department, the total consumptive use of water in the Metolius basin is estimated to range between 0.32 cfs and 3.36 cfs, or approximately 1,045 acre feet of water annually. The proposed limit on any new land use in subarea 2 to an average annual consumptive use of 50 acre-feet would limit each new use to a level where mitigation on stream flow within the Metolius basin is reasonably likely to be possible (considering both the proportional impact within the basin, and the availability of mitigation opportunities). Fifty acre-feet of water use translates to the typical total water use (consumptive and non-consumptive) of about 100 homes in Central Oregon.

³ Jefferson County's destination resort map is not acknowledged, as it is still on appeal in the Oregon Supreme Court.

2.2. Special Use Provisions (Jefferson County). Notwithstanding paragraph 2.1. (including its subparts) of this section, Jefferson County may allow the following current and future uses within the portion of Subarea 2 within Jefferson County without amending its comprehensive plan or land use regulations:

2.2.1. All uses allowed by the applicable provisions of the current acknowledged county comprehensive plan and land use regulations⁴ of Jefferson County, subject to the provisions of section 2.4.

2.2.2. The development of up to fifty recreational dwellings within the portion of Subarea 2 mapped as eligible for destination resort development by Jefferson County. The county shall prohibit outdoor watering of lawns or gardens associated with such use, and shall require that the dwellings be sited, clustered and designed to minimize conflicts with wildlife in consultation with the Oregon Department of Fish and Wildlife, the U.S. Forest Service and the Confederated Tribes of the Warm Springs. In addition, the county shall require that the dwellings be sited, clustered and designed to minimize wildfire risk and the costs of protection from wildfire in consultation with the Oregon Department of Forestry and the U.S. Forest Service.

Comment [w11]: This provision is designed to provide the owners of this property (known as the "Ponderosa") with the *option* of proceeding with small-scale development on their property. Another option is provided in section 3. The level of development is based on preliminary evaluations of possible development levels allowed under Measure 49, along with consideration of the likely environmental constraints on development in this location.

2.3. Special Land Use Management Provisions (Deschutes County). Notwithstanding paragraph 2.1. (including its subparts) of this section, Deschutes County may allow all uses allowed by the applicable provisions of the current acknowledged county comprehensive plan and land use regulations⁵ of Deschutes County within Subarea 2, subject to the provisions of section 2.4.

2.4. Special Land Use Management Provisions (Jefferson and Deschutes Counties). Notwithstanding paragraphs 2.2 and 2.3 (including their subparts) of this section, the following limitations apply to new development within Subarea 2:

⁴ Jefferson County's destination resort map is not acknowledged, as it is still on appeal in the Oregon Supreme Court.

⁵ Deschutes County's acknowledged destination resort map includes one area shown as eligible within Subarea 2. However, no application has been filed for master plan approval for this area and, in any event, development of that area would be subject to section 2.4, below.

2.4.1. The total new development (not including residential development of a platted lot or parcel) allowed within the portion of Subarea 2 in Deschutes County after the effective date of this management plan shall be limited so that the total average annual consumptive use of water is not likely to exceed 100 acre-feet.

Comment [w12]: As the proportion impact of groundwater withdrawals in this portion of Subarea 2 that will occur in the Metolius basin is relatively high (averaging close to or even above 50 percent depending on the specific location) the carrying capacity cap for this area has been set lower than for the area in Jefferson County. The Deschutes County portion of Subarea 2 also contains substantially less private land.

2.4.2. The total new development (not including residential development of a platted lot or parcel) allowed within the portion of subarea 2 in Jefferson County after the effective date of this management plan shall be limited so that the total average annual consumptive use of water is not likely to exceed 200 acre-feet.

Comment [w13]: 200 acre-feet is the equivalent of approximately 400 homes. If all of this development were to occur in the western portion of Subarea 2, the proportion of impact within the Metolius basin could approach fifty percent – requiring up to 100 acre-feet of mitigation.

2.4.3. Land uses allowed within subarea 2 shall be located, designed and managed to minimize conflicts with wildlife including, but not limited to, deer and elk winter and transitional range. The county shall consult with the Oregon Department of Fish and Wildlife, the U.S. Forest Service and the Confederated Tribes of the Warm Springs in applying this standard. In addition, the county shall require that any new residential use (other than the development of an existing lawfully platted lot or parcel) be located, designed and managed to minimize wildfire risk and the costs of protection from wildfire. The county shall consult with the Oregon Department of Forestry and the U.S. Forest Service in applying this standard.

2.4.4. In addition to the provisions of paragraphs 2.1 to 2.4, above (including their subparagraphs), any new use of a tract of land within Subarea 2 likely to result in a net average annual consumptive use of water exceeding ten acre-feet shall be conditioned to require mitigation, such that there will be no adverse effect on surface flows of water in the portion of the Metolius River designated as wild and scenic. The county applying this provision shall consult with the Oregon Department of Water Resources, the Oregon Fish & Wildlife Department, the Confederated Tribes of the Warm Springs, and the U.S. Forest Service in determining the appropriate mitigation requirement

3 Alternative Site Eligible for Resort Siting (Round Butte)

3.1. Transfer of Resort Mapping to Round Butte Upon the Oregon legislature's approval of this Management Plan, the county's adopted destination resort map will be replaced with the map attached to this plan

as Exhibit []. The map in Exhibit [] shall be deemed acknowledged, and shall be deemed to comply with the statewide land use planning goals and any applicable statutory and rule requirements for a map of areas eligible for the siting of a destination resort. The county's adopted destination resort map shall have no legal effect.

Comment [w14]: This section would transfer the current Jefferson County destination resort map to a new location in the vicinity of Round Butte. Jefferson County could, but is not required to, authorize destination resort development within this area through the approval of a resort master plan under the other existing provisions of the county's comprehensive plan and land use regulations.

3.1.1. Time-Limited Transfer of Resort Mapping Privilege. For a period of ten years following the Oregon legislature's approval of this Management Plan, the development of a destination resort within Subarea 3 is authorized only if the application for master plan approval includes the agreement of one or more of the owners of the property identified in sections 1.2.2. and 2.2.2. Up to 375 units approved for residential sale may be approved if the application includes the agreement of the owners of the property identified in section 1.2.2. Up to 625 units approved for residential sale may be approved if the application includes the agreement of the owners of the property identified in section 2.2.2. The total number of units approved for residential sale under this paragraph may not exceed 1,000. After the ten-year period, Jefferson County may approve one or more destination resorts within Subarea 3 without the agreement of the owners of the property identified in sections 1.2.2. or 2.2.2., but the total number of units approved for residential sale within Subarea 3 may not exceed 1,000 under any circumstances. If the owners of the property identified in sections 1.2.2 or 2.2.3 elect to participate by agreement in the development of a destination resort within Subarea 3, they shall record a conservation easement assuring that the use of the property identified in section 1.2.2 or 2.2.3, whichever is applicable, is limited to forest uses.

Comment [w15]: The intent of this provision is to give the owners of the Metolian and Ponderosa properties a period of time to transfer their development to the Round Butte. The transfer could be accomplished by a variety of means, all of which would be allowed, including a land exchange (federal lands around Round Butte), a partnership with existing private landowners around Round Butte, or through an outright purchase. The boundaries of the Round Butte area were designed to include enough land and landowners to provide flexibility.

Comment [w16]: The total number of units is limited to limit potential impacts to agricultural operations on surrounding lands.

Comment [w17]: This provision is intended to assure that if the owner(s) elect to transfer their resort mapping entitlement to Round Butte, that they retain no resort or residential development rights on their properties.

3.2. Exemption from Requirement to Develop Recreational Facilities. Notwithstanding ORS 197.445, a new destination resort within Subarea 3 is not subject to ORS 197.445(3) (requirement for improvements for on-site developed recreational facilities).

Comment [w18]: The requirement to invest at least \$7 million in developed recreational facilities is waived, recognizing that the main amenity for resort development in this area would be Lake Billy Chinook and other nearby outdoor recreational opportunities.

3.3. Transportation Facility Mitigation. Any development authorized by Jefferson County within Subarea 3 after the effective date of this Management Plan that meets the definition of a destination resort under statewide land use planning Goal 8, or the criteria of ORS 197.445 shall be required to mitigate adverse impacts on local and state transportation facilities as a condition of development approval, regardless of whether

those impacts will occur in the jurisdiction where the development is located.

3.4. Agricultural Mitigation. Any development authorized by Jefferson County within Subarea 3 after the effective date of this Management Plan that meets the definition of a destination resort under statewide land use planning Goal 8, or the criteria of ORS 197.445 shall be required to avoid adverse effects to the maximum extent practicable through the location, design and operation of the development. In addition, such development shall be required to mitigate any unavoidable adverse impacts through contributions to a mitigation fund, administered by Jefferson County.

3.5. Alternate Destination Resort Sites. Notwithstanding ORS 197.455(2) Jefferson County may map other locations as eligible for destination resort development (outside of the Area of Critical State Concern) without waiting 30-months from the previous destination resort map adoption. Mapping conducted, if any, pursuant to this provision must satisfy all other applicable provisions of law and must be accomplished on or before January 1, 2014.

Comment [w19]: This provision allows Jefferson County to identify other sites eligible for destination resort development, without waiting for 30 months as would otherwise be required. The county could use this provision if it determines it does not want to proceed with resort development in the Round Butte area.

The land use management plan provisions identified in this Section apply in addition to and (in some cases) instead of other state and local land use statutes, rules, and regulations governing land uses within the proposed Area of Critical State Concern. The proposed Area of Critical State Concern consists of three subareas, as described immediately below. In the event that any state or local land use law, rule or regulation conflicts with this management plan, the plan will control upon approval by the Oregon legislature.