The Metolius

Area of Critical State Concern

Metolius River (John Hutmacher, Deschutes National Forest)

Oregon Department of Land Conservation and Development

March 24, 2009

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Exhibit A: Metolius Area of Critical State Concern, Area 1 and Area 2 (Map)

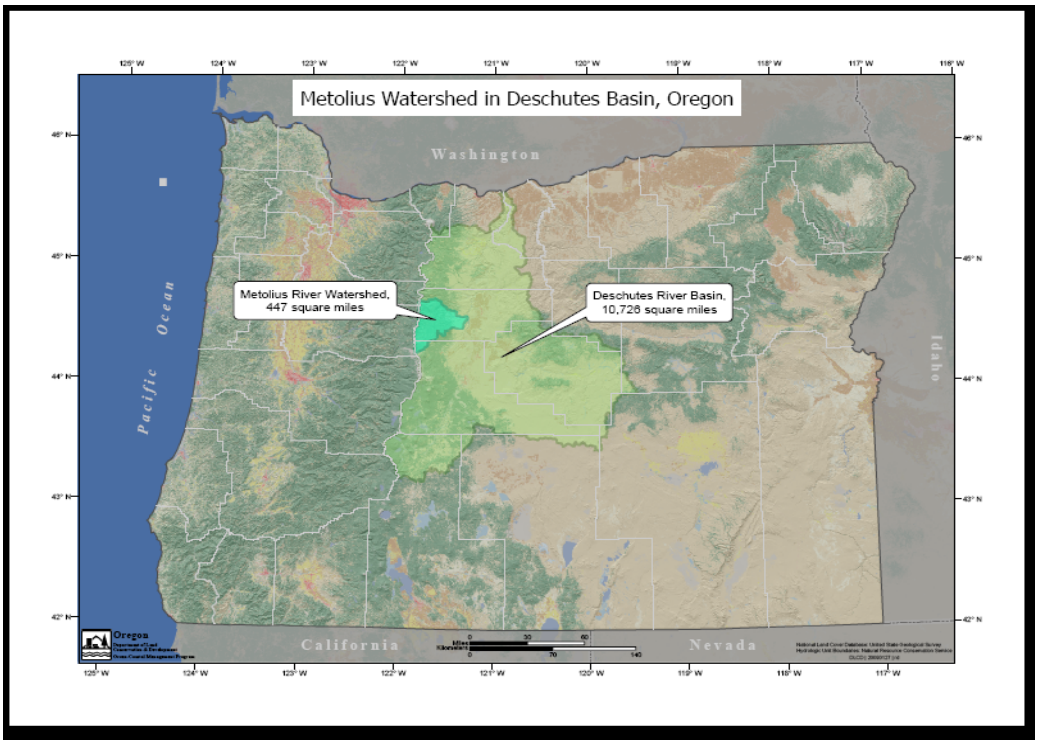
I. RECOMMENDATION: The Metolius Basin Should Be Designated as an Area of Critical State Concern (ACSC)

The Land Conservation and Development Commission recommends that the Oregon legislature approve the Metolius Area of Critical State Concern to protect the outstanding water, wildlife and scenic values of the area from conflicting large-scale resort and residential development planned in and around the area. The Commission recommends that the Area of Critical State Concern contain two areas -- Area 1 and Area 2, as shown on the attached Exhibit A -- and that the legislature approve the Management Plan contained in part VI of this document as additional use limitations on land uses within the Area of Critical State Concern.

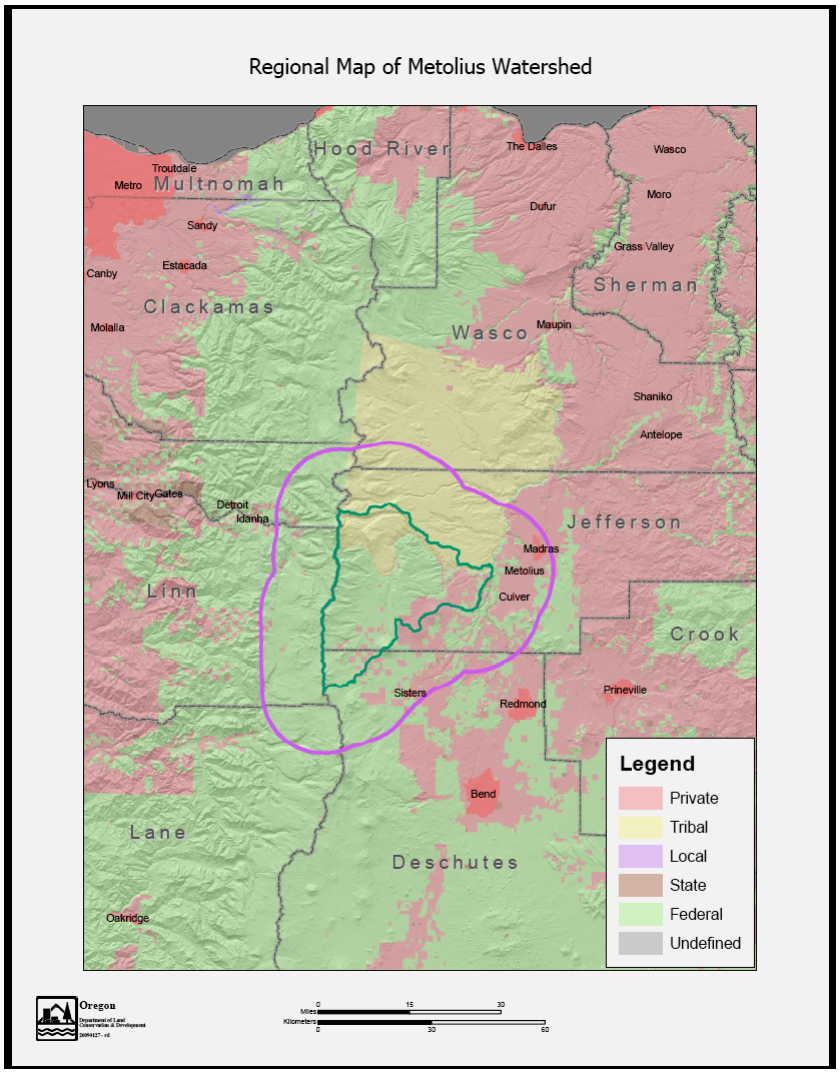
II. INTRODUCTION

A. General Setting and Context

The Metolius Basin is part of the larger Deschutes River Basin, and includes portions of southwestern Jefferson County and northwestern Deschutes County. The basin includes 447 square miles, and the unincorporated communities of Camp Sherman and Three Rivers. The basin drains the east slope of the Oregon Cascade, including portions of the Mt. Jefferson wilderness.


Metolius Watershed in Deschutes Basin, Oregon
Washington
Pacific Ocean
Metolius River Watershed, 447 square miles
Deschutes River Basin, 10,726 square miles
Idaho
California
Nevada
Oregon

The City of Sisters lies about eight miles to the south of the Metolius Basin, and Bend is approximately 30 miles to the east. Most of the land in the basin is owned by the federal government, and managed as part of the Deschutes National Forest; however there are significant private land holdings along the southeastern boundary of the basin and on lands to the east of the basin.



B. The Basin as an Area of Critical State Concern

For many, the Metolius is an iconic example of the beauty of the Oregon Cascades, with natural resource and scenic values that have been noted for decades. As early as 1913, a Bend Bulletin editorial called for preserving "a strip along the river" as a national park, and stated 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"*

More recently, in June 2007, an Oregonian editorial was captioned "Yes this river must be saved." In weighing how the river should be protected, 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 the surrounding basin give rise to these exceptional portrayals? The remarkably clear, cold waters that feed the river with a constant year-round flow are one source of such sentiments. The Metolius River has one of the most stable year-round water flows in the world due to large springs that provide a significant portion of the in-flow to the river. The river supports one of the healthiest bull trout populations in the state, and has had large sockeye and spring chinook fisheries historically.

Described as a "remarkable and state treasure" the Metolius was designated as a federal 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 stands of large yellow ponderosa pine that make up portions of the basin are another reason why this area is unique in the state. The yellow pine stands caused the Deschutes National Forest to recommend that a portion of the basin be protected as a Yellow Pine Museum in 1928. More recently, in 1990, the Forest Service established the Metolius Conservation Area as part of its Deschutes Forest Plan. The following excerpt from the Forest Plan describes why the Forest Service established this special management area:

> The Metolius Basin is truly unique in the quality and diversity of its natural resource and spiritual values. The River's headwaters well from the ground in scenic springs, ensuring pristine water quality and excellent fisheries. Abundant rainfall and rich soils have combined to produce luxuriant forests of fir, cedar, larch and Ponderosa pine which have contributed greatly to the demand for forest products locally and regionally. Big, yellow-barked Ponderosa pine trees are a highlight of the Basin. The Metolius ecosystem provides habitat for a wide variety of plant and animal species.
>
> Outstanding natural scenery exists throughout the Basin and attracts visitors who seek a variety of recreation pursuits. Black Butte has been a landmark since the first settlers arrived and continues today as a scenic beacon to travelers and residents. The Metolius is outstanding in the abundance of its resources and depth of feeling with which they are held by all who visit this special place.
>
> Recognizing these special qualities of the Metolius, and wishing to preserve its outstanding values for future generations, the Metolius Conservation Area is established in this plan. This 86,000 acre area encompasses Black Butte, the Metolius Basin between the wilderness boundary on the west and Green Ridge on the east, and the "Horn of the Metolius".

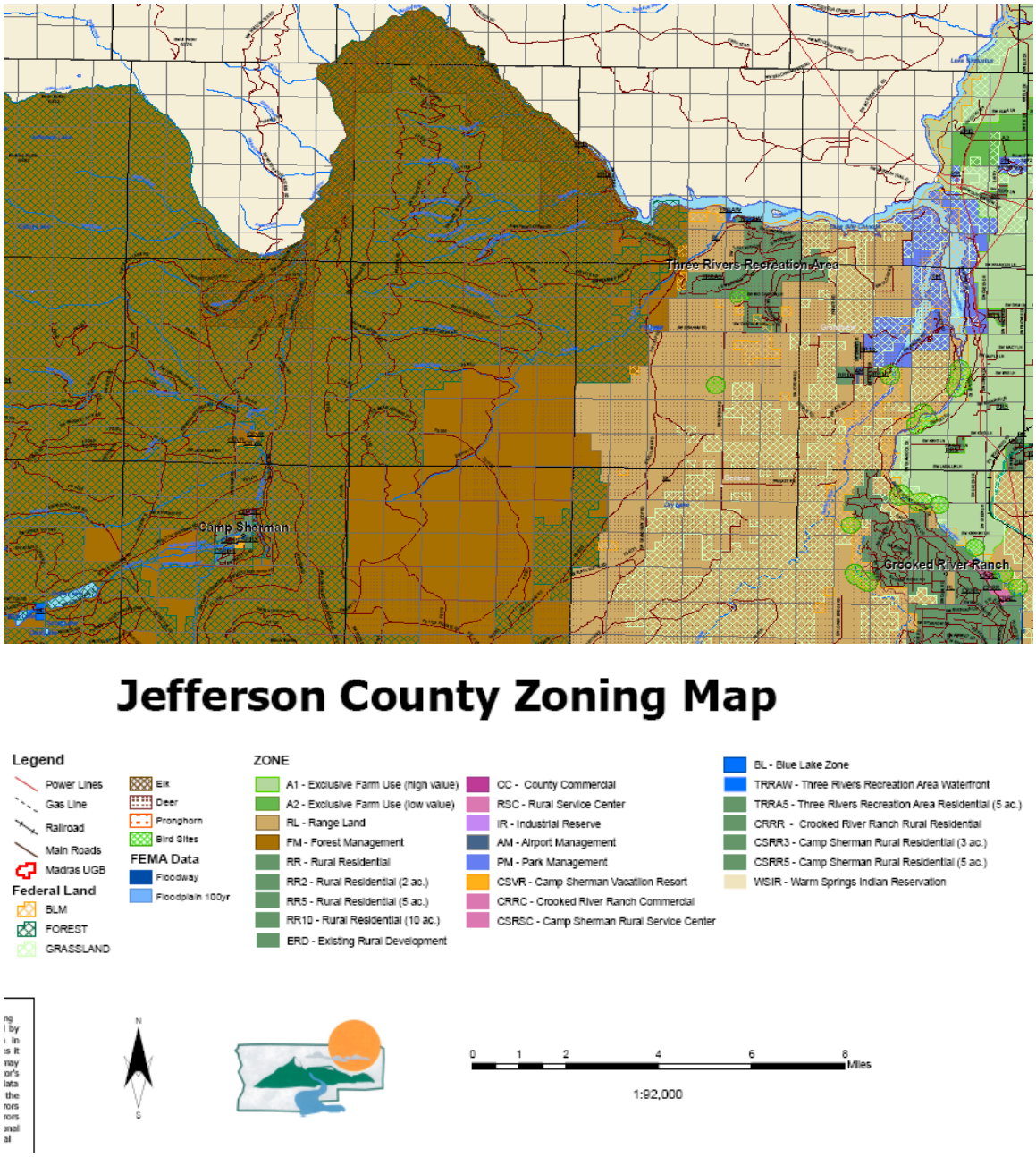
A third unique resource of this area is its wildlife. Large deer and elk populations, combined with the threat of "sagebrush subdivisions," led Governor Tom McCall to request in 1974 that the Land Conservation and Development Commission consider the Fly Creek portion of this area as an Area of Critical State Concern. More recently, the size of the deer population in this area has declined (the population is now at approximately 40 percent of the ODFW target). A major influence on the quality of deer and elk habitat is road densities and the level of vehicular traffic. Road use on Highway 20 and along Forest Service roads in the Metolius Basin has increased over the past twenty-five years. This area also forms the eastern edge of habitat for the Northern spotted owl. Many owl nest sites were destroyed in the recent extensive fires in the basin.

Finally, the Metolius area is an important recreational resource for the state. 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. In addition to substantial hunting and angling use, the area sees increasing levels of day-use recreation. There are nine public campgrounds within the basin, and several lodges on private lands. The day-use area at the Head of the Metolius River receives 120,000 to 130,000 visits per year.

C. Current and Historical Land Management in the Metolius Basin

Most of the private lands in the basin are planned and zoned for forest uses under Statewide Planning Goal 4 *(Forestlands).* This and corresponding county zoning limit uses to forest operations, recreation, certain conservation-related uses, and very limited forest-related dwellings. The Camp Sherman and Three Rivers areas are designated as unincorporated communities under OAR Chapter 660, Division 22, which allows for limited non forest-related residential and commercial activities. The eastern portion of the basin includes some lands that are planned and zoned as range land under Statewide Planning Goal 3 (*Agricultural Lands*). Uses on these lands

are limited to grazing and other farm uses (some non-farm uses are allowed as well). The western portion of the area largely is owned and managed for the public by the U.S. Forest Service (USFS). Land management within the National Forest is guided by the Deschutes Land and Resource Management Plan, adopted in 1990. Prominent natural features in include the Cascade Mountain Range at the Basin's western boundary and Green Ridge, which runs north-south through the middle of the Basin.



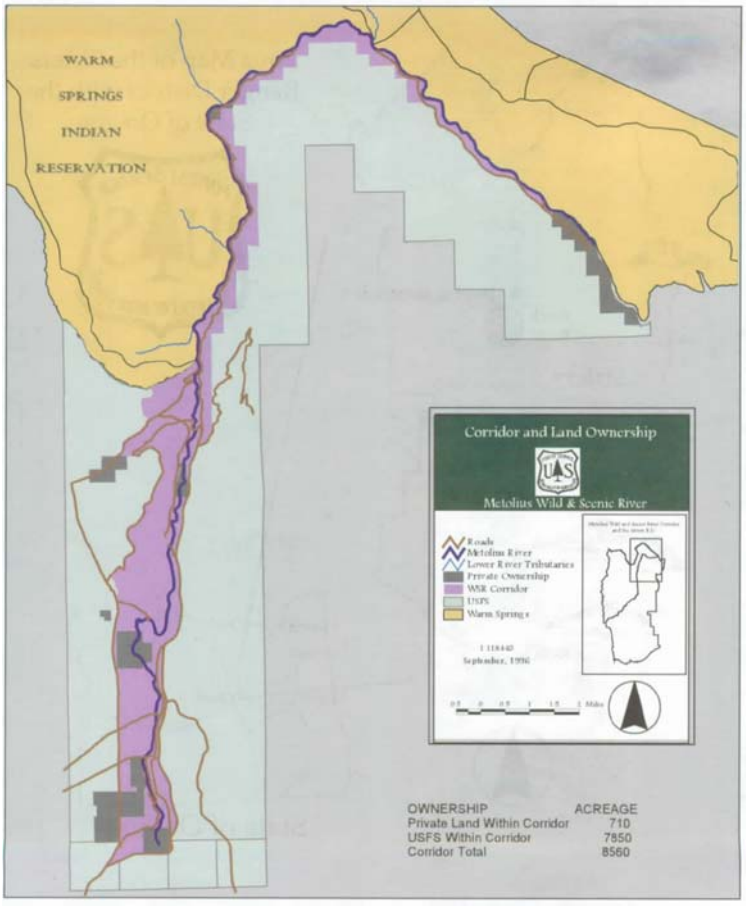
The basin includes lands within the Warm Springs Reservation. All of the Deschutes National Forest lands within the Metolius Basin were ceded to the U.S. Government by the Tribes and Bands of Middle Oregon through the Treaty of 1855. The treaty reserves for the Tribes exclusive rights of "taking fish in the streams running through and bordering the reservation." The Confederated Tribes of the Warm Springs Reservation 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. According to the Tribes, the area includes traditional huckleberry gathering areas, village sites and other areas of tribal historical and spiritual significance. 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.

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." (U.S. 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. 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 or seeing them protected through federal actions such the Columbia Gorge Scenic Area Act. 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.



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

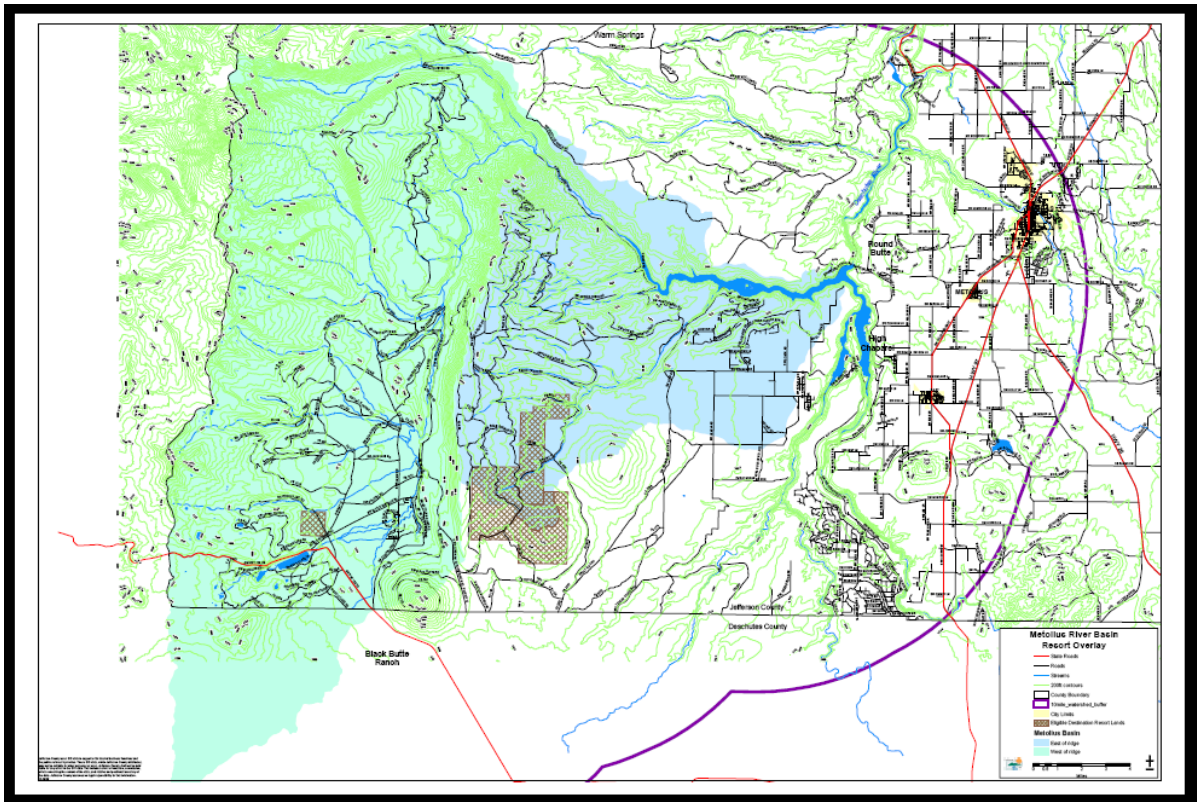
In 1990 the Deschutes National Forest established the Metolius Conservation Area." The Conservation area contains ten management (sub)areas within an 86,000-acre designation. Included in the Area are Black Butte, the Metolius Basin between the wilderness boundary on the west and Green Ridge on the east, and the "Horn of the Metolius." The ten management areas 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)

D. Destination Resorts and the Metolius Basin

Under state statutes, the siting of destination resort facilities is an issue of statewide concern. ORS 197.440(4). 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 – to proceed the owners next must prepare conceptual master plans for their lands for review by the county. Once a

master plan is approved, resorts typically proceed in phases, with specific plans for each phase reviewed by the county.

The county's destination resort map identified two areas as eligible for resorts. One property is 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 lead to 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.

E. The 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 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. The City of Sisters functions as a service center for the area surrounding the city. Although the population of the city is 1,875 (as of July 1, 2008), the Sisters School District 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 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 also have been considered. Using the ACSC process, it is possible to identify opportunities for development that avoid adverse environmental and other effects, while still providing economic benefits to the county and residents of the county. This could both limit development in sensitive areas, and allow 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 Interests and Fairness

At least three private property owners would be directly affected by the ACSC – the owners of the two properties that Jefferson County has mapped as eligible for siting destination resorts, and the owner of one property mapped as eligible for destination resort development in Deschutes County. The owners of the two properties in Jefferson County acquired their properties after the statewide planning goals where 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. Under current zoning, new forest dwellings may be allowed on parcels of 240 acres or more.

The Department recognizes that the property owners in Jefferson County have worked to navigate the destination resort planning requirements in Oregon statute and Statewide Planning Goal 8 (*Recreation*). Both owners

have invested time and resources to participate in the county planning process. The owners of the Metolian property have created a detailed development proposal.

An objective of this ACSC is to include provisions that provide a fair return to the three directly-affected property owners. The relief supplants state and local laws that would otherwise apply, and entitles the owners to carry out a particular level of development. The development entitlement allowed for each of the three properties has been set at a level that is intended to offset any reduction in value resulting from prohibition on large-scale resort development and given the current destination resort status of each of the properties. One of the properties, in Deschutes County, is mapped for resort development, but has no approved master plan. The other two properties are tentatively mapped as eligible for resort development, but the map is on appeal and has been remanded by the Oregon Land Use Board of Appeals. No master plan approval exists for these two properties. All three properties would need water right approvals, and Forest Service access agreements in order to proceed.

III. OBJECTIVES

A. To Protect the Basin, Including the Biological Deer and Elk Range East of the Basin. First, the ACSC 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 (including large resorts) 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 are limited to ensure that new development will not result in:

(a) Negative impact to the Metolius River, its springs or its tributaries;

(b) Negative impact on fish resources in the Area of Critical State Concern; or

(c) Negative impact on the wildlife resources in the Area of Critical State Concern.

The limitations in this ACSC will not affect existing development or the development of platted lots in Camp Sherman or any other portion of the ACSC.

B. To Give Jefferson County a Clear Path to Allow Small-Scale Recreation-Oriented Development Consistent with the Carrying Capacity of the Area.

The ACSC also recognizes the economic development objectives of Jefferson County by easing the limitations on remapping of areas eligible for destination resort development, and by authorizing appropriate small-scale recreation-oriented development in the two areas previously- mapped for large resorts by the county. The small-scale recreation-oriented development that would be allowed would general transient lodging revenues for the county, along with limited employment opportunities – consistent with the carrying capacity of the sensitive areas they are located within.

For large-scale resort development, the ACSC exempts Jefferson County from the normal 30-month waiting period before it may re-map lands for destination resorts.

C. To Provide a Fair Result for Directly-Affected Property Owners. The ACSC provides fairness for the property owners that would be directly affected by the proposed management plan by allowing them an entitlement to limited small-scale residential development on their properties. The proposed ACSC does not eliminate statutory claims for compensation the

owners may (or may not) have under Measure 49, but it is intended to avoid a reduction in the fair market value of the properties.

IV. SUMMARY OF EXISTING STATE AND LOCAL PROGRAMS

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

A. Oregon Water Resources Department OWRD)

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 Laws) and is 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. The quantity of new groundwater rights allowed under the Program largely has been utilized through new water right applications, many of which are still pending review.

OWRD also considers state scenic waterways when evaluating water right applications. State statutes allow no more than a one cubic foot per second cumulative impact on flows in a scenic waterway. The Metolius River is already at the state limit for cumulative impacts.

In addition, there are state in-stream water rights on the Metolius River to protect resource values, as well as a water right held by the Warm Springs Tribes.

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. The main sources of water quality problems in the basin are nutrients from septic systems, and nonpoint sources associated with roads and forest uses. Widespread fires in the Metolius basin have raised some concerns regarding sedimentation and temperature.

C. Oregon Parks and Recreation Department (OPRD)

OPRD implements programs designed to protect state scenic waterways. 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 Oregon Department of Fish & Wildlife (ODFW) co-manages fish and wildlife resources in the Metolius area along with the U.S. Forest Service

and the Warm Springs Tribes. 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 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 and its 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.

ODF also is responsible for fire protection on private lands that are not in a fire district. Increased residential development near and within forest lands can substantially increase the likelihood of fire, as well as the cost of controlling fire.

F. Jefferson County Land Use Regulations

As noted above, Jefferson County has planned and zoned the Metolius area for forest and rangeland uses. These regulations significantly limit the potential for large-scale residential development in the area, with the exception of destination resorts. Once sites are mapped as eligible for destination resort development, there is no set limit on the overall amount of residential development that may occur. Resorts must go through a planning process, and receive approval from the county under standards that provide some protection from adverse impacts. However, state and federal agencies have noted that the introduction of any new large-scale development into the area will inevitably harm fragile wildlife, water and recreational resources.

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 also 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 vast 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 federal Wild and Scenic Rivers Act to prevent diminishment of the Outstandingly Remarkable Values of the Metolius River. These ORV's include fisheries, water quality and water 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. The Watershed Analysis and the Update have been used by the department as a primary scientific source for the analysis underlying the Area of Critical State Concern, reflecting the fact that federal lands make up a large proportion of the area under review.

V. REASONS FOR ADDITIONAL STATE PROTECTION OF THE METOLIUS

The U.S. Forest Service has carried out extensive planning efforts that identify the outstanding resources of the Metolius area, and the primary threats to those resources. The Department has used three documents, in particular, as important foundational materials in preparing this ACSC plan for the Commission. Those three documents are: (1) the Metolius Watershed Analysis and Watershed Analysis Update; (2) the Metolius Wild and Scenic River Management Plan; and (3) the Deschutes National Forest Land and Resource Management Plan. Additional materials have been supplied by the Oregon Water Resources Department, the Oregon Department of Fish and Wildlife, the Oregon Department of Transportation, and the Warm Springs Tribes.

A. Overview -- The Reasons for Protecting the Metolius, and the Sources of Threats

The outstanding resources that the Land Conservation and Development Commission believes warrant special state protection are:

- The Metolius River, and the quantity and quality of water that the river and its fisheries depend on;
- The scenic values of the Ponderosa pine forests, streams, buttes and east slopes of the Cascades that make this a special place for all visitors; and
- The wildlife resources in and around the basin, including deer and elk winter and transitional ranges that support important hunting opportunities and that are an important tribal resource.

By and large, these resources are protected on federal and tribal lands under existing federal and tribal land management regimes. The Deschutes Land and Resources Management Plan, with its Metolius Conservation Area element, along with the Metolius Wild and Scenic River Management Plan, have reduced the level and extent of development and conflicting uses on

federal lands. As an example, road densities on federal lands have been reduced, and the number and location of campgrounds has been altered to reduce impacts to the river. The main remaining issue on federal lands is fire – over fifty percent of the basin has been affected by wildfire in the past 12 years. A major potential source of fire risk is increased development. Studies show that the density of dwellings on the wildland forest interface is directly related to fire risk. Federal and state land managers also have reported that increases in residential development in the wildland forest interface significantly increase costs to the public, both in increase costs of forest management to reduce fire risk, and through increased costs of fighting fires to protect structures.

Most private lands in the Metolius are planned and zoned for forest use. Normally, this would prevent any large-scale development that could significantly affect water, wildlife or scenic resources. However, there are at least two ways in which forest lands can be developed for more intensive uses. The first of these is through the destination resort program. Under state statutes, counties may allow large resorts on forest lands under certain conditions. While one of those conditions relates to wildlife, even it is based on a county's *mapped* location of especially sensitive big game habitat. In this case, Jefferson County has acknowledged that it has not updated its mapping of sensitive wildlife habitat since 1981.

Furthermore, state land use standards for destination resorts do not address water use issues at all. Nor do they consider effects on scenic or recreational uses or increased wildfire risks. One recent study of water demand in Central Oregon found that resort development is a significant component of potential future water needs, competing with municipal and farm uses of water, and sharpening potential conflicts with efforts to rebuild fisheries in the Deschutes basin.

Large-scale development of forest land is also possible through the exceptions process in Oregon land use law. This process has been used to authorize other resort-like developments elsewhere in the state, and can also be used to allow specific uses that may raise water or wildlife concerns.

The two destination resorts currently contemplated in and straddling the basin propose a total of approximately 3,100 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 both 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 ACSC 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 and Elk

The proposed destination resort areas in Jefferson County are in or adjacent to 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 believes it 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.

Moreover, both resort areas are located within area mapped as deer and/or elk habitat by the US Forest Service. The Forest Service mapping is the most current of the agencies, and shows that the proposed Metolian resort is immediately adjacent to a Northern spotted owl nest site, and within transition and summer deer range, while the Ponderosa resort is within elk migration range and transitional and winter range for deer.

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 have noted that USGS and Oregon Department of Water Resources (OWRD) data indicate that groundwater withdrawals outside the surface water basin likely will affect surface water flows 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."*

According to OWRD, the current consumptive use of water in the Metolius basin is approximately 1,045 acre-feet of water. As noted above, under Oregon law, the allowable cumulative impact on a scenic waterway has already been reached for the Metolius for most months of the year. As a result, any additional significant additional water use would conflict with the state scenic designation.

The 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 (more than twice the total current water use in the basin). Although the site for the withdrawal is outside of the surface area of the

basin, it appears that between 25 percent and 50 percent of the proposed withdrawal would affect surface water flows in the Metolius (depending on the exact placement of the wells). The U.S. Forest raised these issues 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. Wildland Fire Risks and Costs

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 are introduced into the Basin, the greater the likelihood that more persons and private property will be put in danger and the more public costs of protecting private investment will increase.

Finally, The Metolius Watershed Update was prepared in part due to the massive fires that hit the basin in the 10 years leading up to 2004. Some of the General Recommendations in that analysis are:

- 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

The LCDC subcommittee charged with conducting public hearings on a proposed Area of Critical State Concern has heard testimony from over 200 persons testifying at three public hearings. Testimony has been provided by both counties, the Warm Springs Tribes, the City of Madras, the City of Sisters and several state representatives as well as property owners and citizens. The subcommittee has visited the mapped sites as well as the general area, and staff has met repeatedly with the counties, the cities, the Tribes, the property owners and other agencies. Although the time for preparation of this plan has been short, the amount of input from the public and interested parties has been substantial.

Public testimony generally has favored protecting the Metolius Basin in some manner, although both counties continue to oppose a state designation. Testimony stressed that the boundary of any buffer area should be based on impacts, not on an arbitrary distance from the basin. Testimony also generally did not support designating the area near Round Butte for resort development. As a result, this aspect of the ACSC has been removed.

Additional testimony did not favor inclusion of the Three Rivers unincorporated community in the ACSC, even though the draft management plan would not have limited the development of existing lots, or uses allowed under the current county zoning. In addition, evidence was presented that the existing development pattern within the Three Rivers community meant that it was of less importance in terms of habitat for the wild deer herds in this area of the basin. As a result, the Commission elected to remove this area and adjacent lands to the east from the ACSC.

VI. LAND USE MANAGEMENT PLAN

A. The Legal Effect of the Management Plan.

This section of the Metolius Area of Critical State Concern contains the operative provisions of the proposed designation. The earlier sections are intended only as background for the proposed land use management plan. The provisions of the management plan will become effective only upon approval by the Oregon legislature (on the effective date of the legislation approving the plan). No further action by LCDC or by Jefferson or Deschutes County is required for the plan to take effect. Specifically, neither county is required to amend its comprehensive plan or land use regulations as a result of this management plan. Instead, the counties will apply the provisions of this management plan directly to any land use decision that the plan applies to (as specified in more detail below).

The Management Plan provisions in this section apply in addition to and (in some cases) instead of other state and local land use statutes, goals, rules, plans and regulations governing land uses within the Area of Critical State Concern. If any statute, goal, rule, plan or regulation conflicts with a provision of this Management Plan, the plan will control upon the effective date of legislation approving the plan. All other programs and regulations of state agencies, Jefferson County and Deschutes County are not affected by this Management Plan.

The Management Plan may be amended by the Land Conservation and Development Commission, as provided and subject to the limitations contained in Part D of this section.

B. The Boundary of the Area of Critical Concern

The Area of Critical State Concern consists of two areas:

1. The Metolius basin itself, except for the Three Rivers unincorporated community and lands to the east of Three Rivers (defined by surface hydrology as mapped by the Oregon Water Resources Department, and as shown in Exhibit A) (Area 1); and

2. An 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 adversely affect important deer or elk winter range (as shown in Exhibit A) (Area 2).

The eastern boundary of Area 1 was adjusted by the Commission to remove the Three Rivers unincorporated community from the boundary, along with lands to the east of Three Rivers. The boundary otherwise encompasses the surface drainage of the Metolius River, including Fly Creek.

The boundary of Area 2 was developed based on two criteria: (a) the area where groundwater withdrawals are likely to substantially affect surface flows in the Metolius River (by more than 30 percent); and (b) the area identified as especially sensitive big game habitat by ODFW or identified as important winter or transitional deer or elk range by the U.S. Forest Service. The boundary of Area 2 was adjusted to follow section lines to assist in the administration of the Management Plan.

C. Management Plan Objectives: The Management Plan for the Metolius Basin Area of Critical State Concern ("the Management Plan") is intended to achieve three important objectives. These objectives will guide LCDC and Jefferson and Deschutes Counties in the implementation of the Management Plan.

1. **Protect the Basin**. The Management Plan is designed to protect the Metolius Basin (Area 1) and Area 2 from large-scale development that would be inconsistent with the outstanding and unique environmental, cultural and scenic values and resources described in Section V. This is accomplished by prohibiting large-scale development in the basin itself, and by substantially limiting such development in Area 2. The location and development limits with Area 2 have been planned carefully, based on the likely hydrological impacts of development and the location of important wildlife resources. Within Area 2 the amount, location and type of development are limited to: (a) assure no negative impact to the Metolius River, its springs or its tributaries; (b) assure no negative impact to fish resources in the ACSC; and (c) assure no negative impact to

wildlife resources in the ACSC. The limitations do not affect small-scale development allowed under existing zoning, or existing land uses including the development of platted lots in Camp Sherman or the Three Rivers unincorporated communities.

2. **Give Jefferson County a Clear Path to Allow Small-Scale Recreation Oriented Development Consistent with the Carrying Capacity of the Area**. The Management Plan also recognizes the economic development objectives of Jefferson County by authorizing small-scale recreation-oriented development within a small portion of the two areas mapped by the county for destination resort development. In addition, the Management Plan allows Jefferson County to remap without regard to the 30-month waiting period that would normally apply under ORS 197.455.

3. **Provide a Fair Result for the Property Owners**. The Management Plan provides fairness for the property owners that would be directly affected by the proposed management plan by giving them an entitlement that they do not currently have in exchange for the prohibition on resort or other large-scale development. The level of entitlement for each property is set to offset the possible loss of value from the other provisions of the Management Plan, while avoiding adverse impacts to the resource values the plan protects. The Management Plan does not eliminate statutory claims for compensation the owners may (or may not) have under Measure 49.

D. Management Plan General Standards and Procedures

The following standards limit the authority of LCDC to amend the Management Plan, by prohibiting certain changes to the plan without legislative approval, and by setting general standards for other changes.

1. Changes Prohibited Without Legislative Approval

The following types of changes in the designation and Management Plan are prohibited without legislative approval:

a. Any change to the boundary of the ACSC, including its two Areas, of more than 50 acres;
b. Any change to the prohibition of a destination resort, as defined by Statewide Planning Goal 8 or ORS 197.435 et. seq.; or
c. Any change that would authorize an exception to a Statewide Planning Goal in order to allow the development of more than 100 residential units.

2. Other Changes

Other changes to the boundary of the ACSC or Management Plan by LCDC are allowed without legislative approval, subject to the following standards:

Any new development allowed by the change will not result in:

a. Negative impact to the Metolius River, its springs or its tributaries;
b. Negative impact on fish resources in the area of critical state concern; or
c. Negative impact on the wildlife resources in the area of critical state concern.

3. Procedure for Amendments

If LCDC proposes to amend, add to or remove the boundary of Area 1 or Area 2, or to amend any provision of the Management Plan in a manner that is subject to subsection (1) of this section, the amendment will not take effect until the effective date of legislation approving the amendment.

If LCDC proposes to amend, add to or remove the boundary of Area 1 or Area 2, or to amend any provision of the Management Plan in a manner that is not subject to subsection (1) of this section, it shall do so by following the applicable rulemaking procedures specified in ORS 183.325 et. seq. LCDC shall hold at least one hearing in Jefferson County on any proposed change

to the boundary of the ACSC or any proposed change to the Management Plan.

4. Implementation of the Management Plan

Notwithstanding other statutory requirements, neither Deschutes County nor Jefferson County is required to amend their comprehensive plan or land use regulations as a result of the designation or the Management Plan. Instead, the two counties will apply the designation and Management Plan directly to any application for a permit or land use decision within the ACSC, to the extent that this section of the Management Plan specifies that the Management Plan applies to the proposed use. The Management Plan will apply in the same manner as provided by ORS 197.646(4). If the county receives a land use application that is subject to the Management Plan, it must provide written notice to DLCD 15 days prior to the deadline for comments or testimony on the application.

Any development or use of land not specifically regulated by this Management Plan is subject to the otherwise applicable provisions of state and local laws, goals, rules, plans and regulations.

E. Management Plan Supplemental Land Use Regulations

1. Area 1: Metolius Basin. Area 1 is the area shown as Area 1 on Exhibit A.

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 acknowledged[1] Jefferson County and Deschutes County Comprehensive Plans and land use regulations, the following uses and activities are prohibited on all lands in Area 1:

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

1.1.2. Any new golf course;

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

1.1.3. Any new residential development exceeding 10 dwelling units on a tract, regardless of whether an exception is taken (except as provided in section 1.2, below);

1.1.4. Any new commercial or industrial development, other than those commercial or industrial uses that would have an average annual consumptive use of water of less than 5 acre-feet, and other than those small-scale, low impact uses allowed under OAR 660-022-0030; and

1.1.5. Any new uses of a tract of land that would have an average annual consumptive use of water in excess of 5 acre-feet, except as provided in section 1.2, below.

1.2. Special Land Use Provisions (Jefferson County). The following uses and development in the portion of Area 1 in Jefferson County are not subject to section 1.1., above:

1.2.1. All uses allowed by the current provisions of the Jefferson County comprehensive plan and land use regulations concerning the Blue Lake, Camp Sherman Vacation Resort, Camp Sherman Rural Service Center, Camp Sherman Rural Residential (3 acre and 5 acre) areas.

1.2.2. Farm uses and forest uses allowed under Statewide Planning Goal 3 or Goal 4, including conditional uses of forest land allowed by Goal 4 or its implementing rules (so long as any conditional use does not have an average annual consumptive use of water in excess of 5 acre-feet).

1.2.3. Non-farm uses allowed under Statewide Planning Goal 3 and its implementing rules (so long as any non-farm use does not have an average annual consumptive use of water in excess of five acre-feet).

1.2.3. A small-scale recreation-oriented development within the area mapped as eligible for destination resort development by Jefferson County in Township 13 South, Range 8 East, section 13. The development authorized by this section consists of:

- Up to twenty-five residential units and up to ten additional overnight accommodations (as defined by ORS 197.435(5)(b)), and accessory uses and activities including a small accessory

restaurant and recreation-oriented amenities;

- All units must be sited within a single clustered node of development, not to exceed 25 acres in size (access roads to the node and fire buffer areas are not included in the 25 acre limitation). The units must 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.
- Fire siting standards must meet or exceed the standards in Jefferson County zoning code section 426;
- The average annual average water use for this development may not exceed 12.5 acre-feet; however, this limitation does not include water for fire-fighting needs on or off-site;
- Individual residential lots may not exceed one acre in size, with a maximum disturbance area of 35 percent;
- Front and rear yard minimum setbacks are 10 feet; minimum side yard setbacks are 5 feet;
- Roads to serve the residential lots may be private.
- Jefferson County's review of development carried out under this section shall demonstrate compliance with the applicable provisions of this Management Plan, together with applicable county site plan and land division requirements, as set forth in Jefferson County's land use regulations.
- This use is allowed not withstanding any state statute in ORS chapters 197 or 215 to the contrary, and notwithstanding any Statewide Planning Goal or implementing rule to the contrary, and notwithstanding any land use regulation or comprehensive plan provision of Jefferson County to the contrary. If the owner of the property described in this paragraph elects to carry out this use, the property not used for residential use or overnight accommodations (including any common facilities) must be dedicated as open space. In addition, if the owner elects to carry out this use, all other property owned by the owner or any affiliate of the owner within section 13 may not be developed with farm, non-farm or forest dwellings that would otherwise be allowed under applicable state and local land use regulations.

1.3. Special Land Use Provisions (Deschutes County). The following uses and development in the portion of Area 1 in Deschutes County are not subject to section 1.1., above:

1.3.1 All uses allowed by the applicable provisions of Deschutes County's current acknowledged comprehensive plan and land use regulations (so long as any new use does not have an average annual consumptive use of water in excess of 5 acre-feet).

1.3.2 Farm uses and forest uses allowed under Statewide Planning Goal 3 or Goal 4, including conditional uses of forest land allowed by Goal 4 or its implementing rules (so long as any conditional use does not have an average annual consumptive use of water in excess of 5 acre-feet).

1.3.3. Non-farm uses allowed under Statewide Planning Goal 3 and its implementing rules (so long as any non-farm use does not have an average annual consumptive use of water in excess of five acre-feet).

2. Area 2: Metolius Water/Wildlife Buffer Area. Area 2 is that area shown as Area 2 on Exhibit A.

2.1. Prohibited Uses and Activities (Jefferson and Deschutes Counties). In addition to the existing provisions of state statutes, Statewide Planning Goals and their implementing rules, and the acknowledged[2] Jefferson County and Deschutes County Comprehensive Plans and land use regulations, the following uses and activities are prohibited on all lands in Area 2:

2.1.1. Any new destination resort as defined 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 20 dwelling units on a tract, regardless of whether an exception is taken;

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

2.1.4. Any new commercial or industrial development, other than those commercial or industrial uses that would have an average annual consumptive use of water of less than 10 acre-feet, and other than those small-scale, low impact uses allowed under OAR 660-022-0030; and

2.1.5. Any new uses of a tract of land, not including any farm use, that would have an average annual consumptive use of water in excess of 10 acre-feet, except as provided in section 2.2, below.

2.2. Special Use Provisions (Jefferson County). The following uses and development in the portion of Area 2 in Jefferson County are not subject to section 2.1., above:

2.2.1. Farm uses and forest uses allowed under Statewide Planning Goal 3 or Goal 4, including conditional uses of forest land allowed by Goal 4 or its implementing rules (so long as any conditional use does not have an average annual consumptive use of water in excess of 5 acre-feet).

2.2.2. Non-farm uses allowed under Statewide Planning Goal 3 and its implementing rules (so long as any non-farm use does not have an average annual consumptive use of water in excess of five acre-feet).

2.2.3. The development of a small-scale recreation community within Township 13 South, Range 10 East, sections 20, 21, 28, and/or 29 in Jefferson County. The development authorized by this section consists of:

- Up to 100 residential units and up to twenty additional overnight accommodations (as defined by ORS 197.435(5)(b)), and accessory uses and activities including a small accessory restaurant and equestrian facilities or other recreation-oriented amenities (not including a golf course);
- All units must be sited within one or more clustered nodes of development, not to exceed 320 contiguous acres in size (access roads to the nodes and fire buffer areas are not included in the acreage limitation). The units and nodes must 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.

- Fire siting standards must meet or exceed the standards in Jefferson County zoning code section 426;
- The average annual average water use for this development may not exceed 60 acre-feet; however, this limitation does not include water for fire-fighting needs on or off-site;
- Individual residential lots may not exceed five acres in size, with a maximum disturbance area of 35 percent;
- Roads to serve the residential lots may be private.
- Jefferson County's review of development carried out under this section shall demonstrate compliance with the applicable provisions of this Management Plan, together with applicable county site plan and land division requirements, as set forth in Jefferson County's land use regulations.
- This use is allowed notwithstanding any state statute in ORS chapters 197 or 215 to the contrary, and notwithstanding any Statewide Planning Goal or implementing rule to the contrary, and notwithstanding any land use regulation or comprehensive plan provision of Jefferson County to the contrary. If the owner of the property described in this paragraph elects to carry out this use, the property not used for residential use or overnight accommodations (including any common facilities) must be dedicated as open space. In addition, if the owner elects to carry out this use, all other property owned by the owner or any affiliate of the owner within Area 1 and Area 2 may not be developed with farm, non-farm or forest dwellings that would otherwise be allowed under applicable state and local land use regulations.

2.3. Special Use Provisions (Deschutes County). The following uses and development in the portion of Area 2 in Deschutes County are not subject to section 2.1., above:

2.3.1. All uses allowed by the applicable provisions of Deschutes County's current acknowledged comprehensive plan and land use regulations, except the development of a new destination resort (completion of development already authorized for Black Butte Ranch is not limited by this Management Plan).

2.3.2. Farm uses and forest uses allowed under Statewide Planning Goal 3 or Goal 4, including conditional uses of forest land allowed by Goal

4 or its implementing rules (so long as any conditional use does not have an average annual consumptive use of water in excess of 5 acre-feet).

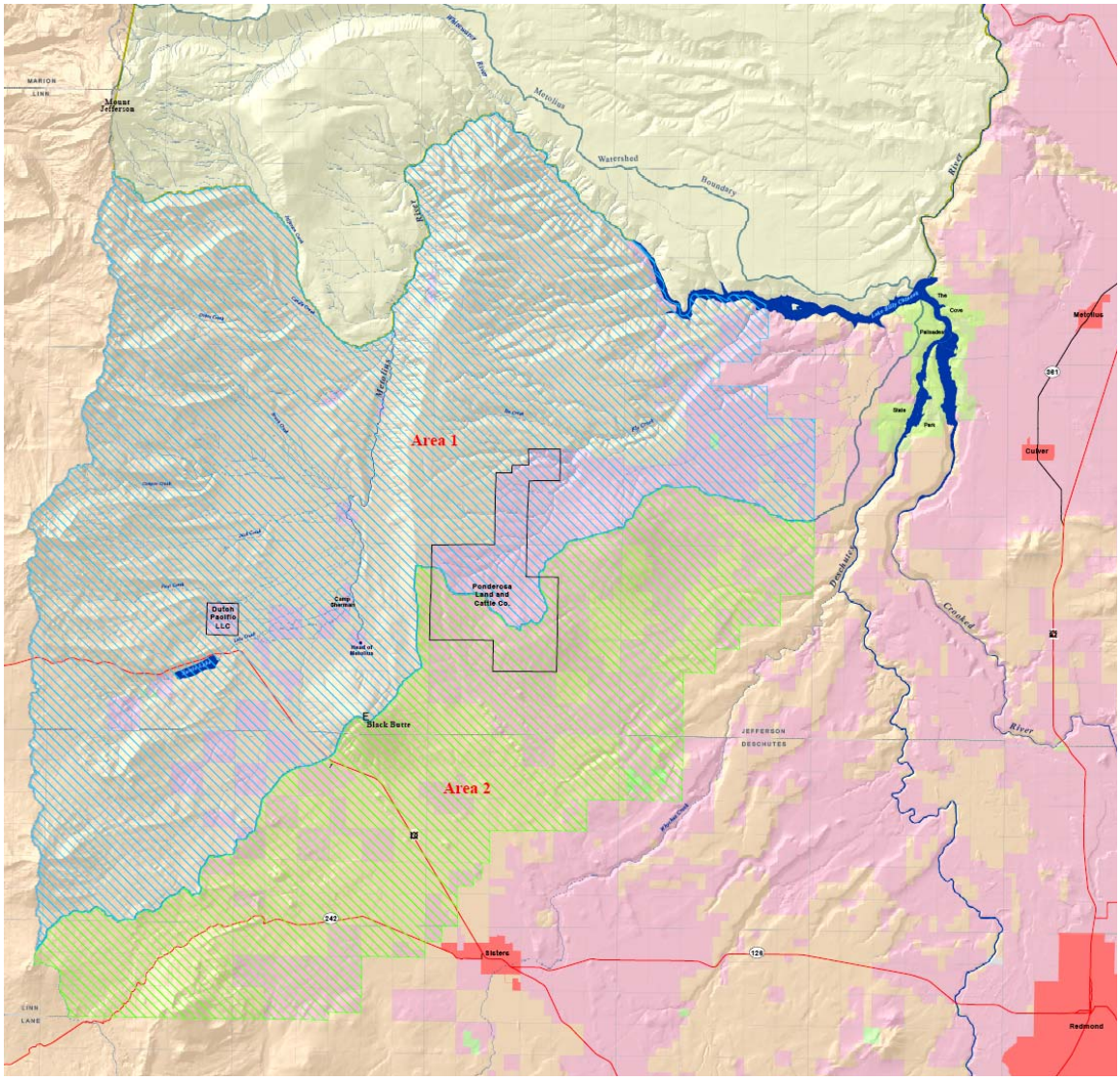
2.3.3. Non-farm uses allowed under Statewide Planning Goal 3 and its implementing rules (so long as any non-farm use does not have an average annual consumptive use of water in excess of five acre-feet).

2.3.4. The development of up to ten residential units within the area mapped as eligible for destination resort development by Deschutes County in Township 14 South, Range 9 East, Section 21. However, the development area for such units (the area of any lots and common facilities, but not including common open space) may not exceed ten acres. The units must 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. In addition, the annual average water use for this development may not exceed 5 acre-feet. This use is allowed not withstanding any state statute in ORS chapters 197 or 215 to the contrary, and notwithstanding any Statewide Planning Goal or implementing rule to the contrary, and notwithstanding any land use regulation or comprehensive plan provision of Deschutes County to the contrary. If the owner of the property described in this paragraph elects to carry out this use, the property not used for residential units and common facilities must be dedicated as open space.

3. Alternative Resort Siting Provisions (Jefferson County)

3.1. 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. This paragraph sunsets on January 1, 2014.

Exhibit A, Metolius Area of Critical State Concern, Area 1 and Area 2



Dept. of Land Conservation
and Development
635 Capitol St.,NE
Suite 150
Salem, OR 97301-2540

22240 Parker Lane
Bend, OR 97701
Tel. 541-389-1421
March 20, 2009

Sirs:

Due to illness and eye surgery, I could not get to the hearings on Destination Resorts. I submitted this letter to the Source he re but they did not print it. The Source had printed my other Water resource letters through the years.

Will you please enter my letter as testimony about Resorts, especially the Metolius area. I will send it to some of our officials but I would like it entered as my testimony. There is so much danger about uncontrolled growth and our natural resources and possible loss of water supplies. It is a Critical issue and should not be swept under the rug by our developers and hand-in-hand officials who Can control it.

Yourss truly,

Alice Keiser Greth

Alice Keiser Greth, Retired
school librarian and former
science teacher in Beaverton

To
Letters
The Source Weekly
704 NW Georgia
Bend, OR 97701

From
Alice Keiser Greth
22240 Parker Lane
Bend, OR 97701
Phone -541-389-1421
Feb. 18, 2009

Protect the Metolius River areabasin from rampant development and Destination resorts. The hydrologists tell us about the vast aquifer lying under our mountain ranges. What they don't tell you is the possible problems that can arise. The depth of the aquifer, is it easily accessable for drilling, is the encapsuled water pure and potable, or is it rife with impurities such as arsenics,etc.,from the igneous rock formations that enclose it?? The Ogallala Aquifer in the midwest, once the largest aquifer in the U.S. and perhaps the entire world is slated to run dry in the near future. Once upon a time artesian wells gushed forth along the entire Rocky Mt. front range until the out-of-control development came. Much of the water that is left has impurities or is too deep to make it viable for use.

What they also don't tell you is the rule of water capture, which is happening everywhere. Most states do not recognize the significance of the surface and groundwater connection. There are doctrines that govern the right to divert water from rivers and streams. The rule of capture controls the rights to groundwater. This rule allows the drying up of springs, rivers, lakes by excessive deep ground well drilling. Drilling deep wells captures surface waters eventually and other shallower wells. Example: In Arizona, Tucson's groundwater pumping caused the water table to drop,causing land subsidence with damage to buildings,etc. It also changed the relationship between the Sa nta Cruz river and the aquifer. The river water began its flow to the aquifer-eventually sucking the Santa River dry! This is happening in many places. Some places in California have captured salt water in their aquifers with deep well drilling.

Before the huge population growth in Bend, there was a drought. Irrigation water was turned off in July, causing many far ms to lose crops and dry up, especially in the Tumalo area. With the increased population growth, how much worse would another drought be? This is a Desert!

Alice Keiser Greth 3,20,09

Alice Keiser Greth, Retired science teacher, school librarian

Native Fish Society

River Steward - Upper Deschutes

March 24, 2009 Statement, to
Oregon Land Conservation and Development Commission
Regarding the Metolius Area of Critical State Concern

The Native Fish Society continues our support of the excellent work done on the Metolius ACSC designation. We support the adoption of the current plan with a few revisions as follows:

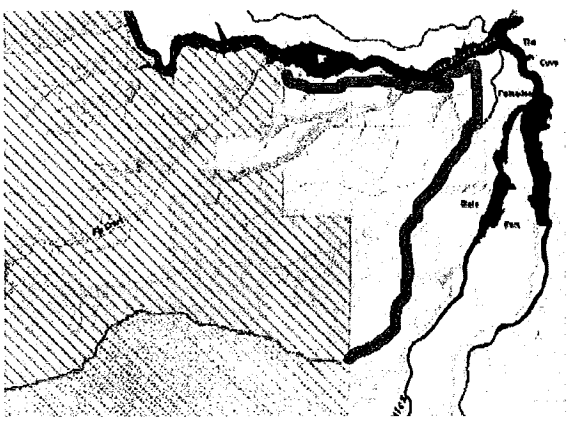
1. Limit the Ponderosa Land and Cattle Company's units, and Dutch Pacific's units, to the number that they are allowed under the existing forest zonings, which existed when they purchased the properties. The proposed units set a bad precedent for the integrity of LCDC, DLCD, Oregon land use planning and many facets of the public interest. An important statement is on page 13 of the first "Draft Plan".

   "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 only on parcels of between 240 and 320 acres or more."

2. Move the northeast boundary further east to protect the lower reaches of Fly Creek for the pure, native redband DNA resource. The following is a quote from an ODFW response to a question from me:

   "You are correct that Trout Creek and Fly Creek are two streams that harbor small redband populations and have never been stocked. Therefore, from a purity standpoint they are probably the best."

   It should also be moved far enough east to protect the critical game habitat in Big Canyon and Juniper Canyon. The rough boundary below would work well and is similar to the previous draft ACSC boundaries, except for a setback from the LBC shoreline.



These are preliminary and other comments may emerge prior to action by the Legislature, but we are confident that these capture our most important concerns.

69217 Tapidero, Sisters, OR, 97759 (Upper Deschutes)
549 1222
tomlin2@bendcable.com

EXHIBIT: F
LAND CONSERVATION & DEVELOPMENT COMMISSION
DATE: 3-24-09
PAGES: 2
SUBMITTED BY: Tom Davis
DLCD Staff for

(541)

Native Fish Society

River Steward - Upper Deschutes

H. Tom Davis

H. Tom Davis, PE

69217 Tapidero, Sisters, OR, 97759 (Upper Deschutes) (541)
549 1222
tomlin2@bendcable.com

(3/24/2009) Michael Morrissey - Re: Final Metolius Basin ACSC Management Plan

EXHIBIT: B
LAND CONSERVATION & DEVELOPMENT COMMISSION
DATE: 3-24-09
PAGES: 1
SUBMITTED BY: DLCD Staff

From: Richard Whitman
To: dderby@aol.com,marilyn@bookartscenter.com,tjosi@co.tillamook.or.us,Bryan...
CC: Michael Morrissey
Date: 3/23/2009 9:04 PM
Subject: Re: Final Metolius Basin ACSC Management Plan

Commissioners:

The following is a summary of the major changes in the Metolius Area of Critical State Concern from the prior draft.

1. Area

The extent of Area 1 has been reduced to eliminate the Three Rivers unincorporated community, along with lands to the east of the Three Rivers community.
The extent of Area 2 has been reduced at its southern end to remove lands in public ownership (not under threat) and to block up the boundary so that it follows section lines.

2. Metolian Property

The development authorization has been redefined as a small-scale recreation-oriented development. The overall development area is the same (25 acres), as is the maximum number of lots (25), but an authorization for a small odge (up to 10 units and a small dining facility) has been added. Also added are a maximum lot coverage number (35%) and clarification regarding the application of county development standards.

3. Ponderosa Property

The development authorization has been redefined as a small-scale recreation-oriented development, with a likely equestrian theme. The overall development area has been increased to 320 acres (from 100) in multiple "pods," but the maximum number of lots is still 100. An authorization for a small lodge (up to 20 units, and a small dining facility) has been added. Note that the owner has agreed to relinquish all forest-dwelling rights on the entire Ponderosa ownership (there were approximately 20 potential forest dwellings allowed under the prior draft). We consulted closely with ODFW in the design of the development envelope for this part of the plan, and on the larger question of whether trading more acres and a lodge is worth it to remove the forest dwellings from deer range (it is). 120

4. Round Butte

The Round Butte resort area has been removed from the map and from the management plan.

5. Other

A number of stylistic and editorial changes were made to the ACSC and management plan text, but the changes described above are the major ones.

The department supports these changes. Staff and I will be available to answer any questions you may have tomorrow at the special meeting.

Richard

Richard Whitman
Director, Oregon Dept. of Land Conservation & Development
(503)373-0050 x 271
>>> Bryan Gonzalez 03/21/09 5:37 PM >>>
Sent on behalf of Michael Morrissey:
Attached are the clean and red-line version of the Final Metolius Basin ACSC for your consideration Tuesday. Richard will be e-mailing you a summary of changes from the prior document to this Final, before Tuesday.

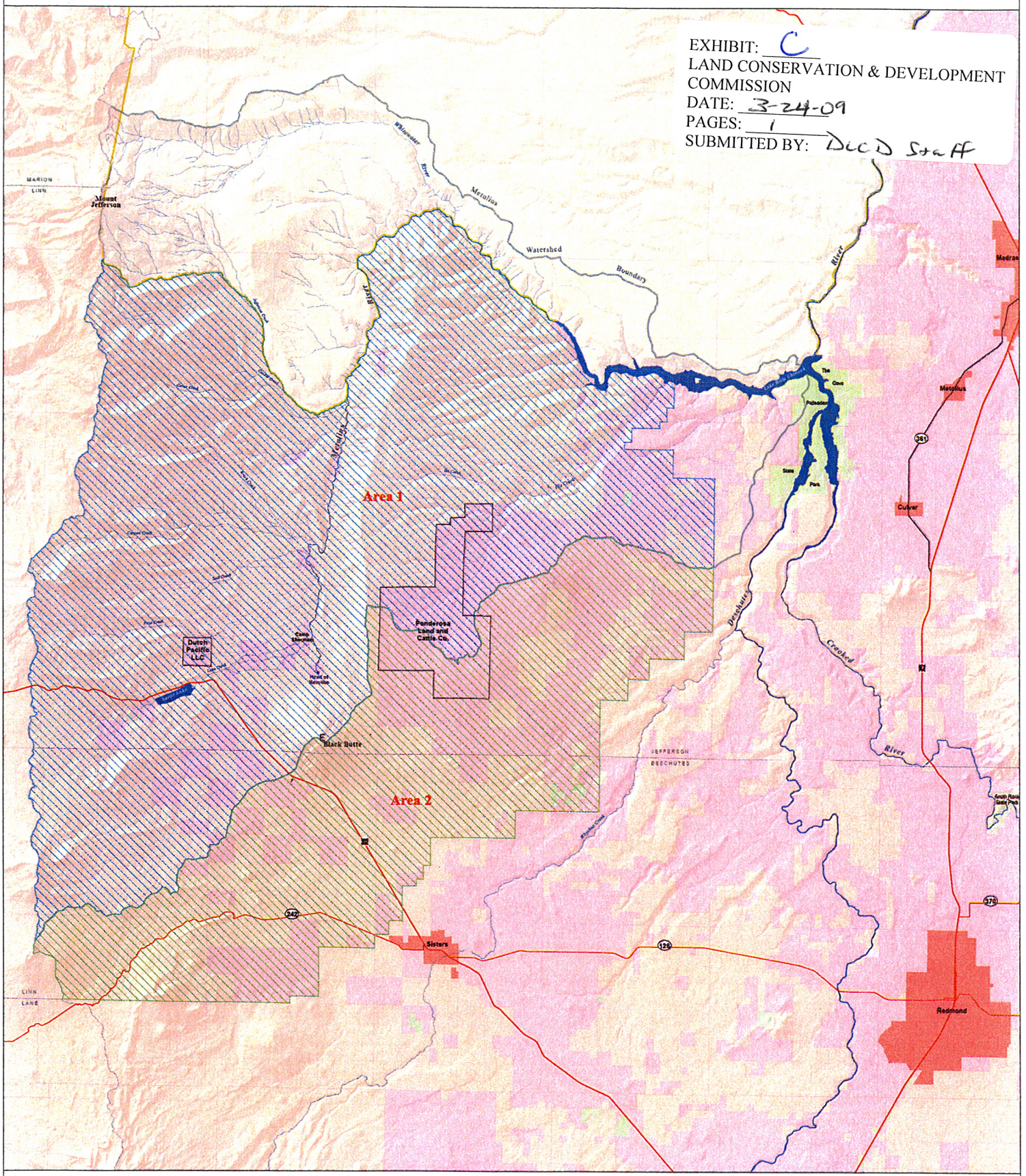
Best,

Michael Morrissey

Bryan Cruz González | Rules, Records & Policy Coordinator | Assistant to the Deputy Director
Oregon Dept. of Land Conservation and Development
635 Capitol Street NE, Suite 150 | Salem, OR 97301-2540
Office: (503) 373-0050 ext. 322 | Fax: (503) 378-5518
bryan.gonzalez@state.or.us | www.oregon.gov/LCD

Metolius Basin and Areas of Interest

EXHIBIT: C
LAND CONSERVATION & DEVELOPMENT COMMISSION
DATE: 3-24-09
PAGES: 1
SUBMITTED BY: DLCD Staff



Warm Springs Indian Reservation (WSIR)
Private Lands
Federal Lands
State Lands
Urban Areas

Area 1 Metolius Basin south of WSIR
Area 2 Metolius water / wildlife buffer area

Metolius Watershed
Watercourses
Highways
County Lines
Black Butte Ranch

Miles 0 5 10
Kilometers 0 10 20

Oregon Department of Land Conservation & Development

EXHIBIT: 7
LAND CONSERVATION & DEVELOPMENT COMMISSION
DATE: 3-24-09
PAGES: 2
SUBMITTED BY: DLCD Staff

Staff recommended changes to Metolius Final ACSC 3-24-09
Hand carried to 3-24-09 LCDC meeting.

1.2.~~3~~4 (add bullet)

- <u>If the 2009 Legislative Assembly enacts a bill that provides for an owner, or affiliate of an owner, of the property described in this section to carry out a pilot project to develop a sustainable eco-community outside of Area 1 and Area 2, then the development authorized by this section is limited to two forest dwellings.</u>

2.2.3. The development of a small-scale recreation community within Township 13 South, Range 10 East, sections 20, 21, 28, and/or 29 in Jefferson County. The development authorized by this section consists of:

- Up to 100 residential units and up to twenty additional overnight accommodations (as defined by ORS 197.435(5)(b)), and accessory uses and activities including a small accessory restaurant and equestrian facilities or other recreation-oriented amenities (not including a golf course);
- All units must be sited within one or more clustered nodes of development, not to exceed 320 <u>contiguous</u> acres in size (access roads to the nodes and fire buffer areas are not included in the acreage limitation). The units and nodes must 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.
- Fire siting standards must meet or exceed the standards in Jefferson County zoning code section 426;
- The average annual average water use for this development may not exceed 60 acre-feet; however, this limitation does not include water for fire-fighting needs on or off-site;
- Individual residential lots may not exceed five acres in size, with a maximum disturbance area of 35 percent;
- Roads to serve the residential lots may be private.
- Jefferson County's review of development carried out under this section shall demonstrate compliance with the applicable provisions of this Management Plan, together with applicable county site plan and land division requirements, as set forth in Jefferson County's land use regulations.

- This use is allowed notwithstanding any state statute in ORS chapters 197 or 215 to the contrary, and notwithstanding any Statewide Planning Goal or implementing rule to the contrary, and notwithstanding any land use regulation or comprehensive plan provision of Jefferson County to the contrary. If the owner of the property described in this paragraph elects to carry out this use, the property not used for residential use or overnight accommodations (including any common facilities) must be dedicated as open space. In addition, if the owner elects to carry out this use, all other property owned by the owner or any affiliate of the owner within Area 1 and Area 2 may not be developed with farm, non-farm or forest dwellings that would otherwise be allowed under applicable state and local land use regulations.