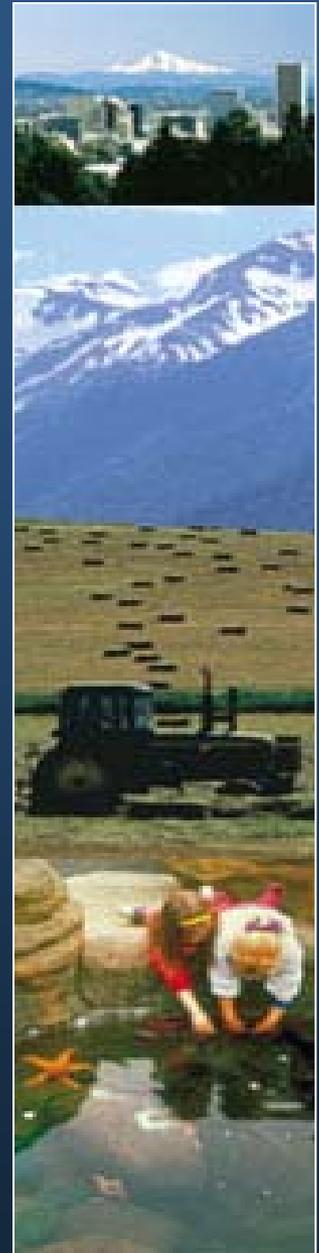


Metolius Basin: Proposed Area of Critical State Concern

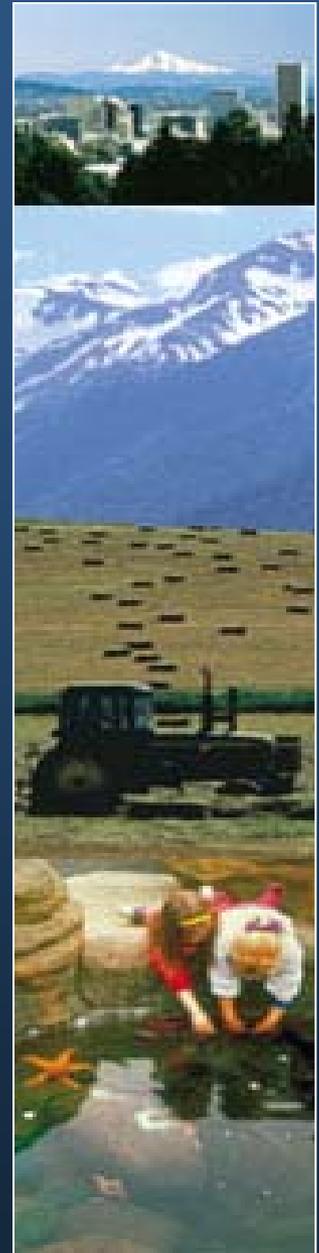
Public Hearings for the Oregon Land
Conservation and Development Commission

March 11, 2009



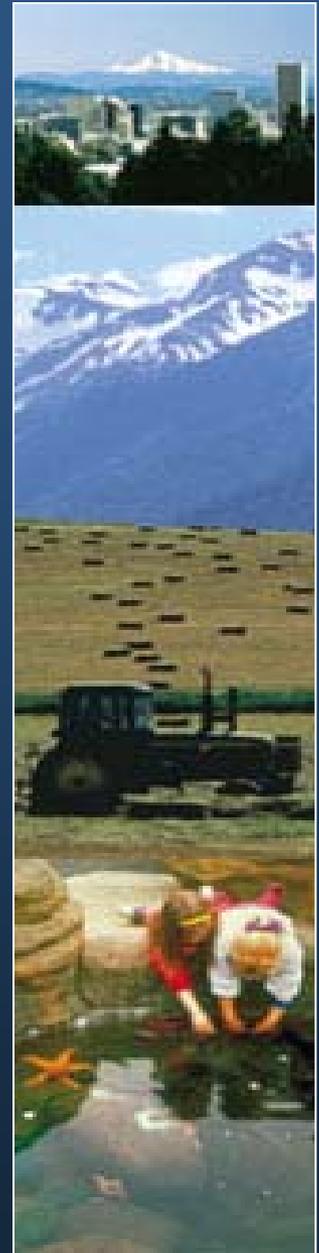
What We'll Cover:

- What is an Area of Critical State Concern (ACSC)?
- What is the process for considering an ACSC?
- What area is being proposed for an ACSC?
- Why is an ACSC being proposed?
- What limitations would the proposed ACSC place on land uses?
- How would the ACSC be administered?



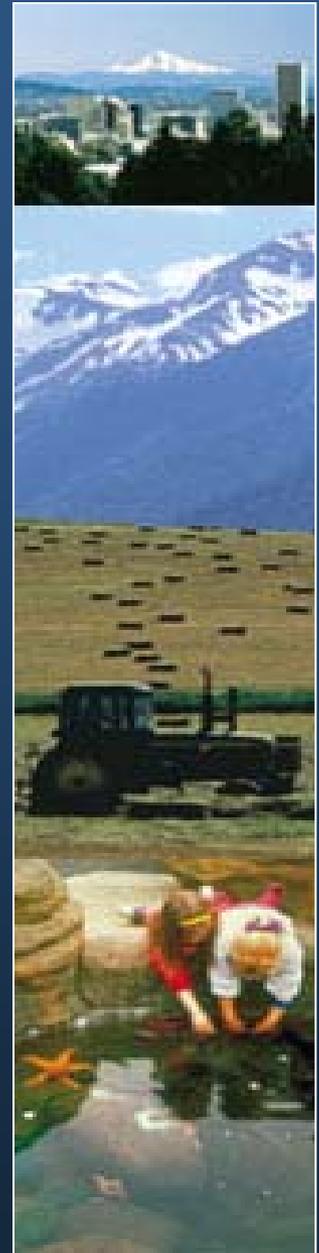
What is an Area of Critical State Concern (ACSC)?

- An area of *state* concern.
- An area with natural, cultural, or other values important to the state as a whole, where those important values are threatened by sources that are not controlled by existing limits.
- The ACSC and management plan must designate an area to be protected, and may include new policies or other measures to accomplish that protection.

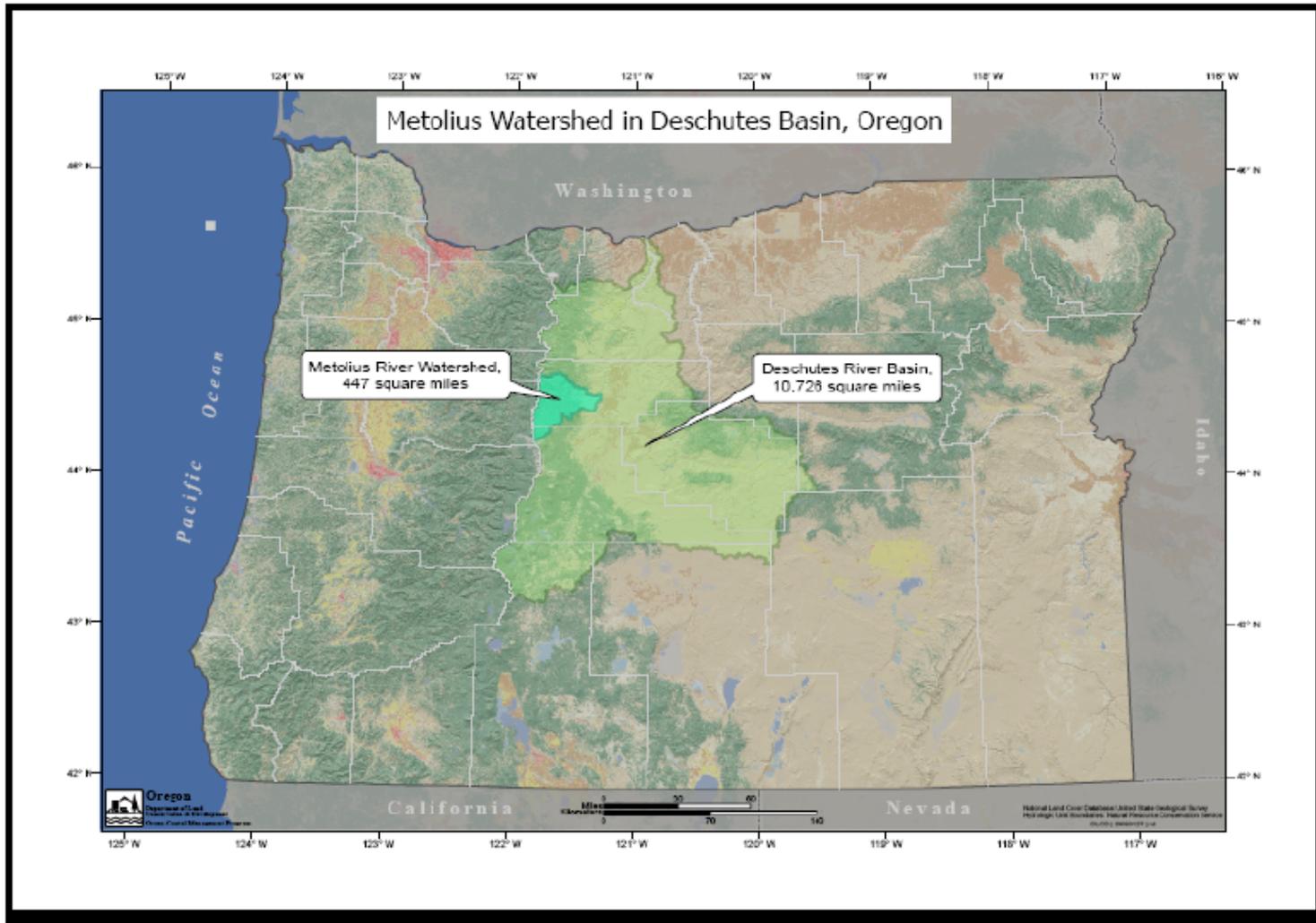


What is the process for considering an ACSC?

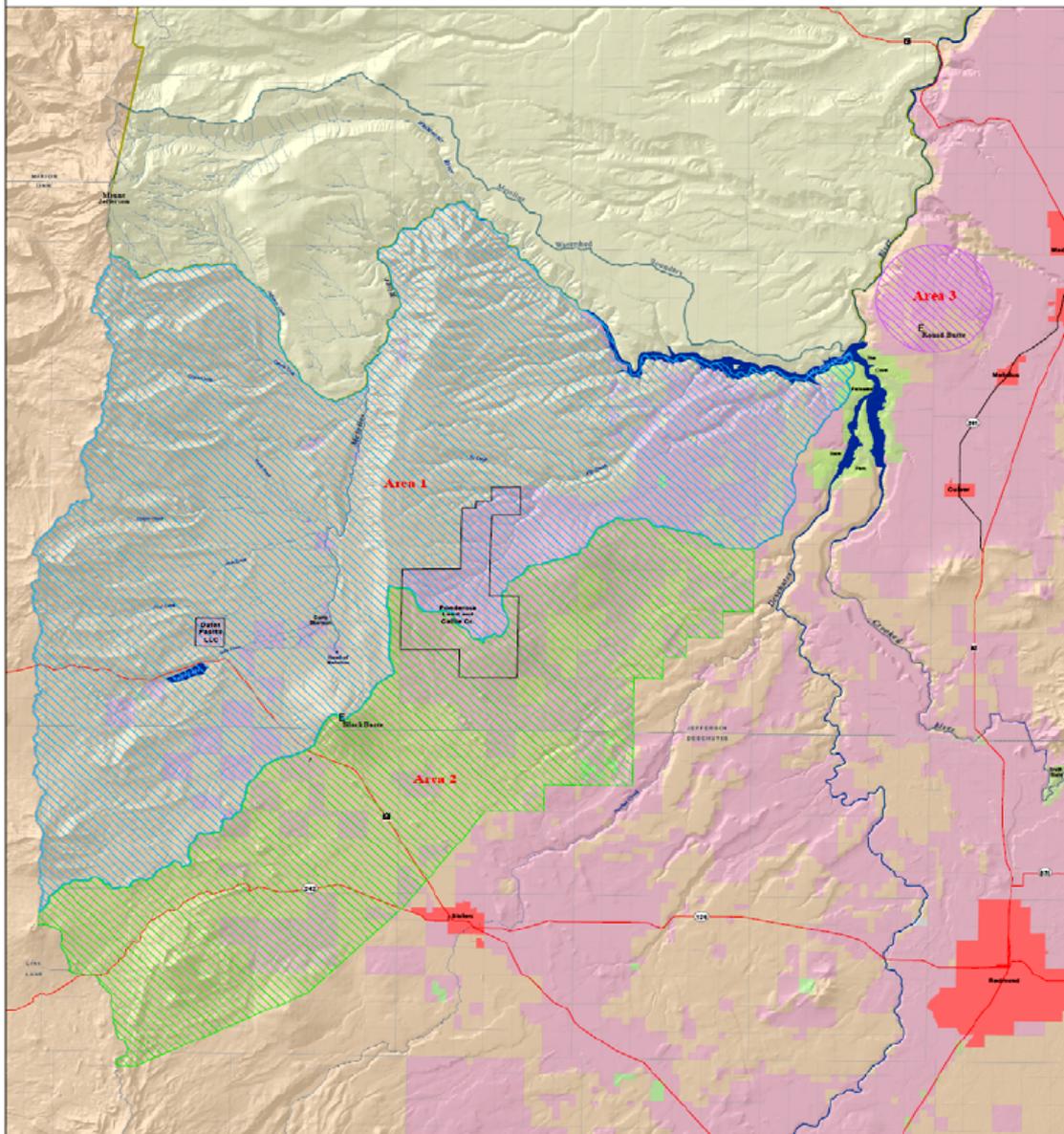
- Recommendation to the Land Conservation & Development Commission (LCDC).
- LCDC decides whether to begin the process.
- Public process to gather input (subcommittee hearings; meetings with counties and other interests).
- LCDC may: (a) do nothing, or (b) make a recommendation to the legislature.
- If there is a recommendation by LCDC, the legislature may approve, amend or reject it, via the normal legislative process. The ACSC does not take effect without legislative approval (LCDC as a Planning Commission).



What Area is Being Proposed for an ACSC?



Metolius Basin and Areas of Interest



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

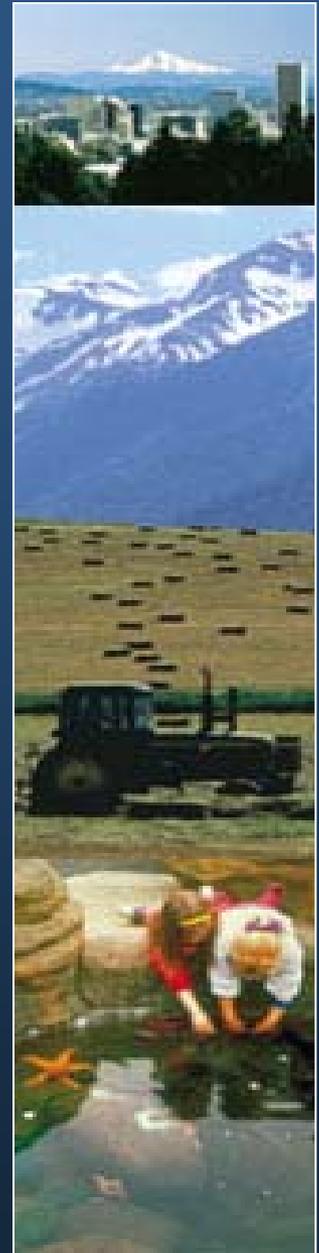
- Area 1 Metolius Basinsouth of WSIR
- Area 2 Metolius water/wildlife buffer area
- Area 3 Round Butte alternative site

- Metolius Watershed
- Watercourses
- Highways
- County Lines
- Black Butte Ranch

What are the Reasons for an ACSC?

Statewide Values

- **Metolius River, and the quantity and quality of water for its fisheries**
- **The scenic and recreational values of the pine forests, streams, and buttes**
- **The wildlife resources in and around the basin, in particular the deer and elk herds**

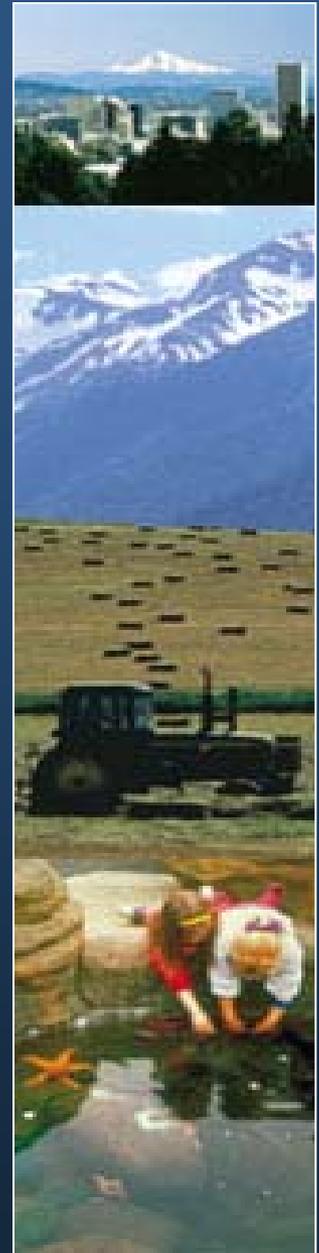


What are the Reasons for an ACSC?

Threats

Large-scale development (three areas mapped for resorts); up to 4,000 residential units and 8,000 people):

- Introduction of substantial numbers of people into deer and elk winter and transitional range, when deer population already has declined by 60% in the past 15 years.
- Introduction of substantial numbers of people directly increases the likelihood of fire, and increases the cost of managing for fire.
- Introduction of substantial numbers of people when the Metolius basin is already at its capacity according to the USFS.

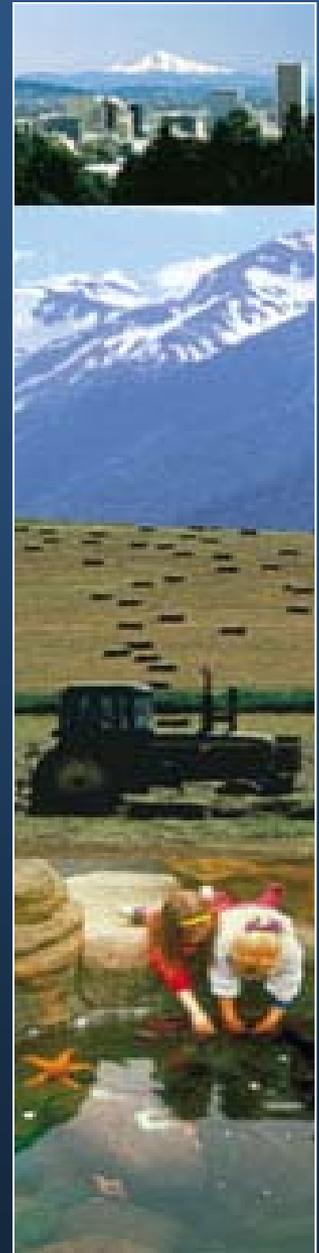


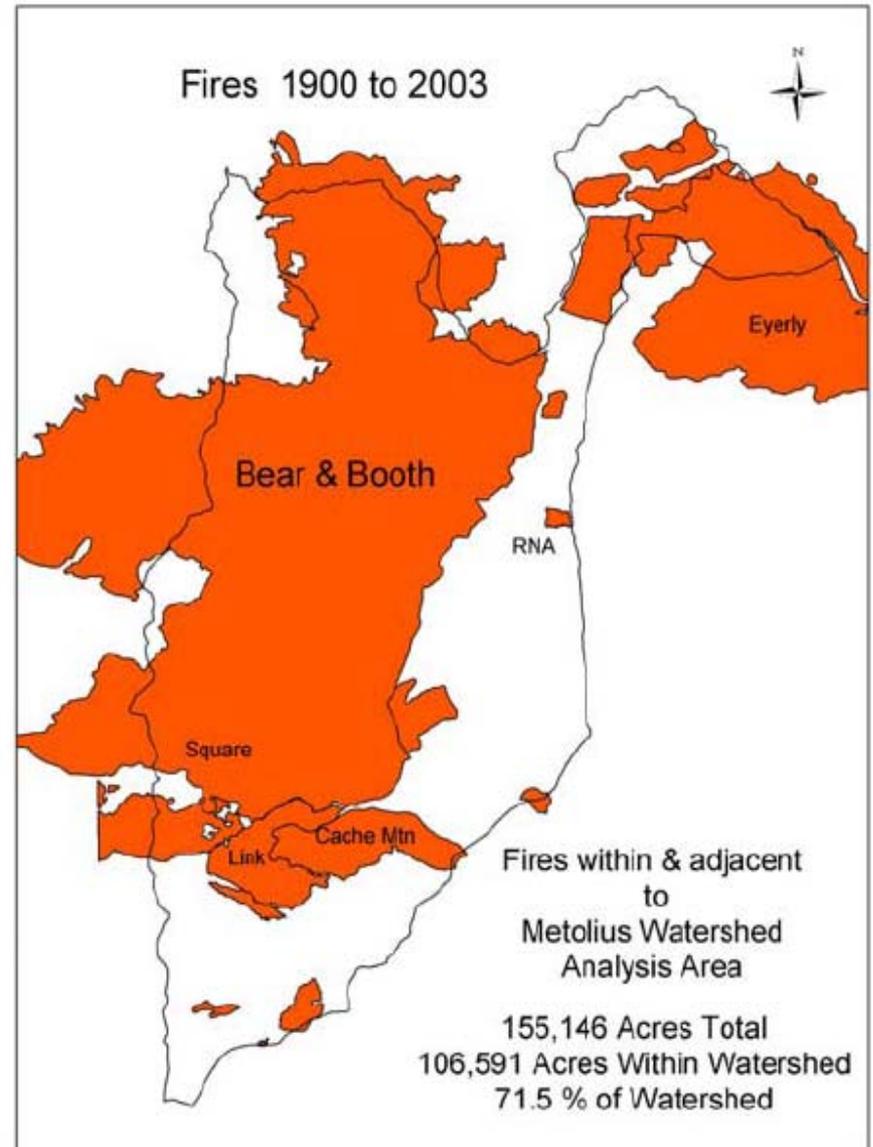
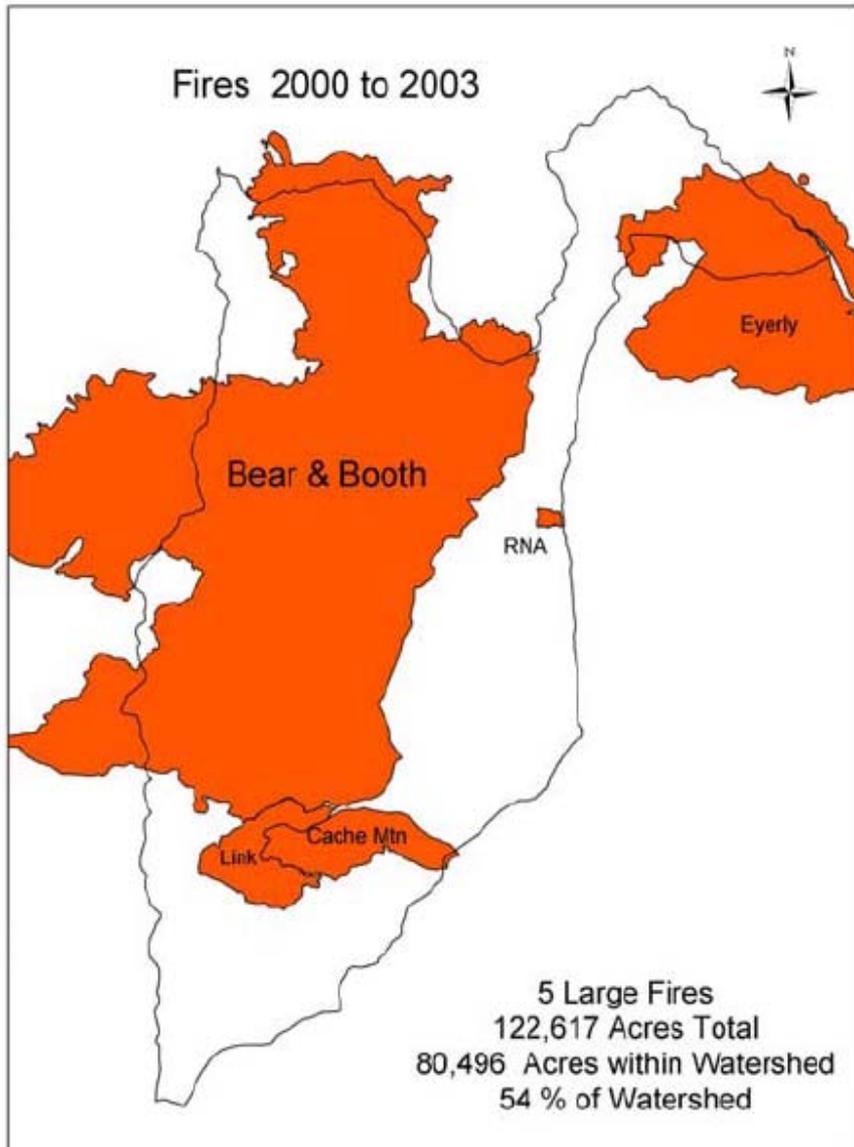
What are the Reasons for an ACSC?

Threats

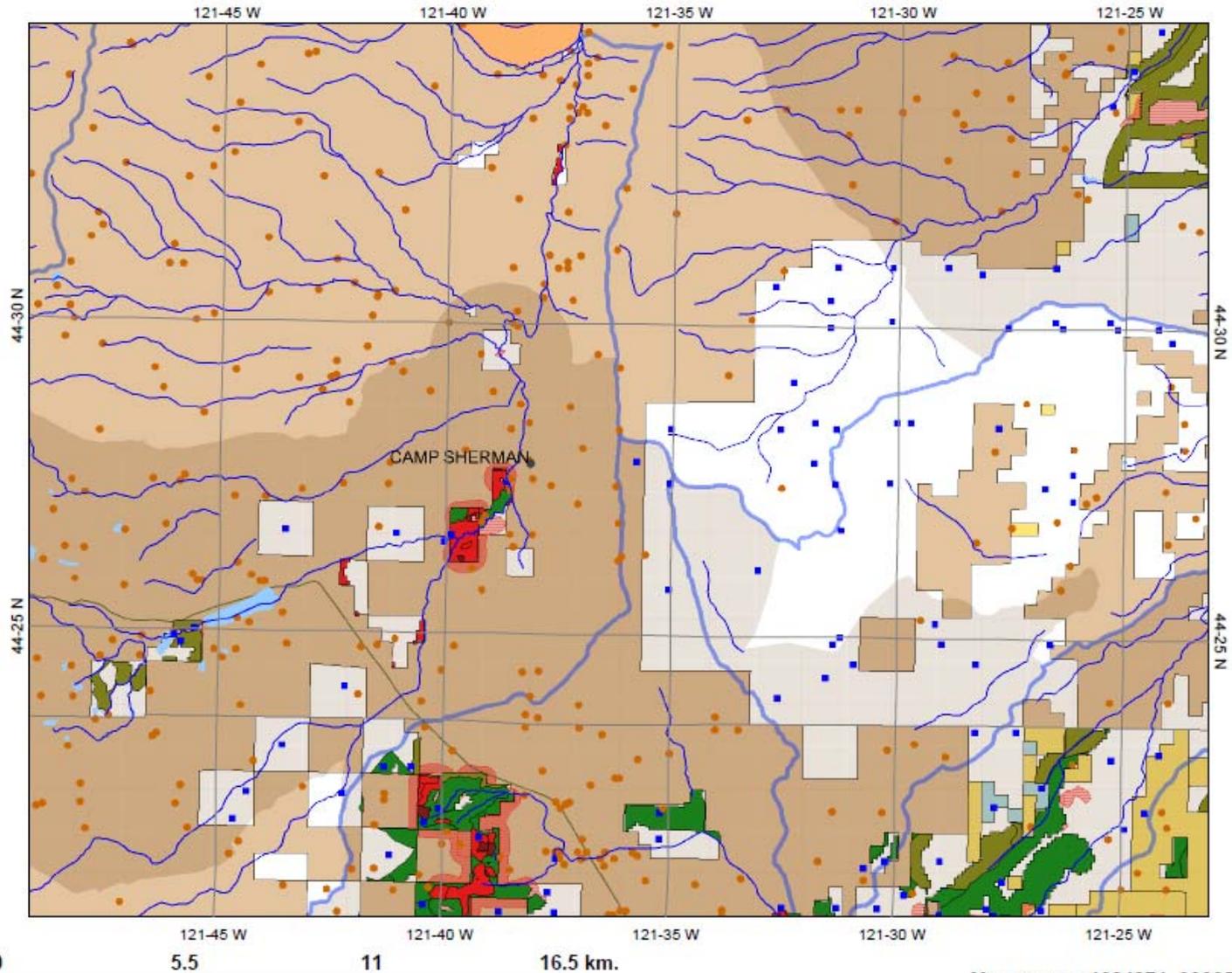
Large-scale development (up to 3,500 residential units and 7,000 people):

- Impacts on water rights (state scenic waterway flows, minimum flows for fisheries, tribal water rights and fishing rights);
- Quantity of water use is substantial in relation to existing water use in the basin;
- Traffic issues (potential effects on Sisters; substantial increase in use of USFS roads and conflicts with wildlife).





Internet Mapping Framework

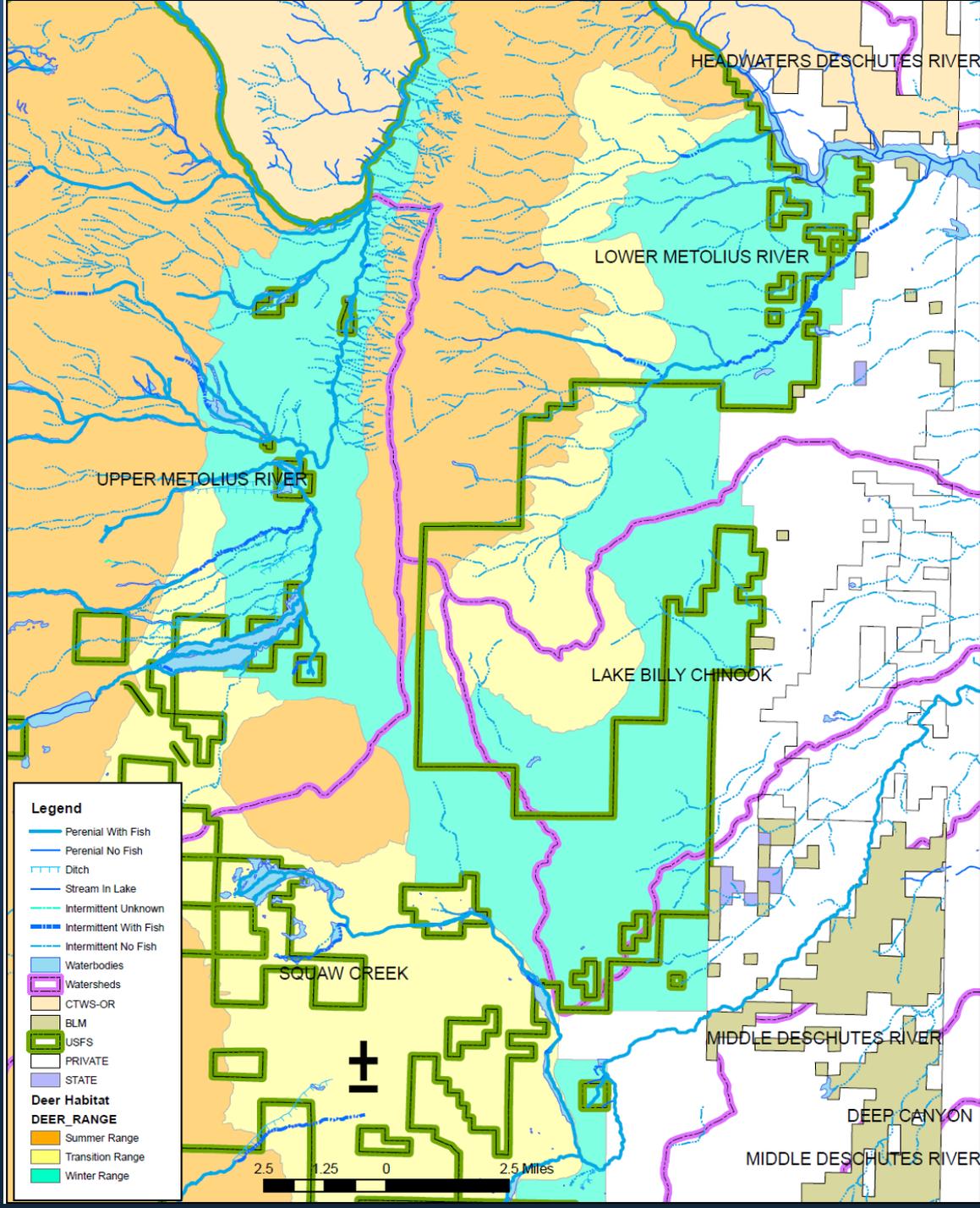


Legend

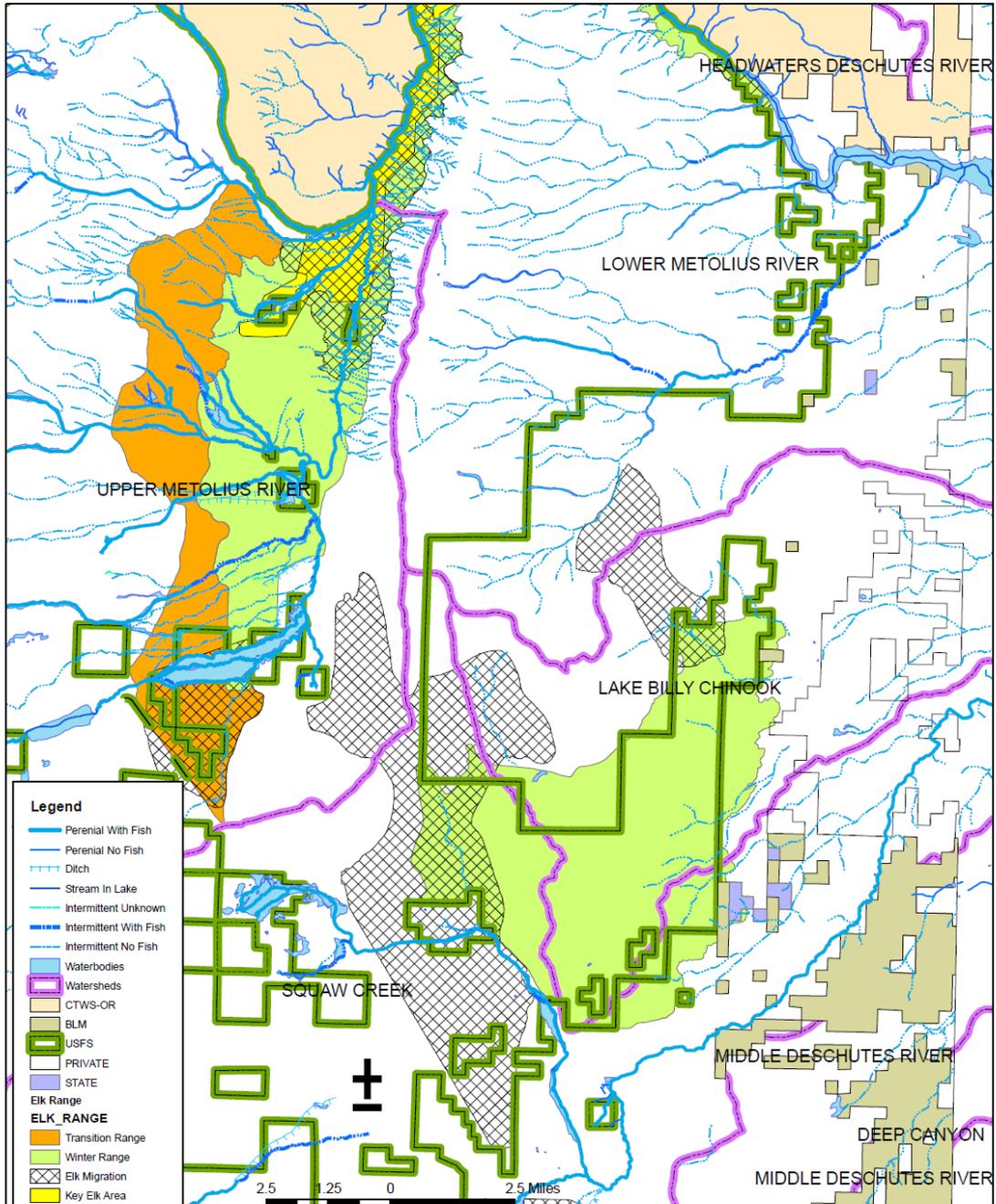
- Counties
- Federal Fire Occurrence
- State Fire Occurrence
- Tribal areas
- Population Density
 - 0
 - 1
 - 2
 - 3
 - 4
 - 5
- Populated Place Names
- ~ Rivers
- Fifth field watersheds
- Lakes
- ~ Highways
- Cities
- City Limits 2005
- CAR Boundary
- Community Name and Rating
 - H
 - L
 - M
- Urban Growth Boundaries
- Land Ownership
 - Bonneville Power Administration
 - Bureau of Indian Affairs
 - Bureau of Land Management
 - Bureau of Reclamation
 - Department of Defense
 - Federal Aviation Administration
 - Federal Energy Regulatory Commission

Scale: 1:186,437

This map is a user generated static output from Oregon Explorer (oregonexplorer.info) and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.



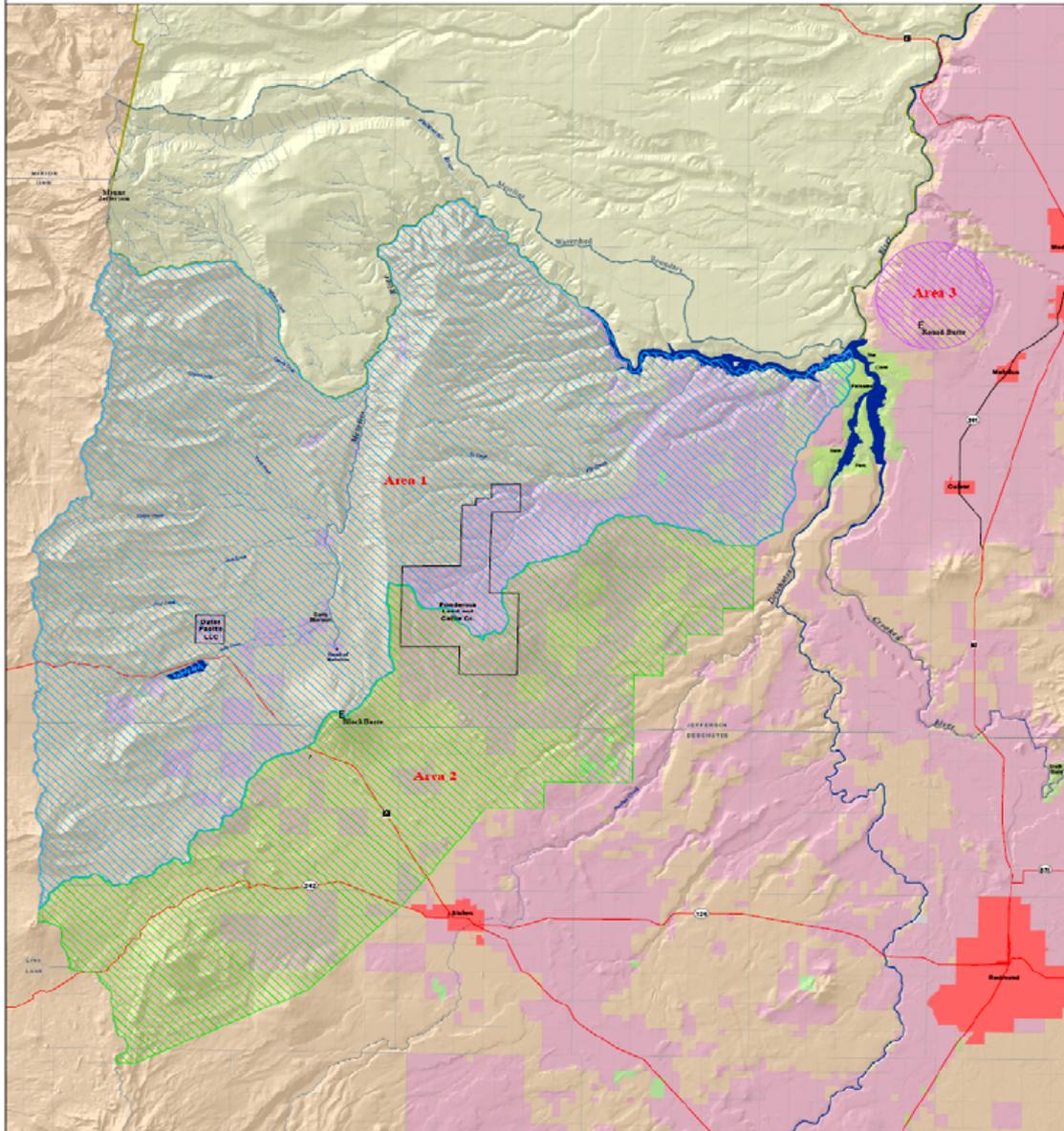
Elk Range Map - Metolius Basin



Summary of the Management Plan

- Three subareas:
 - Area 1: Most Protective
 - Area 2: Relatively Protective
 - Area 3: Jefferson County Resort Option

Metolius Basin and Areas of Interest



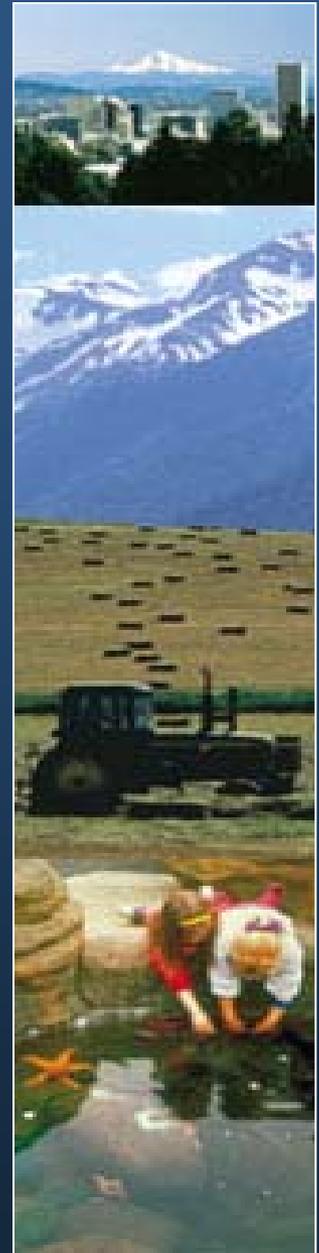
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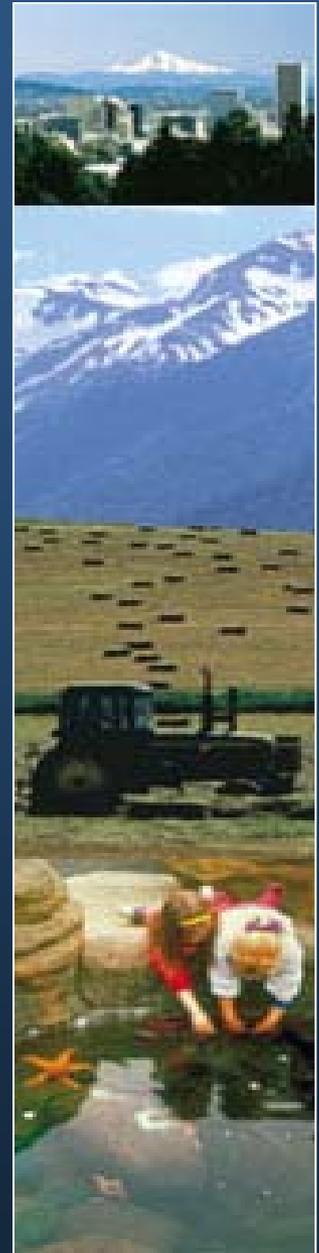
What Limitations would the Proposed ACSC Place on Land Uses in Area 1?

- The ACSC would prohibit:
- Any new destination resort;
- Any new golf course;
- Any new residential development of > 10 dwellings on a tract;
- Any new large-scale commercial or industrial use; and
- Any new land use that would have an average annual consumptive use of water in excess of 5 acre-feet (equivalent of 10 dwellings).



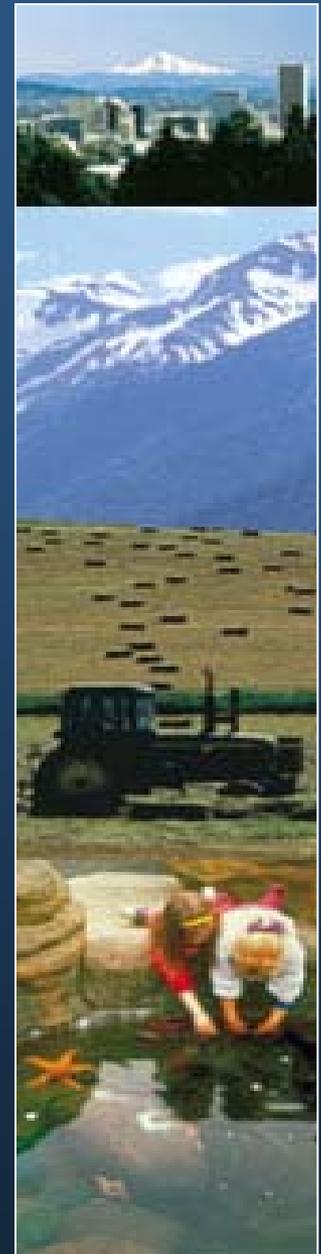
What Exceptions are Proposed for Area 1?

- All uses allowed under current county plans for all unincorporated areas (Camp Sherman and Three Rivers, etc.);
- All uses allowed under Goal 4 except resorts (campgrounds; farm use; forest dwellings); and
- Up to 25 residential units on the Metolian property (25 acre development area), subject to siting requirements for wildlife and fire.



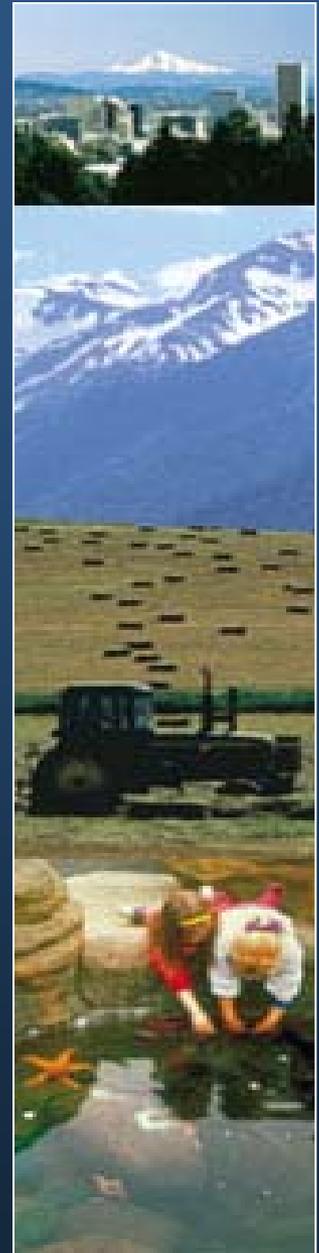
What Limitations would the Proposed ACSC Place on Land Uses in Area 2?

- The ACSC would prohibit:
- Any new destination resort;
- Any new golf course;
- Any new residential development of > 20 dwellings on a tract;
- Any new large-scale commercial or industrial use; and
- Any new land use that would have an average annual consumptive use of water in excess of 10 acre-feet (20 dwelling equivalent).



What Exceptions are Proposed for Area 2?

- All uses allowed under applicable current county plans for any unincorporated area within Area 2;
- All uses allowed under Goals 3 or 4 except golf courses or resorts (campgrounds; farm use; forest dwellings);
- Up to 10 residential units on resort mapped area south of Black Butte Ranch (subject to siting standards); and
- Up to 100 residential units on the Ponderosa property (100 acre development area) (subject to siting standards).



Area 3. Lands in The Round Butte Area and Options for Jefferson County

- Change in area: now a relatively small site, beyond 3-miles from high value crop land as mapped by Jefferson County.
- Mixed public and private ownership.
- Proximity to Madras and Lake Billy Chinook.
- Option for Jefferson County – not allowed unless county amends its comprehensive plan. Only basis for appeal is 3-mile limit.
- Waiver of 30-month rule.
- Jefferson County would still have to review and decide on master plans for any resort.
- Other candidate areas?

Round Butte Site



Administration of the ACSC

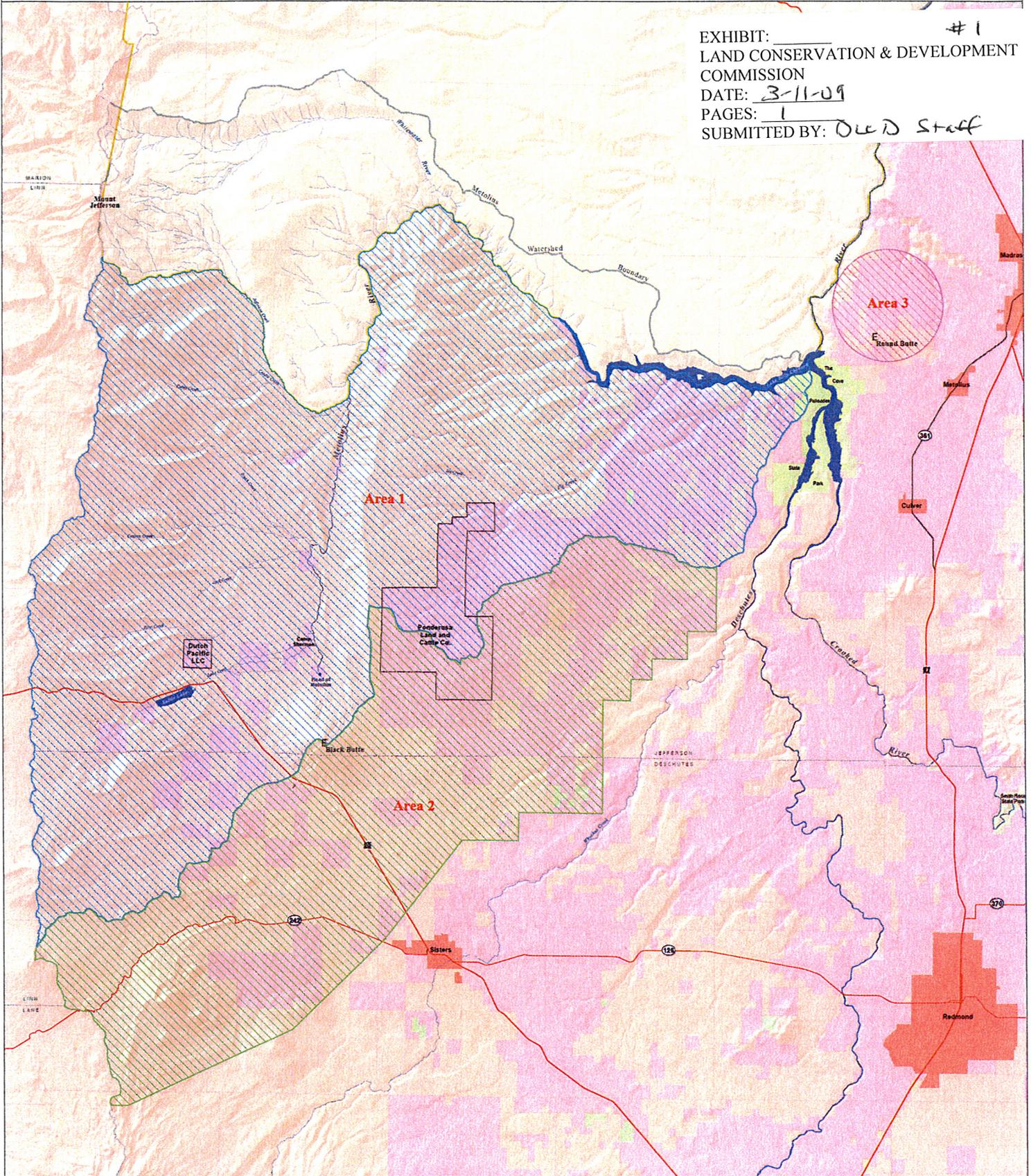
- Very few land uses affected.
- County land use regulations continue to apply, except to extent they conflict with the management plan.
- Jefferson County and Deschutes County would apply ACSC limitations directly to land use applications, without amending their plans.
- Some aspects of the ACSC could be amended by LCDC, but only by a rulemaking process, with at least one hearing in Central Oregon. Major changes would require legislative approval.

More Information

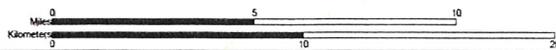
http://www.oregon.gov/LCD/metolius_river_basin_acsc.shtml

Metolius Basin and Areas of Interest

EXHIBIT: #1
 LAND CONSERVATION & DEVELOPMENT
 COMMISSION
 DATE: 3-11-09
 PAGES: 1
 SUBMITTED BY: OLE D Staff



- | | | |
|--|--|--------------------|
| Warm Springs Indian Reservation (WSIR) | Area 1 Metolius Basin south of WSIR | Metolius Watershed |
| Private Lands | Area 2 Metolius water / wildlife buffer area | Watercourses |
| Federal Lands | Area 3 Round Butte alternative site | Highways |
| State Lands | | County Lines |
| Urban Areas | | Black Butte Ranch |



Dear Chairman and Commission members,

After three weeks of being involved with this process there are still key questions that I have of the staff and commissioners that are gnawing at my gut. **(1)** why was ODA kept out of the process involving area three?, **(2)** Why would the agency (DLCD) recommend to you as commissioners an area three in the first place?, and **(3)** why is it that the current draft for area three differs from what is in the press release?

The area three plan in this draft may seem to be improved and harmless to staff, and you as commissioners, and you may feel that you have responded to agriculture's screams and that you realized that area three didn't have support from the developers or county commissioners, **but I am still opposed to area three and the precedent that will be set if that section continues forward in your recommendation as commissioners.**

You have not been given an easy task in the first place, and then to have the short timeline to deal with really isn't fair to you as volunteers. Yet, everyone here probably thinks this process hasn't been fair to them in some sense. I know that I feel that way.

Two things that I want to stress is that we as farmers and ranchers have worked hard to protect the North Unit Irrigation District for over twenty years, and we plan to continue to protect our livelihood. The second thing is that even area three is still within the mitigated basin and we are the junior water right holders that should be made whole if mitigation truly was working, and if we were made whole the dry land would be irrigated that you looked at in your area three and as a side note we as irrigation members have self financed over \$8 million in water conservation measures for this basin to help restore the flows.

Good evening and have a safe trip traveling to Salem in the morning.

Sincerely,



Mickey Killingsworth
798 SE Dover Lane
Madras, Oregon 97741

Dear Chairman and Committee Members,

Jefferson County Farm Bureau has been involved with destination resorts trying to be sited within our North Unit Irrigation District irrigated agricultural lands since 1988. Last October we testified before this commission at the joint hearing held by this commission with the Interim House Agriculture and Natural Resources Sub-Committee on destination resorts and I testified before this commission's sub-committee on February 26, 2009. Our position has not changed.

I strongly want to reiterate today that our farm bureau has for over 20 years battled to protect our high value crop areas. It has always been our assertion that a three (3) mile buffer along the North Unit Irrigation District's boundary is what is needed to protect the agricultural base in Jefferson County. It truly caught us off guard to be under attack by this agency as the solution to "fairness" for the resort developers and Jefferson County if the " area of critical State concern" is adopted for the Metolius Basin. The only State mitigated basin is the Deschutes. Which means area three (3) is in a mitigated basin. The Metolius is a sub-basin of the Deschutes basin. **Again** I ask "How did we wind up in the middle of the battle to protect the Metolius Basin?".

We are upset and do feel that we are still under attack since area three (3) is still left in the draft that you are considering. Even though it has been scaled down and appears to have no teeth, we are still prepared to fight to save our agricultural lands as we have in the past. If this goes forward to the legislature as written today we are prepared to get involved to have the bill amended to remove area three (3).

It has always been our belief that we need to work together to have strong protection of our agricultural lands within our North Unit boundaries. Nothing has changed except that now we aren't viewing DLCD or LCDC as our allies. **Something has changed within the agency to take the steps to super-site and trade for fairness an agricultural area that has worked so hard to establish a virtual three mile buffer.** When the mapping was done by the county they did take the steps to define the three (3) mile buffer and we applaud them for that.

Bottom line is why are you willing to damage one of the best agricultural areas in Oregon to appease some sort of fairness in your minds when the county and developers are on record as saying they don't support the fairness that you think area three provides. **Can anyone on the commission today answer that question for me?**

We are still in production agriculture and an economic engine for Jefferson County and the State of Oregon. Last year our sales increased by 29%. We haven't laid off our farm workers and stop crop production just because the economy has turned bad. We are not exporting our agricultural lands or jobs out of the State of Oregon.

The laws aren't broken to protect our best soils and crop area unless you as an agency and the Governor decide to break them. Please remove area three and don't set a precedent that would change how our three (3) mile boundary is working.

Sincerely,



Ed Chotard

President

Jefferson County Farm Bureau

798 SE Dover Lane

Madras, Oregon 97741

EXHIBIT: _____ #1
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: 3-11-09
PAGES: 1
SUBMITTED BY: Ed Chotard

3/11/2009

TO: LAND CONSERVATION AND DEVELOPMENT COMMISSION

RE: METOLIUS BASIN CRITICAL AREA OF STATE CONCERN

Dear Commissioners,

Impossible Mission

DLCD, a LCDC subcommittee, and two fine staff individuals, Richard Whitman, director, and Jon Jinnings, regional rural lands specialist have been on task for over four weeks. They were given an assignment, which is a mere political football. The political concern was to designate an area of critical concern for the Metolius Basin; however, the project has evolved into a more onerous project full of land use planning inconsistencies.

I'm asking that this citizen commission rein in this process and hand it off to the legislature. The current draft ignores the expensive two-year efforts of Jefferson County, at a time when the Big Look Committee is encouraging local input.

197.405 authorizes LCDC to recommend an area of critical state concern to the legislature; and that is what this process should be. Drop, area two and area three from the draft; those new regulations go way beyond the task at hand. I do recommend you draw the MSACSC as small as possible, and follow the recommendation of Jefferson County Commission's six mile wide zone. Camp Sherman residents and the commission surely can agree on an area that is most deserving of protection.

Jefferson County should have the ability to site at least one or two resorts, in a county that has over 50% public and tribal lands. These two potential resorts will meet the Goal 8 intentions of tourism and recreation; and will truly be authentic resorts because of their distance from urban centers. One in a heavy snow zone which will discourage year round residency and one on 32,703.68 acres of private land set off by itself.

Competing Science

An unavailable to the public "draft" map on water-draw-down-area-of-influence, is being used to deny water use on lands east of Green Ridge. No

valid testing exists to confirm the small consumptive use of a resort in those two proposed areas. Will their water use truly result in reduced flows in the Metolius River? Older hydrogeology studies would suggest otherwise, especially the Colson property. (Enclosed maps) Again, Water Resources is going to approve up to 200 cfs of additional mitigated water uses in the Deschutes Basin. Any future resort applications must meet the standards in place today.

We all care for the deer and wildlife, but the fact Western Jefferson County is huge and the small footprint of a resort will have minimal impact.

Super Siting a Mistake

Draft Three, still proposes the ludicrous alternative resort receiving area; which will not have recreation, rather just a rural gated subdivision, and is both, inside the North Unit Irrigation District and within the 3 mile capable high value crop area. Most The proposed location is made up of mostly public lands belonging to the Crooked River Grasslands/BLM or in PGE/Warm Springs Tribe ownership. These rural subdivisions will certainly influence the area of agriculture practices. 1000 affluent home owners, each with a lawyer on retainer, will be a guaranteed test for the right-to-farm standards protecting agriculture. Jefferson County agriculture's economic engine produced nearly \$70 million in traded sector dollars which multiplies throughout the community. (Exhibit enclosed) Please also read my enclosed letter submitted to your LCDC sub committee on the value of this unique and prime irrigation district.

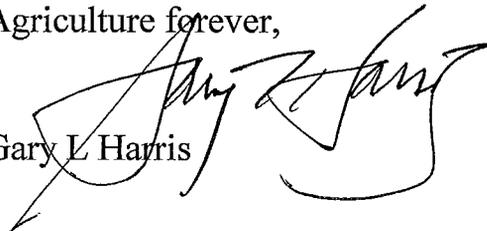
Return to Sender

Three agencies: OWRD, ODF&W, and DEQ concluded could not determine that development would not harm the Metolius Basin's water resources and fish and wildlife populations. (Page 15 of draft) That science is still undetermined. Jefferson County's map if acknowledged by the courts should stand and a 6 mile swath protecting the Metolius should become law. Again the size of the draft's MBACSC is far too expansive. The county followed the correct land use process and developed a map respective of

agriculture and wildlife overlays. Unlike the two neighboring counties, whose maps were drawn by the resort developers, Jefferson County's resort map was a citizen effort. Only the Metolius River scenic area should be your concern. Area one, will receive legislative protection regardless of DLCD's efforts. We should thank the staff for their attempt, but return the Governor's assignment back to him and free the department from recommending actions contrary to current land use goals and placing new regulatory overlays on existing rural communities in area two.

Agriculture forever,

Gary L Harris

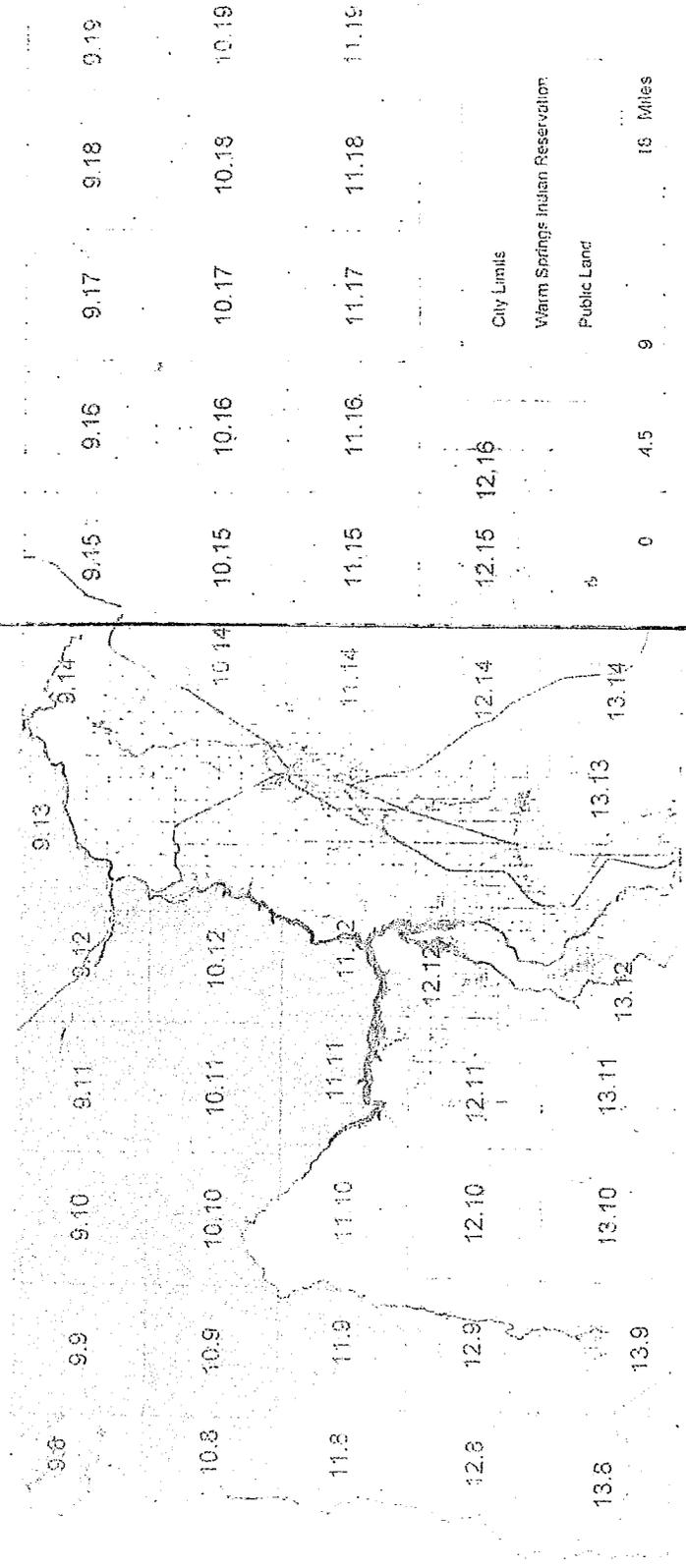
A handwritten signature in black ink, appearing to read "Gary L Harris", written over the printed name. The signature is stylized and cursive.

JEFFERSON COUNTY LANDS

Total 1,145,005.8 acres
 Tribal 256,993.4 22.44 %
 Public 318,857.5 27.85 %
 Private 569,154.9 49.71 %

1215 SQ MILES or ~775,000 ACRES

~250,000 ACRES RANGELAND



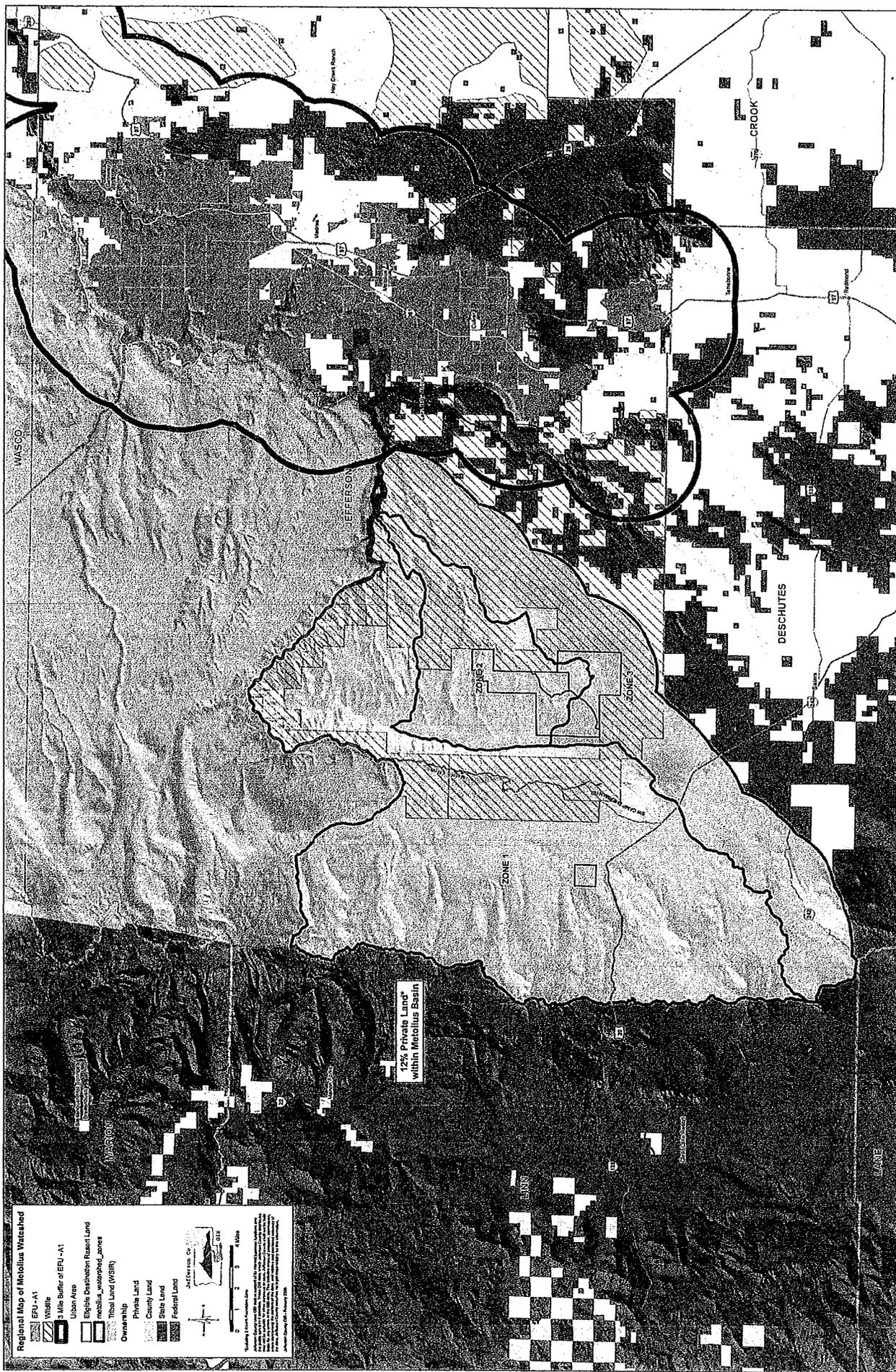
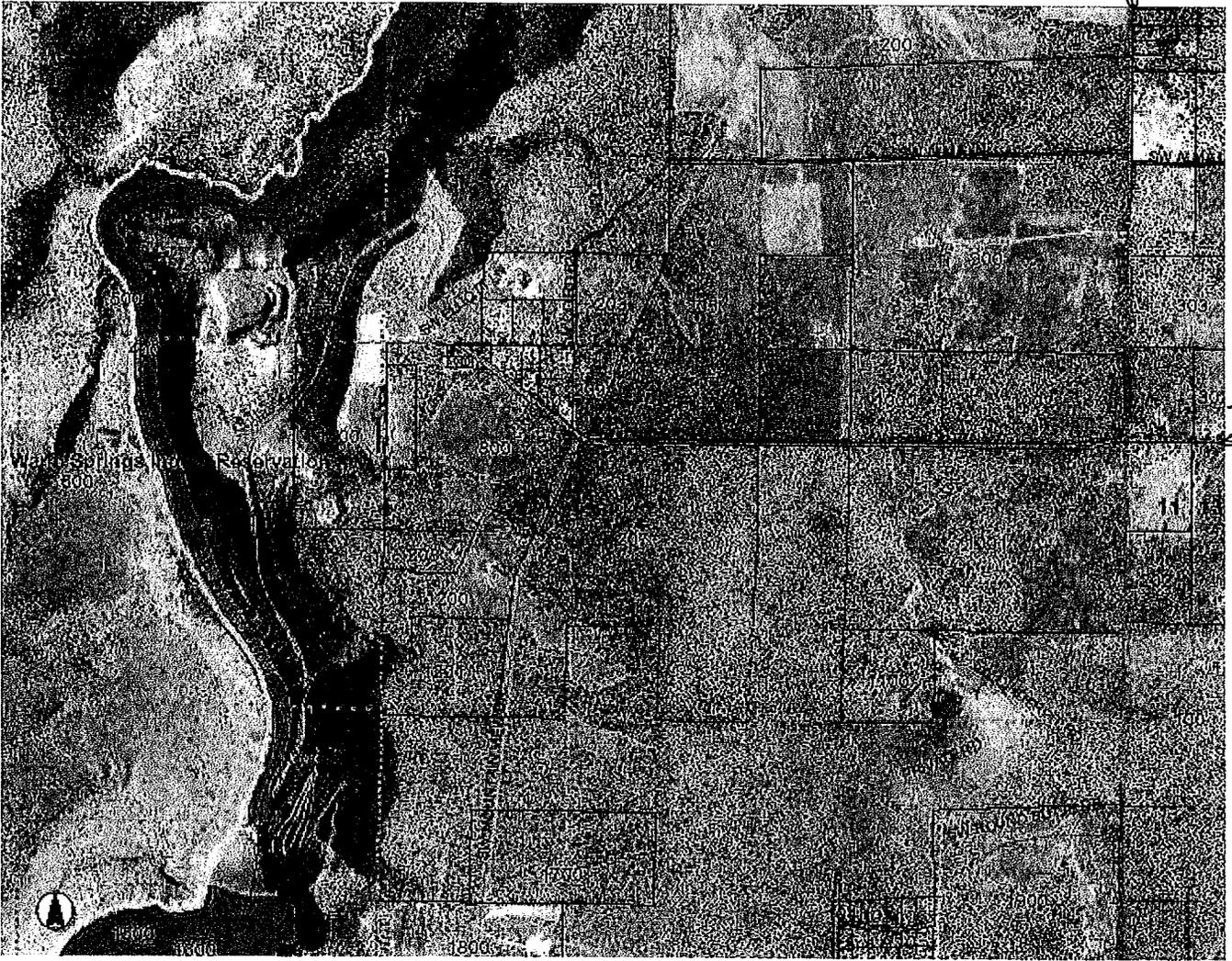


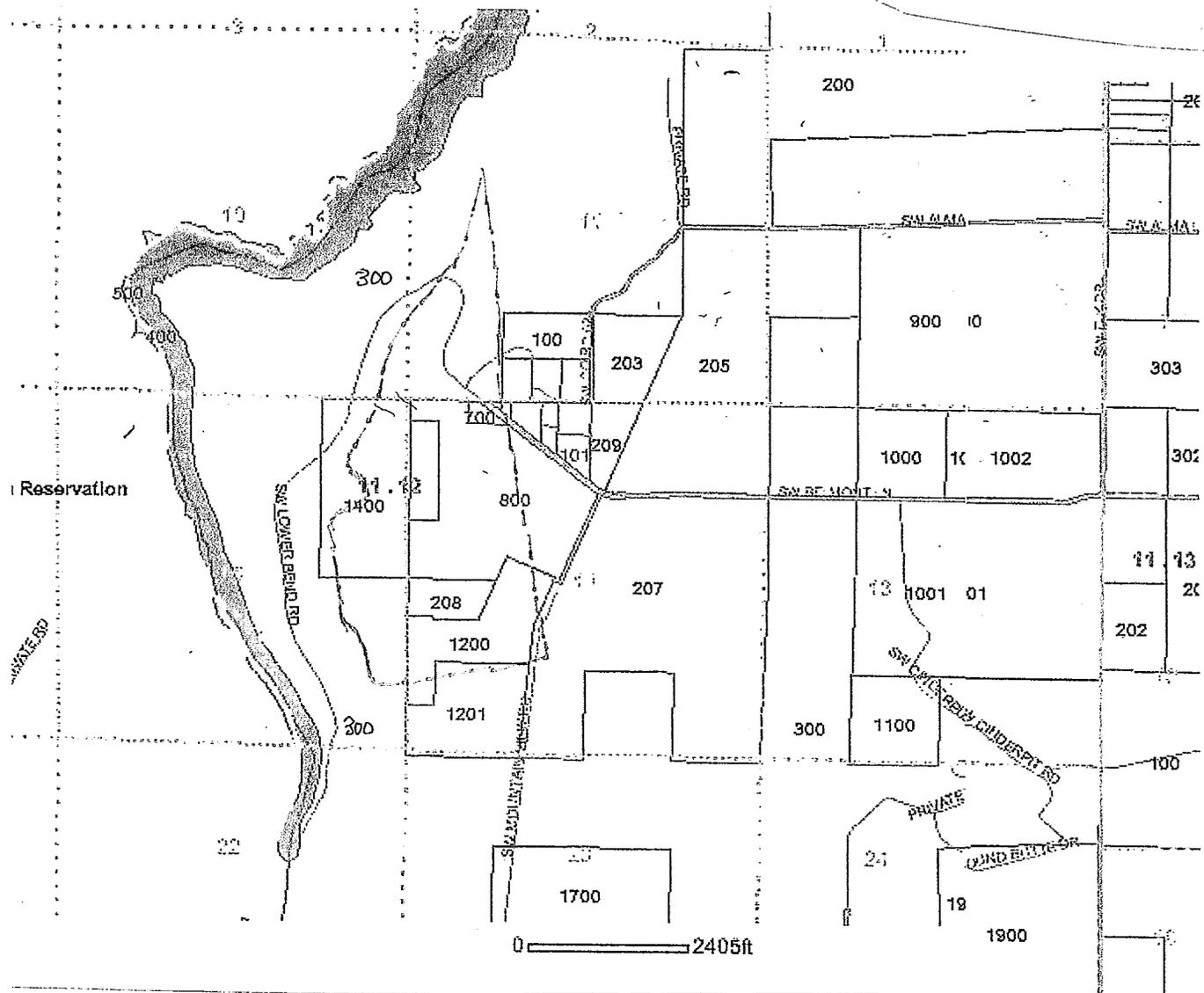
Exhibit B, MBACSC Area 3 Round Butte Alternative Site





Jefferson County GIS

0 ————— 2405ft

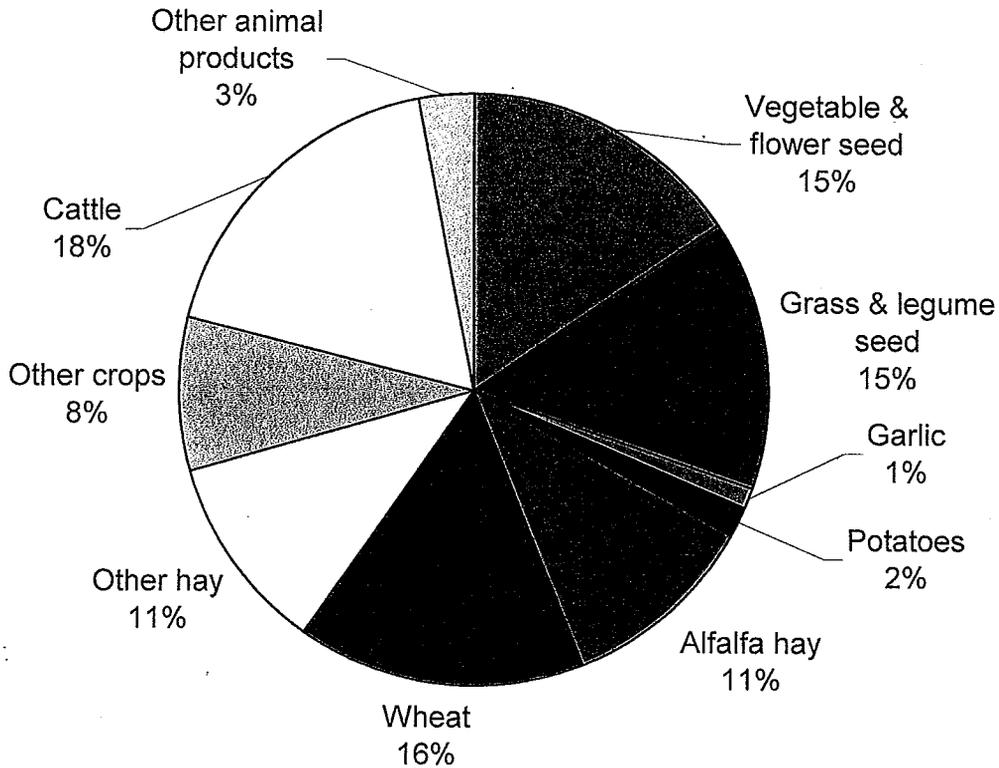


PROPERTY OWNERS INSIDE ALTERNATE DR SITE

TAX LOT	SECTION	OWNER	ACRES IN ZONE
300	11.12.10,11, & 15	BLM	~80 ACRES
1400	11.12.15	PGE and WARM SPRINGS TRIBES	65 A OF 80
208	11.12.14	KEVIN and BECKY STOVALL	15.44 A
700	11.12.14	PGE and WARM SPRINGS TRIBES	2.85 A
800	11.12.14	EMMERT INTERNATIONAL	~85 A OF 104.2
900	11.12.14	PGE and WARM SPRINGS TRIBES	15 A
1200	11.12.14	KEVIN and BECKY STOVALL	49.67 A
1201	11.12.14	JUDY SWENDSEN	3 A OF 50.33
TOTAL ALTERNATIVE DESTINATION RESORT SITE			~ 315.96 ACRES

*Green lined area approximates the DLCD's red line in exhibit B of the MBACSC

AGRICULTURAL COMMODITY SALES JEFFERSON COUNTY, 2008p



All Crops 79%
All Livestock 21%

2008p Sales By Commodity \$000

Vegetable & flower seed	10,804
Grass & legume seed	10,309
Garlic	762
Potatoes	1,277
Alfalfa hay	7,461
Wheat	10,990
Other hay	7,546
Other crops	5,879
ALL CROPS	55,028
Cattle	12,711
Other animal products	2,037
ALL LIVESTOCK	14,748
ALL CROPS & LIVESTOCK	69,776

Agricultural Sales by Year \$000

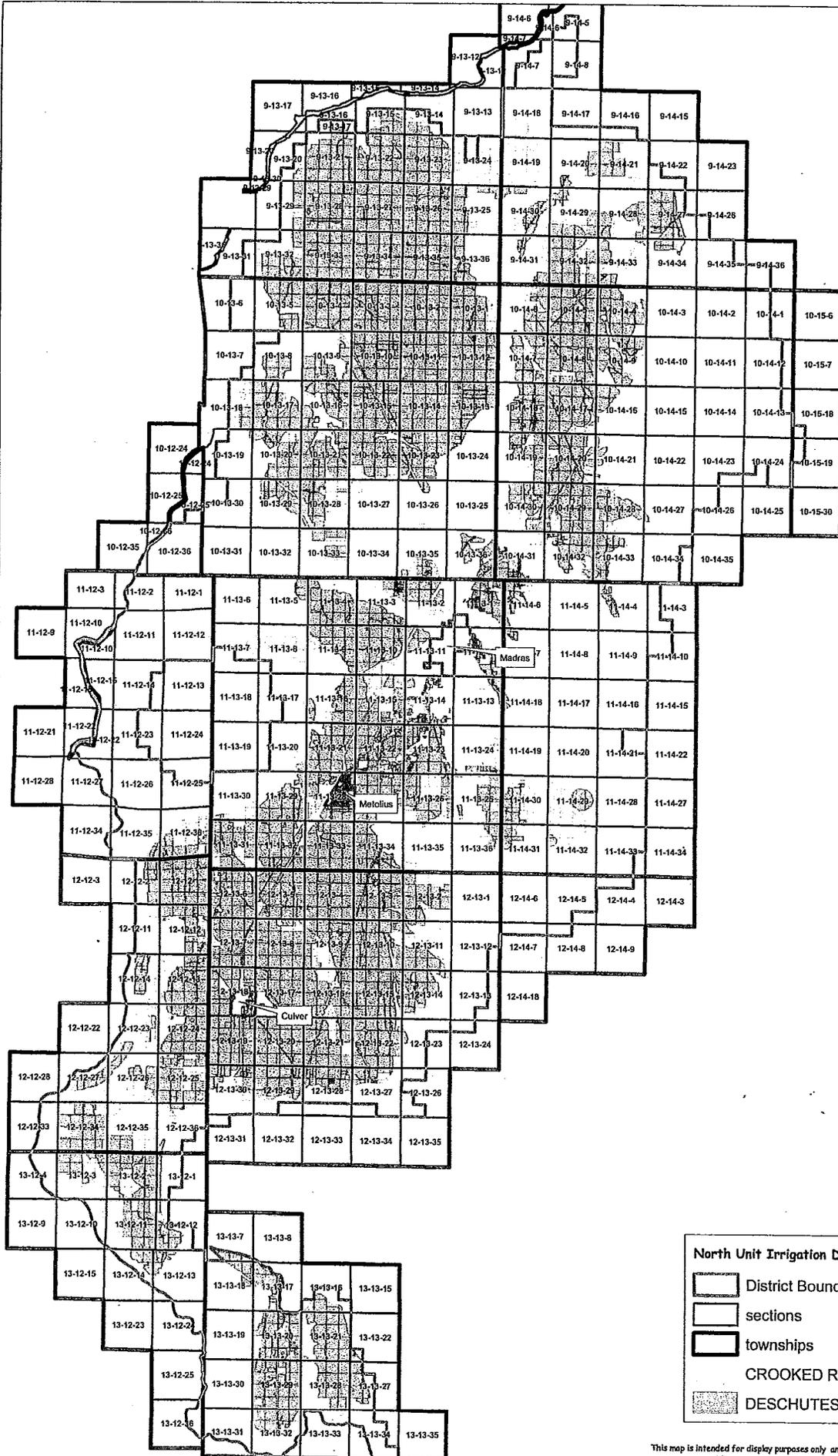
Year	Crops	Livestock	Total
2006r	38,755	13,934	52,689
2007r	44,285	9,855	54,140
2008p	55,028	14,748	69,776

r - revised, p - preliminary

Source: Extension Economic Information Office

Oregon State University

December 29, 2008



North Unit Irrigation District

- District Boundary
- sections
- townships
- CROOKED RIVER - 8,852.9 Acres
- DESCHUTES RIVER - 50,049.9 Acres



organic clay

Paul Clowers/Sun Farms

308 acres irrigated across Dry Creek

Jefferson

Madras

top Round Butte

Image State of Oregon
© 2009 TerraAtlas

44°38'34.99" N 121°11'56.36" W

CLAY 224 E 21

Apr 26 2005

EV 311 7074112

Google

N

Soil Classes

Legend

Cls3_Nirr

Cls4_Nirr

Cls5_Nirr

Cls6_Nirr

Cls7_Nirr

Cls8_Nirr

Cls3_Irr or Cls4_Nirr



Cls3_Irr or Cls6_Nirr



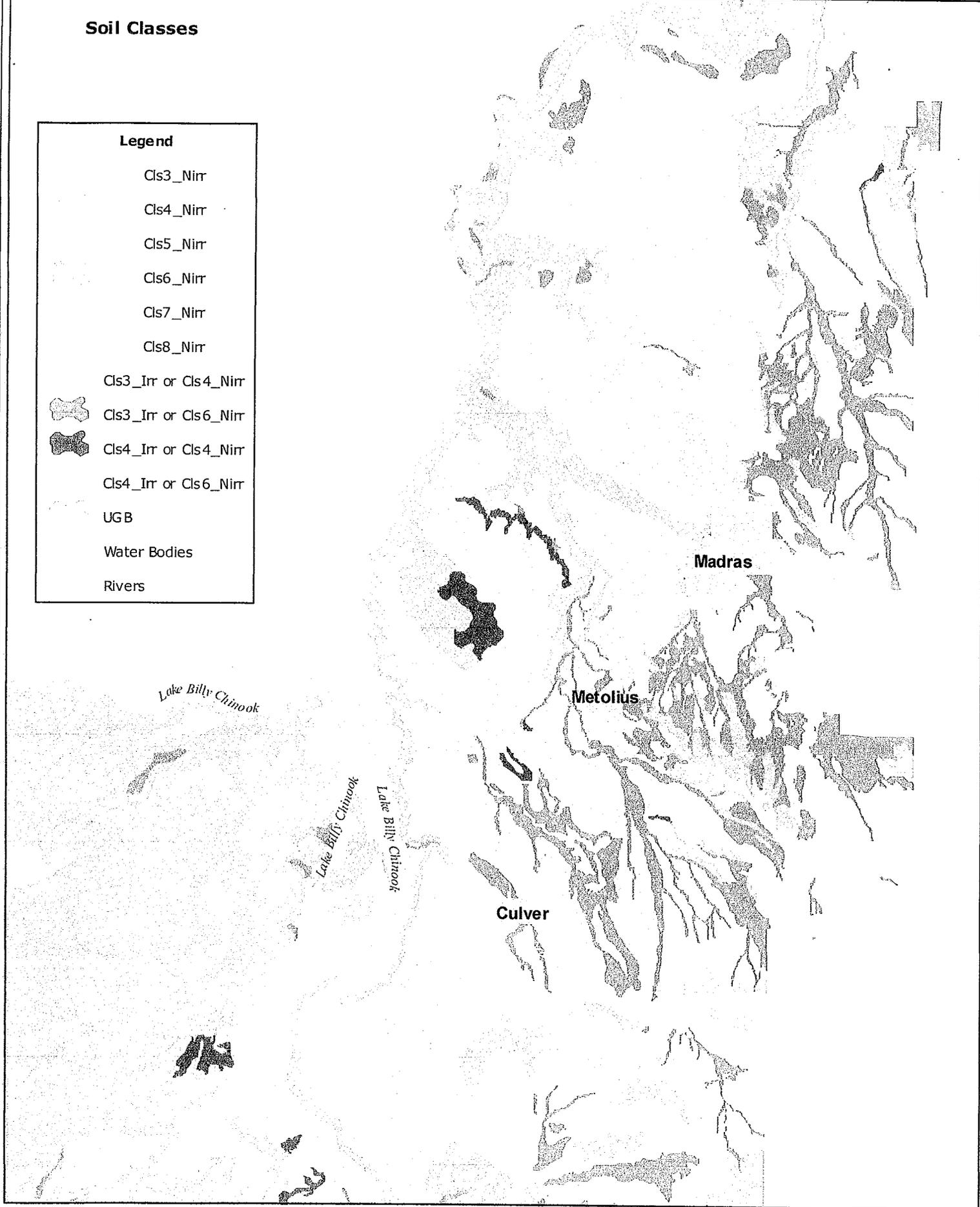
Cls4_Irr or Cls4_Nirr

Cls4_Irr or Cls6_Nirr

UGB

Water Bodies

Rivers



High Value Farm Land

Legend

- \ or620_PrimeIrr
- UGB
- Water Bodies
- Rivers

Lake Billy Chinook

Lake Billy Chinook

Lake Billy Chinook

Madras

Metolius

Culver

0 1 2

1 Miles



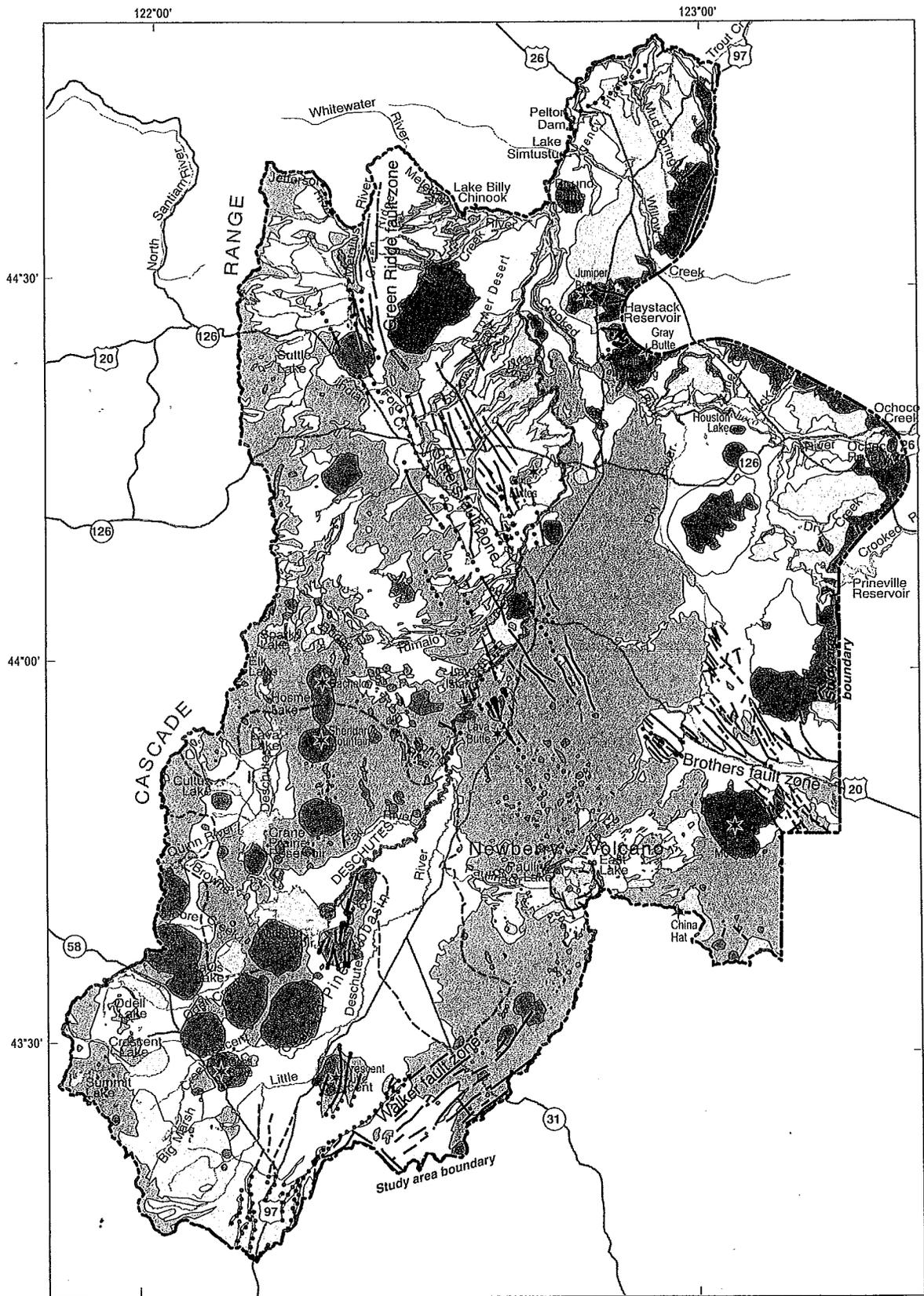
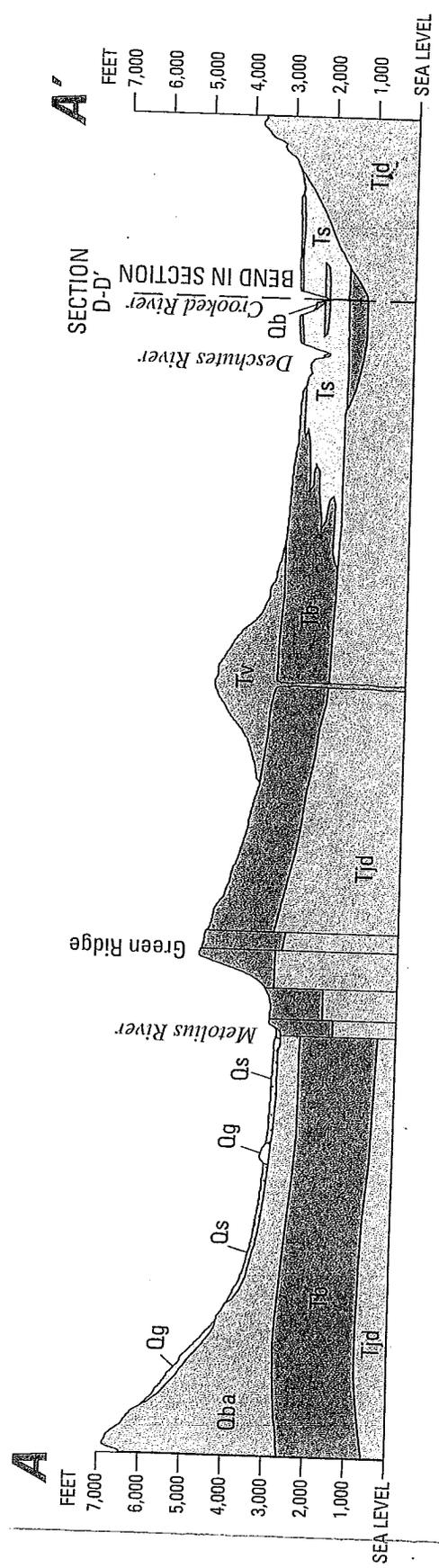
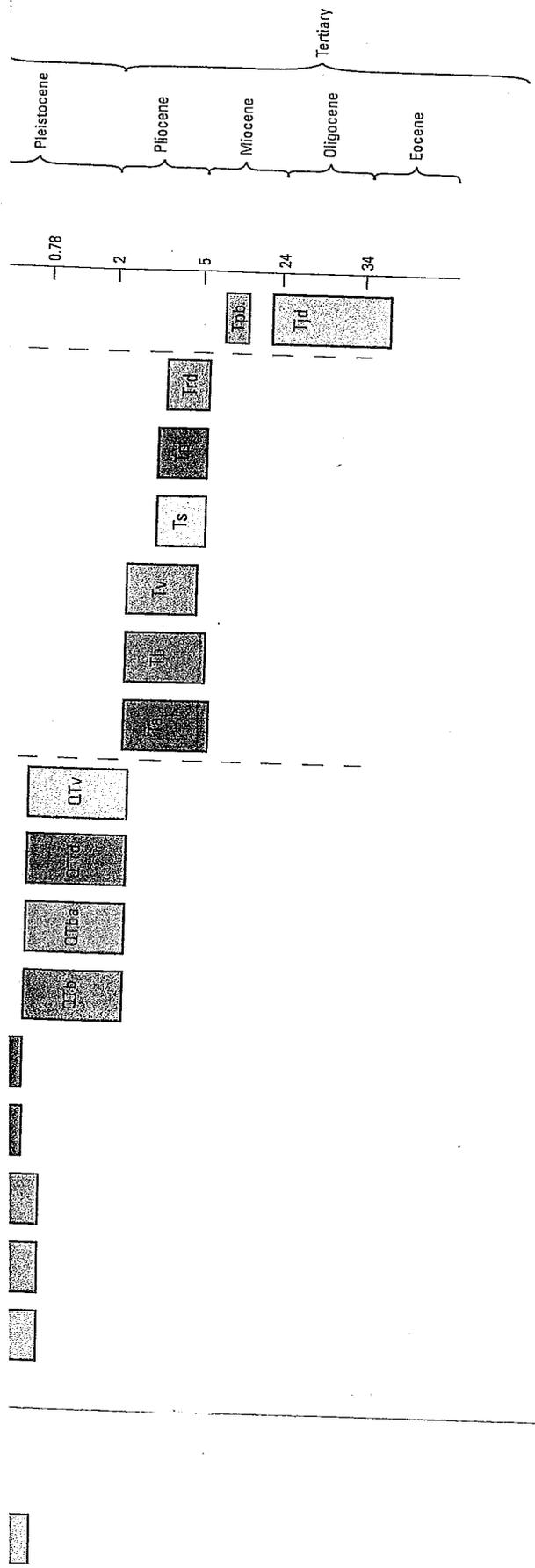


Figure 4. Generalized geology of the upper Deschutes Basin, Oregon.

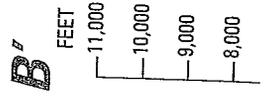


SECTION D-D'

BEND IN SECTION

Crooked River

Deschutes River



1-D-10N

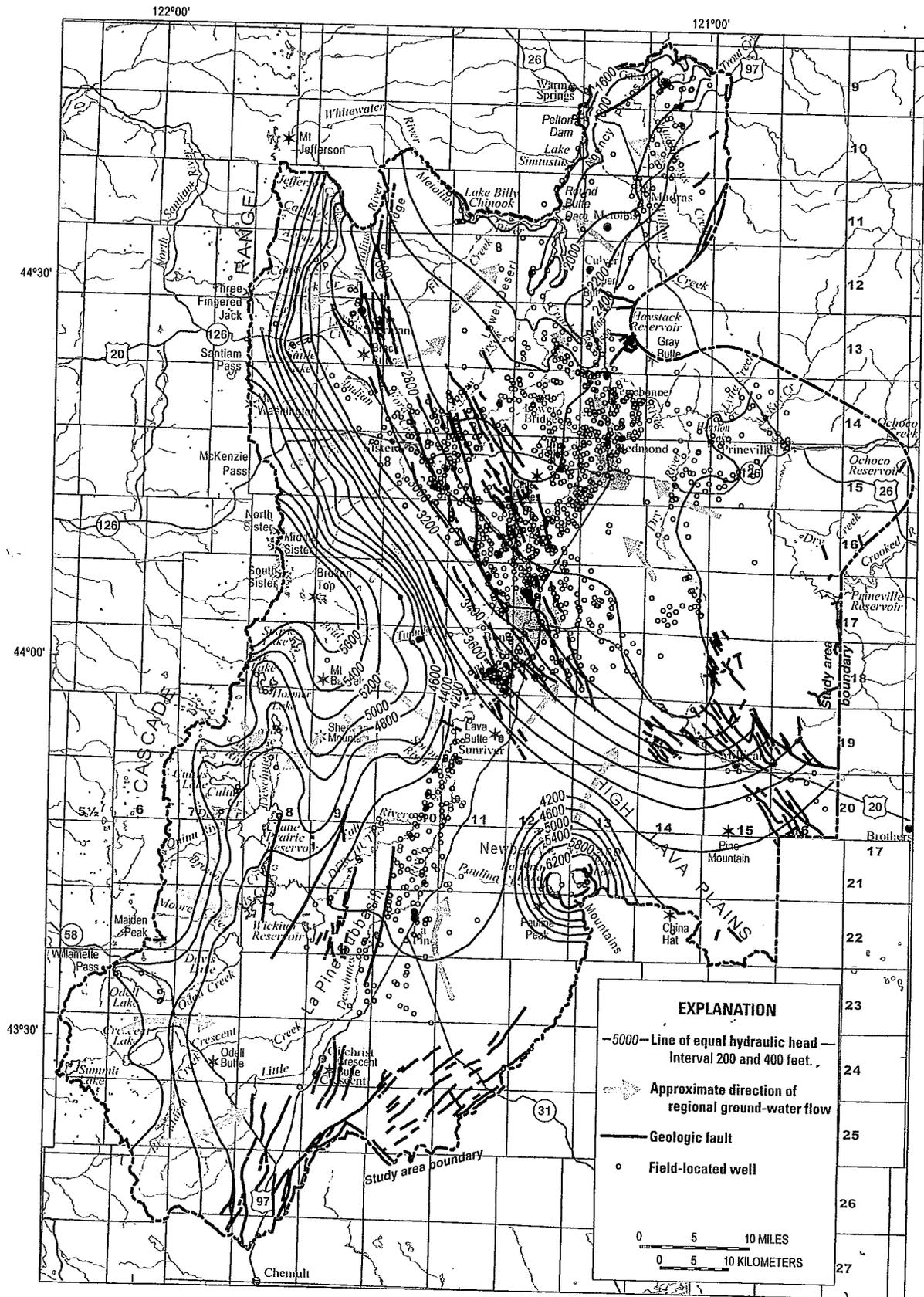


Figure 10. Generalized lines of equal hydraulic head, ground-water flow directions, and major tectonic structures in the upper Deschutes Basin, Oregon. (Head contours from Gannett and others, 2001)

February 26, 2009

To: LCDC Sub Committee

RE: Testimony on the Metolius Basin / Area of Critical State Concern,
MBACSC:

I appear before you today with a tear in my eye and my body trembling with the thoughts of your idiotic compromise of placing a destination resort receiving area inside our prime high-value and unique irrigation district. I have spent my entire adult life fostering and promoting this farming footprint in Jefferson County. In just four years it will be 100 years since a group of pioneering dryland farmers conceived and obtained the water rights to build the North Unit Irrigation District.

The Jefferson County Commissioners followed existing state statutes, rules, and goals and have respected our agricultural zone when mapping the land eligible for destination resorts. Our pristine ag zone is the cleanest from non-farm sprawl in the state. Even today, citizens are not allowed to place non-farm dwellings in our EFU A-1 zone, a standard more restrictive than state rules. For the staff and your subcommittee to propose this "receiving area" inside our irrigation district is preposterous.

Why is our ag belt so valuable and the economic engine of Jefferson County?

- This 58,902.8 irrigated acres represents the second largest irrigation district in Oregon, with it's boundary of almost 100,000 acres eligible to receive water; it is the best farmland in Central Oregon.
- The high-value soils within this district are part of just 2-3% of all Eastern Oregon lands that have such soils suitable for intensive agriculture.
- There has always been a unique blend of crops grown, from the days of ladino clover and potatoes, to the largest county in the U.S. in peppermint production, to vegetable seeds, wheat, hay and grass seeds, today.

- Vegetable seed crops thrive in Central Oregon. This ag zone produces 15-16 million dollars of farm gate value in vegetable seeds annually. Jefferson County is supplying 65% of America's hybrid carrot seed needs and 40% of the world's use. The following vegetable seed crops: onion, carrot, radish, and sugar beets require pollination via honey bees. Each year approximately, 45 one-mile circles for bee placement are mapped on the district's farmland to accommodate isolation for different hybrid varieties. The farmers spend over \$750,000 on honey bee rentals and research to save the honey bee.
- We are one of the few regions that supply garlic seed to Central California's garlic industry. Our unique isolation is why companies desire farm products from this disease free region.
- We lead the nation in peppermint tea leaf production.
- We produce over 90% of America's supply of roughstalk bluegrass, a grass used for winter overseeding the lawns and golf courses across the southern U.S. Blue and rough grass is our largest acreage crop and most all farms use grass seed in their rotation. The continuance of the grass industry in Jefferson County is crucial. We facilitate each year, with DEQ, the smoke management area. We spend annually \$85,000-90,000 for research and staffing; to run the program to lessen the impacts of smoke intrusion into populated areas. Destination resorts (DR) placed inside our irrigation district would make that task onerous at best.
- Aerial and ground pesticide application is the required norm. We don't need another "zone" in which we must avoid application drift. Some potato and vegetables need weekly applications. A few legislators continue to introduce new bills in Salem, every year, to restrict applications within one to five miles of schools and neighborhoods.
- Now, the North Unit is the home of an organic dairy and one large fresh vegetable grower whom left the valley to supply Fred Meyer produce without the urban influence. That new dairy is just across the Willow Creek canyon and up wind from the proposed "receiving area".

domestically tapping the supply, the Deschutes River is flowing greater today than it did at the Moody gauging station when the first flow measurements were taken at the turn of the 1900 century. Enclosed is an Oregonian article referring to the vast abundance of water in this aquifer. Destination resorts are supposed to be “go there,” “stay there,” “recreate there,” and “leave there” opportunities for recreation and tourism. The Ponderosa property represents all these needs and could be a true destination resort rather than a rural affluent subdivision.

What is so special about the Round Butte area? It has a viewshed like almost all landscapes in Central Oregon; it is cultivated dryland, sagebrush, and juniper, and is approximately eight miles West of Madras. So what would a resort at that location be? These so-called resorts would be just another rural housing tract for people wanting to live in the rural zone and commute to their job and take advantage of a nearby lake. DLCD, as stated in the draft, will exempt these 1000 homes from the recreation component. Furthermore, the home owners would be required to have a “save the farmer fund;” what an administrative nightmare! Is it Oregon’s land use policy to allow housing tracts beside every natural amenity in Oregon so they can live on site?

The city of Madras just completed their Urban Reserve Area and the massive planning effort to allow developers to build Yarrow, a 1200 home, golf course and planned-unit development. The state has invested millions enabling Madras to treat the new prison’s sewage. This development was to gentrify and balance Madras’ housing needs. Why would people reside in that setting if they could live in a gated community out on the Round Butte rim?

Why would the Metolian and Ponderosa owners want to buy out the existing few property owners land, and at what price, to put in a typical 350 and 650 home subdivision? Also, the Madras site is an additional 64 miles from the market, for the Willamette Valley tourist via the Santiam pass.

The bottom line is the Jefferson County Commissioners with their map are headed in the right direction. If different lands need to be added, then the county should be required to go through the same process that they previously undertook. This assures protection of all natural resources while providing for some development where appropriate. It is not a

super siting process such as proposed here by the department. The MBACSC needs to be drawn more narrowly and aligned with the State Scenic Waterway protection area.

For God's sake, no damn receiving area! Former Governor Tom McCall spoke on the Oregon Senate floor in 1973 against sage brush subdivisions in Jefferson County, which is just what this area would be. Sprawling Crooked River Ranch still exists for these people today. Are you going to potentially destroy the livelihood of 500 farm families for the supposed interests of two forest property owners?

How can the DLCD and the Governor ignore their own rules and Oregon state statute, ORS 215.243 to "preserve a maximum amount of the limited supply of agricultural land in large blocks necessary to maintain Oregon's agricultural economy"?

Sincerely and concerned,



Gary L Harris
7000 NW Danube Drive
Madras, OR 97741
541-475-6933

Attached are maps showing the North Unit Irrigation Districts boundary, irrigation rights and soil types, along with newspaper articles?

Cc: Governor Ted Kulongoski
Michael Carrier
Katy Coba
Richard Whitman
John Van Landingham
Representative Brian Clem
Jefferson County Commission
Jefferson County Farm Bureau
Oregon Farm Bureau

Friends of the Metolius

Dedicated to protecting the legacy
& the natural resources of the Metolius Basin

11 March 2009

Land Conservation and Development Commission
635 Capitol Street, Suite 150
Salem, Oregon 97301-2540

Chair VanLandingham and Commission members:

Friends of the Metolius appreciates the time, energy and commitment provided by the Commission and the Department of Land Conservation and Development. Such commitment is apparent in the changes to the Metolius Watershed ACSC Management Plan from draft #1 to this the 'final' draft # 3.

Then-Governor Tom McCall recognized the 'Metolius Deer Winter Range' as critical, but we doubt that he could have ever envisioned that Oregon would be threatened with runaway rural subdivisions and the loss statewide of forestlands. This, at the same time, that the Warm Springs Tribes, PGE Corporation, the Federal and State governments, as well as, NGOs would be investing over 100 million dollars at Pelton-Round Butte Project and over 250 million dollars in the Metolius, Crooked River and Deschutes Basins to return native steelhead and salmon to their home waters.

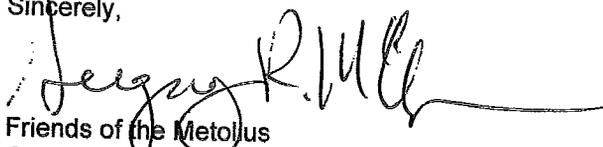
Banning destination resorts is the right action. Such resorts have 'flipped the intent of land use in Oregon'. That is wrong, especially within the boundaries of National Forests alongside Scenic Rivers and National Wildernesses. During the 1980s and again in the 1990s, Forest Service, USDA staff with extensive public input, found the Metolius Watershed at capacity for human use and therefore, capped recreation development.

With scant time to fully assess the latest draft, *Friends* offers these initial comments:

- We support retaining Zones 1 and 2, and the reduced Zone 3;
- We agree Jefferson County should have the opportunity to remap resort eligible lands within 30 months, as a one-time exemption from law and rule;
- We oppose conversion of forestlands into partitioned tax lots with development rights;
- We support vigorous protection of resource lands and the related economic and cultural legacy – forest and agriculture – as once lost they are gone, forever;
- We question that providing for 10, 25 and 100 homes (per respective ownerships in Plan) is appropriate as it will change surrounding National Forest and ODFW-ODF management strategies to a WUI and landowner in-holding focus i.e. structural fire protection from resource-based e.g. fish, wildlife and ecosystem restoration.
- We do not support future Oregon taxpayers paying the consequences of flawed County planning assessments and ill-thought decisions, as well as, bad business practices.

Friends of the Metolius finds it gratifying that ACSC status will be finally bestowed on a National jewel, a gift of nature. Governor Kulongoski, the Commission and Oregon's Legislature are leading the way during Oregon's 150th Birthday year to protect forever the Metolius Watershed and its sense of place. There are locales that simply should not be developed. The Metolius is a defining part of Oregon that should be vigorously preserved as a legacy for all future generations.

Sincerely,



Friends of the Metolius
Gregory R. McClarren, President

EXHIBIT: _____ # 1
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: 3-11-09
PAGES: 1
SUBMITTED BY: Greg McClarren



CENTRAL OREGON LANDWATCH

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BEND, OR 97702

PHONE: (541) 647-1567

FAX: (541) 647-1568

WWW.CENTRALOREGONLANDWATCH.ORG

*Protecting Central Oregon's natural environment
and working for sustainable communities.*

March 11, 2009

Land Conservation & Development Commission
635 Capitol St. NE, Suite 150
Salem 97301-2540

Re: Metolius Basin Draft Management Plan #3

EXHIBIT: _____ #1
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: 3-11-09
PAGES: 3
SUBMITTED BY: Erik Kancler

Dear Commissioners:

Central Oregon LandWatch would like to offer a quick assessment of the current draft management plan for protecting the Metolius Basin and vicinity as an Area of Critical State Concern. We realize and appreciate that the Department of Land Conservation and Development is moving on a quick time frame to establish protections for the Metolius. However, with so little time to actually review the latest draft management plan, our assessment is less than complete.

Most significantly we are impressed with how far this plan has come in recognizing the importance of safeguarding the Metolius River, its Headwaters, its Basin, and the surrounding areas against the impacts of destination resorts and other large-scale developments. In particular, we appreciate the effort that DLCD put into working with the Oregon Department of Water Resources and the Oregon Department of Fish & Wildlife in collaboratively drawing a principled boundary based on concern for water and wildlife that extends beyond the basin and into sensitive areas to its south and east.

We are also impressed with the detail and accuracy with which the plan lays out the fundamental issues of importance including the region's unique natural resources, the region's rich conservation history, and the deliberate and consistent approach the Governor has taken beginning in June of 2007 to protect the basin and surrounding areas.

We are also please to see that DLCD fully recognizes that Dutch Pacific Resources and Ponderosa Land & Cattle have no rights to build their proposed destination resorts, or anything else, on the timber land they purchased only within the last several years.

Which is why were disappointed that the agency put so much effort into seeking compromise via a proposed transfer of nonexistent rights to the Round Butte area. It seems that the agency is now backing away from this proposal, and we would encourage it to drop the Zone 3 Round Butte alternative altogether. We already have one controversial issue on our hands, we certainly don't need to go looking for others, at least not as a part of this process.

In an effort to seek fairness, we ask that you simply waive the 30-month requirement to let Jefferson County start its mapping process fresh, and let the landowners pursue Measure 49 claims if they feel that rights have been taken and value has been lost as a result of the state's interest in this matter.

Before offering specific concerns regarding the draft language, we would like to suggest adherence to the following basic guidelines to ensure that the final plan for the Metolius Area of Critical State Concern is enduring and defensible:

1. The primary elements of this plan should be placed in statute and under the jurisdiction of the State Legislature. Most importantly, the boundary, the prohibition against large-scale developments including destination resorts, and the definition of what constitutes a large-scale development should be clearly defined by the Legislature. Changes to these important elements of the Metolius ACSC should not be allowed without legislative approval.
2. Strong protections regarding impacts to fish, wildlife, and water also deserve to be laid out in state statute rather than in the plan itself.
3. In establishing the ACSC, it's been made clear that the state enjoys the ability to consider development types that may not otherwise be allowed under state land use law. Because of this, an ACSC, if not drawn up properly, runs the risk of actually creating development potential where it otherwise wouldn't have existed, rather than simply limiting it to help achieve conservation objectives. While this flexibility can be used to draw up creative solutions and help balance a variety of interests, it comes with the potential for severe abuse. The current draft management plan has several large loopholes which threaten to undermine the plan over time and which need to be addressed.

While we're still addressing the specifics of how the plan would be implemented and administered, we currently have several concerns about the draft language:

- Page 36D(1)(A) – Regarding allowing boundary changes of less than 50 acres without legislative approval. 50 acres is a significant amount of land. We'd recommend striking this language from the plan to avoid a future filled with incremental changes and adjustments that may potentially whittle away at the integrity of the plan and the Metolius Basin by allowing additional development at the fringe.
- Page 36D(1)(B) – Regarding prohibiting purely administrative changes to the prohibition on Goal 8 destination resorts. This plan proposes to limit impacts from destination resorts and other large-scale developments. To be consistent with its stated intent and to ensure that this plan is not cut up piece by piece over time, this section should apply both to Goal 8 and Goal Exception destination resorts and to other large-scale developments, as otherwise defined by the plan.
- Page 36(1)(C) – Regarding allowing exceptions to statewide planning goals without legislative approval on developments of up to 100 residential units. There are several large problems with this language that need to be addressed:
 1. A project of 100 residential units is clearly large-scale, and as such should require deliberate legislative approval if it is to be allowed within the ACSC. This standard should be removed entirely, or the legislative trigger should be lowered to a number more representative of a small-scale development, say no more than 5 residential units. Even at this level, however, the integrity of the plan and the basin, which many believe is already at or beyond its carrying capacity, could be compromised bit by bit.
 2. The term "residential" is vague. In many resorts, homes are rented out to vacationers. It's uncertain whether such homes would be counted as residential under this plan. This should be clarified.
 3. This section says nothing about limitations to overnight units. The state enjoys the ability to super-site developments of pretty much any nature within an

ACSC that don't otherwise have to conform with existing land use laws. The concern is that this language allows the possibility of large projects of undetermined characteristics and impacts without requiring legislative approval.

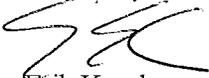
- Page 37(2) – Regarding "Other Changes." The language in this section allows administrative approval of pretty much any type and size of development so long as it meets three simple standards set out for protecting fish, wildlife, and water. These three standards despite the appearance of completely protecting these resources against any negative impacts, can and often have been easily sidestepped by developers, and provide a very weak barrier against exactly the types of large-scale developments we're currently working to prohibit today.
- To the degree that this plan allows limited clustered development on the Ponderosa and Dutch Pacific properties, which we are still troubled by, we have several comments:
 1. The agency should be more specific in terms of defining what dedicated open space means in sections 1.2.3, 2.2.3, and 3.2.3 and clearly specify that no additional development is allowed on these lands, preferably through permanent deed restrictions signed by parties that include DLCD, ODF&W, and preferably a land trust as well.
 2. We would also request that some portion of the proceeds from the sale of the lots allowed under 1.2.3, 2.2.3, and 3.2.3 be used to establish sound management practices and restore the natural resource and ecosystem service values of the land deeded into open space. Specifically, the developers should be required to evaluate the ecosystem services and ecological value lost as a result of the development and mitigate to offset the loss of those values on open space.
 3. The mention of residential units at the bottom of sections 1.2.3, 2.2.3, and 3.2.3 should be clearly reference only those units allowed within each section, and not other units that may exist or come to exist through some other means.
 4. Lastly, such a clustering proposal, if it is pursued, should be pursued not as an option for the landowners that have been identified, but as a mandatory element of the management plan referred to and adopted by the legislature. We would also like to see the number of units afforded these landowners reduced substantially, particularly on the Dutch Pacific Property, which under the state's least restrictive forest zoning laws, which is what Jefferson County is pursuing, would at most yield two legal lots and two dwelling units.

Overall, we appreciate that the agency has recognized the need to protect the Metolius, its springs, its Headwaters, and its Basin, and understands how important it is to act swiftly. We also appreciate the steps that have been taken to protect the existing rights of property owners in the Camp Sherman and 3 Rivers communities.

A lot of work has been put into this plan, which overall presents a strong vision for protecting the region's amazing resources. However, the plan leaves open many avenues that threaten to undo this vision over time. Those "loopholes" will surely be exploited to the full extent the law allows and need to be closed if this plan is to have any chance in succeeding.

Thank you for this opportunity to comment.

Very Truly Yours,



Erik Kancler
Executive Director

GORDON C JONES
9837 NE Irving St. #302
Portland, OR 97220
gordoncjones@gmail.com
cell (503) 702-1555 · fax (503) 408-1575

February 25, 2009

Testimony and open letter to Governor Theodore R. Kulongoski

Re: LCDC: Metolius Basin - proposed Area of Critical Concern Management Plan

We are not here today to engage in a public outreach process, or a democratic land use process, or even to engage our elected government representatives in debate. No, our presence here today is a sham, and in all likelihood, a waste of our time and resources. Governor Kulongoski, this is not, as you have portrayed it, "...a collaborative process with Jefferson County and other interested parties and citizens." There is no public outreach here, the land use process in Jefferson County has been violated, and even the wistful hope that we are represented by elected officials has been rendered a cruel hoax.

Jefferson County undertook a lengthy effort in 2005 and 2006 to gather information, invite public opinion and legally and carefully follow the procedures of state land use laws to update their Comprehensive Plan, rewrite their zoning ordinances, and map the County for destination resorts. The process was exhaustive and hundreds of citizens attended and gave testimony. I have a question for our esteemed Governor, and Betsy Johnson, Ginny Burdick, Ben Westlund, and the other proponents of this "Area of Critical Concern" land grab. Where were you when we were participating in the system that our government of laws has evolved for this process? I know the answer to that question. You weren't there. You didn't participate. Because you knew that you didn't have to. It was a waste of your time, and you knew that the elected officials didn't matter, the process didn't matter, and the people didn't matter; you could simply mandate a different result and/or legislate around them when the time came.

This end run to contravene Oregon's land use laws is a moral and ethical outrage. It is a betrayal of the public trust and clearly sends the message to the citizens of our state, and to anyone considering a land use application, no matter how well-intentioned, environmentally responsible or socially correct, you are likely to spend years and millions in court, and even if successful you may still get blindsided by rich and powerful politicians. The only way that the Governor can restore the public trust would be to apologize to the citizens of Jefferson County and the state of Oregon, withdraw this dictatorial mandate and allow the existing laws and local government to work.

I am not overstating the disregard, arrogance and cynicism that Betsy Johnson and her "friends" employ to get what they want. This is an Oregon State senator who has engaged in serious ethics violations and is currently under investigation by the FBI. Senator Johnson rationalizes her abuses by saying that she is trying to stimulate economic

development and create jobs in her district. She obviously doesn't care about jobs in Jefferson County. And, of course we recently learned that Johnson provides the Governor free transportation in her private aircraft and lets him use her family's residence on the Metolius River without compensation. Yes, Betsy Johnson has time and again shown that she has no compunction about using, "...her money and political muscle, including influential and wealthy contacts" to further her personal agenda.

There are currently eight lodges and a ski resort in the Metolius Basin. There are also 108 Forest Service cabins lining the banks of the Metolius, a store and gas station, restaurant, over a dozen campgrounds, a fish hatchery, a school, church, fire station, community hall, a 100 lot suburban subdivision known as "Metolius Meadows", and dozens of other private residences spread throughout the community of Camp Sherman. All anadromous fish runs in the Metolius system have been extinct since the construction of Pelton and Round Butte Reservoirs over 40 years ago. This is not a pristine wilderness. It has been a vacation destination for nearly 100 years and is officially an "Unincorporated Resort Community" under OAR chapter 660, division 22. This is and always has been an issue of "Not In My Back Yard". There is an elitist group of private property owners imbedded on the Board of Directors of Friends of Metolius. Funded largely by the Johnson Family Foundation, they have used every means available, no matter how unscrupulous or unethical, to fight any and all land use applications that they consider would intrude into their exclusive domain. If this were really about improving the Metolius watershed for habitat and environmental preservation, then our conversation would be about removing the dams and the cabins on the Forest Service leased land.

The DLCD proposal is not based on credible science and is not supported by evidence that the County erred in its destination resort mapping procedures or methodology. In fact, the very definition of "Basin" has been misapplied by DLCD in their management plan. The attached USGS Circular Survey 838 describes the structural geology of the Metolius Basin and Green Ridge. The Hydrology of the Metolius Basin is contained between the summit of the Cascade mountains and the north/south fault that is defined by the course of the Metolius River. The likelihood that any runoff from the Cascades or any water that finds its way into the Metolius could somehow be influenced or interrupted or depleted by wells east of Green Ridge is highly unlikely and not supported by any facts

The Governor is dead wrong when he claims that there are, "...inadequate state protections" and "...local safeguards for groundwater". Any proposed resort will be required to obtain water rights, to justify their usage and mitigate any impacts on groundwater. They will need to address traffic impacts, wildlife impacts, density issues, wildfire issues, and on and on. It will take years to process an application and the opponents will have every opportunity to challenge their proposal, and I'm sure that they will. It will cost the applicants hundreds of thousands, perhaps millions, of dollars in legal fees and consultants. It will cost Jefferson County significantly in legal fees defending their land use decisions. Friends of Metolius are well funded and relentless.

Governor Kulongoski, you were right when you threatened to veto Senate Bill 30. You are wrong to now use this obscure, never-before-used "Area of Critical Concern" mechanism to callously be-head Jefferson County's land use process. Your integrity and self-respect have been sold. You have been manipulated and you should be ashamed. Your only course of action is to withdraw this Area of Critical Concern designation and management plan.

Gordon C. Jones

Owner: Lake Creek Lodge
13375 SW Forest Service Rd.
Camp Sherman, OR 97730

Gordon & Jeff Jones purchased Lake Creek Lodge in 2003. They entered into a partnership with the Upper Deschutes Watershed Council, US Forest Service and other public agencies to restore a section of Lake Creek, an important tributary to the Metolius, to a natural habitat suitable for migrating fish. They were awarded the prestigious Gene Leo Memorial Award for Sustainable Tourism at the Governor's Conference on Tourism in 2007. The award recognized the lodge owners for their environmental stewardship and socially responsible practices in the tourism and hospitality industry.

EXHIBIT: _____ Item 1
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: 3-11-09 Robert Powers
PAGES: 11
SUBMITTED BY: 3 Rivers Landowners

THREE RIVERS LANDOWNERS ASSOCIATION, INC.

Three Rivers Office
12468 SW Graham Rd.
Culver, OR 97734

~~Alto Draft~~

March 10, 2009

SUBJECT: Response to The Metolius Basin Area of Critical State Concern sub-committee draft.

Dear sub-committee of the Land Conservation and Development Commission:

Remove the following from the map of area 1

1. Three Rivers Recreation Area Residential Zone.
2. Three Rivers Recreation Area Waterfront Zone.

Reason to remove

These areas are already regulated by Jefferson County Zoning Ordinances. The ACSC process does not provide enough time to properly examine the impact on the large area that the map of the Metolius Basin and Areas of Interest defines.

We believe the Jefferson County Alternate Draft of Six Mile Wide Metolius River Protection Zone is a better plan.

1. The plan protects the Metolius River Basin.
2. The rest of the county area around the Basin is left to the existing procedures for protection.

Why is the state changing the development process and telling Jefferson County what it can and cannot do?

Thank you for allowing us to present this written testimony. Included are signatures of property owners in Three Rivers Landowners Association, Inc.

Sincerely,
Three Rivers Landowners Association, Inc.



Dave Collar
President of the Three Rivers Landowners Association Board of Directors

encl

1-E11010M
TO REMOVE 3R FROM LCDC
METOLIUS BASIN

Harold Wells
Frank Wells
Wynon Norton
Bernice Abner
Karen Richardson
Arlene Richardson
Jan V. White

Ann Davis
Madeline Roberts
JAMES LEANS
EM LAFER
ROBERT BOO
William Norton
Ann Norton
Chris Frazier
Lara Frazier
Gary F. Frazier

Rocky Wamoon
John Wamoon
Scott Wamoon

M. J. Wamoon
M. J. Wamoon
Tui Palomaki
Marta Wamoon
D. Wamoon

Debra S. Coetzler
Lynne Wamoon
D. Wamoon

Donna Gray
Linda Wheeler
Carol Fuchs

Dennis Sandbach
Richard Riley
Roy A. Rupp
Cindy Little
Tad & Judy Jolley
Gacey C. Buckner
James Manner
James K. Mitchell
J. Evans

Bronka Wiczkopp
Kara Carlson
Ken Weyand
George W. Kendall
John Schupel
Lyn Schupel
James A. Hassler

Jim Fung
Bryon K. Boyd
Carol Shas
Bill Jay
Bill Wamoon
James F. Paterson
Jacelyn R. Smith
Charles Sneed
Gwinn L. Mary
Jake A. Mary
Larry Anderson
Jeff Thompson
Sue Thompson
Madeline Armitage
Barbara J. Jensen

AREVA NP Inc.
Dosimetry Department, Support Services
155 Mill Ridge Road (MR-19)
Lynchburg, Va 24502

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Norm Schaller	503-333-2885
Dana H. Reader	503-650-8100
Gregory N. Sewap	
Suzanne Cole	541-344-5166
Elaine Parrott	503-375-2229
Ernest Peterson	541-419-0446
Ray Dunford	503-658-3232
Robert W. Wizes	503-737-9544
Ed Kubit	971-285-6748
Borough Hulse	503-914-9495
Royce A. Orr	503-348-0729
John A. Alliac	503-286-5901
Paul H. Radwin	503-650-8100
George S. Cox	541-344-5166
Suzanne Clow	503-655-8160
Mark R. Young	503-665-2005
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Joseph C. Crider	(503) 581-3308
John H. Smith	503-581-3308
John C. Van	503-708-4324
Monty Scott Brown	503-648-5337
Ed W. Crook	541-419-0402
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Paul W. Marthe	
Paul H. H. H. H.	503-689-7860
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Robyn B. Cash (434)832-4026
 email robyn.cash@areva.com

Tiffany M. Randolph (434)832-3209
 email tiffany.randolph@areva.com

PETITION - TO REMOVE SKIVERS FROM
LCDC - METALLUS BASIN

Jerry Fuchs	503-632-7810
Cheryl Forster	503-235-6070
Antone Mizer	503-8869-8900
William B. Stueck	541 721 3288
Barbara H. Heeler	541-865-2585
Sheila Hunt	12766 SW. Dec. Ln. 541-541-6925
Tom Hunt	Calver, Or. 97734 541-420-9960
Linda M. Lami	541-325-3250
Tim McClam	541-325-3250
Sherri Warde	503-510-1778
COFF WARDE	503-551-7273
Judy Hillon	541-771-9323
Sherry Gillings	541-977-8026
Doralee Hill	541-977-8026
Nancy Shaver	541-788-5458
Ralph Shaver (RALPH SHAVER)	541-788-3133
Tom R. Wegener	541-350-4650
Glenn Thornton	541-482-0214
R. J. Thornton	541 482-0214
Joyce Stricker	503-334-9132
Andy Talley	503-807-9730
Marianne Powers	503-522-3534
Darla Dubois	541-980-363262
Quince Lynn	541-771-4770
Luther Grant	541-771-4770
Wendy Christy	541 977 4694
Seag M. Hall	541 382-3089
Genevieve Keller	541 352-3081
Lynell Hays	541-580-1044
John A. Hays	541-288-6062
Sherry Lindsay	541-777-0276
John D. Hays	541 334 9132

AREVA NP Inc.
Dosimetry Department, Support Services
155 Mill Ridge Road (MR-19)
Lynchburg, Va 24502

Robyn B. Cash (434)832-4026
email robyn.cash@areva.com

Tiffany M. Randolph (434)832-3209
email tiffany.randolph@areva.com

PETITION - To remove 3 Rivers from
LCRC - Metolius Basin

NAME	PHONE #
ED A DAVIS	503-851-1442
Eli Springerich	
Mary H. Gibson	541-408-3013
Walter R. Johnson	541-408-3013
Judie Owens	503-655-9309
Gordon S. Weger	503-799-8557
GARY SWEET	541-470-0190
Billy Ray Ewers	541-977-7241
Reynold Lee	503 510-5840
Ann G. Cross	" 880 3420
James Judy	541-480-1765
Karen Judy	541-480-1765
Shedda Bandana	503-877-2550
DON & GANDY BOYER	541-504-1470
Mit Whitte	541-540-7465
Franklin D. Coog	503-348-5141
Linda Pantovich	541-977-8238
Dennis Pantovich	541-977-8288
Nancy Smartt	541-325-3111
Dona McInty	541-777-2271
Harlen Peterson	541 977-7243
Yvonne Ewers	
Don Beer	541-480-3860
Karen Linn	503-860-7383

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ABNEY, DEAN ABNEY, LORRAINE	11244 NW Kingwood Dr. Redmond, OR 97756	Res: Cell: 541-480-6084-D
ADAMSON, JAMES ADAMSON, VICKI	820 North Ivy Canby, OR 97013	Res: 503-266-1383
ANDERSON, GARY ANDERSON, SHARON	P. O. Box 564 Colton, OR 97017	Res: 503-824-2377
ARMITAGE, ROGER ARMITAGE, NADINE	21030 South Ferguson Rd. Oregon City, OR 97045	Res: 503-632-6866 Cell: 503-781-6236
BAUGHMAN, SCOTT BAUGHMAN, SHELLY	P. O. Box 943 Mill City, OR 97360	Res: 503-897-2550 Cell: 503-932-5404
BEESON, JACK BEESON, PEGGY	16525 Nottingham Dr. Gladstone, OR 97027	Res: 503-659-5550 Cell:
BOYER, DON Kindsvogel, Sandy	18100 Highway 126 Sisters, OR 97759	Res: 541-504-1470 Cell: 541-480-7090
BUCKLEIN, PATRICK BUCKLEIN, STACEY	21025 S Mossy Rock Court Oregon City, OR 97045	Res: 503-657-4893 Cell: 503-709-2711-P
BUDDEN, DAVID BUDDEN, ELAINE	12453 SW Bald Eagle Lane Culver, OR 97734	Res: Cell: 541-480-3860
CARLSON, RICK CARLSON, DEBRA	25250 South Zeller Dr. Canby, OR 97013	Res: 503-632-7120 Cell:
CHRISTY, WESLEY	366 SW 'M' Street Madras, OR 97741	Res: Cell: 541-977-4694
CLOW, KEVIN CLOW, DEEANNE	P. O. Box 876 Oregon City, OR 97045	Res: 503-655-8160 Cell: 503-880-3420 (K)
COLE, GEORGE COLE, SUZANNE	2760 West 11 th Ave. Eugene, OR 97402	Res: 541-344-5166 Cell
CROOK, KENT CUMMINGS, MARGUERITE	12390 SW Scorpion Ln. Culver, OR 97734	Res; Cell: 541-419-0402-K
DAVIS, EDWARD DAVIS, PHYLLIS	12055 SW Big Canyon Ln. Culver, OR 97734	Res: Cell: 541-851-1442
DESWERT, MICHAEL SMARTT, NANCY	P. O. Box 1889 Redmond, OR 97056	Res: Cell: 541-325-3111
DOWNEY, HENRY DOWNEY, JAN	11272 SE Highland Loop Clackamas, OR 97015	Res: Cell: 503-887-0656-H

DUBOIS, GARY DUBOIS, DARLA	11528 SW Dynamite Ln. Culver, OR 97734	Res: Cell: 541-980-3262
DUBOIS, JOE DUBOIS, ROBYN	52931 NW 5 th Scappoose, OR 97056	Res: 503-543-4132 Cell: 503-348-7119 (J)
DUNFORD, DONALD EVANS, JOY	15124 SE Wyeast Clackamas, OR 97015	Res: 503-658-3232 Cell: 503-312-9088
EWERS, BILL EWERS, DYANN	12275 SW Big Canyon Ln. Culver, OR 97734	Res: Cell: 541-977-7241 (B)
FORSTER, EARL FORSTER, CHERYL	1332 SE Carlton Str. Portland, OR 97202	Res: 503-235-6070 Cell: 503-803-8648 (E)
FUCHS, GERALD FUCHS, CAROL	20244 South Ferguson Rd. Oregon City, OR 97045	Res: 503-632-7810 Cell: 503-329-0269
FUREY, ALICE FUREY, ALEX	10700 SW Highland Dr. Tigard, OR 97224	Res: 503-245-1058 Cell:
FUREY, GEORGE	P. O. Box 442 Molalla, OR 97038	Res: 503-829-3125 Cell:
GEISZLER, DELORES	19571 SE Highway 212 Boring, OR 97009	Res: 503-658-2485 Cell: 503-799-8388 (Jerry)
GINGERICH, ELI GINGERICH, JEAN	5145 SW Brandy Lane Culver, OR 97734	Res: Cell: 541-948-0163
GLENN, RONALD GLENN, SORENA	3200 SE Harrison Milwaukie, OR 97222	Res: 503-353-0703 Cell: 503-329-3283
GOODDING, DEAN GOODDING, PATRICIA	P. O. Box 998 Sherwood, OR 97140	Res: 503-625-7150 Cell:
GOVER, GARY GOVER, YVONNE	4454 Durbin Ave., SE Salem, OR 97301	Res: 503-581-3308
GRANT, LUTHER GRANT, EUNICE	13311 SW Cascade Ln. Culver, OR 97734	Res: Cell: 541-771-4770
GRAY, DONNA	609 NE Jackson Str. Hillsboro, OR 97124	Res: 503-648-5337 Cell:
GULLINGS, GERALD GULLINGS, SHERRY	12000 SW Yucca Flats Ln. Culver, OR 97734	Res: Cell: 541-977-8026 (home)
HASSLER, JAMES HASSLER, BARBARA	9683 South Barnards Rd. Canby, OR 97013	Res: 503-651-2405 Cell:

HILSABECK, BARRY	5139 SW Upper Canyon Rim Dr. Culver, OR 97734	Res: 503-408-7653 Cell: 503-413-9559
HUNT, THOMAS HUNT, SHEILA	6458 Dee Lane Culver, OR 97734	Res: Cell: 541-420-9960-T
ILLIAS, JOHN WITTKOP, RHONDA	8806 NW Bailey St. Portland, OR 97231	Res: 503-286-5901 Cell:
JOHNSON, RALPH JOHNSON, MARY	13700 SW Airstrip Ln. Culver, OR 97734	Res: Cell: 541-408-3013
JOHNSON, STEVEN JOHNSON, BARBARA	22531 S Ferguson Rd. Beavercreek, OR 97004	Res: 503-632-6228 Cell: 503-516-4490
JUDY, JAMES JUDY, KARLA	4115 SW Lucky Dr. Culver, OR 97734	Res: Cell: 541-480-1765
KENDLER, GEORGE KENDLER, EDEANE	7450 SW Bel-Aire Dr. Beaverton, OR 97008	Res: 503-644-3756 Cell:
KILEY, KATHLEEN	16522 South Eaden Oregon City, OR 97045	Res: 503-631-2799 Cell:
LANSING, MARTA	19150 SW Pilkington Rd. Lake Oswego, OR 97035	Res: 503-639-2888
LEE, RICHARD LEE, JAN	1565 Norway St, NE Salem, OR 97303	Res: 503-581-3735 Cell; 503-881-9216-R
LEWIS, JAMES LEWIS, CHARLOTTE	3523 SE Grant Str. Portland, OR 97214	Res: 503-235-2840 Cell:
LEWIS, MITCH (Gary) Palomaki, Jill	20012 NE 112 th Avenue Battleground, WA 98604	Res: Cell: 503-519-4380
LIEZEIERT, CHRIS LIEZEIERT, LORI ANN	57899 Fisher Ln. St. Helens, OR 97051	Res: 503-397-1056 Cell: 503-702-8350-C
LINDSAY, JACK LINDSAY, GLENNYS	13045 SW That Way Ln. Culver, OR 97734	Res: Cell: 541-777-0276
LOLLEY, LARRY LOLLEY, JAN	4100 SW Lakeview Dr. Culver, OR 97734	Res: Cell: 503-807-9730
MANESS, STEVEN MANESS, MARY JANE	18825 Lafayette Ave. Oregon City, OR 97045	Res: 503-655-4740 Cell:
MARTHALLER, JAMES MARTHALLER, SALLEY	1614 SW 12 th St. Battleground, Wa 98604	Res: 360-666-6686 Cell: 541-977-7952

MARTHALLER, MATT MARTHALLER, STACIE	P. O. Box 13521 Salem, OR 97309	Res: Cell: 503-689-7860
MARTIN, MYRON	12653 SW That Way Ln. Culver, OR 97734	Res; Cell: 541-977-7410
MARY, JAKE MARY, CHERILL	240 SE 136 th Ave. Portland, OR 97233	Res: 503-254-1228 Cell: 503-803-8405 (J)
MCINTYRE, DAVID MCINTYRE, DONA	11655 SW Pixie Lane Culver, OR 97734	Res: Cell: 541-777-0268-Dave
MITCHELL, THOMAS MITCHELL, JACKIE	13525 SW Airstrip Ln. Culver, OR 97734	Res: Cell: 541-977-8002-T
MIZER, GORDON MIZER, ARLENE	11729 SW Upper Canyon Rim Dr. Culver, OR 97734	Res: Cell: 503-737-9544-G
MCBRIDE, JEFFREY MCBRIDE, KAREN	P. O. Box 29 Terrebonne, OR 97760	Res: 541-548-6281 Cell: 541-350-4957-J
MCCRACKEN, JOYCE	16505 SE Alder Court Portland, OR 97233	Res: 503-254-8568 Cell:
MCLAIN, TIM MCLAIN, LINDA	14050 SW Black Butte Lane Culver, OR 97734	Res: Cell: 541-325-3250
NORTON, WILLIAM NORTON, ANN	1541 Bonnie Lane Forest Grove, OR 97116	Res: 503-357-0829 Cell: 503-475-7910
OWENS, CARL OWENS, JUDI	5885 Skyline Drive West Linn, OR 97068	Res: 503-655-9309 Cell:
PANEK, RANDEL PANEK, LINDA	119 Lost Creek Dr. Folsom, CA 95630	Res: 916-987-5944 Cell: 916-715-0199
PANTOVICH, DENNIS PANTOVICH, LINDA	12562 SW That Way Lane Culver, OR 97734	Res: Cell: 541-977-8288-D
PARROTT, JOSEPH PARROTT, ELAINE	2782 Bastile Avenue, SE Salem, OR 97306	Res: 503-375-2229 Cell: 503-803-5976-J
PATEREAU, JAMES BENTON, REBECCA SUE	19549 SE Yamhill Portland, OR 97233	Res: 503-661-0571 Cell: 503-805-5375
PENTICO, RODNEY PENTICO, MARILYN	9657 South Kraxberger Road Canby, OR 97013	Res: 503-266-5795 Cell: 503-880-0411
PETERSON, DONALD PETERSON, DENISE	3924 Wauna Vista Drive Vancouver, WA 98661	Res: 360-693-1512 Cell: 360-921-3855

PETERSON, HARLAN PETERSON, ESTHER	13010 SW Airstrip Lane Culver, OR 97734	Res: Cell: 541-977-5777-H
PETZEL, ROY PETZEL, RANDY	6607 Pinto Court, SE Salem, OR 97301	Res: 503-749-1529
POWERS, ROBERT POWERS, MARION	11570 SW Pixie Lane Culver, OR 97734	Res: Cell: 503-708-4324-R
REEDER, PAUL REEDER, LANA	10893 South Forrest Ridge Ln. Oregon City, OR 97045	Res: 503-650-8100 Cell:
REGIER, JOHN REGIER, SALLY	7170 Ridgeway Drive Gladstone, OR 97027	Res: 503-655-3858 Cell: 503-781-3001
RICHARDSON, HARLEY RICHARDSON, KAREN	7205 SE 67 th Avenue Portland, OR 97206	Res: 503-775-7119 Cell: 503-329-7888
ROBERTS, JAMES ROBERTS, MADELINE	25300 South Hughes Lane Canby, OR 97013	Res: 503-632-3025 Cell:
SANDBOTHE, DENNIS	11540 NE Klickitat Portland, OR 97220	Res: 503-254-7047 Cell: 503-572-6564
SCHILLER, NORMAN SCHILLER, CAROL	5380 SW Brandy Lane Culver, OR 97734	Res: 503-278-8023-3R Cell: 503-333-2885-N
SCHUBEL, LYN SCHUBEL, JOAN	4015 NW 127 th Street Vancouver, WA 98685	Res: 360-574-0703 Cell:
SHAVER, RALPH SHAVER, NANCY	14195 SW Black Butte Ln. Culver, OR 97734	Res: Cell: 541-788-3133-R
SHAY, WILLIAM SHAY, CAROL	6033 SE 103 rd Portland, OR 97266	Res: 503-775-0075 Cell: 503-329-6363
SHELTON, JAMES SHELTON, JUDY	5536 SW Upper Canyon Rim Dr. Culver, OR 97734	Res: Cell: 541-771-0515-Jim
STRICKER, JOHN STRICKER, LORRELL	13058 SW Hunters Loop Culver, OR 97734	Res: Cell: 503-334-9132
SWEET, CHARLES SWEET, JACKLYN	4735 SE 58 th Portland, OR 97206	Res: 503-774-6286 Cell: 971-404-6185
SWEET, GARY SWEET, MARLENE	11350 SW Pixie Lane Culver, OR 97734	Res: Cell: 541-420-0190-G
THOMPSON, JEFF THOMPSON, SUSAN	4976 SE Regents Circle Milwaukie, OR 97222	Res: 503-652-2802 Cell: 503-539-2763-J

THORNTON, RICHARD THORNTON, ADDIE	490 Thornton Way Ashland, OR 97250	Res: 541-482-0214 Cell: 541-821-6282
TRINE, WADE TRINE, KAREN	155 SW 130 th Beaverton, OR 97005	Res: 503-644-4891 Cell: 503-819-9073
TRUMP, WILFORD TRUMP, PHYLLIS	11705 SW Hunters Loop Culver, OR 97734	Res: Cell: 541-480-1044-L
WARDE, CLIFF WARDE, SHERRI	5610 SW Wildcat Lane Culver, OR 97734	Res: Cell: 503-551-7273-C
WEGENER, LEON WEGENER, PATTI	6580 SW Dee Lane Culver, OR 97734	Res: Cell: 541-350-4650
WELLS, GEORGE WELLS, ROMA	142 SE Airpark Drive Bend, OR 97702	Res: 541-382-3089 Cell: 541-410-1127
WELLS, HAROLD WELLS, ISABEL	2250 SE Wind Ryder Bend, OR 97701	Res: 541-382-4382 Cell: 541-408-0104
WEYAND, KENNETH WEYAND, LINDA	5425 SW 208 th Court Beaverton, OR 97007	Res: 503-642-1630 Cell:
WHEELER, BILL WHEELER, BARBARA	6471 SW Dee Lane Culver, OR 97734	Res: Cell: 541-771-3288-Bill
WHEELER, BILL JR. WHEELER, LINDA	11888 SW Mountain Sun Drive Clackamas, OR 97015	Res: 503-698-4060 Cell: 503-348-2111
WILLHITE, JAMES WILLHITE, FRANCES	9460 SW Bayou Drive McMinnville, OR 97128	Res: 503-472-3056 Cell: 503-550-0990
WILSON, JAMES WILSON, BARBARA	19755 SW Anderson Street Beaverton, OR 97007	Res: 503-642-1272 Cell:
YOUNG, MICHAEL YOUNG, MARTHA	1450 NE Vista Way Gresham, OR 97030	Res: 503-665-2005 Cell:

Testimony on LCDC's 3rd draft plan for an ACSC in the Metolius Basin
March 11, 2009 in Madras, OR
by Madeleine Landis, Camp Sherman resident

Thank you for listening to all of Oregon's citizen's concerns for protecting the Metolius basin and its outstandingly remarkable values from the two ill conceived destination resort proposals currently before us, by creating the far-seeing Area of Critical State Concern, or ACSC. You couldn't do more for future generations and Oregon's legacy as a green state than shepherd this thru the legislature as soon as possible.

I strongly urge you to not increase the residential units from 10 to 25 on Dutch Pacific's land and from 50 to 110 on Ponderosa Cattle's. Their land will be worth no less under an ACSC plan than it was when they bought it, and therefore absolutely no compensation for premature spending on their parts should be rewarded them, penalizing innocent taxpayers in this state for their financial foolishness, arrogance and haste.

As you have seen by the large outpouring of support for permanent protection of the Metolius basin and outrage against Jefferson County and the developers, the Metolius is not only important to us locally and state wide, but it has been recognized for over a century as a special place from the national level of our Government, starting in 1893 with President Cleveland proclaiming the basin a Cascades Forest Reserve, and in 1908, establishing Deschutes National Forest. Less than three miles west of the Dutch Pacific property runs the boundary of the spectacular Mt. Jefferson Wilderness, designated in 1968. Designation of the Metolius as a federal Wild and Scenic River followed in 1986. These were also battles at the time, but now no one would want these designations to be taken away, as they allow all people to enjoy their beauty, and they contribute to the local economies in more ways than can easily be counted. Don't ruin the destination by allowing resorts or any type of rural subdivisions in the ACSC.

These were not easy designations to achieve. Only the best of the best places qualify for such high recognition, and even fewer actually make it though the whole process. Yet even with these significant protections, we must constantly be vigilant against those who would defile them. For example, there is a claim that extraction of large amounts of groundwater very near the headwater springs of the Metolius River--the very heart and lifeblood of the basin--would cause no reduction in water levels and all that implies. We cannot afford to risk any such thing. We are the future generations those early hard battles were fought for, and now we must to do the same for the next generations.

I've been a lucky full time resident in Camp Sherman for twenty years, and have worked for preserving its integrity all this time as a volunteer in various capacities. I have seen many proposals by various private and public entities that would like to profit from the abundant natural resources we have here, such as large clear cutting plans for the signature ponderosa pine forests, paving over & greatly enlarging a campground mere yards from the Headwater springs, and commercial guiding and rafting on the river to

name a few. I have also witnessed an increased degradation of natural resources and abuse by illegal motorized vehicles, unregulated dispersed camping, and even by swelling numbers of well meaning recreationists simply loving the place to death. Now we have the latest threats to the integrity of the entire basin and all within it; these two very unpopular proposed destination resorts. There will surely be more threats after this fight is over, although you have the power to greatly stem the tide of such increasing development pressures at least in the private sector.

Even 'regular use' over time by the public of the Metolius, let alone the increased pressures that would be brought on by two new destination resorts, or even two smaller rural subdivisions--which is what the latest 25 and 110 residential unit proposals would be-- will seriously impact this area that has been protected to a point, but now needs more.

The US Forest Service wrote in the mid 1990's already that "the Metolius basin was largely at maximum capacity for recreational use", and in 2004 that "human use of the watershed is increasing, especially diversity and intensity of activities, traffic, access on roads and demand for day use recreation." Both resorts are located within areas mapped as deer and/or elk habitat by the Forest Service. 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.

Please do the right thing for the greater public good and exercise financial responsibility. Don't allow increases of residential units in the Forest Management Zone or compensate developers for money they spent that they should not have, and create the ACSC in its strongest form possible. Thank you.

March 11, 2009

Land Conservation and Development Commission
Department of Land Conservation and Development
635 Capitol Street, Suite 150
Salem, Oregon 97301-2540
Attention: Lisa Howard

Re. Testimony at hearing in Madras
Metolius ACSC Management Plan, dated 3-9-09

Again, I would like to compliment DLCD for your ability to work through the deluge of diverse opinions, and for keeping the stated objectives in focus. I especially compliment you on disregarding the alternative management plan put forth by Jefferson Co.

And to the Commission, you now have before you what I believe is a well balanced plan that addresses the Governor's objectives in protecting the Metolius. It also respects local control as embodied in the acknowledged portions of the county's community plan and zoning ordinance.

Following are a few remaining questions and comments I have on the ACSC Management Plan:

Section 1.2.3 which states the special use provisions for the Dutch Pacific property, requires that the development area "...may not exceed twenty-five *contiguous* acres". Section 2.2.3 stating the special use provisions for the Ponderosa property simply says "...may not exceed one hundred acres". The same standard of "contiguous acres" should apply to both properties, so as to minimize wildlife impacts. This may simply be an inadvertent word omission. If not, I would like to hear the reasoning behind it.

The following questions refer the two map references in Sections 2.2.3. and 2.3.3.:

In Section 2.2.3., for Jefferson County, development is allowed on property in sections 20, 21, 28 and 29. Of these, only section 21 appears to lie within the area designated as eligible for destination resorts. Is there some rationale for this or were the other three sections incorrectly referenced?

In section 2.3.3., for Deschutes County, development is allowed on property in section 21. This section of land appears to be part of the already developed Black Butte Ranch. Was it supposed to be the unimproved section earlier referred to as eligible for destination resorts?

Finally, I would like to addresses the Governor's objective of "providing a fair result for directly-affected property owners".

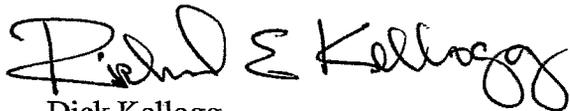
Yes, these two developers have incurred significant expense in pursuing their goal. But let us be honest about the situation. This was purely a speculative venture. Both parties recently bought these properties zoned for timber production. They then proceeded with the hope that they could be rezoned to allow destination resorts – a much higher and more valuable use. With rezoning not yet fully approved, they proceeded to spend significant sums on planning consultants, lobbyists and a campaign to sell their idea and refute opposition.

This was, by any measure, a high risk speculative adventure with zoning approvals not in place. Regardless of their encouragement along the way by county officials, and their misinterpretation of the Governor's will in protecting the Metolius, this was their decision. They should be held accountable for that judgment –not the State, not DLCD, and certainly not the natural state of the Metolius forest lands.

I see very little rationale for allowing even limited development to impact these forest lands and wildlife values. Although this may be politically necessary to appease misinformed property rights legislators, it represents a compromise to the integrity of what exists in the Metolius.

Applying this ACSC designation and its protective management plan is well deserved and is overdue.

I thank you for your steadfast efforts in protecting this Oregon treasure,

A handwritten signature in black ink that reads "Dick Kellogg". The signature is written in a cursive, flowing style with a large, prominent "D" and "K".

Dick Kellogg
26247 Metolius Meadows Drive
Camp Sherman, Oregon, 97730
dicksuekellogg@aol.com

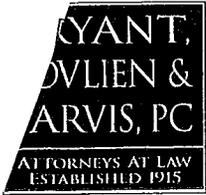


EXHIBIT: _____ #1
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: 3-11-09
PAGES: _____
SUBMITTED BY: _____

November 15, 2006

Neil R. Bryant
Robert S. Lovlien
Lynn F. Jarvis
John A. Berge
Sharon R. Smith
John D. Sorlie
Mark G. Reinecke
Melissa P. Lande
Kitri C. Ford
Paul J. Taylor
Christopher A. Bagley
Jeremy M. Green
Kelly L. Schukart
Kyle D. Wuepper
Helen L. Eastwood

GREGORY POYSKY
16454 SYLVESTER RD., SW
SEATTLE, WA 98166

Re: Gregory Poysky/Measure 37 Claim
Jefferson County Claim No.: 06-M37-20

Dear Mr. Poysky:

Enclosed please find a copy of your Measure 37 Waiver signed by the Jefferson County Board of Commissioners. I believe this waiver accurately reflects the waiver that you requested and will allow you to divide your parcels into lots at least 2.5 acres in size.

We have submitted a copy of this Waiver to the State of Oregon to supplement the State's record with regard to your application. A copy of our letter to the State of Oregon is enclosed.

Please call me if you have any questions.

Sincerely,

HELEN L. EASTWOOD *(cc:alk)*

HLE/alk

Encl.

12910-001 107.doc

*was APPROVED
BY JEFFERSON COUNTY.*

BEND
591 S.W. Mill View Way
Mail: P.O. Box 1151
Bend, Oregon 97709
Phone: (541) 382-4331
Fax: (541) 389-3386

WWW.BLJLAWYERS.COM



BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF
THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR) FINAL ORDER
COMPENSATION UNDER ORS 197.352) CLAIM NO. M130208
(BALLOT MEASURE 37) OF)
Gregory Poysky, CLAIMANT)

Claimant: Gregory Poysky (the Claimant)

Property: Township 11S, Range 12E, Section 13: tax lot 1001
Township 11S, Range 12E, Section 23: tax lot 1700
Township 11S, Range 12E, Section 24: tax lot 1900

Township 11S, Range 13E, Section 19, Tax lot 200

Jefferson County (the Property)

Claim: The demand for compensation and any supporting information received from the Claimant by the State of Oregon (the Claim).

Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this order.

ORDER

The Claim is approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Gregory Poysky's partition of the 610.25-acre subject property into 1- to 5-acre parcels or to his development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after August 7, 1975. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired the property on August 7, 1975.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the property for the use described in this report, subject to the standards in effect on August 7, 1975

IN REALITY THE LAW DID NOT GO INTO EFFECT UNTIL 1976. I WAS NEVER ABLE TO PRESENT MY CASE FINAL ORDER BECAUSE OF MEASURE 49.

CH
CHRISTOPHER J. KELLEY
972 OLD STAGE RD.
CENTRAL PT OR 97502

RE: Round Butte Property - owned by
Gregory Poylsky

Thanks for the short time @ the Madras mtg.
Quick Review.

1970 - POYLSKY, MENEY, TYLER - BUILT 3000+ ACRES.

FORMED ROUND BUTTE LAND DEVELOP. CORP.

DEVELOPED UNITS I, II ESTABD ROADS ON UNIT III
PROPERTY BY KRELOSS'S ZONING MAP SHOWS IT WAS
ZONED RR 2.5 ACRES SAME AS CROOKED RIVER RANCH.

DUE TO ONE OUR PARTNER'S BUSINESS PROBLEMS UNRELATED
TO ROUND BUTTE INC DISSOLVED TO CORP. MY FATHER
BOUGHT EVERYTHING NORTH OF HEDGECOCK LANE & I & MY
BROTHER BOUGHT 800 APPROX SO. OF HEDGECOCK LANE.
I IN TURN BOUGHT OUT MY BROTHER.

1976 LDC - INACTIVE RULES BUT @ THE TIME I
NEVER REALIZED HOW UNBENDING THE NEW LAWS WERE,
I THOUGHT THAT UPON APPEALS IT WOULD BE ZONED
BACK - NO DA!

IN REALITY THE LACK OF LDC'S FLEXIBILITY &
IRON FIS. MEASURE 37 WAS PASSED. COMMON SENSE
- HOW'S THAT MY PROPERTY ~~WAS~~ SHOULD HAVE BEEN
EXEMPTED, IN THE 30 YEAR PLUS I KNOW OF
ONLY 2 CASES WERE AN LDC. ~~WAS~~ APPEAL WGN.
NOW HERE IT IS 2009 AND MAYBE THERE WILL
BE SOME KIND OF SWAP.

THE 3 MILE LIMIT NEXT TO HIGH VALLEY
FARMLAND GOES TO THE IDEA THAT ONE SHOE FITS
ALL. CARY HARRIS'S SPEECH WAS FEROCIOUS IN THAT
THEY WILL NEVER EXPAND THE IRRIGATION DIST NOR
POOL IT AHEAD FARMING. I GROW UP ON
2400 ACRES MY FATHERS FARM SO I RESPECT
HIS OPINION I DO NOT BUY IT.

THE ONLY FARMLAND THERE IS SOME CRAZING
DAY LAND CATTLE.

IN 1996 MY FATHER SOLD HIS PROPERTY TO
FRANK McCALL WITHIN TO THE BEST OF MY
KNOWLEDGE HAS NOT FARMED & IS COLLECTING SUBSIDY
ON THE 700+ ACRES OF DAY LAND CATTLE.

I ALSO SOLD HIM 195 ACRES ON THE CORNER OF
BENNETT CANYON MOUNTAIN VIEW DRIVE IN 1996.

I CURRENTLY OWN 637 ACRES + AND HAVE A
100,000 GAL. WATER RESERVOIR NEXT TO UNIT II ON UNIT III
OWNED BY THE DESCHUTES VALLEY WATER DIST.

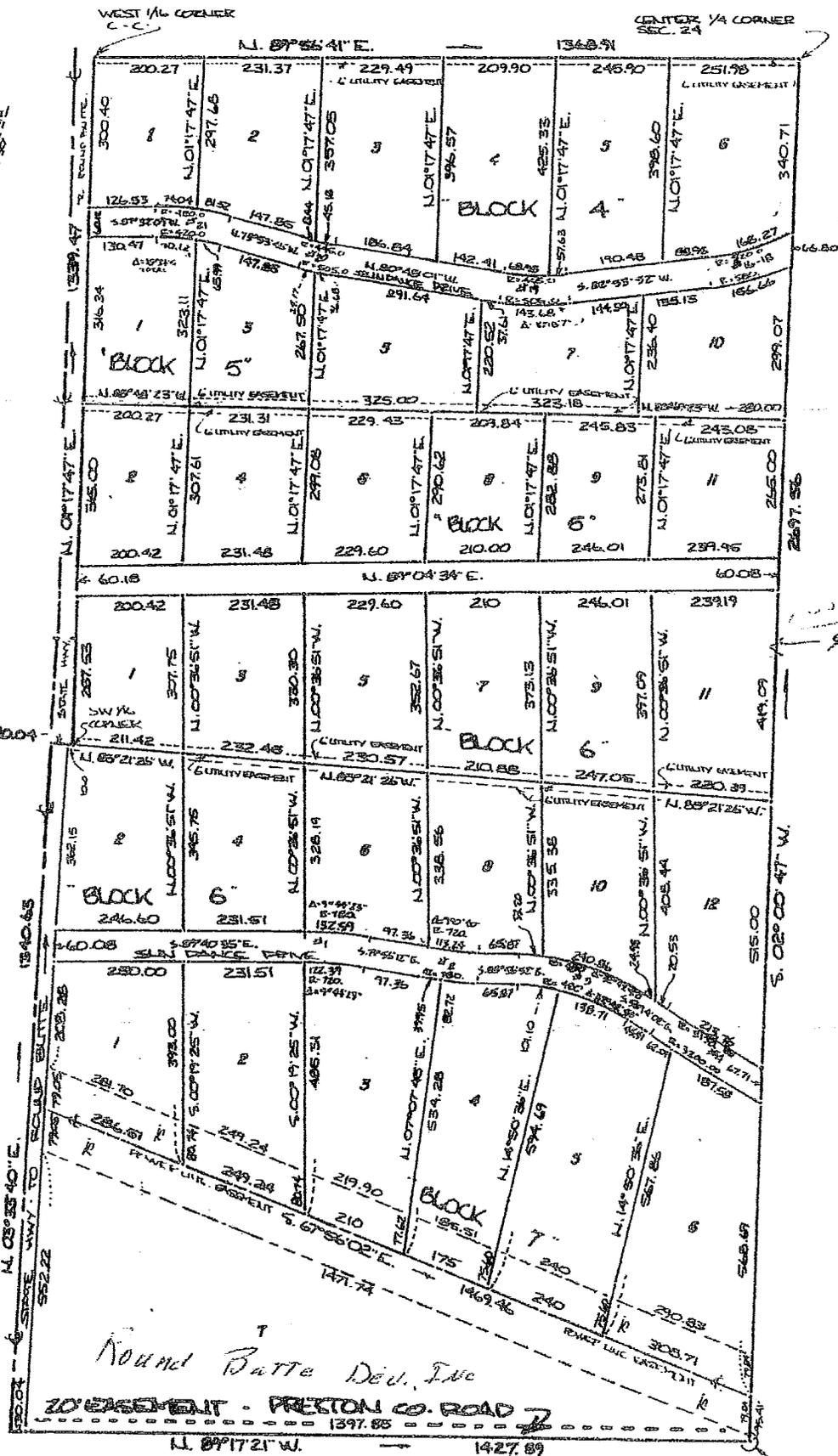
ALL MY PROPERTY IS GOOD FOR IS JACKRABBIT AND HOUSES.

IF YOU HAVE ANY QUESTIONS PLEASE CALL
ME @ 253-261-3714

CREE FOSTER
16454 Sylvester Rd S.W.
SEASIDE, WASH 98166

ROUND BUTTE RECREATIONAL AREA - UNIT I

UNIT II

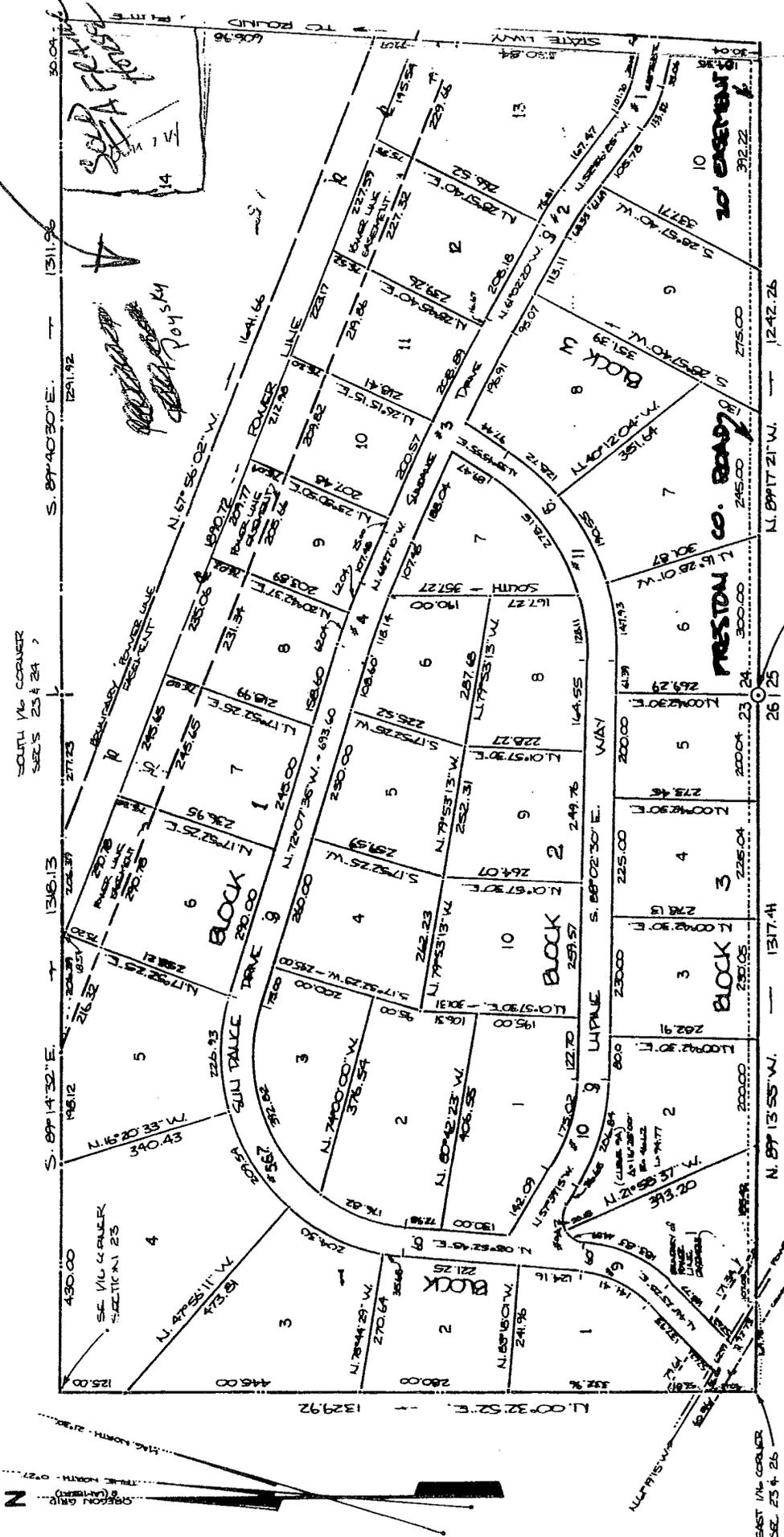


ROUND BUTTE RECREATIONAL AREA - UNIT I

ROUND BUTTE RECREATIONAL AREA - UNIT I

JOHNS REAL ESTATE, Sales
 Don & Barbara Johns
 Br. Office Ph. 546-3423
 Madras Office 475-3821

*Jackie
 for Bob*



POINT OF BEGINNING
 CORNER SEC. 9
 23, 24, 25 & 26 2" IRON PIPE

Bob

1121113

REGON GRILE
 (Lambert)
 TRUE NORTH - 0727
 N

SKIDMORE LAND USE SERVICES, LLC

LAND USE AND ENTITLEMENT CONSULTING
2570 NW SACAGAWEA LANE
BEND, OR 97701
(541) 350-3783 (541) 317-0551 FAX
JONSKI@BENDBROADBAND.COM

March 11, 2009

Land Conservation & Development Commission
c/o Jon Jinings, DLCD
888 N.W. Hill Street, Suite 2
Bend, OR 97701
jon.jinings@state.or.us

EXHIBIT: _____ #1
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: 3-11-09
PAGES: 4
SUBMITTED BY: Jon Skidmore

Dear Commissioners,

I appreciate this opportunity to provide written testimony on the proposed Metolius Area of Critical State Concern (ACSC). I am the project manager for Metolian, the proposed eco-resort whose innovative approach to resort development will not be permitted to proceed if the ACSC is adopted. As our governor has been involved in recruiting green and sustainable technologies to Oregon in an effort to expand our environmentally conscious reputation it is hard to understand why our sustainable and stewardship-based model of development is not encouraged. Please keep in mind that our development will enhance the surrounding environment and the Metolius River 4 miles to our east by providing real dollars into restoration projects throughout the basin.

In a conversation with Richard Whitman last Friday he said to me that water is not the Department's concern with the Metolian proposal. Rather the issues of concern are focused on wildfire and wildlife. He also said that Metolian will bring too many people into the basin.

The planning process in Oregon is grounded in fact. A proposal is not approved or denied until the merits of the proposal are reviewed and debated. We have an application that addresses the Jefferson County standards relating to Destination Resorts. In that application we address the wildfire concerns and have worked with the Sisters-Camp Sherman Fire District to adequately plan the site to reduce such concerns. Further, we are contemplating adopting the Fire Wise community standards as part of our CCRs. We are working with Pacific Habitat Services and ODFW to adequately gauge our impacts on wildlife and create a plan to mitigate or avoid such impacts as possible. The fact that we will be bringing people into the basin isn't negative as our public lands are for all of us to enjoy. However, what we will provide is a level of education that will raise the bar with how people interact with the forest and we will require our guests to provide stewardship through financial contributions. We feel obligated to provide such financial support to our environment in this era of slashed federal and state budgets.

The main problem with the proposed ACSC Management Plan is that it lacks the factual basis needed to drive public policy. The management plan is conclusionary in its approach without providing the evidence relied upon to arrive at such conclusions. For instance, on page 26 of the document the plan states that the two resorts propose approximately 3500 overnight and residential units. Metolian's master plan proposes 630 total units. However, no proposal has been made by the Ponderosa group regarding the number of units planned for their site. It is inappropriate for a State agency to include such claims in a document that will set public policy without the facts to support it. I could list many other similar instances where the management

plan is misleading, inaccurate or speculative in nature however the aggressive public input schedule for this “planning” process precludes it.

As a member of the American Institute of Certified Planners I am bound by a set of ethical standards. One of which is especially relevant in this case:

“We shall not deliberately or with reckless indifference fail to provide adequate, timely, clear and accurate information on planning issues.”

Please consider the message above. If LCDC engages in emotionally based planning without the Goal 2 required factual basis you will be setting a horrible precedent. Our state land use system is nationally recognized due to the thoughtful nature of the goals, guidelines and review process including appeals. Voting to approve the proposed management plan undermines the legitimacy of the land use system and process.

I appreciate your service to our state by sitting on the Commission. However, I urge you to make the ethical decision and vote to NOT approve the proposed Metolius Area of Statewide Critical Concern Management Plan. The rest of the state is watching.

Thank you,

A handwritten signature in black ink, appearing to read "Jon Skidmore". The signature is fluid and cursive, with a large initial "J" and "S".

Jon Skidmore, AICP

“Yes, this river must be saved: But Oregon can protect the precious Metolius River without subverting its land-use system and water laws?”

The Oregonian

Sunday, June 10, 2007

The Metolius River is one of Oregon's natural wonders, and if you've seen the magical place where the river bubbles out of the ground, you, too, probably reflexively oppose any development, anywhere anyone claims it would harm the river.

Jefferson County is considering two destination resorts, each only a few miles away from the headwaters of the Metolius. Maybe you don't need to hear anything else.

Not the specific plans for either resort, which have little in common except their proximity to the river. Not how much water they would use, or where they would get it, or whether it would likely impact those springs out of the earth.

Nineteen members of the Oregon Senate had the same protective response. They passed Senate Bill 30, banning destination resorts within three miles of the Metolius Basin. The bill has moved to the House, and a vote there is coming soon.

It is tempting just to recall the gin-clear spring water plunging into the Metolius at Canyon Creek, and then add our voice to all those clamoring to stop any development that could conceivably diminish the river, and let the facts be damned.

But the shallow, muddy and entirely partisan debate in the Legislature is a striking contrast to the stunningly clear Metolius.

You have lawmakers eager to override more than a year of work by Jefferson County officials, including more than a dozen public hearings, to map the two proposed resort sites.

You have people on the other side cynically suggesting that SB30 is all about the financial interests of Sen. Betsy Johnson, D-Scappoose, whose family for decades has generously allowed public access to the private land it has long owned and protected around the head of the Metolius.

Is this any way for a state to decide a critical land-use issue? Oregon has a statewide land-use system that instructs counties to follow an established process to site destination resorts. It has an appellate system for people to challenge local decisions. It has a long established body of water law.

SB30 is a statement that lawmakers have lost faith in Oregon's entire system of protecting natural resources -- beginning with Jefferson County's ability, or willingness, to protect the most important resource within its boundaries.

Maybe, in time, that break in faith will be justified, and so will some protective action by the Legislature. But not yet. All the facts aren't in. All we've seen is an emotional, superficial debate -- not a thoughtful, sophisticated discussion about the merits of these proposals, and their likely impact on the river basin.

The Legislature has shoved the projects together like bookends. In fact, they could hardly be more different. One, known as the Colson proposal, is an enormous development that would stretch across Green Ridge and potentially include thousands of homes and two golf courses. It's a project on the scale of Sunriver, five times the size of nearby Black Butte Ranch.

The other, known as Dutch Pacific, would be much smaller. It would sit on about 600 acres of logged forest across Oregon 20 from Suttle Lake. The developers are talking about creating a new kind of destination resort in Oregon, one that would be lighter on the land than existing developments. It wouldn't have a golf course, for example.

We'll concede that the broad outlines of the Colson project make us shudder. It is awful to imagine a development the size of Sunriver planted on the shoulder of the Metolius Basin. But the other project, Dutch Pacific, ought to be considered on its own.

If the House insists on joining the Senate in short-circuiting the state's land-use process, it ought to amend the bill to block massive development in the Metolius Basin, and let other, less damaging plans apply through Oregon's land-use system.

The Metolius is an Oregon treasure. But this state is full of places where a destination resort would set off a furor -- Wallowa Lake, Steens Mountain, Crater Lake, McKenzie River. The right protection for all of them is not a hurried piece of legislation, but a land-use process that Oregonians can believe in, and trust.



Native Fish Society, 7830 SW 40th, Suite 6, Portland, OR 97219
Conserving biological diversity of native fish and protecting their habitats

Metolius Hearing - ACSC Draft Plan
Madras, March 11, 2009

Members of the Oregon Land Conservation and Development Commission, and
Director Whitman

My name is Bill Bakke and I'm the Executive Director of the Native Fish Society. We have approximately 500 members in Oregon and 21 River Stewards across the State, including for the Upper Deschutes. Protecting the Metolius and its influence area is one of our top priorities and we've followed the Metolius Area of Critical State Concern (ACSC) process closely.

We commend DLCD staff and Director Whitman for a job well done. The ACSC process brought together the land use, flow, water quality and native fish habitat challenges of an exceptionally important area in an unprecedented manner.

We urge LCDC to use this science-based process for other exceptional Oregon watersheds. As stated in three letters from Oregon agencies to Governor Kulongoski in 2007 regarding SB 30, the previous implementation of Oregon's requirements for protecting waters like the Metolius have not been effective. As a consequence Oregon's native salmonids continue to decline. The ACSC process places higher priority on special areas like the Metolius and focuses the implementation of our Oregon programs. It is leading to a good solution for the Metolius.

We support the excellent DLCD third draft plan with a few clarifications as outlined in a separate statement by our Upper Deschutes River Steward. We urge your adoption of the ACSC recommendations for submittal to the Legislature and Governor Kulongoski.

EXHIBIT: _____ # 1
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: 3-11-09
PAGES: 1
SUBMITTED BY: Tom Davis for
Bill Bakke



Native Fish Society
River Steward - Upper Deschutes



Metolius Hearing – ACSC Draft Plan
Madras, March 11, 2009

**Members of the Oregon Land Conservation and Development Commission,
and Director Whitman**

My name is Tom Davis and I'm the volunteer Upper Deschutes River Steward for the Native Fish Society. Protecting the Metolius and its influence area is one of our top priorities and we've followed the Metolius Area of Critical State Concern (ACSC) process closely.

DLCD staff and Director Whitman have done an excellent job and we support the recommended ACSC, and Management Plan. The science-based ACSC process brought together the land use, streamflow, groundwater, water quality and native fish habitat challenges of an exceptionally important area in an unprecedented manner.

I'm submitting my statement and a statement of overall support from our Director, Bill Bakke. I recommend a few specific changes as follows:

- Areas 1 and 2 on the current map recognize the science-based natural resource constraints and we support full protection within those areas from all large developments.
- To avoid unnecessary concerns please ensure that activities, developments or home improvements can proceed that are, a) consistent with existing forest, agricultural or other current zoning, b) subdivisions approved prior to March 1, 2009, and c) within the urban growth boundaries of existing cities.
- Other developments should not be allowed. The units recommended in the current ACSC draft for the three properties mapped as eligible for resorts exceed that precedent-based limit and should be reduced.
- Please add "the potential for" to the end of the sentence "Any new development allowed by the change will not result in:" on page 37.

Thank you for your great effort.

H. Tom Davis



EXHIBIT: _____ #1
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: 3-11-09
PAGES: 1
SUBMITTED BY: Tom Davis



534 SW Third Avenue, Suite 300, Portland, OR 97204 • 503-497-1000 • fax 503-223-0073 • www.friends.org

Southern Oregon Office • PO Box 2442 • Grants Pass, OR 97528 • 541-474-1155 • fax 541-474-9389

Willamette Valley Office • 189 Liberty Street NE, Suite 307A • Salem, OR 97301 • 503-371-7261 • fax 503-371-7596

Central Oregon Office • PO Box 242 • Bend, OR 97709 • 541-382-7557 • fax 541-317-9129

March 10, 2009

Land Conservation and Development Commission
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540

EXHIBIT: _____ Item 1
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: 3-11-09
PAGES: 3
SUBMITTED BY: Carol Macbeth

re: Metolius Basin Area of Critical State Concern Management Plan

Dear Commissioners,

On behalf of 1000 Friends of Oregon, thank you for the opportunity to review and comment on the March 9, 2009 draft Metolius Basin Area of Critical State Concern (ACSC) Management Plan. 1000 Friends of Oregon is a statewide organization that works with Oregonians to enhance our quality of life by building livable urban and rural communities, protecting family farms and forests, and conserving natural and scenic areas.

We are grateful for the Land Conservation and Development Commission’s (LCDC’s) attention to the potential impacts of destination resorts on the resources of the Metolius Basin and for the inclusive outreach process that has allowed over 200 people to provide testimony. After reviewing the version of the Management Plan that was released yesterday, we support the prohibition of resorts in the Metolius, but we oppose development at Round Butte and we oppose creating new development rights within the ACSC.

1) Support No Resorts in the Metolius

We strongly agree with DLCD that resorts are not an appropriate use in and near the Metolius basin. This is an important step in protection of this unique natural area in Oregon. However, changes in the management plan through the proposed amendment process could remove large areas from the ACSC and allow intensive development within the ACSC.

The Management Plan should include language to explicitly clarify that resort development under the exception process will not be allowed in the Metolius ACSC. Also, to prevent a reduction in the size of the ACSC over time, legislative approval should be necessary for any change to the ACSC boundary of more than five acres and only three cumulative changes should be allowed without legislative approval. These adjustments are important if the Metolius is to be protected long-term.

2) Oppose Development in Area 3 (Round Butte)

We strongly oppose the possibility of destination resorts in “Area 3” at Round Butte within Jefferson County’s North Unit Irrigation District. The irrigated croplands of Jefferson County are world-class. They will suffer irreparable harm from the resulting fragmentation of the agricultural land base.

The farms of the North Unit produce an impressive variety of specialty crops, including 80% of the nation’s carrot seed. Seed crops need to be protected from cross-pollination, so the relative isolation of this farmland is ideal. A resort near Round Butte would be an island of development within the irrigation district. This poses an unacceptable risk to the County’s thriving farm sector at a time when its gross farm sales have been steadily

increasing over the past three years and when agricultural sales in Jefferson County jumped 29% in the past year alone¹.

Round Butte development would introduce conflicting uses that will threaten the long-term viability of North Unit agriculture by increasing the costs and liabilities of the district's working family farms. As noted in the earlier plan, access to Round Butte is through Belmont Lane, which bisects farmland west of Madras. This puts farmers in an untenable, and unprofitable, position of conducting industrial activities with nonfarming residents driving through this farming area. Consequent drops in agricultural production will disrupt a County economy that is heavily dependent on the activity of its agricultural sector.

The starting point for any discussion of resort siting in this area should in any case be three miles from high value cropland as defined by soil maps generated by the Oregon Department of Agriculture, not three miles from the much less protective "high value cropland as defined by Jefferson County". Three miles from the boundary of North Unit Irrigation District makes sense to avoid the problems of siting an island of development within a productive farmland.

3) Object to Additional Development Rights within the ACSC

The Management Plan creates development rights for at least 135 houses within the ACSC – above and beyond any homesites that can be currently established – as compensation for developers. However, the developers have no valid claim for compensation because the ACSC is not taking away any development rights held by the developers. Granting these additional development rights out of whole cloth to compensate developers for the loss of development rights they never had is a bad deal for Oregon.

We agree with the text of the draft plan where it states:

“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 ACSC does not change the development rights held by the developers so no additional compensation is due. The Jefferson County property owners acquired land zoned for timber management. Without the proposed entitlements they still possess all of the residential development rights that were on the lands when they acquired them.

The properties in question have been managed for timber production for over a century and the property owners in question engaged in a speculative risk that they could convert these working forestlands into developed uses despite the Jefferson County Goal 5, state Scenic Waterway, federal Wild and Scenic River, and tribal Treaty protections in place for the resources of the Metolius Basin.² Because the ACSC does not

¹ Oregon State University. 2009. Oregon Agricultural Information Network: “2008 Oregon County and State Agricultural Estimates”. <http://oain.oregonstate.edu/>

² The proposed entitlements are also incompatible with the timber production and wildlife habitat uses of the underlying zones and would extend the wildland urban interface far into stressed Ponderosa pine forests that are rated at the highest level of risk for catastrophic wildfire by the Oregon Department of Forestry. (ODF, 2007: “Oregon Communities at Risk” <http://www.oregonexplorer.info/Wildfire>). The Management Plan provides extensive documentation of the enormous risks to life and property associated with further residential development in these fire prone forests and yet inexplicably proposes granting development rights for remote rural subdivisions there.

change the development rights held by the developers, we are opposed to allowing additional development in the ACSC in the form of compensatory development rights.

However, as a backstop, we agree with the change in the Management Plan to allow affected property owners in the Basin to pursue claims for compensation under Measure 49. Measure 49 has provisions for compensating landowners for loss of value of their land due to new regulations.³ Like any other landowner, the developers can follow the provisions of the law and make a Measure 49 claim if their land loses value in a “residential use of real property” as a result of the ACSC designation.

Thank you for your attention to these views.

Best regards,



Carol Macbeth
Central Oregon Advocate
1000 Friends of Oregon

³ Even if the land had a destination resort overlay no compensation would be due under Measure 49 as a result of ACSC designation because a destination resort is not a “residential use of private real property” that is eligible for compensation under Measure 49. Measure 49 allows a landowner to apply for compensation “[i]f a public entity enacts one or more land use regulations that restrict the residential use of private real property. . . .” ORS 195.305(1) (2008). A destination resort is not a “residential use of private real property” that is eligible for compensation under Measure 49. Instead, “[a] destination resort is a self-contained development that provides for visitor-oriented accommodations and developed recreational facilities in a setting with high natural amenities” – a commercial use. ORS 197.445 (2008). Destination resorts must contain a certain number of units for overnight lodging and the developer must spend a certain amount of money on “developed recreational facilities and visitor-oriented accommodations. . . .” ORS 197.445. While a destination resort may provide individually owned lots or units, it is not required to. Any residential use of property is ancillary to the commercial nature of the destination resort. Destination resorts are not a residential use of property that is compensable under Measure 49.

Land Conservation and Development Commission
635 Capitol Street, Suite 150
Salem, Oregon 97301-2540

EXHIBIT: _____ Item 1
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: 3-11-09
PAGES: 2
SUBMITTED BY: Tam Landis

To: LCDC Commissioners
From: Thomas Landis, concerned citizen
Regarding: Metolius Watershed ACSC Management Plan, Draft #3 (The Plan)

Do not bail out Jefferson County for unwise planning.

Do not bail out land developers for unwise business decisions.

Today bailouts are all the rage. The federal government is bailing out businesses right and left. Unwise decisions by the government and by private businesses led to these bailouts. The general public is suffering mightily because of these unwise decisions.

The bailout provision in the ACSC Plan is wrong. The Plan itself is a laudable document, well thought out and backed up by reasoning that is hard to fault. However, the provision that grants developers the right to develop 25 residential homesites in the heart of the Metolius Basin undoes a lot of what the Plan sets out to do. Certainly, 25 residences is a far cry from the several hundred envisioned by the developer, but even 25 is excessive, far too many to protect the outstandingly remarkable natural values of the basin. The reasoning behind this provision is weak, making vague reference to possible measure 49 claims and the reimbursement of developers for money lost.

Land speculators often lose money when they base their decisions on uncertain factors. When these factors line up for them they can make vast amounts of money. They take chances. Should they be bailed out when the uncertain factors they depend upon for making money do not turn out the way they wish? Dutch Pacific gambled that land use processes would allow them to build a destination resort that would bring them huge windfall profits. Now the land use process is going against their goals. Should they be bailed out at the expense of the public good? Their land is worth no less today than it was the day they bought it.

Jefferson County officials told the developers that they could build a destination resort in the heart of the Metolius Basin. This was long before a destination resort map had been acknowledged. In fact, that map has still not been acknowledged, yet the developers went on with their planning, pouring money into the project. Both the county and the developers were premature in their decisions. Was this wise? Certainly not! Should the people of Oregon pay to bail out developers and county officials for these unwise decisions?

Jefferson County based their "new" comprehensive plan on resource inventories that were woefully out of date. They have admitted as much and this admission is documented in the ACSC Plan. Both federal and state agencies concur that the county's resource inventories are flawed. If, as they should have, Jefferson County had brought

Resolution No. 2009-04

**A RESOLUTION REPEALING RESOLUTION 2007-07, SUPPORTING LOCAL
LAND USE PLANNING RIGHTS AND EXPRESSING CONCERN ABOUT THE
IMPACT OF NEARBY DESTINATION RESORTS ON THE CITY OF SISTERS**

WHEREAS, in 2007, the Sisters City Council adopted Resolution No. 2007-07 in support of SB 30 (2007 Legislative Assembly) which sought to protect the Metolius River watershed, and scenic and environmentally sensitive areas around the Metolius by prohibiting the siting of destination resorts in or within three miles of the Metolius River basin; and

WHEREAS, the Metolius River is a precious asset to the state of Oregon, integral to the identity and livelihood of the Greater Sisters Country, and should be protected; and

WHEREAS, Oregon's land use planning system is a model in the nation and has served to protect the state's natural resource qualities and lands for decades by providing a framework for orderly growth and requiring adverse environmental impacts associated with new development to be identified, debated and mitigated; and

WHEREAS, new development also brings jobs and economic opportunity to all Oregonians and benefits economically distressed communities like Sisters; and

WHEREAS, new development from nearby destination resorts will impact Sisters and these impacts need to be identified, debated and mitigated locally and within the region;

NOW, THEREFORE BE IT RESOLVED by the Common Council of the City of Sisters that Resolution No. 2007-07 is hereby repealed; that the City of Sisters supports locally controlled land use planning; that the City continues to be concerned about the impact of nearby destination resorts on the city of Sisters; and that the City looks forward to working with Jefferson and Deschutes counties to mitigate these impacts.

Adopted by the Common Council of the City of Sisters this 5th day of March, 2009, by the following vote:

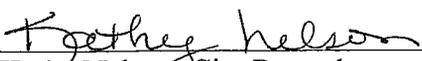
Mayor Lon Kellstrom	<u>Yes</u>	Councilor William Merrill	<u>No</u>
Councilor Sharlene Weed	<u>No</u>	Councilor Pat Thompson	<u>Yes</u>
Councilor Jerry Bogart	<u>Yes</u>		

Approved by the Mayor this 5th day of March, 2009.



Lon Kellstrom, Mayor

ATTEST:



Kathy Nelson, City Recorder

DAVID C. ALLEN
ATTORNEY AT LAW
THE HARRIMAN BUILDING
212 S.W. 4TH STREET, SUITE 304
P.O. Box 577
MADRAS, OREGON 97741
(541) 610-9171
dallen@dalawco.com

March 11, 2009

Land Conservation and Development Commission
Chair John VanLandingham

RE: Metolius Basin Area of Critical State Concern ("ACSC")
Jefferson County Written Testimony: ACSC Technical and Procedural Errors

Dear Chair Landingham and Members of the Commission:

I provide this written testimony on behalf of my client, Jefferson County Oregon.

Jefferson County would like to thank the Sub-Committee and DLCD staff for all of their hard work these past 56 days. Jefferson County has spent much of its time with DLCD staff and sub-committee members complaining about the short time frame suggested by Governor Kulongoski in his December 19, 2008 letter to the agency and the Commission. Jefferson County believes the Commission should make a recommendation to the Governor, not the legislature. The recommendation should be: the Commission needs more time to adequately address and research the issues related to an area of critical concern in the Metolius Basin.

Jefferson County believes the current ACSC process violates several statutes, administrative rules and Statewide Planning Goals. The highly irregular and accelerated timeframe has been a showpiece for why local control, with a transparent and deliberate process, should be defended. Because the ACSC process is so undefined, the County submits this technical memorandum to preserve alleged error with the process. While we understand LCDC's role in the ACSC process may be considered legislative or advisory, and therefore strict rules of "waive it or raise it" and exhaustion of remedies may not technically apply, the process is so uncertain the County feels obligated to raise the following issues so as to preserve its potential rights to future appeal.

BACKGROUND INFORMATION

On February 12, 2009 Jefferson County provided the Sub-Committee a copy of its entire local record related to destination resort mapping.¹ In excess of 4, 000 pages, the County's record evidences a thorough, transparent and citizen involved process. If you have not yet done so, Jefferson County respectfully requests you read and familiarize yourself with the contents of its local proceedings. To assist your understanding of the local process to date, follows is a detailed timeline of Jefferson County's efforts and involvement related to destination resort mapping:

Jefferson County Destination Resort Mapping Timeline

January 2006	Advisory Group starts
March 2006	Planning Commission initiates the process to hold public hearings on Destination Resorts mapping.
June 1, 2006	Planning Commission hearing (Comprehensive Plan)- Madras
June 17, 2006	Planning Commission hearing (Comprehensive Plan and Zoning Ord)- CRR
June 29, 2006	Planning Commission hearing (Zoning Ordinance)- Madras
July 6, 2006	Planning Commission hearing (Comprehensive Plan and Zoning Ord)- Madras
July 22, 2006	Planning Commission hearing – Camp Sherman
August 3, 2006	Planning Commission Deliberations
August 17, 2006	Planning Commission Deliberations
August 24, 2006	Planning Commission Deliberations
August 24, 2006	Planning Commission Approved
September 6, 2006	County Commissioner Public Hearing – Madras
September 13, 2006	County Commissioner Public Hearing – Madras
September 27, 2006	County Commissioner Public Hearing – CRR
October 4, 2006	County Commissioner Public Hearing - Camp Sherman

¹ It should be noted Jefferson County's record submittal has not been uploaded to the LCDC website on this issue.

October 11, 2006	County Commissioner Public Hearing – Madras
October 25, 2006	County Commissioner Deliberations
November 8, 2006	County Commissioner Public Hearing - Madras
November 29, 2006	County Commissioner Deliberations
December 6, 2006	County Commissioner Deliberations
December 13, 2006	County Commissioner Deliberations
December 20, 2006	County Commissioner Deliberations
December 21, 2006	County Commissioners approved Destination Resort map.
December 27, 2006	County Commissioners signed Ordinance Nos. O-01-07, O-02-07, O-03-07 and O-04-07
January 17, 2007	Appealed to LUBA
March 5, 2007	Senate Bill 30 Sponsored by Senator WESTLUND, and Senators BATES, BROWN, BURDICK, CARTER, DECKERT, JOHNSON, WALKER, COURTNEY is introduced. The bill prohibits Destination Resort mapping in the area of the Metolius Basin, plus three miles. The bill includes a retroactive date to December 25, 2006.
May 22, 2007	Senate passes SB 30 as amended. Amendments include removing the 3-mile Metolius Basin buffer outside of Jefferson County and would allow development within the 3-mile Metolius Bass buffer inside Deschutes County (Black Butte Ranch).
June 22, 2007	Governor Kulongoski writes letter to Legislative Assembly opposing SB 30 and requests state agencies review existing laws.
September 6, 2007	LUBA Hearing
February 11, 2008	LUBA Ruling – Partially sustained COLW’s and the Tribes first and second assignments of error. Said Ordinance O-03-07, which amends the JCCP, must be remanded, and since the JCZO amendments adopted by Ordinance O-04-07 depend on the JCCP amendments adopted by Ordinance O-03-07, changes in O-04-07 may be required. Therefore, they remanded Ordinance O-04-07 as well.
March 3, 2008	LUBA Ruling Appealed to Oregon Court of Appeals

May 8, 2008	Court of Appeals Oral Argument
July 9, 2008	Court of Appeals upholds LUBA Ruling – Final Order
December 2, 2008	Board of Commissioners schedules December 30, 2008 hearing to hold hearing on LUBA remand issues
December 19, 2008	Governor Kulongoski writes letter requesting Area of State Critical Concern to LCDC (does not send letter to Jefferson County)
December 24, 2008	Oregon State Supreme Court grants review
December 30, 2008	County Commissioners cancel Public Hearing due to Supreme Court granting review.
January 7, 2009	County Commissioners receive Governor Kulongoski’s December 19, 2008 letter.
January 8, 2009	Richard Whitman (DLCD) meets individually with County Commissioners to discuss Legislative Concept 705 (currently HB 2226) and Governor Kulongoski’s December 19 th letter. Whitman informs the Commissioners that he <u>might be</u> recommending to LCDC they initiate the ACSC process during the January meeting.
January 14, 2009	County Commissioners meet to discuss the County’s position on the ACSC. Commissioners vote to oppose the ACSC process if it includes an outright ban of Destination Resorts in the entire Metolius Basin.
January 14, 2009	DLCD informs the County Commissioners that the ACSC will be on the LCDC Agenda on January 15, 2009.
January 15, 2009	LCDC votes to initiate the ACSC process.
February 11, 2009	LCDC Sub-Committee holds hearing in Sisters.
February 12, 2009	LCDC Sub-Committee holds hearing in Madras.
February 18, 2009	County Commissioners meet with Richard Whitman (DLCD) to discuss the ACSC process and “next steps”. Whitman informs the Commissioners that DLCD will release a “2 nd version” of the draft ACSC that will include an alternative Destination Resort site in Jefferson County within the prohibited 3-mile Farm Land buffer.

- February 23, 2009 DLCD sends County the “2nd version” of the draft ACSC, which includes the mapping of approximately 1,800 acres of farm land near Round Butte.
- February 26, 2009 LCDC Sub-Committee holds hearing in Madras. Jefferson County announces it will hold a March 5, 2009 public hearing to discuss the 2nd version of the ACSC and will release a County Protection Plan as an alternative.
- March 3, 2009 Jefferson County releases a draft Protection Plan that includes an 112,294 acre zone of protection 6 miles wide along the Metolius River.
- March 5, 2009 County Commissioners held a public hearing to gather public input on the ACSC and the County Protection Plan.
- March 6, 2009 County Commissioners met with Richard Whitman (DLCD) to discuss the ACSC process and the County Protection Plan. Whitman shows the first public viewing of a “Water Study” map showing the impact of drawdown on the Metolius River. Whitman stated the data for map was from existing studies and roundtables with state agencies.
- Whitman announces the “3rd Version” of the ACSC will be released on March 9th.
- March 11, 2009 Full LCDC Commission hearing in Madras

This testimony will first discuss some of the pragmatic problems and issues presented by the Draft management Plan and the ACSC process as applied. The testimony concludes with specific technical assignments of error for the Commission to address.

DLCD’S REFUSAL TO PROVIDE REQUESTED TECHNICAL DATA

Throughout this process, DLCD staff has refused to provide reports and other science they are apparently relying on in developing the draft management plan. For instance, at our meeting with DLCD staff on Friday, March 6, 2009 DLCD Director Whitman shared a map regarding hydrology in the basin. The map contained projections regarding projected impacts of groundwater wells on the in stream flow of the Metolius river. Many of the maps conclusions were in stark contrast to existing science and reports. When asked if the map was prepared specifically for the ACSC process, the Director admitted it was. When asked where the supporting reports and studies were, the Director indicated they were all pre-existing reports but refused to specifically identify which reports were used, how they were used and refused to

provide copies. Similarly, Jefferson County's requests for reports and studies related to wildlife, wildfire, and traffic have been denied by the agency. These reports have clearly been instrumental in the draft plan's proposed boundary. Without access to the data the agency is relying upon, Jefferson County and concerned citizens have been deprived of any meaningful opportunity to participate in the process.

THE DRAFT MANAGEMENT PLAN FAILS TO ACHIEVE 66% OF ITS STATED OBJECTIVES

The Draft Management Plan has three stated objectives:

1. *Protect the Metolius Basin, Including the Biological Deer and Elk Range East of the Basin.* The current Draft Management Plan arguably satisfies this objective. However, it does so at all cost and to the exclusion of the other stated objectives. Further, protection of the Biological Deer and Elk Range was an after thought when the first proposed boundary based on water alone was not big enough to completely capture the Ponderosa destination resort site. Using wildlife to cast a wider net was indicative of this process in general: start with the conclusion and then work the science backwards to support it.
2. *Give Jefferson County a Clear Path to Allow Limited Resort Development in a More Appropriate Location.* The current Draft Management Plan absolutely fails on this objective. After offending nearly all of Jefferson County, and especially its agricultural base, DLCDC has amended its Zone 3 ("Round Butte") map to include lands it believes are three miles from high value crop areas. The proposal does nothing to promote destination resort development in Jefferson County. According to DLCDC, the area complies with existing laws related to mapping. The two crumbs DLCDC's plan is apparently offering the County are some undefined and undeveloped method of expedited approval process for this area if mapped (keep in mind Jefferson County will still be required to go through the full mapping process) and to allow Jefferson County to map without waiting the required 30 months. This is another empty gesture. On July 1, 2009 30 months will have passed since Jefferson County last mapped destination resort areas. DLCDC's proposal generously shaves 2-3 months off this waiting period and allows the County to do something it can already do.²
3. *Provide a Fair Result for Directly Affected property Owners.* It is ironic one of the stated objectives is to be fair. This process has been anything but fair to the affected property owners. In the end, these property owners will not be able to develop their

² Please note, DLCDC's assertion the selected site is outside three miles from high value crop areas is contested by Jefferson County. DLCDC's assertion conflicts with existing County maps and the position of the local Farm Bureau. Finally, the site is not suitable in any way shape or form for a destination resort.

land as they currently could, without regard to destination resorts. The water limitations, acreage limitations, required consultation with a plethora of agencies all contribute to deprive the property owners of the value in their lands. Statements by DLCD that the proposed amount of development is somehow related to possible Measure 49 claims, is, once again unsupported by any analysis or support for their statement.

**THE DRAFT MANAGEMENT PLAN IN ITS CURRENT FORM IS NOT CAPABLE OF
“SELF-EXECUTION”**

Section IV(D)(4) relates to implementation of the draft management plan. It states “the two counties will apply the designation and Management Plan directly to any application for a permit or land use decision...” Stated another way, the designation and the management Plan will somehow become applicable standards and criteria that inform the decision of the governing body. As such, the standards and criteria must be adopted by some already established procedure for adopting such standards and criteria. A legislative referral that simply adopts the designation and Management Plan does not meet the threshold requirements or detail required for meaningful standards and criteria as those terms are currently understood by the Court of Oregon. Further, if Jefferson County does not amend its current Comprehensive Plan or land use regulations consistent with the designation and management Plan, how will affected current and future property owners be put on notice that such restrictions apply to their land ?

WHAT IS THE LEGAL STATUS OF LCDC’S RECOMMENDATION ?

The ACSC process provides “[t]he Land Conservation and Development Commission may recommend to appropriate legislative committees the designation of areas of critical state concern.” ORS 197.405. LCDC’s recommendation to the legislature must be viewed as one of the following:

1. The result of a “contested case” ORS 183.310(2)
2. An “Order” ORS 183.310(6) or,
3. A “Rule” (ORS 183.310(9)).

Each definition statutorily requires a different notice, hearing, analysis and process by the Commission.³ It is unclear what type of final action LCDC may take or how it is interpreting its role in this process. Most likely, this “recommendation” will be determined to be a “rule”. This conclusion is supported by the management Plan provision (Section IV(D)(3)) which requires LCDC driven amendments to the Plan to be via the standard rulemaking procedure of ORS 183.325. In any circumstance, an official action by the Commission is required. Any such action must not only follow the Administrative Procedures Act, it must also comply with the

³ LCDC is an “agency” under the Administrative Procedures Act. ORS 183.310(1)

Attorney Generals rules for Public Meetings and Public Records. In addition, LCDC must follow its own rules of procedure.

ORS 197.405- 197.430 DOES NOT EXEMPT LCDC OR THE LEGISLATURE FROM GOAL COMPLIANCE, STATUTORY COMPLIANCE OR COMPLIANCE WITH ADMINISTRATIVE RULES

LCDC is required to follow the goals, statutes and rules related to land use planning. ORS 197.180 provides:

“ State agency planning responsibilities; certain information to be submitted to department; determination of compliance with goals and plans; rules; exceptions. (1) Except as provided in ORS 197.277 or subsection (2) of this section or unless expressly exempted by another statute from any of the requirements of this section, state agencies shall carry out their planning duties, powers and responsibilities and take actions that are authorized by law with respect to programs affecting land use:

- (a) In compliance with goals adopted or amended pursuant to ORS chapters 195, 196 and 197; and
- (b) In a manner compatible with:
 - (A) Comprehensive plans and land use regulations initially acknowledged under ORS 197.251;
 - (B) Amendments to acknowledged comprehensive plans or land use regulations or new land use regulations acknowledged under ORS 197.625; and
 - (C) Amendments to acknowledged comprehensive plans or land use regulations or new land use regulations acknowledged through periodic review.

The text of ORS 197.405 – 197.430 does not expressly exempt LCDC or the legislature from the requirements of ORS 197.180. The legislative history is also silent on this issue. If the legislature had intended to exempt itself or LCDC from goal, statute and rules compliance, it would have specifically stated so. The legislature has amended ORS 197.405 - .430 in 1977, 1981 and most recently two years ago. Certainly, if the legislature desired to provide itself or LCDC an exemption it could have done so in any of these amendments. It has not done so.

Because ORS 197.405 - .430 pre-existed Senate Bill 100, its general applicability is dubious at best. In large part, the ACSC process has been supplanted by the adoption of the Statewide Planning Goals. It should be noted, LCDC has never utilized the provisions of ORS 197.405 nor has it ever written any rules of implementation for this archaic and anachronistic ORS provision.

Thus, this entire process is subject to review for compliance with the goals, rules and compatibility with acknowledged comprehensive plans.

ASSIGNMENTS OF ERROR

1. *Assignment of Error # 1: The ACSC, as applied, violates Goal 1: Citizen Involvement, OAR 660-015-0000(1)*

*“The citizen involvement program shall be appropriate to the **scale of the planning effort**. The program shall provide for continuity of citizen participation and of information that enables citizens to identify and comprehend the issues.”*

*“Federal, state and regional agencies, and special- purpose districts shall coordinate their planning efforts with the affected governing bodies and **make use of existing local citizen involvement programs** established by counties and cities.”*

The ACSC process violates Goal 1 because it has not made use of existing local citizen involvement programs. More importantly and drastically, the ACSC process has violated Goal 1's requirements to share technical information:

*“**Technical Information -- To assure that technical information is available in an understandable form.** Information necessary to reach policy decisions shall be available in a simplified, understandable form. Assistance shall be provided to interpret and effectively use technical information. A copy of all technical information shall be available at a local public library or other location open to the public.”*

D. TECHNICAL INFORMATION

1. Agencies that either evaluate or implement public projects or programs (such as, but not limited to, road, sewer, and water construction, transportation, subdivision studies, and zone changes) should provide assistance to the citizen involvement program. The roles, responsibilities and timeline in the planning process of these agencies should be clearly defined and publicized.

2. Technical information should include, but not be limited to, energy, natural environment, political, legal, economic and social data, and places of cultural significance, as well as those maps and photos necessary for effective planning.”

No technical information has been provided during this entire process.

2. *Assignment of Error #2: The ACSC, as applied, violates Goal 2: Land Use Planning, OAR 660-015-0000(2)*

It is striking and disappointing that the State's most powerful land use planning body has decided to ignore its own requirement to follow the planning process and policy as a framework for this ACSC process. Oregon's Statewide Planning Goal 2: LAND USE PLANNING provides:

It is expected that regional, **state** and federal agency **plans will conform to the comprehensive plans of cities and counties**. Cities and counties are expected to take into account the regional, state and national needs. Regional, **state** and federal **agencies are expected to make their needs known during the preparation and revision of city and county comprehensive plans**. During the preparation of their plans, federal, state and regional agencies are expected to create opportunities for review and comment by cities and counties. **In the event existing plans are in conflict or an agreement cannot be reached during the plan preparation process, then the Land Conservation and Development Commission expects the affected government units to take steps to resolve the issues. If an agreement cannot be reached, the appeals procedures in ORS Chapter 197 may be used. (Emphasis added)**

The Department of Land Conservation and Development raised no objections to the County's mapping process. In fact, DLCD has not been involved in Jefferson County's destination resort mapping process until it was requested to do so by Governor Kulongoski. This late entry into the game, long after Jefferson County has amended its comprehensive plan, (after all required legal notices were provided to the Agency) violates Goal 2's requirement that State agencies coordinate and engage local governments as part of the **local process**.

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//

Goal 2 continues:

C. PLAN CONTENT

1. Factual Basis for the Plan

4.

Inventories and other forms of data are needed as the basis for the policies and other decisions set forth in the plan. This factual base should include data on the following as they relate to the goals and other provisions of the plan:

- (a) Natural resources, their capabilities and limitations
- (b) Man-made structures and utilities, their location and condition
- (c) Population and economic characteristics of the area
- (d) Roles and responsibilities of governmental units.

No inventories or other forms of needed data appear in the record of these proceedings.

3. *Assignment of Error #3: The Draft Plan lacks statutorily required Substantial Evidence in the record to support its Findings.*

In addition to violating Goal 2, the Draft Management Plan also violates well settled requirements for adequate factual basis in the record to support required findings. There is an absolute dearth of information or facts in this record. Certainly, there is not a sufficient factual basis to support many if not all of the findings and conclusions contained in the Draft Management Plan.

4. *Assignment of Error #4: Statutorily required notice has not been provided.*

Mandatory notices to local government and affected property owners required by Measure 56 (ORS 197.047) and Oregon Laws 2003, Chapter 668 (SB 516) have not been provided.

5. *Assignment of Error #5: The ACSC process violates ORS 197.010*

Clearly, Jefferson County has objected to this process and the various management plan drafts that have been provided. At no time was an “equitable balance” sought by using alternative dispute resolution techniques. No offer was ever made to mediate this dispute. Once again, there just wasn’t enough time to really sit down and discuss the issues.

6. Assignment of Error #6: The ACSC process violates ORS 197.040

Recommendation of the Draft Management Plan to the legislature will violate LCDC’s duty to assess what economic and property interests will be affected by their proposed rule. There has been no assessment of alternative actions (such as periodic review, standard rulemaking, etc...) that are available to achieve the governmental objective.

7. Assignment of Error #7: The ACSC process violates the Big Look Task Force’s draft legislation.

HB 2229, LC 709, 1/12/09 Proposed Technical Amendments read:

SECTION 8. (1) Any rules adopted by the Land Conservation and Development Commission implementing sections 6 to 8 of this 2009 Act:

(b) May not contain new regulatory restrictions on the use of lands identified as containing ecologically significant natural resources or areas to protect those resources or areas.

(d) May provide for the purchase, lease or transfer of development rights to protect the resources or areas.

Comment [w31]: This is intended to assure landowners that any overlay zone adopted identifying areas that are priorities for protection due to natural resource values will not be protected by new or additional land use regulations. The intent is that market-based tools be used if additional protections are needed.

The designation and Management Plan violate both the express terms and the spirit of the Big Look Committee’s recommendation to the legislature.

8. Assignment of Error #8: The ACSC process violates Oregon’s Administrative Procedure Act, ORS Chapter 183

As stated above, this process is likely to be viewed as a rulemaking by LCDC. As such, the current process has not provided the required notice, process, hearings, response to testimony and all the other requirements of Oregon’s Administrative Procedure Act. (ORS 183 *et. seq.*)

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JEFFERSON COUNTY WRITTEN TESTIMONY RE: TECHNICAL AND PROCEDURAL ERRORS

9. *Assignment of Error #10: The ACSC is incompatible with the current Jefferson County Comprehensive Plan.*

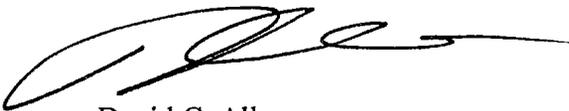
The designation and Management Plan are entirely inconsistent with Jefferson County's Comprehensive Plan. Jefferson County's plan does not require the types of development caps, water usage assumptions, wildlife analysis, etc... contained in the Management Plan.

CONCLUSION

For the reasons stated above, LCDC should seriously re-consider the path it has set upon. At the beginning of this process, Jefferson County was encouraged and did actively participate and engage with DLCDC and the subcommittee on the three stated objectives of the Management Plan. Jefferson County was told such participation would likely yield a better result for the County and the affected property owners than would an outright legislative effort by the Governor or other legislators. Of course, there have already been several bills introduced dealing with the Metolius Basin, and more are expected to be introduced soon. Jefferson County has not gained anything from this process. In fact, what started out as a simple process to ban destination resorts in the Metolius Basin has now blossomed into a complicated, inconsistent and factually unsupported Management Plan that not only prohibits destination resorts but places burdensome restrictions on all types of development in the area. Quite frankly, an outright ban on destination resorts may have been more palatable than the current sprawling bureaucracy of this Management Plan.

Jefferson County encourages this Commission to take its statutory obligations seriously. Tell Governor Kulongoski his timeframe was not "ambitious", it was foolhardy and offensive. Tell Governor Kulongoski you have not been provided sufficient time to adequately perform your functions, which are of Statewide concern. Tell property owners, land use practitioners and Oregon's citizens that the land use planning system and respect for the law is more important than any "rush to judgment".

Respectfully submitted,



David C. Allen

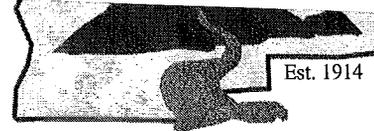
Attorney for Jefferson County

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JEFFERSON COUNTY BOARD OF COMMISSIONERS

EXHIBIT: _____ Item 1
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: 3-11-08
PAGES: 5
SUBMITTED BY: Jefferson Co.

66 S.E. "D" St., Suite A • Madras, Oregon 97741 • Ph: (541) 475-2449 • FAX: (541) 475-4454



March 10, 2009

Jefferson County Board of County Commissioners
Written Testimony Before The
Land Conservation and Development Commission
Sub-Committee On Metolius Basin

Dear Chairman VanLandingham and Commission Members:

Here we are 56 days later. As you know, we have opposed this process from day one, but we did hold out hope that a management plan would offer Jefferson County additional development rights and opportunities as promised. We believe that is how the Commission discussed the issue back on January 15th. In all due respect to the Sub-Committee Member's work and the attempts of DLCD staff to complete this task, this plan is incomplete, lacks due diligence and is based on public processes that were neither open nor transparent. You just did not have enough time.

We encourage the Commission to not take action on this item and inform the Governor that 56 days was insufficient time for the monumental task he asked of you; and, to seek his guidance. Should you proceed taking the proper amount of time to review all the issues before you and clearly find a management plan that offers Jefferson County a clear path, or should you stop this process and allow House Bill 2226 to proceed through the legislature.

We have authorized our attorney, Dave Allen to present a technical memorandum that we feel preserves our ability to raise errors and preserve our right to pursue other recourses.

1. We ask the Commission to note the lack of public disclosure of water data and water maps used by the sub-committee and DLCD staff. The first public viewing of this water map was only four business days ago in Madras. This Commission should know after the Warm Springs Tribe offered to meet with one of the developers to review the tribal data on water modeling. They found an error that they were willing to fix and this process substantially changed the tribes water model data.

Why would a water map first created on February 2nd only be disclosed to the County after the Sub-Committee has finished its hearings? Why should the data that created this map not receive the full light of public scrutiny? Why was the public denied access to this map when requested and told it was protected under the guise of "Attorney/Client Privilege"? Who is the Client? The Sub-Committee? This Commission?

We were told that the data is not available, but that it was derived from existing data. How does this make any sense in today's world of open government? How can

existing public data that creates a map an Attorney/Client protected document and not public?

2. Why is the DLCD website posting only certain written testimony? We are offended that all the documents provided by the County Commissioners did not make the cut, but the 270 pages submitted by the Warm Springs Tribe did. Has the full Commission been given access to all of the documents submitted by the County?
3. Jefferson County was never offered the opportunity to meet with the Sub-Committee Members to discuss the pros and cons of the strategies they were considering in developing the three objectives of the plan. We have been shut out of the Sub-Committee process. The first draft was released to the County only three business days before the first Sub-Committee Hearing. The second draft plan was released to the County only three days in advance of the February 26th hearing. This final plan, which the Governor would like for you to vote on in these next few days, was again, only released to the County and this Commission three business days before this hearing. Is this the new model for open and transparent government?
4. On February 26th the County Commissioners announced that we had an alternative plan and would hold a public hearing. At that time we requested a meeting with the Sub-Committee to discuss our plan. That did not happen. We understand that you are volunteers and this timeline did not allow it. Does the Commission have any questions for us regarding the plan we released?
5. Exhibit "B" which shows approximately 260 acres as the County's clear path for resort development is insulting. The lack of effort used to produce this map is a direct reflection on the efforts to work with Jefferson County. This map does not include one street name, does not identify the scale, includes an active rock pit, and was purposely cropped to hide the fact that it includes the only access road to Pelton Dam. Please reflect back on the discussion you held on January 15th and ask yourself if Mr. Whitman showed you this map to demonstrate what he believes is a clear path to alternative development opportunities would you have been able to keep a straight face?
6. We request the following changes to the document:
 - a. Page 8, fourth paragraph, first sentence – Remove "third" – It is unclear of the sequencing.
 - b. Page 8, fourth paragraph, third sentence – Insert footnote that identifies the ODFW study that shows deer population is 40% below target.
 - c. Page 8, fourth paragraph, fifth sentence – Insert footnote that identifies the study that indicates the road density and level of traffic impact study used to draw this conclusion.
 - d. Page 8, fourth paragraph, sixth and seventh sentence – Insert footnote that identifies the ODFW study that indicates the eastern boundary habitat of the Northern Spotted owl and the number and location of Northern Spotted owl nests destroyed by fires.
 - e. Page 9, second paragraph – Range Land is not referenced and is inside of area 2.

- f. Page 12, second paragraph, first sentence – Change sentence to reflect the headwaters are not included in the federal Wild and Scenic River Boundary.
- g. Page 14, second paragraph, first sentence – Reference that neither site is located in mapped wildlife habitat areas in the Jefferson County Comprehensive Plan.
- h. Page 14, second paragraph, second sentence – Add something similar to: This property is approximately 4 miles from the Metolius River and access to the property is only 0.8 miles from Hwy 20.
- i. Page 14, second paragraph, third sentence – Add something similar to: This property is approximately 2.5 miles from the Metolius River and is located on the eastern side of Green Ridge (4500 feet in elevation). This property is approximately 6.2 road miles from Hwy 20 and this property does not have road access to reach the Camp Sherman area with using Hwy 20.
- j. Page 14, third paragraph, first sentence – Change to something similar to: “On December 21, 2006 the Board of County Commissioners approved the Destination Resort map after holding six public hearings that started in September 2006. This mapping process was appeal to the Oregon Land Use Board of Appeals (LUBA) on January 17, 2007.”
- k. Page 15, first paragraph, first sentence, line 3 – Insert “retroactively” before ban.
- l. Page 15, last paragraph, first sentence, -- Insert “On December 19, 2008” at the beginning of the sentence.
- m. Page 15, last paragraph – Insert before the last sentence a sentence similar to: “However, the Governor stated in his letter the plan ‘should not include destination resorts.’”
- n. Page 16, second paragraph, last sentence – Change to: “The Metolius Basin Area of Critical State Concern plan eliminates destination resorts from the basin and adds additional 111,347 acres east of the basin, thereby eliminating the pending litigation at the Oregon Supreme Court. The plan does allow small scale development in the basin.”
- o. Page 16, last paragraph, third sentence – Replace November data with January 2009 data: “In January 2009 the county had an unemployment rate of 16.2%, which is 48% higher than the statewide level of 10.9%.”
- p. Page 17, second paragraph, second sentence – Insert “by choosing not to map areas that were mapped as wildlife habit areas.” after “requires”.
- q. Page 18, first paragraph, second sentence – Delete and replace with “The Metolius Basin ACSC plan removes the destination resorts options the County mapped in 2006. The ACSC plan attempted to identify other areas in the County, but is only able to identify approximately 260 acres for destination resorts. This 260 acre site is currently owned by six different property owners and includes the only access road to Pelton Round Butte Dam. The site also includes an active rock pit. If fully developed the site would require 130 acres of open space and \$9.38 million dollars of recreational amenities. The site would allow for approximately 40 building sites. It is doubtful that this type of project is feasible since the recreational investment alone would add \$235,000 to the cost of each of the 40 lots.”
- r. Page 18 – Insert map that shows property eligible to be mapped as destination resorts in Jefferson County.
- s. Page 19, first paragraph, fifth sentence – delete after “been” and insert “appealed to the Oregon State Supreme Court.”
- t. Page 19, second paragraph, fourth sentence – amend to read “The location and development limits of the basin and buffer area are based on DLCD’s

- interpretation of likely hydrological impacts(insert footnote referencing water modeling data) of development and the location of important wildlife resources (insert footnote referencing study data). The hydrological impacts are normally handled by Oregon state's Water Resources Division, through the application process that a destination resort development would be required to prove prior to submitting an development application to the County that proves a water right sufficient enough to support the proposed development. DLCD's believes that existing water law does not adequately protect the river flows of the Metolius River even if Water Resources applies current law and recommends using the ACSC to circumvent current state law and impose restrictions on development.”
- u. Page 20, second paragraph – Delete and insert something similar to: **“B. Reduce the amount of mapped destination resort land in Jefferson County by 97%.** The Metolius Basin ACSC plan removes 11,058 acres mapped as eligible for destination resorts the County mapped in 2006 to 260 acres. The ACSC plan attempted to identify other areas in the County, but only identifies approximately 260 acres for destination resorts. This 260 acre site is currently owned by six different property owners include the only access road to Pelton Round Butte Dam. The site also includes an active rock pit. If fully developed the site would require 130 acres of open space and \$9.38 million dollars on recreational amenities. The site would allow for approximately 40 building sites. It is doubtful that this type of project is feasible since the recreational investment alone would add \$235,000 to the cost of each of the 40 lots.”
 - v. Page 20, third paragraph – Delete and insert something similar to: “The ACSC exempts Jefferson County from the normal 30-month waiting period before it may re-map lands for destination resorts. Since the County concluded the mapping process on December 21, 2006 this prohibition expires on June 21, 2009, therefore Jefferson County would be able to proceed with a re-mapping process earlier than normally, assuming the Legislature passes the recommendation prior to June 21, 2009.
 - w. Page 22, third paragraph – Insert a concluding statement that identifies how OWRD and WRC are unable to deny or limit water rights applications under existing state law for destination resorts and this inability of the agencies to prevent these water rights application will cause a negative effect on the wild and scenic river.
 - x. Page 22, fourth paragraph – Insert a concluding statement that identifies how DEQ is unable to deny or limit wastewater applications under existing state law for destination resorts and this inability of DEQ to prevent these wastewater applications will cause a negative effect on the wild and scenic river.
 - y. Page 22, fifth paragraph – Insert a comment that states neither of the mapped lands are located within 2.0 miles of the wild and scenic rivers protection area.
 - z. Page 25– Insert footnotes to identify dates of identified plans and studies.
 - aa. Page 26 – Insert footnotes to identify dates of identified plans and studies.
 - bb. Page 27 – Insert footnotes to identify dates of identified plans and studies.
 - cc. Page 28 – Add ODFW letter as an attachment.
 - dd. Page 28 – Insert footnotes to identify dates of identified plans and studies.
 - ee. Page 29 – Insert footnotes to identify dates of identified plans and studies.
 - ff. Page 29 – Add OWRD letter as an attachment.
 - gg. Page 30 – Add USFS study as an attachment.
 - hh. Page 31 – Add the Watershed update as an attachment.

- ii. Page 35 – Add the Water study referenced in the first paragraph as an attachment.
- jj. Page 35, fourth paragraph – Delete and insert something similar to: Delete and insert something similar to: **“2. Reduce the amount of mapped destination resort land in Jefferson County by 97%.** The Metolius Basin ACSC plan removes 11,058 acres mapped as eligible for destination resorts the County mapped in 2006 to 260 acres. The ACSC plan attempted to identify other areas in the County, but only identifies approximately 260 acres for destination resorts. This 260 acre site is currently owned by six different property owners includes the only access road to Pelton Round Butte Dam. The site also includes an active rock pit. If fully developed the site would require 130 acres of open space and \$9.38 million dollars on recreational amenities. The site would allow for approximately 40 building sites. It is doubtful that this type of project is feasible since the recreational investment alone would add \$235,000 to the cost of each of the 40 lots. The ACSC exempts Jefferson County from the normal 30-month waiting period before it may re-map lands for destination resorts. Since the County concluded the mapping process on December 21, 2006 this prohibition expires on June 21, 2009, therefore Jefferson County would be able to proceed with a re-mapping process earlier than normally, assuming the Legislature passes the recommendation prior to June 21, 2009.”
- kk. Page 43, second paragraph – Insert reference to 260 Acres.

Thank you for holding this hearing in Madras. We request that the Commission meet with the Board of County Commissioners to discuss this issue in greater detail. We believe there is still time to modify this plan to truly allow Jefferson County a clear path to development opportunities that would make Jefferson County whole.

Respectfully submitted,

Jefferson County Board of Commissioners.

Jerry L. Curl & Debrah J. Curl

703 NW Stonepine Dr.
Bend, OR 97701

Telephone: 541-389-6562
Facsimile: 541-383-2985

March 11, 2009

Michael Morrissey
Oregon LCDC
635 Capitol St. NE Suite 150
Salem, OR 97301

EXHIBIT: _____ *Item 1*
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: 3-11-09
PAGES: 2 *Virginia Pugh*
SUBMITTED BY: *for Jerry & Debrah Curl*
No oral

Sent by email to michael.morrissey@state.or.us
Hand Delivered by Virginia Pugh to the 3/11/09 Commission Meeting

**Re: Item #1 of Commission's March 11, 2009 Agenda
Metolius Basin Area of Critical State Concern Management Plan**

Dear Mr. Morrissey:

As private property owners of a cabin on Lake Billy Chinook, we submit the following comments in opposition to the Metolius Basin Area of Critical State Concern Management Plan ("MBACSCMP") as presented.

Land use around Lake Billy Chinook is strongly influenced by the dramatic geology of the shoreline. Development has occurred in only five areas around the reservoir where topography is suitable. Steep cliffs typify the reservoir shoreline setting. The vertical nature of the shoreline offers few level areas or shoreline access points. It is for these reasons, and the reasons stated below, that we request the shoreline areas, including the land and structures in private ownership along the Metolius arm of Lake Billy Chinook, be removed from the proposed MBACSCMP.

In this letter, in addition to the entire area surrounding Lake Billy Chinook, we specifically address the areas where cabins & improved campsites are located along the Metolius Arm of Lake Billy Chinook. The "Metolius Arm" area begins just east of the old "Eyerly" property on the Metolius arm of Lake Billy Chinook. In particular, we oppose any additional underwater, above water, and on land regulation for that area which is already falls under the use and land use regulation of the Federal Energy Regulatory Commission ("FERC"), and Jefferson County, and the rules of the Oregon State Marine Board.

Of primary concern is that no new layers of regulation or bureaucracy are piled onto the present restrictive regulations – especially those governed by FERC and Jefferson County. Clearly, FERC has authority over all structures within the "FERC Boundary" area surrounding the Pelton-Round Butte Dam.

Jerry L. Curl

March 11, 2009

Page 2

Private property owners, in conjunction with many federal and state agencies, were recently involved in a 1 year collaborative process to successfully fulfill the requirements of Article 443 of the Pelton-Round Butte Dam license, which regulates the use and development of the area within the FERC boundary. That process ended with FERC approving the plan, however, within the approval, FERC required an additional process to be completed with regard to replacements and improvements of structures. **Unless and until that issue is completed and approved, it would seem untimely for the state to make new regulations for the privately owned areas along the Lake Billy Chinook Shoreline**, as FERC may end up trumping any given portion of whatever the LCDC may be recommending for new regulation at this time.

Article 443 of the FERC license for the Pelton-Round Butte Dam allows the Licensees to supervise and control occupancy of lands within the Project boundary. The Licensees were required to develop a Shoreline Management Plan (SMP"), and within that now approved plan, authorization will be required from both the Licensees and the County before construction may begin on a proposed project.

In addition to the SMP, the area within the FERC Boundary is also governed by the federally approved Shoreline Erosion Plan ("SEP"), which was developed pursuant to Article 429 of the license, and the SEP includes erosion control and monitoring provisions to address the most environmentally sensitive areas on both reservoirs.

In summary, the FERC approved SMP & SEP, the Jefferson County land use regulations, and the geography of the area limit the development and expansion such that it would be virtually impossible to create any type of large resort or community of significant size along the Metolius arm of Lake Billy Chinook. It is for these reasons that it is appropriate to remove the shoreline property held in private ownership from the area of critical concern. When the area of the Metolius was designated as Wild & Scenic, the state recognized that the designation should not extend into Lake Billy Chinook, and therefore, the private properties along the Metolius arm of **Lake Billy Chinook** were not included; and were allowed to be developed. The MBACSCMP should not disturb the private property owners' ability to continue to repair, replace, or construct structures on the lake or their private properties, and thus, the shoreline properties, held in private ownership, especially those small parcels on the Metolius arm of Lake Billy Chinook should, at minimum, be excluded from the MBACSCMP.

Sincerely,

Jerry L. & Debrah J. Curl

Delivered by Virginia Pugh

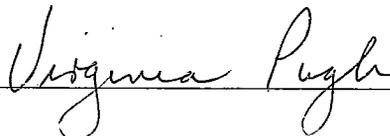
 3/11/09

EXHIBIT: _____ # 1
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: 3-11-09
PAGES: 1
SUBMITTED BY: Sally Miller
No Oral

March 11, 2009

Dear LCDC members,

After attending the two prior meetings held in Madras with the LCDC regarding destination resorts, I want to put forth my opinion as an average citizen living in Jefferson County. I prefer NO resorts as they simply cater to the wealthy and to developers. They disrupt the wildlife and natural habitats, take water from the aquifers, increase traffic, and destroy the scenic beauty of Oregon. If we have to have one, I like Jefferson County's latest compromise for the two proposed resorts near Sisters banning golf courses, limiting the number of homes and staying outside the 3-mile buffer zone on both sides of the Metolius River. Under no circumstances do we need one by the Cove State Park, Round Butte, & near farm land. The park and lake are already over-crowded; but it's far less detrimental to the environment to simply increase the number of camping & parking spaces if we want to bring more visitors and money to the area. People can buy a vacation home in Yarrow if they desire to recreate here.

The pro-growth interests are always the most vocal. The average citizens of our county seem to have little say in the matter. Please represent the folks living here and not always the out-of-town developers and pro-growth interests who have something to gain monetarily. Tom McCall and Teddy Roosevelt were visionaries in trying to save some wild spaces for future generations. We must continue to speak out for wildlife since they have no voice against the forces of greed. I stand with the Confederated Tribes and environmental groups. Thank you for giving citizens of our county an opportunity to weigh in on the issue.

Sincerely,

Sally Miller
705 NW Glass Dr.
Madras, OR 97741
475-2711

Lisa Howard - Metolious Resort Comments

From: scott turo
To:
Date: 3/11/2009 10:38 PM
Subject: Metolious Resort Comments

Lisa

I just gave public comment concerning the Metolious Baisn Resorts and the proposed Area of Critical Concern.

I forgot to mention one thought. Hopfeully you can include the following thought?

I am deeply concerned about the impact this proposed development will have on wildlife habitat. The commission has heard this loud a clear. I want to add that there currently is and has been a cooperative travel agrrement within much of the land considered winter range and the lands around the proposed Ponderosa Resort (for over 15yrs). The county and state have both signed and MOA to this effect. Enforcement of this regualtion is difficult and limited at best. Violations are common. The increased development and assoociated traffic will only add to this problem. More importantly an unfair burden will be put on those agencies tasked with enforcing this travel management rule. Please factor this thought into your decison.

Thank you

Scott Turo
85 NE Hillcrest
Madras Oregon

EXHIBIT: _____ # 1
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: 3-13-09
PAGES: 2
SUBMITTED BY: DCD Staff
for individuals

Lisa Howard - Deliberation Friday on the Metolius ACSC

From:
To:
Date: 3/12/2009 2:11 PM
Subject: Deliberation Friday on the Metolius ACSC

Land Conservation and Development Commission

Dear Commissioners,

Thank you again for your steadfast resolve in producing this important protection for the Metolius. Your dedication and commitment are very much appreciated and supported by those who cherish the Metolius.

Please make every effort to complete your work on Friday and forward the ACSC to the legislature.

Refinements can be made during the legislative hearings to follow.

Timing is critically important. In spite of the "slow down" tactic by the opposition last night in Madras, the ACSC must reach the legislature shortly as protection will be impossible two years from now when the legislature meets again..

Thanks for this important work,

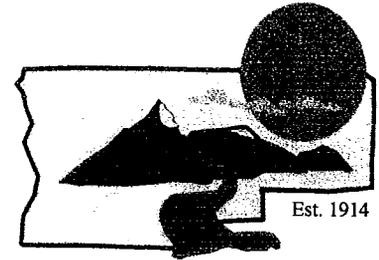
Dick Kellogg
26247 Metolius Meadows Drive,
Camp Sherman, OR 97730
dicksuekellogg@aol.com

A Good Credit Score is 700 or Above. See yours in just 2 easy steps!

JEFFERSON COUNTY

COUNTY ADMINISTRATIVE OFFICER

66 S.E. "D" St., Suite A • Madras, Oregon 97741 • Ph: (541) 475-2449 • FAX: (541) 475-4454
jeff.rasmussen@co.jefferson.or.us



March 12, 2009

SENT VIA E-MAIL

Mr. Richard Whitman, Director
Oregon Department of Land Conservation & Development
635 Capitol ST NE, Suite 150
Salem, OR 97301

Dear Richard,

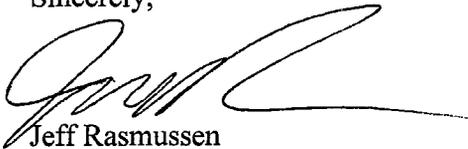
We are disappointed that Jefferson County did not receive the staff report in advance of the LCDC meeting. Attached you will find four maps that were taken from the staff report (dated March 10, 2009) prepared for the March 11, 2009 LCDC meeting on the Area of Critical State Concern. As you can see from the maps, Jefferson County has added the destination resort mapped areas in red. Jefferson County is concerned that your presentation and staff report may have inadvertently misled the Commission on the potential impact to deer and elk winter ranges

When we arrived at the meeting all copies of the staff report were gone. Unfortunately, the staff report was not posted on the DLCD's website dedicated to the ACSC process, but only on the LCDC separate website dedicated to their agenda.

Pages 13-16 fail to identify where the DR mapped areas are located. The US forest Service maps (Pages 14 & 15) are completely mislabeled. It shows "Lake Billy Chinook" at least 10 miles to the southwest of its location. It labels the confluence of the Deschutes River and Metolius River as "Headwaters Deschutes River". Needless to say the most glaring oversight of these maps is the omission of the destination resort mapped areas.

We hope you will raise our concerns with these maps with the full Commission on Friday. We believe this is another example of the timeline being rushed. If the County had received these maps under the normal land use planning requirements of a 14-day notice we would have the opportunity to raise this issue last night.

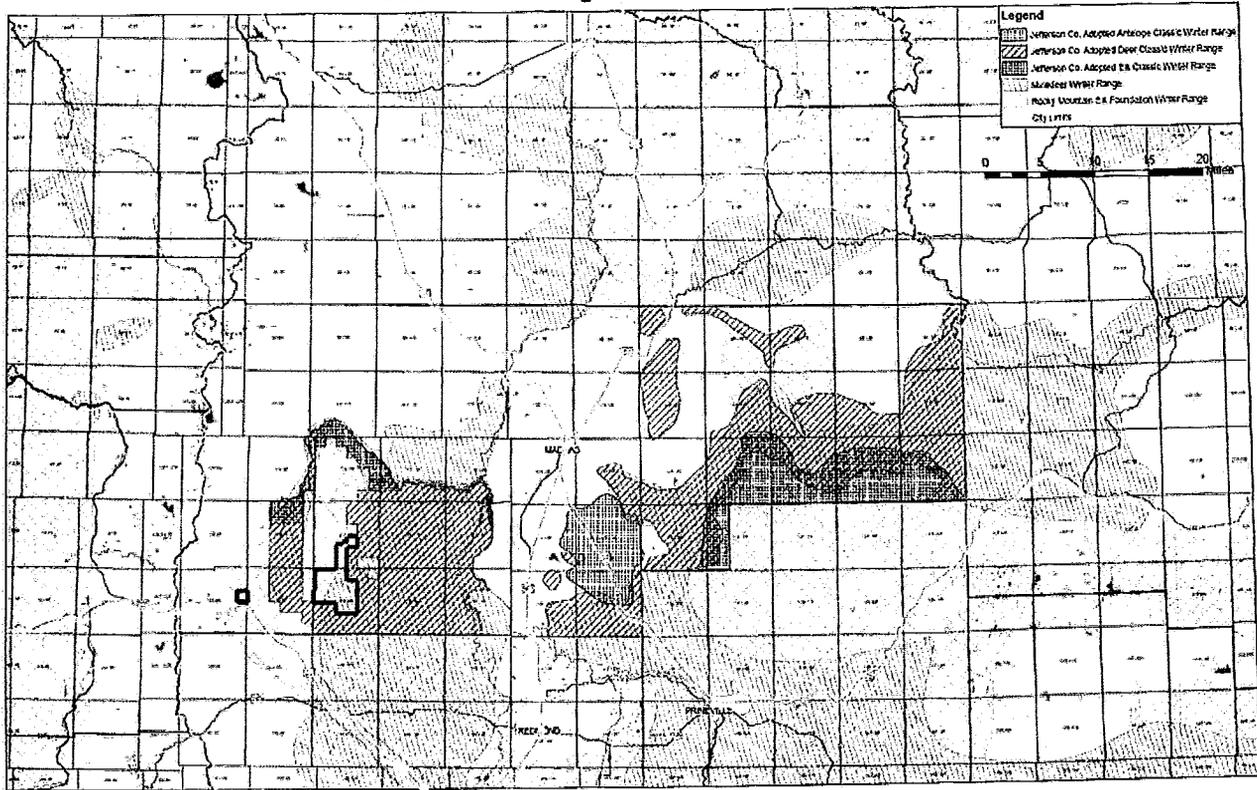
Sincerely,



Jeff Rasmussen

EXHIBIT: _____ # 1
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: 3-13-09
PAGES: 5
SUBMITTED BY: Jeff Rasmussen

Deer and Elk Ranges in Jefferson County



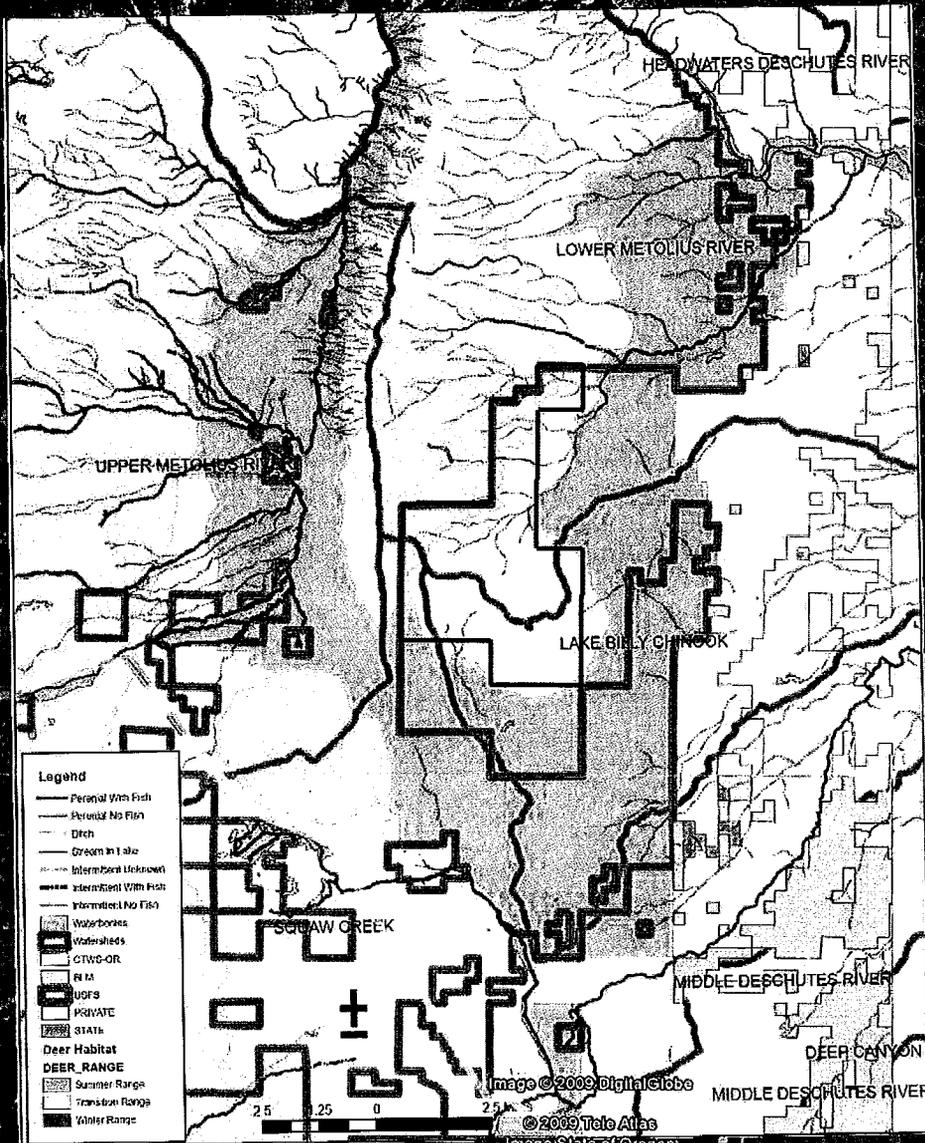
Oregon

Image © 2009 DigitalGlobe
Image © 2009 TerraMetrics
© 2009 Tele Atlas
Image State of Oregon

Google

44°36'19.43" N 121°00'03.64" W

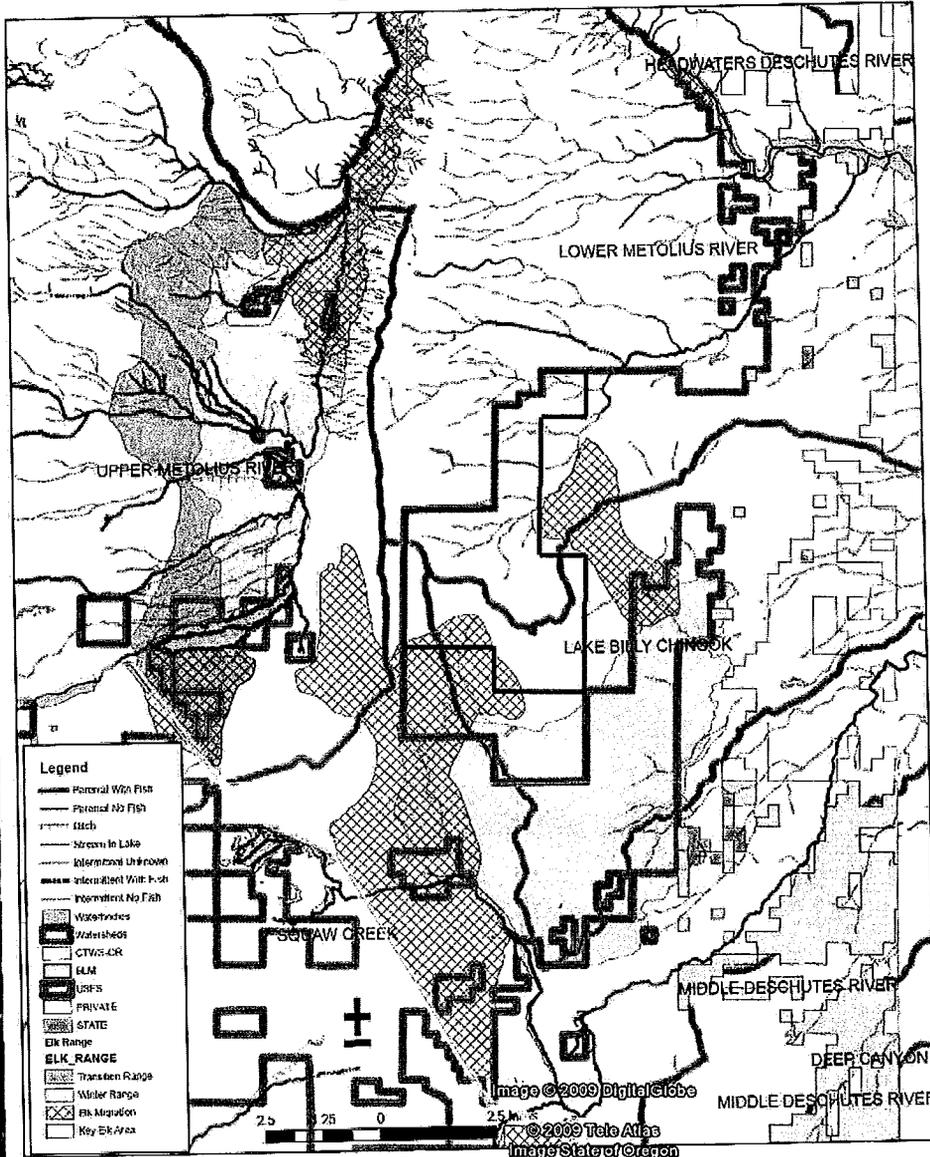
Eye alt 107.68 mi



44°27'59.36" N 121°30'33.38" W

Google
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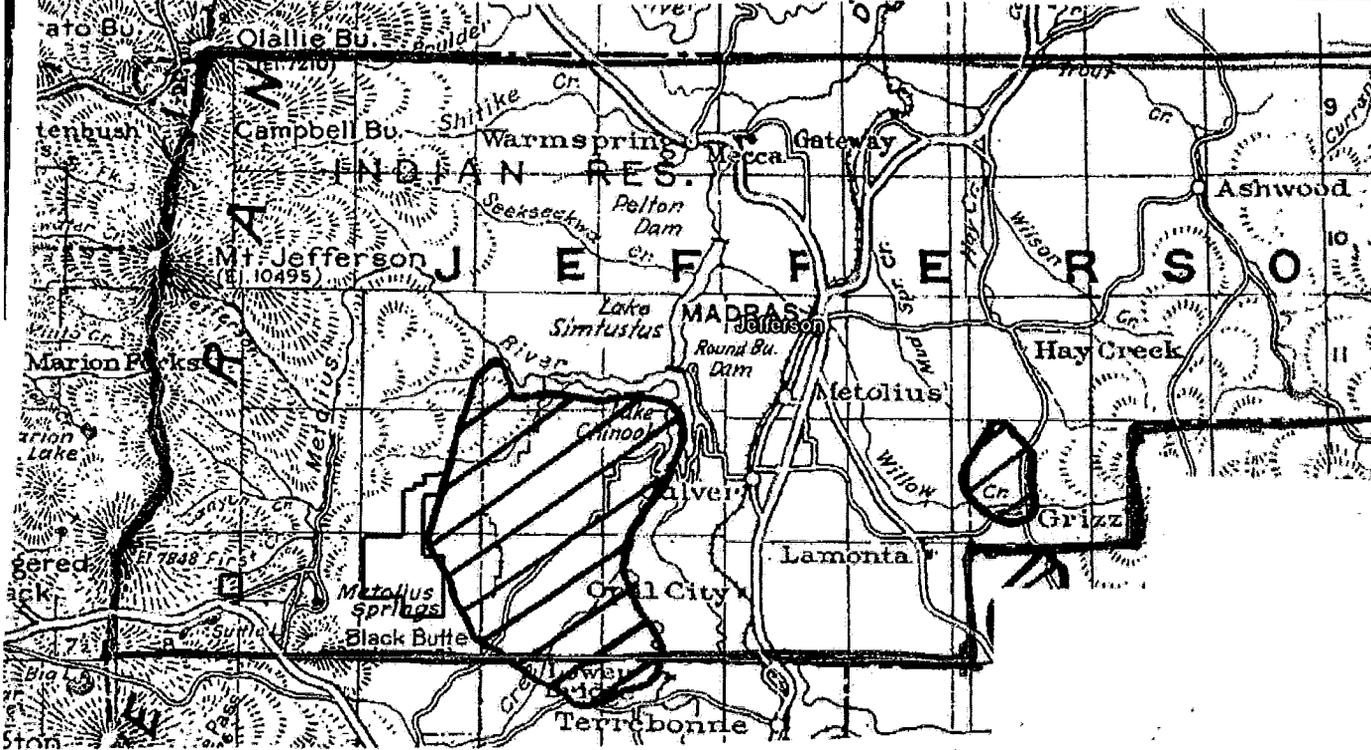
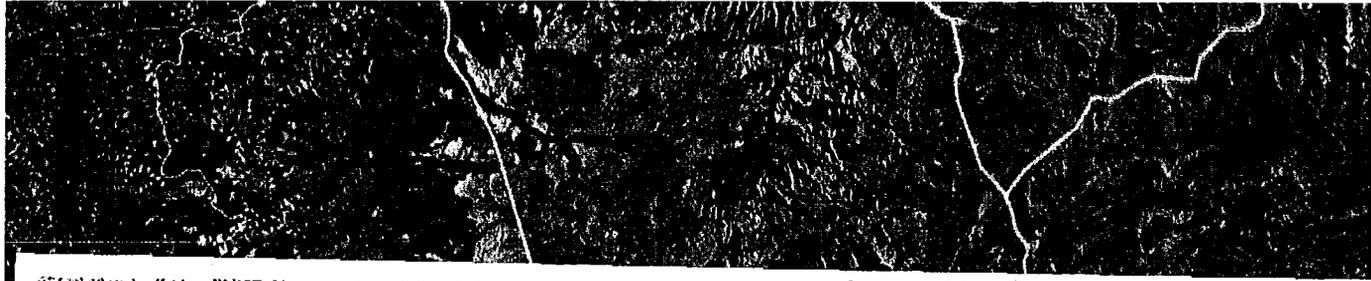
Elk Range Map - Metolius Basin



44°27'59.36"N 121°50'33.68"W

Eye alt 25.92 mi

Google





Oregon

Theodore R. Kulongoski, Governor

Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1266
503-986-0900
FAX 503-986-0904

October 31, 2007

Governor Theodore Kulongoski
State Capital
Salem, OR 97301-4047

Dear Governor Kulongoski:

Thank you for your July 13, 2007 letter directing the Water Resources Department (WRD) to evaluate whether the existing laws and rules that it administers are adequate to ensure that new destination resort development in or near the Metolius Basin would result in no reduction of stream flows in the Metolius River. We have completed that evaluation and offer the following for your consideration.

WRD has a number of programs in place to administer laws that ensure existing water rights and public values are protected, while allowing for new development. In the Deschutes Basin, of which the Metolius is a part, the Deschutes Mitigation Program is the strongest program available to the department to address protection of streamflow in the Metolius River.

The Deschutes Mitigation Program was established in 2002 as a result of a multi-year ground water research study conducted by WRD and the United States Geological Survey (USGS). The study confirmed that ground and surface water are directly connected within the Deschutes study area, including the Metolius sub-basin. This means any new ground water use would impact stream flow that is already fully appropriated in the Deschutes Basin.

The mitigation program divides the Upper Deschutes Basin into seven sub-basins or "zones of impact" and requires bucket for bucket mitigation for any new ground water use to protect streamflow in the primary zone of impact. Water right applicants purchase credits from a mitigation bank as needed to balance their new use. The credits are generally derived from existing out-of-stream water rights that are left instream. The program has been successful at protecting streamflow in the Deschutes Basin and at the same time allowing for economic growth in the region. While mitigation credits are available for most sub-basins, there are no credits currently available for the Metolius zone due to the lack of historic water development in that area.

Any new development would likely rely on ground water to meet its water supply needs. The study found that ground water is connected to surface water beyond the sub-basin boundary where the wells are constructed. This means that ground water withdrawal outside of the Metolius sub-basin could have an impact on stream flow in the Metolius River.

EXHIBIT: _____ #1
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: 3-13-09
PAGES: 14
SUBMITTED BY: DLCD Staff

Governor Theodore Kulongoski
October 31, 2007
Page 2

The Deschutes Mitigation Program will ensure no diminishment of flow in the Metolius River when the primary zone of impact of the new development is the Metolius sub-basin. The mitigation program, as currently administered, does not provide that same level of protection of the Metolius River when the Metolius sub-basin is not the primary zone of impact.

One option to strengthen these protections would be to require mitigation for new ground water use in all zones where state scenic waterways are impacted. The Metolius River is a designated state scenic waterway from its source at river mile 41.2 downstream to Candle Creek at river mile 29. We've been advised by the Attorney General's office that mitigation could be required for impacts to multiple zones involving state scenic waterways. This option however, could have far reaching effects that could potentially eliminate most new ground water development in portions of the Deschutes Basin. For example, using this broader "mitigate everywhere" approach could seriously constrict economic growth in the Sisters area, since withdrawal from wells near Sisters could affect flows in the Metolius sub-basin and require mitigation where credits are not available.

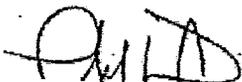
A second option would be to close the Metolius Basin to new appropriations of water. This could be done by Water Resources Commission (WRC) or legislative action, however this option would not provide protection against ground water use by proposed development located outside of the Metolius sub-basin.

A third option would be for the WRC to withdraw designated areas from particular ground water uses. This would limit where new development could withdraw ground water. The difficulty with this option would be hydrologically justifying the withdrawal boundaries.

If implemented, option one could have significant consequences on economic development in the region. Option two does not provide additional protection beyond what the existing mitigation program provides. Option three would limit the development of ground water in designated areas, but without a strong hydrologic basis for delineating those areas, actions under this option would likely be subject to legal challenge.

It is the department's view that the Deschutes Mitigation Program has been successful at balancing streamflow protection with economic development in the Deschutes Basin. For this reason, we recommend this program continue to operate as it is currently administered.

Sincerely,


Phillip C. Ward
Director



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204-1390
503-229-5696
TTY: 503-229-6993

November 2, 2007

Governor Theodore Kulongoski
160 State Capitol
900 Court Street NE
Salem, OR 97301-4047

Dear Governor Kulongoski:

Thank you for your letter regarding the Metolius River Basin, and potential impacts of local development on water quality. As your letter made clear, the Metolius River is an unparalleled natural feature of Oregon's Cascade Mountains, worthy of the best protection available. You requested an assessment of the adequacy of existing state regulations to specifically protect water quality in the Metolius River.

The Metolius River rises from springs fed by snowmelt filtering through porous volcanic rock. Water in the river today fell as snow in the cascades many years ago. This process results in some of the clearest, coldest, and purest surface waters in the state. In the upper Metolius River Basin, water is fairly close to the surface, and is somewhat more vulnerable to human activity or development than areas to the north and east, where ground water lies much farther below the surface. Although there have been proposals for developments already, I am addressing the issue of environmental protection in the basin in a more general sense, rather than any specific development.

The Department of Environmental Quality (DEQ) has authorities to protect the benefits that air and water provide to people and the environment. Specifically, the water quality authorities that apply in the Metolius River Basin include anti-degradation rules, wastewater treatment including onsite and septic systems, controlling stormwater from construction activities, post-construction stormwater controls, and total maximum daily loads (TMDLs).

Large destination resort developments are densely constructed communities requiring collection, treatment and disposal of domestic wastewater and stormwater. During development, construction activities have the potential to deliver sediments and associated pollutants to flowing waters. In a community the size of a destination resort, stormwater runoff from roofs, streets, and some types of irrigated land, must be managed to minimize environmental impacts. DEQ has varying degrees of regulatory control over these sources of pollutants, and little to no authority over water use that may diminish flows in streams. Reduced flows may subsequently reduce water quality.

Anti-degradation rules: Water quality standards are designed to ensure that basic uses of water are available now and are protected from degradation in the future. Such uses include drinking,

fishing and contact recreation. The water quality standards do not necessarily ensure there is no degradation, only that degradation will not hamper or eliminate the use. In general, I believe that our rules are protective of human health and the environment to ensure that the beneficial uses are protected, though there are some gaps in stormwater regulation that are relevant to increased development in the Metolius River Basin, as described below.

Wastewater treatment, including septic systems: The treatment of wastewater is tightly regulated but there will be constituents, such as nutrients, that are still released to the environment. There is little likelihood that a development would be allowed to discharge treated wastewater directly to the Metolius River or a tributary because of existing water quality problems, and because developments outside urban growth boundaries are subject to restrictions on wastewater under land use laws. Subsurface discharge to shallow soils or land application to the surface of soils may be allowed. Even with substantial removal of nutrients and other constituents from this wastewater prior to discharge, small amounts of nutrients may reach the Metolius River or its tributaries through runoff or seepage to groundwater that flows into the Metolius. The river is sensitive to nutrients, and small increases in nutrients could result in some degradation of water quality, such as decreased dissolved oxygen, increased aquatic plant growth, and changes in pH, among others. These effects would be more significant in the western part of the basin, where the relative depth to groundwater is shallower than east of Green Ridge.

Stormwater impacts from construction activities: Construction activities that disturb the land surface are regulated through construction stormwater permits. These permits require use of practices and control technologies to keep sediments out of stormwater, but do not always result in complete control.

Post-construction stormwater control: In general, DEQ does not have a regulatory framework for controlling stormwater from these developments once they are constructed. Local governments may exercise control or, in some cases, DEQ's Underground Injection Control rules may apply to stormwater. If wetlands are impacted, there DEQ and DSL regulations would apply.

Total Maximum Daily Load: You also asked that we consider the potential effects of these types of developments as we complete a Total Maximum Daily Load (TMDL) for this area. DEQ considers both current development and potential growth as best we can during TMDL studies. It is very difficult to estimate the potential effects of wastewater and stormwater in basins where the developments have not been proposed, but are likely to occur. The majority of pollutant discharges in the Metolius River Basin will be from nonpoint sources, which, like stormwater have less stringent regulatory control. Likely authorities from the TMDLs may include stricter wastewater discharge requirements and additional stormwater controls for existing and proposed developments, depending on the outcomes of the TMDLs.

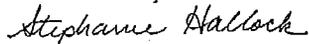
The Deschutes Basin TMDLs that will include the Metolius River Basin are currently on hold. The Water Quality Program reprioritized its schedule over the last two years in light of resource constraints, and the need to complete work in other priority basins, such as the Willamette, Umpqua, Rogue and John Day. As you've requested, we will give the Metolius River special consideration when we return to work on the Deschutes Basin TMDLs. Though we have

collected a considerable amount of data in the Deschutes Basin, we do not anticipate returning to work on these TMDLs in this biennium.

In summary, DEQ has considerable authority over the discharge of pollutants to waters of the state. Despite this, there are significant sources of pollutants that are comparatively uncontrolled, and the potential effects of these discharges, along with potential decreases in instream flow from development could have a measurable impact on an outstanding water such as the Metolius River. Because DEQ does not have a regulatory framework for stormwater management after construction, we believe these developments could pose a significant risk to water quality. The level of risk is dependent on the size and proposed location within the Metolius River Basin.

If there is anything contained in this letter you have questions about, or if you'd like additional information about this or any other aspects of the Metolius River Basin, please call me.

Sincerely,



Stephanie Hallock
Director

cc: Mike Carrier, GNRO
Tim Nesbitt, Governor's Office
Dick Pedersen, DEQ



Oregon

Theodore R. Kulongoski, Governor

Department of Fish and Wildlife

Office of the Director
3406 Cherry Avenue, NE
Salem, OR 97303
503.947.6044
FAX 503.947.6042
TTY 503.947.6339
www.dfw.state.or.us

November 2, 2007

Mr. Tim Nesbitt
Governor's Office
900 Court Street NE
Salem, OR 97301



Dear Mr. Nesbitt:

This letter is in response to Governor Kulongoski's request that ODFW evaluate whether existing laws are adequate to ensure that new destination resorts in or near the Metolius River Basin avoid any adverse effects on fish or wildlife resources, particularly threatened or endangered species.

Existing laws that may address the fish and wildlife resource effects of destination resorts include the following:

- State Endangered Species Act (ORS 496.171)
- ODFW Fish and Wildlife Habitat Mitigation Policy (OAR 635-415-000)
- Federal Endangered Species Act (USFWS)
- Jefferson County plan and ordinances (County)
- State Land Use Laws (Department of Land Conservation and Development) (ORS 92, 193, 197, and 215)
- Forest Practices Act (Department of Forestry) (ORS 527.610 – 527.992)
- Water Laws (Water Resources Department (WRD))
 - Instream Water Rights (ORS 537.332 – 537.360; OAR 690-077 and OAR 635-400)
 - Mitigation Credits for Projects in the Deschutes River Basin (ORS 537.746; OAR 690-505-0500 to 690-505-0630)
 - Additional Public Interest Standards For New Appropriations OAR 690-033
- Water Quality Regulations (Department of Environmental Quality (DEQ)). Numerous regulations would apply depending on the proposed project design and operation. Most water quality laws can be found under Chapter 468B — Water Quality.
 - Groundwater Quality Protection (OAR 340-040)
 - NPDES or WPCF (OAR 340-045)
 - Land Application of Wastewater (OAR 340-50)

- o Reclaimed Water from Sewage Treatment Plants (OAR 340-55)
- o Instream Water Rights (OAR 340-56)
- o On Site Sewage Disposal (OAR 340-71)
- o Stormwater (handled under OAR 340-045 and 340-044)
- o TMDL's (OAR 340-042)
- o Underground Injection Control (OAR 340-044)

Of the above regulations, only the State Endangered Species Act (ESA), the Fish and Wildlife Habitat Mitigation Policy and the ODFW Instream Water Rights rule are implemented by ODFW. There are limitations to ODFW's regulations.

- o The State ESA applies primarily to state land and waters of the state. A state incidental take permit (ITP) is required for take of a state-listed species, but there is no state regulation of listed species habitat on private land. If a federal incidental take permit is required, a state ITP is not required.
- o The ODFW Fish and Wildlife Habitat Mitigation Policy is required to be followed for ODFW activities and when providing ODFW recommendations for fish and wildlife mitigation. However, ODFW's recommendations are usually only advisory to other state and local agencies and these agencies take ODFW's advice into account along with other factors.
- o ODFW's Instream Water Right (IWR) rule provides directions for how ODFW will determine flows necessary for fish and other aquatic life. Based on these flow determinations, ODFW can make application to WRD for an instream water right. WRD is responsible for making the final determination on the amount of the water right and holds the issued IWR in trust for the state.

State Endangered Species Act

- o State listed threatened species that occur in the Metolius Basin are the bald eagle and the northern spotted owl. Other bird species in the basin that are listed on the state sensitive species list are the northern goshawk, olive-sided flycatcher, yellow-breasted chat, Lewis' woodpecker, black-backed woodpecker, Williamson's sapsucker, flammulated owl, ferruginous hawk, mountain quail, white-headed woodpecker, willow flycatcher, western bluebird, bufflehead, Swainsons hawk, northern pygmy owl and pileated woodpecker.
- o The two state-listed sensitive fish species that occur in the Metolius Basin are the bull trout and redband trout.
- o State-listed sensitive amphibians in the basin are the spotted frog, Cascades frog, western toad, and tailed frog.
- o Mammal species on the state sensitive species list that occur in the Metolius Basin are the silver-haired bat, small-footed myotis, Townsend's big-eared bat, and American marten.

- o Not listed, but other important species of concern in the basin include sockeye salmon (including kokanee), the peregrine falcon, the golden eagle, mule deer and elk. In addition, chinook salmon have recently been released in the upper basin as part of the re-introduction of anadromous fish populations.
- o The bald eagle is no longer federally listed, so in the event of a take of an eagle through a development action, a state incidental take permit would be required.

ODFW would not have direct regulatory authority over the habitat of any of the above listed species. ODFW would request that any proponent of a destination resort in the Metolius Basin address potential impacts to all of the above species. ODFW would also request mitigation to offset unavoidable losses to essential or important wildlife habitat.

Fish and Wildlife Habitat Mitigation Policy

The Oregon Fish and Wildlife Commission adopted a Fish and Wildlife Habitat Mitigation Policy that guides ODFW's mitigation recommendations for development actions. The rules are not binding unless the activity is regulated directly by ODFW. ODFW uses the Mitigation Policy to guide recommendations for avoiding, minimizing and compensating adverse effects of development on fish and wildlife habitats. These recommendations are provided by ODFW when requested by a government or municipality with jurisdiction or oversight authority over the particular development project. ODFW has used the policy in making recommendations for numerous destination resorts throughout the state.

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.

Federal Endangered Species Act

Federally listed species that occur in the Metolius Basin include bull trout, and the northern spotted owl. The Metolius Basin is a critical spawning and rearing area for bull trout. Bull trout are limited by their requirement for cold water temperatures for spawning and juvenile rearing. They are extremely sensitive to potential development effects including increased water temperatures and sedimentation changes. Some of the most productive spawning and rearing habitat for bull trout in the basin occurs in the spring-originated tributaries to the Metolius River such as Jack Creek and Roaring Springs. If a proposed destination resort would result in take of a listed species, the project proponent would be required to either obtain an incidental take permit from the US Fish and

Instream Flows

ODFW applied for instream flows in the Metolius River and nine tributaries within the basin for fish migration, spawning, egg incubation, fry emergence and juvenile rearing. WRD has issued water right certificates and holds them in trust for the state. There are a few cfs of other water uses in the basin mostly domestic and irrigation use, but the majority of the flow is protected by the IWR. There is also a tribal treaty water right that needs to be satisfied. WRD's water availability tables show that water is not available from the Metolius River for further appropriation for all months except April.

Most likely a destination resort would need to rely on groundwater which would require mitigation for water use through the Deschutes River Basin Groundwater Mitigation program. WRD indicates that a proposed groundwater development for the current proposed destination resort developments would impact the Metolius River, but the impact would be below that required to mitigate within the Metolius basin. Therefore the development could mitigate their water use elsewhere in the Deschutes basin (if the development needed to mitigate within the Metolius Basin there would be insufficient mitigation water available for mitigation). Groundwater extraction for development use would likely have some effect on instream flows and fish habitat which could affect bull trout (a listed species), redband trout, kokanee salmon and other aquatic life.

Decreases in stream flows have the potential to translate into negative impacts on fish populations. ODFW has tracked fish spawning through good and bad water years and has observed that reductions in spring flows brought on by dry climatic conditions have translated into reduced spawning rates. ODFW would expect that reductions in stream flows from springs through groundwater withdrawal would have similar effects on spawning and fish populations only it would be a more permanent reduction because of the continuing nature of the groundwater withdrawals.

Water Quality

Most of DEQ's rules are designed to minimize pollution, maintain water quality above water quality standards and in some cases prevent decreases in water quality in high quality streams. Major concerns for fish (specifically bull trout) for the Metolius River would be water quality concerns associated with:

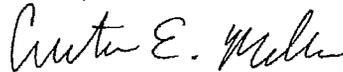
- o Stormwater runoff - would likely increase with the increase in impervious surfaces which may have direct impacts by increasing potential pollution loads through runoff to local tributaries and the river; increasing the likelihood of spills; and delivering pollution to streams through groundwater discharge contaminated by stormwater.
- o Sewage Treatment – Most likely the density and number of homes envisioned would require a municipal sewage treatment system of some kind. The effects on fish will depend on how the effluent from such a system is handled. DEQ would require either a NPDES or WPCF permit and would either discharge directly to a surface water

body after treatment or be applied to the land where groundwater could be affected. If the development relies on septic systems there would likely be an impact to groundwater quality which in turn could affect surface water quality through groundwater discharge to surface water.

All of the local, state, and federal regulations that apply to destination resorts are intended to avoid or minimize adverse effects of these developments on fish and wildlife habitat and other resources. However, none of the regulations are intended to avoid all adverse effects on fish or wildlife resources. Even with the best mitigation actions there will be loss of fish and wildlife habitat through habitat fragmentation, incremental reductions in stream flow, increased human interaction, road development, etc.

Thank you for the opportunity to comment on this important issue. Please contact me if you have any questions on our response.

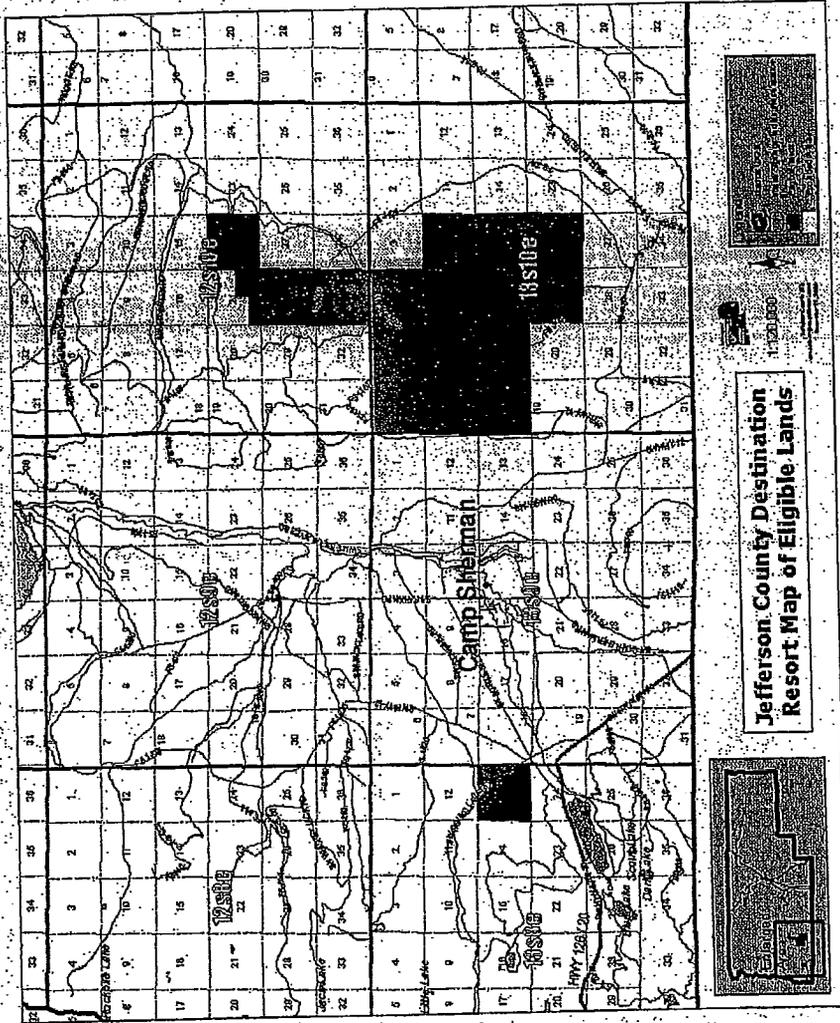
Sincerely,



Curt Melcher
Deputy Director for Fish and Wildlife Programs

Attachment

C: - Mike Carrier, Governor's Office
Suzanne Knapp, Governor's Office
Jeannie Kelso, Governor's Office





United States
Department of
Agriculture

Forest
Service

Deschutes National Forest

1001 SW Emkay Drive
Bend, OR 97702
(541) 383-5300

File Code: 1500

Date: April 11, 2008

Governor Kulongoski
160 State Capitol
900 Court Street
Salem, OR 97301

Dear Governor Kulongowski:

I am writing to call your attention to the legal standing of the Metolius Wild and Scenic River, and the United States Forest Service mandate and responsibility to protect the natural and cultural resource values for which it was designated. I hope this information can be useful to you as the State seeks to determine if its own laws and regulations are sufficient to adequately protect the river from adverse impacts that could be caused by development, even when that development may be several miles from the river.

I understand that you have recently asked State agencies to evaluate whether existing state laws and rules are adequate to ensure that new destination resort development in or near the Metolius basin would not have any adverse effects to important resources, including water quantity and quality. We have seen the responses from the Department Environmental Quality, Department of Fish and Wildlife, and the Water Resources Department that suggest that there will likely be adverse impacts to the river.

The Metolius River was first mentioned as a potential Wild and Scenic River in the 1982 Nationwide Rivers Study conducted by the National Park Service. Through the work of many local citizens led by then Senator Mark Hatfield, the Metolius was added to the national system in 1988 in the Omnibus Oregon Wild and Scenic Rivers Act of 1988. It was added to the State Scenic Waterways Program at the same time.

The purpose of the Wild and Scenic River designation as stated in the original Wild and Scenic Rivers Act of 1968 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."* Both the federal and state programs encourage cooperation between agencies to protect the river and its values. Both programs protect private property rights in and around the designated rivers, and envision a high reliance on local comprehensive plans to maintain consistency with the objectives of the program.

In the Act, Congress delegated responsibility to the Forest Service through the Secretary of Agriculture to administer the river *"in such manner as to protect and enhance the values that caused it to be included in the system..."* The role of the federal manager, in this case myself as

the Forest Supervisor of the Deschutes National Forest, is to identify the outstandingly remarkable values (ORVs) of the river, to develop resource management goals necessary to protect those ORVs, and to define the boundaries necessary to enhance the river values and properly protect them for the benefit of future generations. The Deschutes National Forest, with the partnership of the State and the Confederated Tribes of the Warm Springs Reservation of Oregon undertook a broad planning process beginning in 1989, with unprecedented public involvement and comment. A Management Plan was signed in May, 1997 and implementation began immediately and continues to this day.

For the Metolius River, the ORVs were determined to be geology, ecology, fish and wildlife, scenery, cultural history, recreation, and water. For water, the natural, unpolluted water quality is considered to be unique for rivers of its size and for the amount of development and recreational use that occurs. The Metolius River is also considered unique in the region for the quantity and stability of its spring-fed headwaters sources. While the possibility of destination resorts raises a number of issues that may affect the ORVs in various ways, it is the water of the Metolius River that is of most concern. Our goal for water quality in the Metolius River is to maintain the existing high quality. Our on-going water quality testing program utilizes monitoring thresholds that are higher than current state standards. Residents of our 108 recreation residences and other special use holders in the river corridor rightly consider themselves to be stewards and protectors of the river. With the help and cooperation of those summer homeowners and Jefferson County, we have replaced nearly all of the old and failing septic systems and raised the standard for new systems on National Forest Lands in the basin.

In the case of water quality, the potential for adverse impacts may come from those lands classified as suitable for destination resorts that lie to the west of the Metolius River. These lands are drained by tributaries of the Metolius that generally share and enhance its high water quality. More than half of these resort-eligible lands have very high water tables, are seasonably wet, and may be considered unsuitable for septic field development. The soil types and high water tables may also require specialized construction techniques for foundations and roads. In its letter to you, ODEQ notes that *“Subsurface discharge (of effluent) to shallow soils or land application to the surface of soils may be allowed. Even with substantial removal of nutrients and other constraints from this waste water discharge, small amounts of nutrients may reach the Metolius River or its tributaries through run-off or seepage to groundwater that flows into the Metolius. The river is sensitive to nutrients, and small increases in nutrients could result in some degradation of water quality.”* ODEQ goes on to note that the Total Maximum Daily Load (TMDL) analysis for the Deschutes basin is on hold for at least the next biennium. This is the process that would normally be used to estimate the potential effects of storm water and waste water, and determine acceptable amounts of discharge as well as requirements for control in existing and proposed new developments.

For water quantity, the risk may be higher from those resort-eligible lands to the east of the Metolius basin. While not connected via surface tributaries except at the lowermost limit of the river, groundwater extraction could have an impact on streamflows in the Metolius River, according to the response from the Water Resources Department. Unfortunately, as noted by WRD, the otherwise very successful Deschutes Mitigation Program, as currently administered, cannot ensure that there will be no diminishment of flows in the Metolius, nor can it require

mitigation that will benefit the Metolius as a condition of new groundwater extraction. I should note too, that reducing water quantity, especially at the headwaters, can adversely affect water quality, particularly temperature.

As the various developments move forward in their planning and local application processes, we will continue to stay involved at the local and state level to ensure that the resources entrusted to

our protection are considered. We, and the applicants, will need to address issues such as wildlife habitat, transportation, fire protection, invasive plants, and the recreational impacts to the Metolius basin from many new visitors, as well as water quality and quantity.

I greatly appreciate your efforts to protect this remarkable national and state treasure, while continuing to respect local land use processes and private property rights. We look forward to hearing from you about any new proposals to add protections under state law that will protect and enhance the ability of future citizens to enjoy the Metolius River and its environs. If you have any questions, please feel free to contact me at 541-383-5562.

Sincerely,

/s/ John Allen
JOHN ALLEN
Forest Supervisor

cc Bill Anthony, Sisters Ranger District



Oregon

Theodore R. Kulongoski, Governor

Department of Fish and Wildlife

High Desert Region
61374 Parrell Road
Bend, OR 97702
(541) 388-6363
FAX (541) 388-6281

December 29, 2008

Jefferson County Board of Commissioners
Community Development Department
85 SE D Street
Madras, Oregon 97741

EXHIBIT: _____ # 1
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: 3-13-09
PAGES: 4
SUBMITTED BY: DLCD Staff

RE: Ordinance #O-03-07 and #-04-07: Proposed Amendments to the County Comprehensive Plan and Zoning Ordinance in response to the Land Use Board of Appeals' Final Order and Opinion Johnson vs. Jefferson County.

Dear Commissioners,

This letter is to express Oregon Department of Fish and Wildlife's (Department) concerns regarding the analysis and adequacy of the "DRAFT SUPPLEMENTAL ESEE: BIG GAME HABITAT (Supplement) findings the Department received from the county December 8, 2008. The Department believes the Supplement's findings are not correct based on the body of available wildlife research that describes the significant impacts on wildlife and their habitats from human disturbance.

BIG GAME OVERVIEW

Big game winter range in the county's wildlife overlay zone is critical for maintaining the Department's big game management objectives. Deer and elk winter range boundaries have been adopted by Jefferson County in the Metolius Wildlife Management Unit where the proposed destination resorts are being considered for siting. Big game management objectives were established by the Oregon Fish and Wildlife Commission following public review, with the purpose of sustaining adequate big game to support associated economic, cultural, social, and biological values for present and future citizens of Oregon.

Factors that can impact big game population levels and habitat use include residential and commercial developments; reduction in forage and cover either through direct loss or loss of use through disturbance, barriers such as fences, motorized and non-motorized recreation, poaching, predation, disease, and weather.

DRAFT SUPPLEMENTAL ESEE: BIG GAME HABITAT FINDINGS:

The Supplement states:

"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)."

This statement is incorrect. Multiple studies have shown that human disturbance can have significant impacts on habitat use by big game over one mile away as well as impacts on other wildlife (Rowland et al 2005, Gaines et al 2003, Glennon et al 2005, Hansen et al 2005). Recently, the proposed Thornburg Destination Resort in Deschutes County used a human disturbance band analysis on big game and other wildlife to determine resort impacts on wildlife and the appropriate mitigation measures needed to offset those impacts. The Bureau of Land Management Prineville District also incorporated the use of human disturbance bands to assess impacts on wildlife in their 2005 Upper Deschutes Resource Management Plan. 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.

The Supplement states:

"More generally, in adopting Ordinance No. O-03-07, the Board found that destination resorts that meet the siting approval criteria in JCZO Section 430 by definition cannot conflict with any inventoried Goal 5 resource, because the siting standards require the resource to be preserved by a conservation easement "sufficient to protect the resource values of the resource site." (Section 430.6(N)) (Ordinance No. O-03-07 p. 25)."

A conservation easement "sufficient to protect the resource values of the resource site" would require a one mile buffer from the big game winter range boundary along with no human use of the buffer or the surrounding big game winter range from December 1 through March 31 of each year. Likewise, to avoid significant impacts, access through Goal 5 Big Game Winter Range to the destination resorts would be closed from December 1 through March 31 of each year.

The Supplement states:

"Furthermore, the Board found that the types of uses in a destination resort setting, including residential, recreational, and limited commercial development, are not qualitatively different from the existing uses that the County's programs to protect Goal 5 resources are implemented to regulate."

The rationale behind this statement is unclear to the Department given that two small cities are proposed to be built where currently there is low development and low human disturbance. Resources necessary to build and maintain these destination resorts will increase significantly, as will transportation of energy, people, goods and services.

The Supplement states:

"Therefore, the Board found that its existing programs to protect Goal 5 resources in its acknowledged 1981 Plan and Zoning Ordinance will adequately protect any inventoried Goal 5 resources within destination resort eligible sites. In particular, the Board found that the existing Goal 5 protections for the Winter Range—*i.e.*, the Wildlife Overlay Combining Zone—would protect the Big Game Winter Range. *Id.* at 26. Additionally, the Board found that no reasonably available evidence existed to suggest that eligibility for destination resorts, subject to compliance with development criteria, will conflict with specific significant Goal 5 resources within or around the eligible tracts. *Id.*"

The Department disagrees with the Board's finding given the body of wildlife research that shows how human disturbance, activities and infrastructure, can significantly impact or displace habitat currently used by wildlife. Jefferson County's destination resort ordinance currently only addresses development on mapped Goal 5 lands. It does not address indirect and cumulative impacts that can significantly impact Goal 5 lands.

Jefferson County Ordinance Section 430 – Destination Resorts 430.6 Standards and Criteria for Approval of Tentative Master Plan standards and criteria N states:

"Any designated Goal 5 resource on the tract where the resort will be sited will be preserved through conservation easements as set forth in ORS 271.715 to 271.795. A conservation easement under this section shall be sufficient to protect the resource values of the Goal 5 site and shall be recorded with the property records of the tract on which the destination resort is sited."

The Supplement states:

"The "Goal 5 Impact Assessment of Resort Traffic on Deer Winter Range," prepared by Pacific Habitat Services, Inc., dated November 28, 2008, and "The Effects of Traffic on Mule Deer Winter Range along Access Roads to the Proposed Ponderosa Project Jefferson County, Oregon," prepared by Mason, Bruce & Girard, Inc., dated _____, 2008, are adopted by the County in support of this supplemental ESEE and incorporated herein by reference."

The Department did not receive a copy of the Mason, Bruce & Girard, Inc. report from the County; however we did receive the Pacific Habitat Services, Inc. report from the County and after review we emailed the following comments to the Community Development Director December 22, 2008.

- 1) In 2008 ODFW estimated the spring mule deer population in the Metolius Wildlife Management Unit (WMU) to be 4600 mule deer out of a management objective of 6200. We also estimated an elk population of 400. The report states the population estimate was 611 mule deer in 2007 along with 180 elk. 611 mule deer is the total number of deer biologists counted in 2007 that they used in a model to estimate the total over winter mule deer population.
- 2) The 337,076 acres of mule deer winter range in Jefferson County include winter range acres for the Grizzly and Ochoco WMUs in addition to the Metolius. The Metolius winter range portion is considerably less than 337,076 acres.
- 3) Indicating that 800 acres is insignificant relative to the whole Metolius winter range is not taking into consideration cumulative effects and the ripple effect of placing a small city (two in the Metolius Basin) with all its disturbances where none currently exists.
- 4) The greatest big game impact associated with the Metolius is on elk that currently calve, summer, and winter in the area.

If the County chooses to adopt the Pacific Habitat Services, Inc. report, given its inaccuracies, as support for the supplemental ESEE, then the Supplement could be considered inaccurate as well.

The Supplement states:

"PHS explained that the potential impacts of traffic and road improvements within the Winter Range were that increased traffic speeds would cause an increase in deer/auto collisions and that more accessible roads would encourage more human use of the lands surrounding the roads. PHS concluded, however, that the impacts would be minimal, for three primary reasons: (1) the affected land is less than one percent of the Winter Range resource; (2) the roads in question are already well-traveled, suggesting that deer are accustomed to the roads; and (3) collision data for the surrounding area demonstrates a very low incident rate."

As the Department noted above to the Community Development Director 1) the projects will impact more than one percent of the Metolius Wildlife Habitat Unit winter range, particularly from human disturbance; 2) the level of use on the access roads will increase significantly thereby creating a level of use that the deer are not currently accustomed to; and 3) collision data is based on low road use, where project development will result in high road use. Based on this additional information, the Department finds the PHS conclusions to be inaccurate.

The Supplement states:

"According to PHS and MBG, techniques exist to mitigate those conflicts. They include a variety of strategies in three principal categories:

- Designing roads to keep vehicle speeds low;
- Identifying and improving frequent deer-crossing areas; and
- Discouraging increased use of land surrounding the roads."

The Department's techniques to address wildlife impacts are to 1) avoid the impact, 2) minimize the impact, and 3) mitigate for the impact when appropriate. Four crucial mitigation components associated with roads and people are 1) adequate environmental assessment, 2) adequate engineering, 3) adequate education, and 4) adequate enforcement. Without addressing all four of the crucial components, any mitigation proposed will likely fail. None of the crucial mitigation components are sufficiently addressed in the PHS report or the Supplement.

The Supplement states:

"As discussed above, the impact area for the inventoried, acknowledged Big Game Winter Range resource site is identical to the mapped resource site. The County is not required to expand the regulatory boundaries of the acknowledged resource site and impact area in connection with this PAPA. Therefore, the "impact area" within which this ESEE analysis is conducted is limited to the Goal 5 resource site itself."

As discussed previously, the analysis only addresses direct impacts to the Goal 5 big game resource and not indirect and cumulative impacts associated with human use and disturbance of the Goal 5 resource. These two impact categories will cause a much greater impact on the Goal 5 big game resource than will the direct impacts. Only addressing the direct impacts is comparable to telling an established neighborhood, that no impacts will occur to their neighborhood by allowing development of a large retail mall in an adjacent vacant field.

The Supplement states:

"Limiting the conflicting use would have neutral environmental consequences because the mitigation requirements would minimize effects on deer movement across the roadways and on human disturbance of the surrounding habitat. There also could be opportunities for positive environmental consequences created by mitigating measures required through the siting process."

This statement is inaccurate as presented in the Departments discussions previously in this letter and based on the realization that it will be very difficult to adequately mitigate Goal 5 big game resource impacts associated with the siting of two destination resorts in the Metolius Basin.

The Supplement states:

"Allowing the conflicting use would result in disturbance to the Winter Range, increasing deer/auto collisions and human intrusion into deer habitat. However, the environmental effects are fairly limited."

This statement is inaccurate as presented in the Departments discussions previously in this letter and based on the realization that Goal 5 resource effects will be much greater than those assessed and addressed in the Supplement.

The Supplement states:

"By contrast, very large developed areas of the County, including Camp Sherman, the Three Rivers Recreation Area, and parts of Crooked River Ranch are all located within the Big Game Winter Range, as are hundreds of miles of existing roads. The County historically has allowed development in such areas without any constraints placed on access through the Winter Range. Consistency with prior practice suggests that access through the Winter Range should be allowed."

These residential areas and accompanying access routes were established prior to the existing county ordinances. Based on this statement's rationale, the county is essentially saying that uses allowed in the past should also be allowed on other land within Jefferson County today regardless of the changed economic, environmental, and social conditions.

The Supplement states:

"In addition, the conflicting use is not so detrimental to the Goal 5 resource that it should be prohibited entirely under OAR 660-023-0040(5)(a)."

The Department believes this statement is based on a flawed assessment since some of the information the statement is based on is inaccurate and the assessment did not consider indirect or cumulative impacts on the Goal 5 big game resource. Both of these points were discussed previously in this letter.

The Supplement identifies IV. PROGRAM TO ACHIEVE THE GOAL as adequate mitigation to address impacts to the Goal 5 resource. The proposed program does not adequately address impacts to the Goal 5 big game resource associated with access to the proposed destination resorts as we previously discussed. It also does not address the indirect and cumulative impacts from human disturbance, a much greater impact to the Goal 5 resource than impacts from access that we also previously discussed. Based on inaccurate and incomplete information, the Supplement's findings and proposed recommendations do little to protect and conserve the identified Goal 5 big game resources.

The Department appreciates the opportunity to comment on the County's "SUPPLEMENTAL ESEE: BIG GAME HABITAT findings and consideration of our concerns.

Sincerely,

Glen Ardt
Wildlife Habitat Biologist
Deschutes Watershed District
glen.t.ardt@state.or.us

Literature Citations:

Gaines, W.L., P.H. Singleton, R.C. Ross. 2003. Assessing the Cumulative Effects of Linear Recreation Routes on Wildlife Habitats on the Okanogan and Wenatchee National Forests. Gen. Tech. Rep. PNW-GTR-586. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 79 p.

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Rowland, M.M., M.J. Wisdom, B.K. Johnson, and M.A. Penninger. 2005. Effects of Roads on Elk: Implications for Management in Forested Ecosystems. Pages 42-52 in Wisdom, M.J., technical editor, The Starkey Project: a synthesis of long-term studies of elk and mule deer. 2004 Transactions of the North American Wildlife and Natural Resources Conference, Alliance Communications Group, Lawrence, Kansas, USA.

The Metolius

Area of Critical State Concern



Metolius River (John Hutmacher, Deschutes National Forest)

Oregon Department of Land Conservation and Development

March 9, 2009

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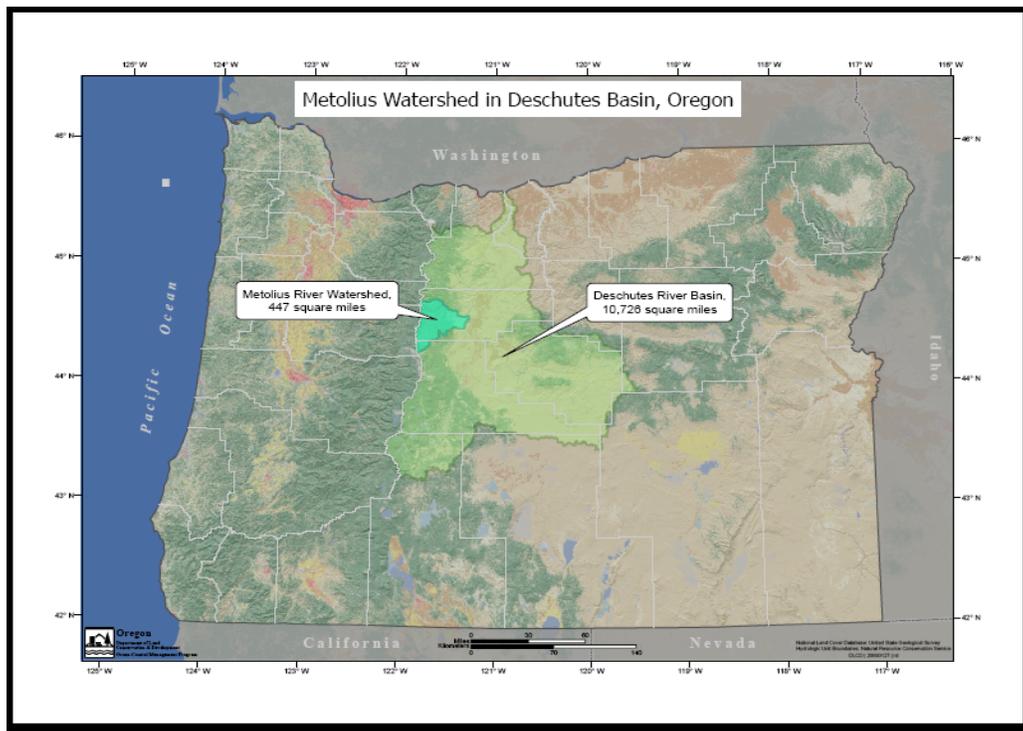
I. RECOMMENDATION: The Metolius Basin Should Be Designated as an Area of Critical State Concern (ACSC)

The Land Conservation and Development Commission recommends that the Oregon legislature approve the Metolius Basin as an 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.

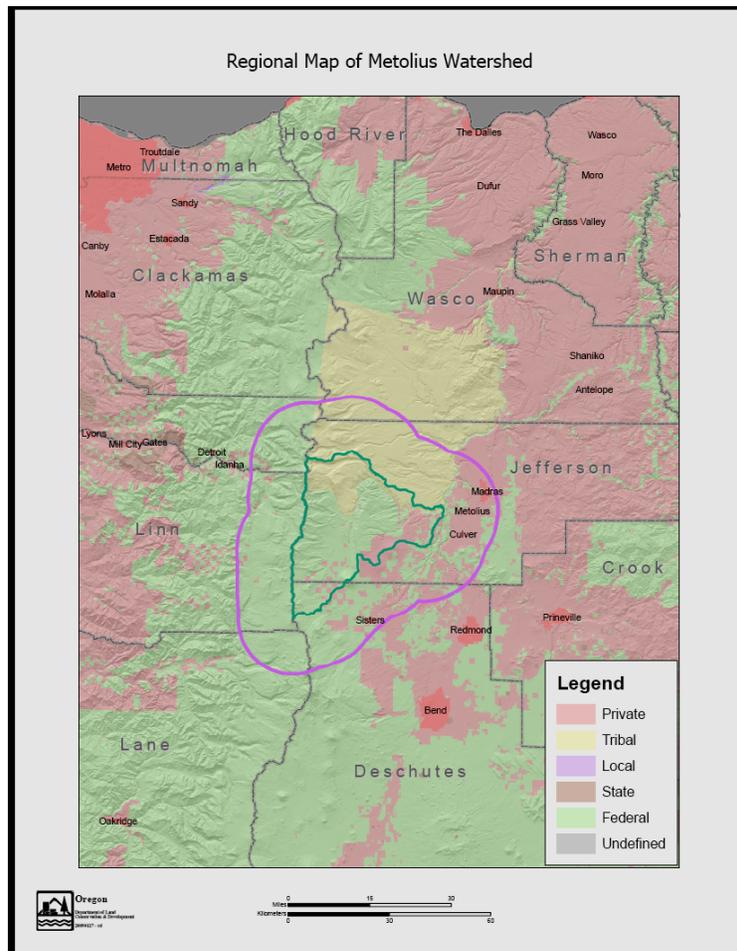
II. INTRODUCTION

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.



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 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.



B. The Basin as an Area of 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 had large sockeye and spring chinook fisheries historically.

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 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.

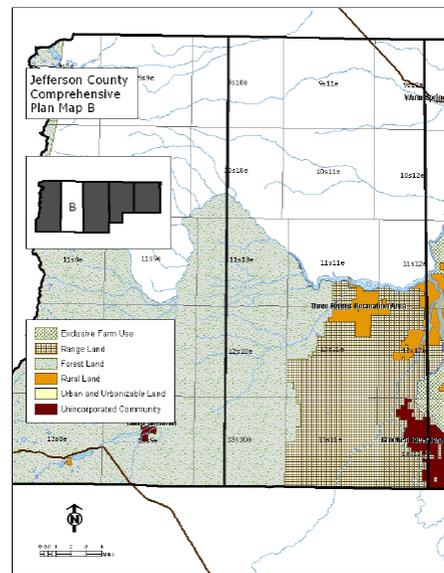
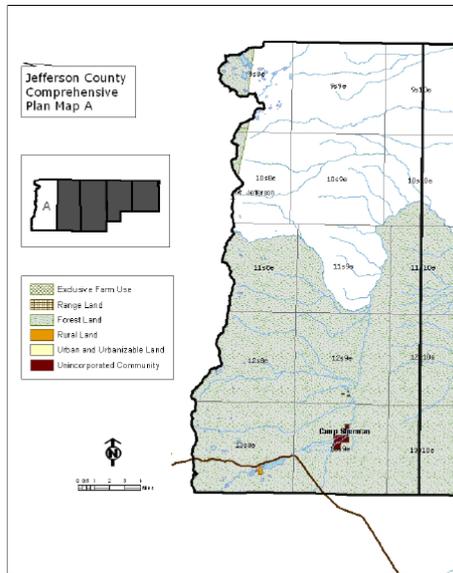
Recognizing these special qualities of the Metolius, and wishing to preserve its outstanding values for future generations, the Metolius Conservation Area is established in this plan. This 86,000 acre area encompasses Black Butte, the Metolius Basin between the wilderness boundary on the west and Green 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 suggest in 1974 that the Land Conservation and Development Commission consider 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. Most of lands in the basin are 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 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

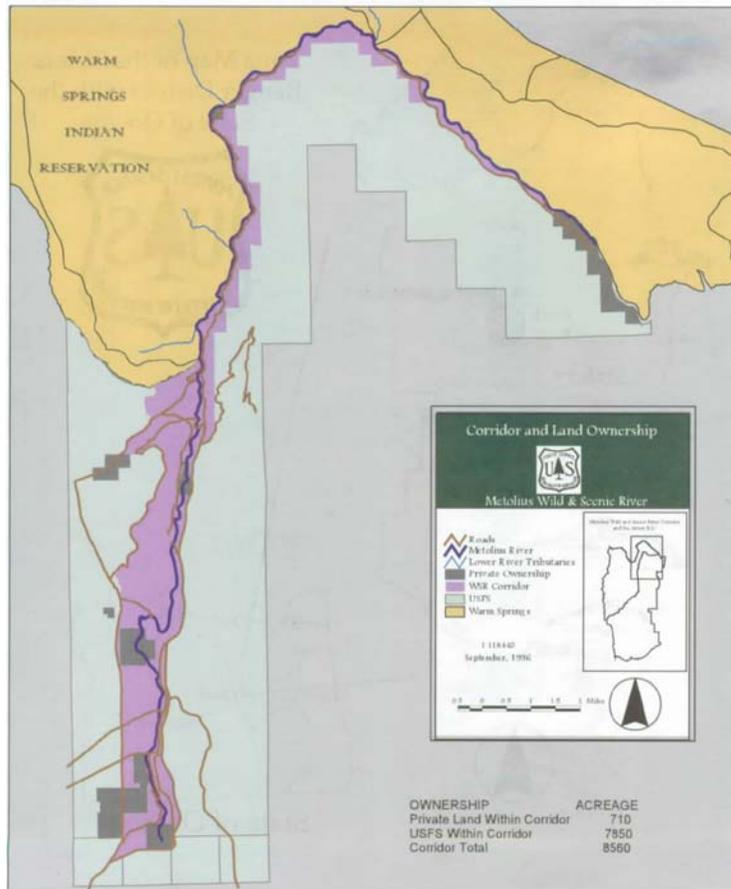
Preservation Act of 1966. The Forest Service and State also contact and consult with appropriate tribal representatives and resource specialists in the early stages of any project or activity planning on Forest Service or State administered lands that may affect Tribal interests, treaty rights or traditional 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. 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

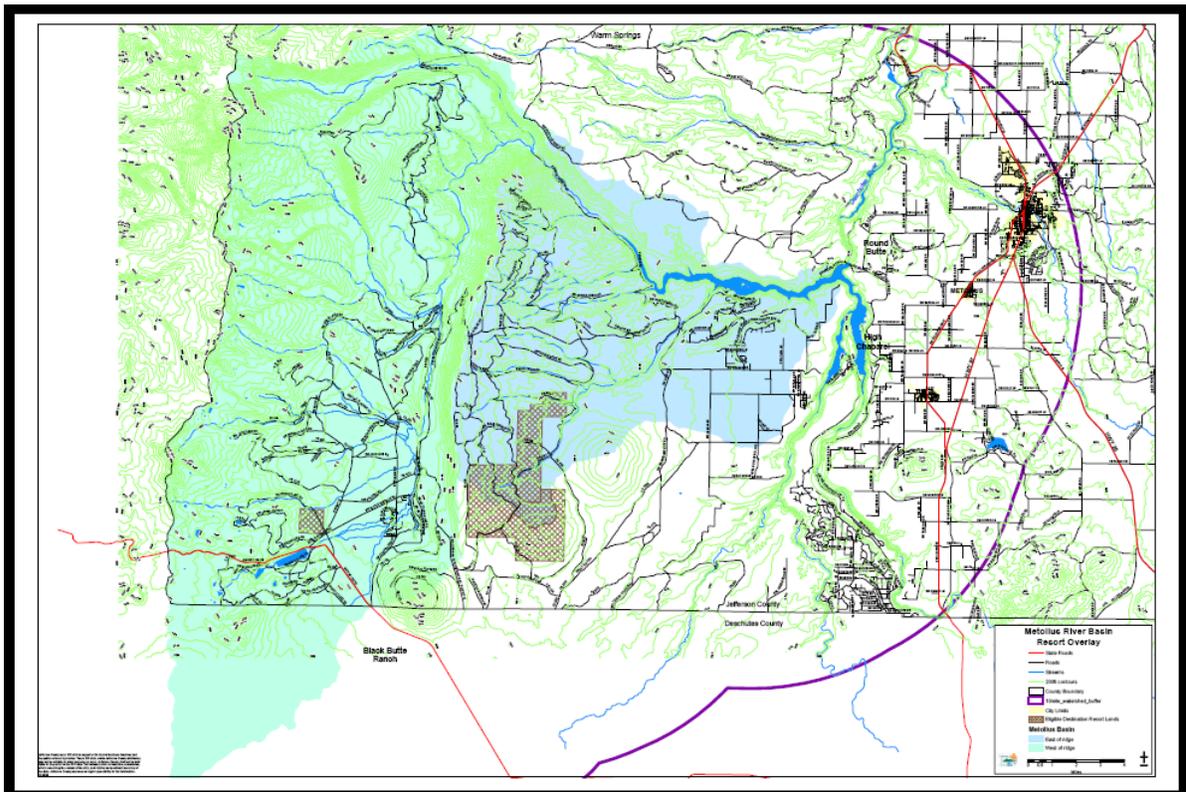
In 1990 the Deschutes National Forest established the “Metolius Conservation Area.” The Conservation Area contains ten management (sub)areas within an 86,000-acre designation. Included in the Area are Black Butte, the Metolius Basin between the wilderness boundary on the west and Green Ridge on the east, 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 –in order 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 with 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 the 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 should also be considered. Using the ACSC process, it may be possible to identify opportunities for 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 Interests and Fairness

At least three private property owners would be directly affected by the proposed 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 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. 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 and to create their own respective 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 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. 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 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 the Three Rivers unincorporated communities.

B. Give Jefferson County a Clear Path to Allow Limited Resort Development in a More Appropriate Location. The ACSC also recognizes the economic development objectives of Jefferson County by identifying an alternative area where the county could, if it elects to do so, 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 development is possible in this area, although there may be difficulties due to land ownership patterns. Resort development in the vicinity of Madras could provide significantly greater employment and other economic benefits to the county than the two areas now mapped for resort development.

The ACSC allows, but does not require, Jefferson County to map a small area west of Round Butte that is further than three miles from mapped high value crop land as eligible for resort development. More generally, the ACSC exempts Jefferson County from the normal 30-month waiting period before it may re-map lands for destination resorts.

C. 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 (at a level

reflecting their potential claims under Measure 49). 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 has largely 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 wildfires 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

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 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 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 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.

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 3,500 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 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. 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 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 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 ACSC 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 an area near Round Butte for resort development, particularly if the area is within three miles of mapped high value crop land, and if the county is not able to go through a public process to determine if such an area is desirable. Property owners were not interested in moving their developments to other areas in Jefferson County.

VI. LAND USE MANAGEMENT PLAN

A. The Legal Effect of the Management Plan.

This section of the proposed 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 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 provision 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.

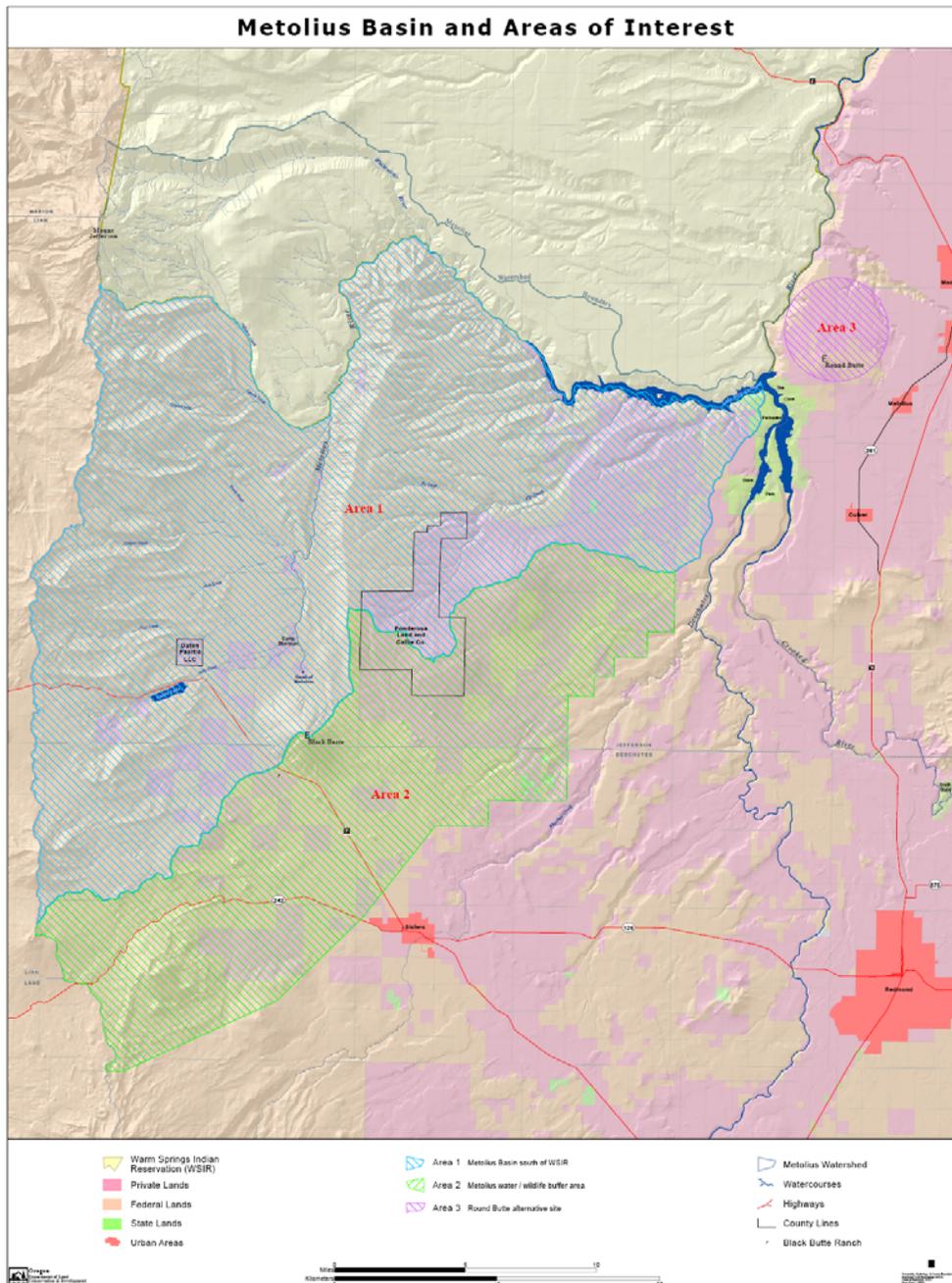
The management plan may be amended by the Land Conservation and Development Commission, as provided and subject to the limitations contained in Part D of this section.

B. The Boundary of the Area of Critical Concern

The Area of Critical State Concern consists of three subareas:

1. The Metolius basin itself (defined by surface hydrology as mapped by the Oregon Water Resources Department in Exhibit A) (Subarea 1);
2. 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

3. A third subarea near Round Butte (east of the Lake Billy Chinook) identified as an alternative location where resort development may be authorized by Jefferson County (as mapped in Exhibit B (and NOT as shown conceptually below) (Subarea 3).



The boundary of Subarea 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.

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 and the buffer area from large-scale development that would be inconsistent with their outstanding and unique environmental, cultural and scenic values and resources. 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 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 Resort Development in a More Appropriate Location.** The Management Plan also recognizes the economic development objectives of Jefferson County by identifying an alternative area where the county could approve destination resort development. Alternatively, the Management Plan allows Jefferson County to remap without regard to the 30-month waiting period that

would normally apply under ORS 197.455. The alternative area identified is in the vicinity of Round Butte, near the City of Madras and Cove Palisades State Park. The area is over three miles from mapped high-value crop land. The Round Butte area may have potential for resort development due to its outstanding views and proximity to Lake Billy Chinook. However, the area beyond the three mile limit is small, and it is unclear without further analysis whether development in that location is feasible. The Management Plan allows, but does not require, Jefferson County to map the area as eligible for resort development if it can show that the area is beyond the three-mile limit.

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 (see sections 1.2.3 and 2.2.3). The level of entitlement for each property is set to offset any loss of value from the other provisions of the Management Plan. 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 without legislative approval, and by setting general standards for other changes.

1. Changes Prohibited Without Legislative Approval

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

- a. Any change to the boundary of the ACSC, including its subareas, of more than 50 acres;
- b. Any change to the prohibition of a destination resort under

- c. Statewide Planning Goal 8 or under ORS 197.435 et. seq.; or
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 designation and Management Plan 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 repeal the designation or 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 the designation or 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.

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 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. Subarea 1: Metolius Basin. Subarea 1 is the area included 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 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;

1.1.2. Any new golf course;

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 uses allowed under Goal 4 and 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

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

provided in section 1.2, below. For purposes of determining the amount of water use under this paragraph, the county may use the following amount unless it finds that there is substantial evidence that the use would be lower: 0.5 acre-feet per year per residential unit. If the county uses a lower amount for residential units, it shall condition the use to ensure that the lower water usage is maintained. For non-residential uses the amount of water use per year shall be calculated based on common and accepted methodologies and the county shall condition the use to ensure that the approved level of water use is maintained.

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), Three Rivers Recreation Area Waterfront, and Three Rivers Recreation Area Residential zones.

1.2.2. All uses allowed under Statewide Planning Goals 3 or 4, whichever is applicable, and the rules implementing Goals 3 and 4, including any conditional use of farm or forest land allowed by Goals 3 or 4 or their implementing rules (except that any development of dwellings authorized by OAR Chapter 660, Divisions 6 or 33 may not exceed the provisions of section 1.1.3).

1.2.3. The development of up to twenty-five residential units within the area mapped as eligible for destination resort development by Jefferson County in Township 13 South, Range 8 East, section 13. However, the development area for such units (the area of any lots and common facilities, but not including common open space) may not exceed twenty-five contiguous acres. 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. 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 12.5 acre-feet. 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 units and common facilities must be dedicated as open space.

1.3. Special Land Use Provisions (Deschutes County). The following uses and development in the portion of Subarea 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.

1.3.2. All uses allowed under Statewide Planning Goal 4 and its implementing rules, including any conditional use of forest land allowed by Goal 4 or its implementing rules.

2. Subarea 2: Metolius Water/Wildlife Buffer Area. Subarea 2 is that area included 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 acknowledged² 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 Jefferson County's destination resort map is not acknowledged, as it is still on appeal in the Oregon Supreme Court.

- 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;
- 2.1.4.** Any new commercial or industrial development other than those uses allowed under Goal 4 and 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. For purposes of determining the amount of water use under this paragraph, the county may use the following amount unless it finds that there is substantial evidence that the use would be lower: 0.5 acre-feet per year per residential unit. If the county uses a lower amount for residential units, it shall condition the use to ensure that the lower water usage is maintained. For non-residential uses the amount of water use per year shall be calculated based on common and accepted methodologies and the county shall condition the use to ensure that the approved level of water use is maintained.

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

- 2.2.1.** All uses allowed by the current provisions of the Jefferson County comprehensive plan and land use regulations concerning the Three Rivers Recreation Area Waterfront, and Three Rivers Recreation Area Residential zones.
- 2.2.2.** All uses allowed under Statewide Planning Goals 3 or 4, whichever is applicable, and the rules implementing Goals 3 or 4, including any conditional use of farm or forest land allowed by Goal 3 or 4, or their implementing rules (except that any development of dwellings authorized by OAR Chapter 660, Divisions 6 or 33 may not exceed the provisions of section 2.1.3).

2.2.3. The development of up to one hundred residential units within Township 13 South, Range 10 East, sections 20, 21, 28, and/or 29 in Jefferson County. However, the development area for such units (the area of any lots and common facilities, but not including common open space) may not exceed one hundred acres. 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. 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 50 acre-feet. For purposes of determining the amount of water use under this paragraph, the county may use the following amount unless it finds that there is substantial evidence that the use would be lower: 0.5 acre-feet per year per residential unit. If the county uses a lower amount, it shall condition the use to ensure that the lower water usage is maintained. This land 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. However, if the owner of the property described in this paragraph elects to carry out this use, any contiguous property (not including property touching only at a point) in the same ownership as of March 11, 2009, not used for residential units and common facilities must be dedicated as open space and this provision may not be combined with the allowance in section 2.1.3.

2.3. Special Land Use Management Provisions (Deschutes County). The following uses and development in the portion of Subarea 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. All uses allowed under Statewide Planning Goal 4 and its

implementing rules, including any conditional use of forest land allowed by Goal 4 or its implementing rules.

2.3.3. 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 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 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. Transfer of Resort Mapping to Round Butte. For a period of two years following the effective date of this Management Plan, Jefferson County may map the area (outlined in Exhibit B) in Township 11 South, Range 12 East, sections 10 and 15 that are more than three miles from high-value crop land (as mapped by Jefferson County in its current comprehensive plan) as eligible for the siting of destination resorts. If the county elects to use this authorization, notwithstanding ORS 197.455 and Statewide Planning Goal 8, its decision may only be appealed on the basis that the county has included land that is closer than three miles from high-value crop land (as mapped by Jefferson County in its current comprehensive plan).

3.2. 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.

Exhibit A, MBACSC Areas 1 and 2

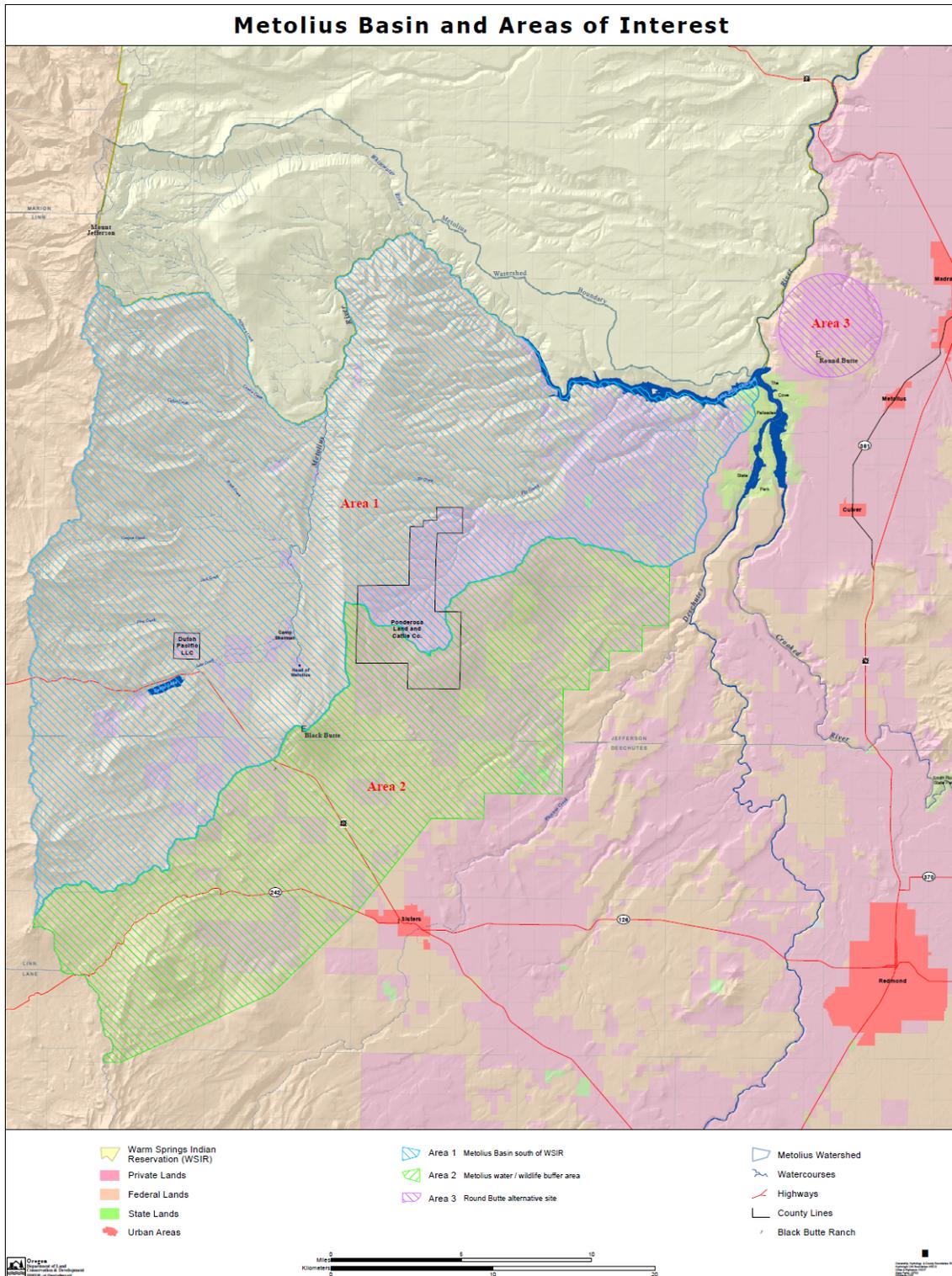


Exhibit B, MBACSC Area 3 Round Butte Alternative Site



Doug Hancock
P.O. Box 146
Camp Sherman, Oregon 97730
phone: 541-549-4942
email: hancock.doug@gmail.com

March 10, 2009

Re: Testimony regarding Metolius Basin Draft Management Plan Dated March 9, 2009

Chair VanLandingham and Commission members:

This written testimony is being submitted prior to the March 11, 2009 hearing held in Madras, which I am unable to attend.

I want to reiterate my thanks to the Commission and its staff members for doing a great deal of high quality work in a very short amount of time. I have not worked with DLCD much in the past, but if the efforts of the Commission and staff on this project are representative of how the agency is being run, this agency is a model that could be emulated by all agencies in the state.

My comments are fairly short and will be to the point. Although in general I support the management plan, I do offer a few specific suggestions:

- In section D.1 (Changes Prohibited Without Legislative Approval), subsection a should be amended to read "Any change to the boundary of the ACSC, including its subareas, or more than 25 acres;". The primary rationale for my suggested revision is that there are a handful of privately owned parcels in within the boundary of the ACSC that are larger than 25 acres and which are in environmentally sensitive areas. This change would affect only a few parcels, and an administrative agency should not be able to modify the plan for these parcels—that authority should be left with the legislature.
- Section D.1, subsection c should be deleted. Such changes should be allowed only by the legislature else too many small subdivisions (i.e., less than 100 units) be allowed.
- Subsection 1.2.3 should be amended to permit up to 15 residential units (as opposed to twenty-five units). There are several reasons why this ought to be revised downwardly. First, by allowing the owners to build even 15 units they are given a far higher density than they would have been allowed under the zoning that applied to the land when they bought it, and the zoning that applies today (under that zoning, at least if the zoning is ever acknowledged, a total of seven units would be permitted). In this sense, allowing 15 units is a true windfall for the landowners. In addition, this is an area that is very prone to wildfire and which is important deer and elk range. Reducing the number of units minimizes impacts to these resources. The requirement for clustering on 25 contiguous acres is a good idea and should be kept. At the end of the day, this is a compromise and I believe that 15 units gives the landowners (and the county) a very good result.
- Subsection 2.2.3 should be amended to permit up to 50 residential units, and the plan should require that the 100 acres on which the units may be built is contiguous. Development on a contiguous parcel minimizes impact on wildlife resources and reduces wildfire dangers. My rationale for these suggested changes is essentially the same as above.

Sincerely,
Doug Hancock

Lisa Howard - Fwd: Metolius

From: Richard Whitman
To: Howard, Lisa
Date: 03/10/2009 2:51 PM
Subject: Fwd: Metolius

For Metolius record.

rw

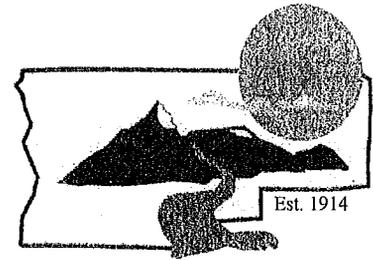
>>> On 02/17/2009 at 12:52 PM, in message <000a01c99141\$a4b38520\$adb10048@your22ca86d5c4>, "Bill Bodden" <bbodden@bendcable.com> wrote:

It is clear from the debate over the Metolius that the State of Oregon needs to develop a statewide policy for protection of special places such as the Metolius river and its basin. Instead of having three meeting on this issue in Madras and focusing on a Jefferson County perspective there need to be other debates on other sensitive areas to preclude future controversies of this nature.

William Bodden, Redmond, OR

JEFFERSON COUNTY BOARD OF COMMISSIONERS

66 S.E. "D" St., Suite A • Madras, Oregon 97741 • Ph: (541) 475-2449 • FAX: (541) 475-4454



FOR IMMEDIATE RELEASE:

CONTACT: Mike Ahern (420-9000) or Jeff Rasmussen (475-2449)

Jefferson County Releases Draft of Six Mile Wide Metolius River Protection Zone

MADRAS – Today the Jefferson County Commissioners released a draft of their plan to protect the Metolius River from over development. The Commissioners announced their intent to release the plan at the February 26th LCDC Sub-Committee hearing on the Area of Critical State Concern that has been initiated by Governor Kulongoski. The County’s plan would protect 112,294 acres of property from over development and require strict environmental measures to protect the river’s unique features.

The County Commissioners have scheduled a public hearing to discuss the LCDC Sub-Committee’s recent proposal to designate approximately 1,800 acres of farm land near Round Butte as eligible for a Destination Resort, in lieu of two areas that the County mapped miles away from the Metolius River Basin in 2006. The County’s mapping process is currently before the Oregon Supreme Court.

The Commissioners’ hearing is scheduled for 4:00PM, Thursday, March 5, 2009 in the Commissioner’s Hearing Room (66 SE D St, Madras).

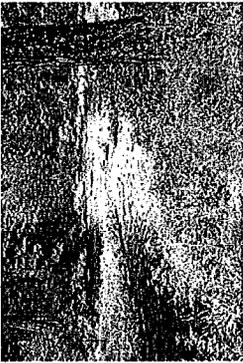
“The three LCDC Sub-Committee hearings have been full of testimony about the unique environment of the Metolius River, unfortunately this testimony has been largely ignored by the Sub-Committee who is 100% focused on the political agenda of the Governor,” said County Commissioner Mike Ahern. “We believe adding protection measures for the 3 mile zone surrounding the river will do more to help preserve the Metolius River than banning development on land that was clear cut years ago and is over 4 miles away from the banks of the river,” continued Ahern.

The full LCDC Commission will meet in Madras on March 11, 2009 (5:30PM at the Madras High School) to consider forwarding a recommendation to the state legislature to adopt an Area of Critical State Concern banning Destination Resorts.

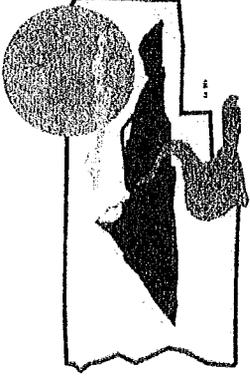
In December 2006, Jefferson County finished a two-year process to map two properties as eligible for Destination Resorts. The plan was first appealed to the Oregon Land Use Board of Appeals

(LUBA) in January 2007, which ruled in favor of Jefferson County on all but two issues. It was further appealed to the Court of Appeals, which ruled in favor of the LUBA decision. On December 24, 2008, the State Supreme Court granted review and oral arguments are scheduled for June 2009.

- END -



*Jefferson County Metolius Protection Plan
Six Mile Protection Buffer
112,294 Acres*



1. Protection of the Metolius River by limiting development.

- 1.1. Management Area – A six mile protection zone (State Management Area) is created along the Metolius River (three miles on both sides) from the headwaters to Lake Billy Chinook.
- 1.2. The Metolius River shall be considered navigable. Upon the Oregon legislature's approval of this Management Plan the Metolius River (headwaters to the Deschutes River) shall be declared a Navigable River of Oregon under ORS 274.
 - 1.2.1. The Oregon Division of State Lands shall require removal of all artificial obstacles (except vehicle bridges and permitted docks) from the river (within line of ordinary high water) in the six mile State Management Area.
 - 1.2.1.1. The Oregon Division of State Lands shall have sole authority to permit the construction docks in the six mile Management Area.
- 1.3. All property within the six mile State Management Area shall have the following restrictions, enforced by the State:
 - 1.3.1. Prohibit new residential building permits after December 31, 2012 without DLCD approval.
 - 1.3.2. Prohibit outdoor watering of lawns and gardens.
 - 1.3.3. Prohibit any destination resort described by Statewide Planning Goal 8 (recreation) or ORS 197.435 to 197.467.
 - 1.3.4. Prohibit any new golf course.
 - 1.3.5. Prohibit any new sub-division unless approved by DLCD.

1.4. After January 1, 2013 the State Building Codes Division shall be charged with permitting and inspections for all building permits requirements within the six mile State Management Area.

1.5. Starting January 1, 2014 the state Building Codes Division, with the assistance of the Oregon Division of State Lands shall complete an inventory of all residential buildings in the six mile Management Area to determine the footprint of buildings and decks to assist LCDC in managing the six mile State Management Area. BCD shall update this inventory every 24 months and make a report to LCDC.

1.6. Water quality and wildlife concerns along the Metolius River. The six mile State Management Area shall have the following restrictions:

1.6.1. Definition: "Maximum Nitrogen Reducing System" means an Onsite System or Systems allowed for use by ODEQ and listed by the Department as having demonstrated at least 79% nitrogen reduction and total nitrogen concentrations of less than 10 mg/L.

1.6.2. **Camp Sherman Zones:**

1.6.2.1. By January 1, 2012 all residential units within the six mile State Management Area shall be served with a Maximum Nitrogen Reducing System or State Department of Environmental Quality (DEQ) compliant community sewer system in order to reduce potential impact on water quality. The DEQ is required to implement this requirement and is authorized to impose fees and penalties.

1.6.2.1.1. Persons making the above improvements shall be eligible for up to a \$3,000 state income tax credit if they install a Maximum Nitrogen Reducing System.

1.6.2.1.2. Persons connecting to a DEQ compliant community sewer system shall be eligible for up to a \$10,000 state income tax credit.

1.6.2.2. No expansion of existing residential structures in the Camp Sherman Rural Residential Zones or the Camp Sherman Rural Center Zone, based on potential impacts to the Deer Winter Range.

1.6.2.3. Notwithstanding paragraph 3.1. of this section, no new residential structures within the Camp Sherman Rural Residential Zones or the Camp Sherman Rural Center Zone unless such units are served by a Maximum Nitrogen Reducing System or DEQ compliant community sewer system.

1.6.2.3.1. New residential structures shall be limited in size to 1000 square feet to minimize impacts to the Deer Winter Range.

1.6.2.4. **All applications:** For development within the Wildlife Overlay Zone, an applicant shall submit a Wildlife Habitat Management Plan for approval by the Oregon Department of Fish and Wildlife that will achieve compliance with the wildlife protection guidelines in the comprehensive plan. The management plan may also propose protections or enhancements of benefit to other types of wildlife that may be considered in weighing use impacts versus plan benefits.

1.6.2.5. All development and alterations of the natural landscape will be limited to 75 percent of the land and at least 75 percent shall be kept in open space.

1.6.2.6. Any new structure approved within the Camp Sherman Zones shall be constructed within 200 feet of the road that provides access to the property or existing driveway to limit potential impacts to the Deer Winter Range.

1.6.2.7. In order to replace any structure damaged by fire or other casualty, or natural disaster LCDC shall adopt Conditional Use Standards to review the proposal and its impacts on ecological systems. If approved, replacements will not authorize an increase in size from the original structure. Such replacements will require connection to a Maximum Nitrogen Reducing System or DEQ compliant community sewer system prior to issuance of building permits to protect the water quality of the Metolius River. All work shall commence under approved permits within one year of the damage. If permits are not obtained within that timeframe, replacement will not be possible.

1.6.3. Forest Management Zones:

1.6.3.1. By January 1, 2012 all approved residential units on FM zoned land within the six mile Management Area shall be served with a Maximum Nitrogen Reducing System DEQ compliant community sewer system in order to reduce potential impact on water quality. The DEQ is required to implement this requirement and is authorized to impose fees and penalties.

1.6.3.1.1. Persons making the above improvements shall be eligible for up to a \$3,000 state income tax credit if they install a Maximum Nitrogen Reducing System.

1.6.3.1.2. Persons hooking up to a DEQ compliant community sewer system shall be eligible for up to a \$10,000 state income tax credit.

1.6.3.2. No expansion of existing residential structures in the FM Zone if the development is within the Deer Winter Range.

1.6.3.3. Notwithstanding paragraph 1.3.1 of this section, no new residential structures within the FM Zone unless such units are served by a Maximum Nitrogen Reducing System or DEQ compliant community sewer system. New residential structures shall be limited in size to 1000 square feet if the development is within the Deer Winter Range.

1.6.3.4. **All applications:** For development within the Wildlife Overlay Zone, the applicant shall submit a Wildlife Habitat Management Plan for approval by the Oregon Department of Fish and Wildlife that will achieve compliance with the wildlife protection guidelines in the comprehensive plan. The management plan may also propose protections or enhancements of benefit to other types of wildlife that may be considered in weighing use impacts versus plan benefits.

1.6.3.5. All development and alterations of the natural landscape will be limited to 25 percent of the land and at least 75 percent shall be kept in open space.

1.7. General ACSC Management Plan Requirements:

The Management Plan shall address ground water quality and quantity threats within the six mile management area. As the unincorporated community of Camp Sherman sits on the banks of the Metolius River the potential water quality impacts from existing septic systems is of paramount concern. As such, the community of Camp Sherman and the State of Oregon shall coordinate to create the Camp Sherman Water & Sewer Districts to implement community water and sewer systems that will best address water quality and quantity issues in the management area.

1.7.1. Upon the Oregon legislature's approval of this Management Plan the LCDC and the State Department of Environmental Quality (DEQ) are granted the authority to create one or more of the following special districts within the six mile management area without going through the normal formation procedures:

- 1.7.1.1. Domestic Water Supply (ORS 266)
- 1.7.1.2. Sanitary Authority or Water Supply Authority (ORS 450.675 to 450.989)
- 1.7.1.3. Sanitary District (ORS 450.005 to 450.245)

Prior to the formation of any special district under this section the State shall complete a feasibility study that protects the groundwaters of the basin by application of treated wastewater to Level IV.

1.7.2. Infrastructure Funding for special districts.

1.7.2.1. If a special district is created under this section and they have incurred debt to pay for infrastructure in addition to normal sources of funding and debt payments the following are authorized:

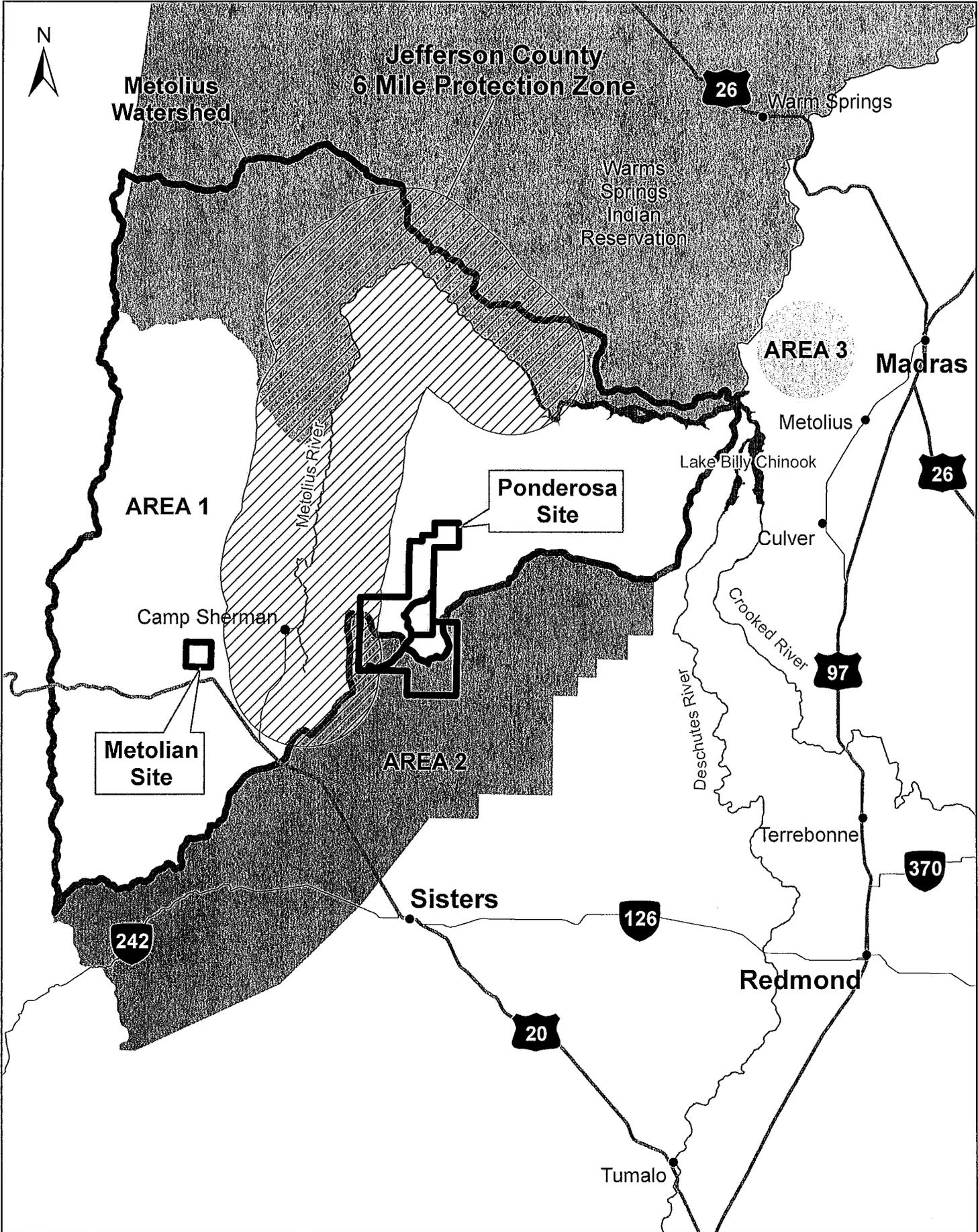
- 1.7.2.1.1. If Jefferson County approves a Destination Resort (under ORS 197.435 to 197.467) wholly or partially within the Metolius Basin:

1.7.2.1.1.1. The developer may donate up to 50% of the funds normally required under ORS 197.445(3) (requirement for improvements for on-site developed recreational facilities) to retire debt for any special district created under this section.

1.7.2.1.1.2. For a period 10 years after the permit has been issued, Jefferson County shall pay 20% of the incremental general fund property tax revenue increase received from the permitted property to retire debt for any special district created under this section.

1.8. City of Sisters Transportation Impacts

1.8.1. If Jefferson County approves a Destination Resort (under ORS 197.435 to 197.467) wholly or partially within the Metolius Basin, for a period of 10 years after the permit has been issued, Jefferson County shall pay 10% of the incremental general fund property tax revenue increase received from the permitted property to the City of Sisters. The City may only spend these funds on road projects within the City of Sisters (including the Urban Growth Boundary) that have been impacted by increased traffic and congestion on Highway 20 & 126.



STAFF DRAFT SUMMARY

Jefferson County Metolius River Protection Plan
Six Mile Wide Protection Zone
112,294 Acres (174 Square Miles)

The County's protection plan is a six mile wide (three miles from both sides of the river) from the river's headwaters to where it empties into Lake Billy Chinook (approximately 28.6 miles). This six mile protection zone is 12 times greater than the protection required under the National Wild and Scenic River Act.

- Declares the river navigable, thereby the riverbed becomes property of the state of Oregon to guarantee enjoyment of the river for future generations.
- Prohibit all new dwellings after December 31, 2012. After January 1, 2013 Oregon's DLCD shall adopt rules and procedures and will be the final decision maker if a new dwelling shall be allowed.
 - New dwellings are limited to 1,000 square feet if they are in the Deer Winter Range.
- Prohibits existing structures from being expanded if they are in the Deer Winter Range.
- Prohibits Destination Resorts and Golf Courses.
- Prohibits sub-divisions without the consent of Oregon's DLCD.
- Requires the State of Oregon to inventory all residential dwellings for square footage to help ensure that existing development remains at the current level.
- Requires all septic systems to be upgraded to a Maximum Nitrogen Reducing System (79% nitrogen reduction and total nitrogen concentrations of less than 10 mg/L.) by January 2012. Offers property owners a \$3,000 state income tax credit to complete this upgrade.
- All new development must preserve 75% of the land as open space.
- Requires Oregon's Land Conservation and Development Commission and Department of Environmental Quality to complete a feasibility study of the need for Community Water and Sewer systems. If the study shows a need the LCDC and DEQ are granted the authority to implement these types of districts. If a property owner is required to hook up to a water or sewer district they would be granted a \$10,000 state income tax credit.
 - If Jefferson County permits a Destination Resort inside the basin, they will be required to pay 20% of new property taxes received to pay off infrastructure debt incurred to establish these districts for 10 years.
 - Allows permitted Destination Resorts to contribute half of the required \$9.38 million in recreation amenities to help pay off the debt of infrastructure in these special districts.
- Requires Jefferson County to pay 10% of new property taxes to the City of Sisters for 10 years for traffic impact mitigation.
- How Large is 112,294 Acres
 - 37.4% the size of Multnomah County
 - 38.4% the size of the Columbia River Scenic Area (Oregon and Washington)
 - 61.3% the size of Crater Lake National Park
 - 91.9% the size of the combined cities of Portland and Vancouver
 - 428.6% the size of Eugene

Jefferson County Destination Resort Mapping Timeline

January 2006	Advisory Group starts
March 2006	Planning Commission initiates the process to hold public hearings on Destination Resorts mapping.
June 1, 2006	Planning Commission hearing (Comprehensive Plan)– Madras
June 17, 2006	Planning Commission hearing (Comprehensive Plan and Zoning Ord)- CRR
June 29, 2006	Planning Commission hearing (Zoning Ordinance)- Madras
July 6, 2006	Planning Commission hearing (Comprehensive Plan and Zoning Ord)- Madras
July 22, 2006	Planning Commission hearing – Camp Sherman
August 3, 2006	Planning Commission Deliberations
August 17, 2006	Planning Commission Deliberations
August 24, 2006	Planning Commission Deliberations
August 24, 2006	Planning Commission Approved
September 6, 2006	County Commissioner Public Hearing – Madras
September 13, 2006	County Commissioner Public Hearing – Madras
September 27, 2006	County Commissioner Public Hearing – CRR
October 4, 2006	County Commissioner Public Hearing - Camp Sherman
October 11, 2006	County Commissioner Public Hearing – Madras
October 25, 2006	County Commissioner Deliberations
November 8, 2006	County Commissioner Public Hearing - Madras
November 29, 2006	County Commissioner Deliberations
December 6, 2006	County Commissioner Deliberations
December 13, 2006	County Commissioner Deliberations
December 20, 2006	County Commissioner Deliberations
December 21, 2006	County Commissioners approved Destination Resort map.
December 27, 2006	County Commissioners signed Ordinance Nos. O-01-07, O-02-07, O-03-07 and O-04-07
January 17, 2007	Appealed to LUBA
March 5, 2007	Senate Bill 30 Sponsored by Senator WESTLUND, and Senators BATES, BROWN, BURDICK, CARTER, DECKERT, JOHNSON, WALKER, COURTNEY is introduced. The bill prohibits Destination Resort mapping in the area of the Metolius Basin, plus three miles. The bill includes a retroactive date to December 25, 2006.

May 22, 2007 Senate passes SB 30 as amended. Amendments include removing the 3-mile Metolius Basin buffer outside of Jefferson County and would allow development within the 3-mile Metoluis Bass buffer inside Deschutes County (Black Butte Ranch).

June 22, 2007 Governor Kulongoski writes letter to Legislative Assembly opposing SB 30 and requests state agencies review existing laws.

September 6, 2007 LUBA Hearing

February 11, 2008 LUBA Ruling – Partially sustained COLW’s and the Tribes first and second assignments of error. Said Ordinance O-03-07, which amends the JCCP, must be remanded, and since the JCZO amendments adopted by Ordinance O-04-07 depend on the JCCP amendments adopted by Ordinance O-03-07, changes in O-04-07 may be required. Therefore, they remanded Ordinance O-04-07 as well.

March 3, 2008 LUBA Ruling Appealed to Oregon Court of Appeals

May 8, 2008 Court of Appeals Oral Argument

July 9, 2008 Court of Appeals upholds LUBA Ruling – Final Order

December 2, 2008 Board of Commissioners schedules December 30, 2008 hearing to hold hearing on LUBA remand issues

December 19, 2008 Governor Kulongoski writes letter requesting Area of State Critical Concern to LCDC (does not send letter to Jefferson County)

December 24, 2008 Oregon State Supreme Court grants review

December 30, 2008 County Commissioners cancel Public Hearing due to Supreme Court granting review.

January 7, 2009 County Commissioners receive Governor Kulongoski’s December 19, 2008 letter.

January 8, 2009 Richard Whitman (DLCD) meets individually with County Commissioners to discuss Legislative Concept 705 (currently HB 2226) and Governor Kulongoski’s December 19th letter. Whitman informs the Commissioners that he might be recommending to LCDC they initiate the ACSC process during the January meeting.

January 14, 2009 County Commissioners meet to discuss the County’s position on the ACSC. Commissioners vote to oppose the ACSC process if it includes an outright ban of Destination Resorts in the entire Metolius Basin.

January 14, 2009 DLCD informs the County Commissioners that the ACSC will be on the LCDC Agenda on January 15, 2009.

January 15, 2009 LCDC votes to initiate the ACSC process.

February 11, 2009	LCDC Sub-Committee holds hearing in Sisters.
February 12, 2009	LCDC Sub-Committee holds hearing in Madras.
February 18, 2009	County Commissioners meet with Richard Whitman (DLCD) to discuss the ACSC process and “next steps”. Whitman informs the Commissioners that DLCD will release a 2 nd version of the draft ACSC that will include an alternative Destination Resort site in Jefferson County within the prohibited 3-mile Farm Land buffer.
February 23, 2009	DLCD sends County 2 nd version of the draft ACSC, which includes the mapping of approximately 1,800 acres of farm land near Round Butte.
February 26, 2009	LCDC Sub-Committee holds hearing in Madras. Jefferson County announces it will hold a March 5, 2009 public hearing to discuss the 2 nd version of the ACSC and will release a County Protection Plan as an alternative.
March 3, 2009	Jefferson County releases a draft Protection Plan that includes an 112,294 acre zone of protection 6 miles wide along the Metolius River.
March 5, 2009	County Commissioners hold public hearing to gather public input on the ACSC and the County Protection Plan.
<i>March 6, 2009</i>	<i>County Commissioners will meet with Richard Whitman (DLCD) to discuss the ACSC process and the County Protection Plan.</i>
<i>March 11, 2009</i>	<i>Full LCDC Commission will hold hearing in Madras.</i>

Lisa Howard - Metolius Resort Development Comments

From: Bill Bakke <bmbakke@gmail.com>
To: HOWARD Lisa <Lisa.Howard@state.or.us>
Date: 02/26/2009 9:42 PM
Subject: Metolius Resort Development Comments

Lisa,
Thank you for the opportunity to comment on this important issue. Please see the Native Fish Society comments below.

--
Bill Bakke

NATIVE FISH SOCIETY

P.O. Box 19570

Portland, Oregon 97280

503-977-0287

February 26, 2009

Lisa Howard

Oregon Land Conservation and Development Commission

RE: Comments on Metolius River Resort Development

Ms. Howard:

I have personally been involved for many years with the Metolius River fishery. I worked with conservation groups seeking to end stocking of non-native hatchery trout and for angling regulations that would protect the wild rainbows in that river. We were successful and the wild rainbow trout population is increasing. This fishery is one of Oregon's finest and is an important ecological attraction for local tourist trade.

In addition, I served on the public advisory committee for the relicensing of the hydro dams on the Deschutes River and supported the reintroduction of anadromous salmonids into the upper Deschutes Basin which includes the Metolius River. The investment of millions of dollars to accomplish this result is yet to be realized, but it is my concern that development on the scale proposed for the Metolius basin will jeopardize this investment and our years of planning and cooperative work with Portland General Electric, Warm Springs Tribes, and the public.

Based on our review and that of members in the area with expertise on impacts of development on water

resources, it is our conclusion that the Ponderosa Land and Cattle development would irreparably harm the Metolius River and tributaries such as Fly Creek.

By allowing Ponderosa Land and Cattle to develop here would lower groundwater levels in much of the Metolius-Whychus area. Consequently surface water flow would be reduced according to a study by the U.S. Geological Survey. Bull trout (a ESA-listed threatened species), reintroduced Chinook, sockeye and ESA-listed threatened summer steelhead as well as kokanee (a vital forage fish for bull trout) and redband trout in the Metolius and its tributaries would be adversely affected. This development would also have an impact on one of the last remaining wild native redband trout in Fly Creek that represent an important genetic resource of these trout in central Oregon according to the Oregon Department of Fish and Wildlife.

Impacts to the productivity, abundance, diversity and distribution of these native, wild salmonid and char species cannot be mitigated and therefore the Ponderosa Land and Cattle development should be denied.

Many people, state and federal agencies, and tribes have worked to improve the Metolius basin for native fish and for the reintroduction of wild salmonids above the hydro dams on the Deschutes River. Recovering this portion of the Deschutes watershed for native fish is a good thing and a benefit to Oregon economically and ecologically. The proposed resort developments will jeopardize what these people and institutions have been working to achieve for decades.

Your review of the Ponderosa Land and Cattle resort must take into account this social and biological context rather than treat it as an isolated economic opportunity in the area.

I recommend that the LCDC deny the proposed resort.

Sincerely,

Bill M. Bakke

Richard Whitman - ACSC consideration for the Metolius Basin

From: <scblau@comcast.net>
To: richard whitman <Richard.Whitman@state.or.us>
Date: 03/05/2009 8:10 AM
Subject: ACSC consideration for the Metolius Basin

Dear Director Whitman,

As a long-time, part-time resident of Camp Sherman, I want to let you know how much I appreciate your careful consideration of the future of the Metolius Basin. Thanks for listening carefully to both sides and for demonstrating your concern for the outstanding resources of this special place.

Sincerely,

Scott Blau

DEPT OF

MAR 03 2009

LAND CONSERVATION
AND DEVELOPMENT

Dennis C. Chapman

2207 NE 22nd AVENUE
PORTLAND, OREGON 97212

Dennis C 13 @ gmail.com

2/28/09

Director Whitman -

I want to thank you for leading the ACSC process to preserve the Metolius basin/watershed, including the inclusion of the buffer zone in Draft #2.

I realize that you are carrying out the Gov's policy direction, but, ~~in the process~~, you have taken lots of spears in the process* and have stood firm in your commitment to a solution to this important issue.

You certainly deserve a 'key' to the basin, but there are none of these because there are no DR's or gated communities in the basin. Instead of a key, a quiet moment sitting on the bench outside the Camp Sherman Store will have to do.

Thanks again for all your efforts - + those of your staff - to preserve the basin.

Dennis Chap



Native Fish Society
River Steward - Upper Deschutes



**Native Fish Society Statement
To LCDC on the ACSC Second Draft Plan for the Metolius**

The Native Fish Society (NFS) supports the second draft of the ACSC management plan for the Metolius. It is obvious that LCDC listened to the technical and legal arguments presented for protecting the Metolius at the hearings in Sisters and Madras, and we appreciate that effort.

A few specifics:

1. Zones 1 and 2 and the development criteria appear to provide the necessary protection for groundwater, streamflow, threatened species and native salmonids.
2. We question the need for land being made available for destination resort development through the ACSC process, but if this is done we have no unsolvable problem with Zone 3. Similar non-farmland areas out of the Metolius influence area would also be acceptable for NFS. Areas zoned as farmland must be avoided and the projects would have to be planned and designed to not interfere with adjacent farm activities. This would require buffers and access separate from farm access, which should be paid for by the developers.
3. Exceptionally high requirements regarding erosion-sedimentation, wastewater treatment, water quality, fish & wildlife habitat protection, farm activities and downstream flow guarantees must apply to all Zone 3 developments.
4. Time is of the essence, so please move quickly to get the ACSC designation and plan through the Legislature to the degree needed.
5. Additional but complementary protection in a separate bill similar to SB 30 in the 2007 Legislature appears to us to be needed for maximum protection.
6. Please don't let the ACSC process end with the Metolius. Many more areas are ideal for the kind of protection ACSC designations and management plans for water, fish, wildlife and forests can provide. Oregon's programs according to EPA, ODEQ and ODFW are failing to protect these resources. For more information on this please review the article at:
http://www.nativefishsociety.org/StrngRns_ORFish_Not ProtecTDfinal.pdf

Thank you,

H. Tom Davis

H. Tom Davis, P.E.



Summary

- The ACSC has been a powerful, protection tool for 35 years since SB 100 initiated Oregon's land use program in 1973, but has never or seldom been used to protect special places like the Metolius. This is a major flaw in Oregon's program implementation. If the Metolius is the catalyst for activating the tool that's great, but the Draft Plan fails to do what's needed for the Metolius.
- The management Plan has three zones. It might adequately prohibit development in **Zone 1** so Dutch Pacific (DP) might not be allowed. It would allow Ponderosa Land and Cattle (PLC) to develop outside the surface-water watershed within **Zone 3**. This is within the Metolius **groundwater zone of influence (i.e. the groundwater watershed)**. **Zone 2** could have recreation associated with a destination resort.
- The USGS groundwater analysis and modeling by Marshall Gannett (USGS lead) of the entire Upper Deschutes and the more specific application of the model by a local, registered hydrogeologist (Mark Yinger, R.G.) clearly indicate that the well field proposed by PLC in Zone 3 for three times the annual amount of water used by the City of Sisters **would reduce flows throughout the Metolius system, and the Whychus – Indian Ford systems**. Flows in the western tributaries of the Metolius are particularly critical for redband habitat, spawning by bull trout and kokanee/sockeye, and probably for Chinook spawning. Bull trout, Chinook salmon and kokanee/sockeye in the Metolius would be adversely affected, as would the pure native redband DNA reserve in Fly Creek (ODFW references provided).
- Currently, DP is promoting the use of "snowmelt", i.e. surface flows, for water supply. The likely sources would be Lake or First Creeks (or other tribs). DP claims this is "eco"-friendly. But such diversions just cut out the groundwater "middleman", which makes cause-effect analysis simpler. Surface water diversions directly reduce flows and adversely affect habitat for existing and reintroduced fish.
- Erosion-sedimentation, water pollution, the need for costly wildfire damage prevention at more urban interface zones, road construction impacts, and traffic problems would all increase by PLC developing in Zone 3 or anywhere else on the PLC property. As the Draft Plan clearly states, they have no development rights now. They speculated and bet on a horse that should lose, and is losing.
- The Draft Plan inadequately considers the \$250 to \$300 million being invested on salmonid reintroduction and flow restoration above the Pelton – Round-Butte dam complex. A conservative allocation of that to salmon and steelhead for the Metolius and Whychus systems would be \$100 million. This is a small part of the long-term economic value of reintroduction, but likely surpasses the financial gain anticipated by developers and Jefferson County through the development of resorts at the PLC or DP properties. Oregon must protect this investment by prohibiting watershed activities that threaten its success.
- A very important statement is on page 13 of the "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."*

- 1. Existing Fisheries** – The Metolius River contains one of the healthiest populations of the ESA threatened bull trout in the western U.S. Present and healthy are native redband (rainbow) trout and kokanee salmon that are the progeny of sockeye salmon isolated by Pelton Round Butte. Wild, pure-native redbands are present in Fly Creek according to fish biologists. The small Metolius tributaries such as First and Lake Creek are important for spawning. Redband trout are present in Whychus Creek. The alevins of bull trout stay in their gravel refuge for up to eight months, so they are very susceptible to damage from erosion-sedimentation (More in **11**).
- 2. Native Redband Genetic Resources** – An important resource at risk is the wild, pure-native redband (rainbow) trout in Fly Creek. Hatchery stocking and hybridization have made the genetic resource of pure, native Metolius redbands rare. Because of the isolation of certain pools in Fly Creek, the small redbands there are wild, native stock, so they are of exceptional value for native fish recovery. The small, isolated pools and reaches depend on good water quality and the meager groundwater inflow during dry periods. Much of the groundwater and surface water from PLC property flows toward Fly Creek.

According to Brett Hodgson, District Fisheries Biologist for ODFW (email provided): *"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."* Fly Creek redbands are also discussed in the Deschutes National Forest, 1998 "Fly Creek, Level 2 Stream Inventory".
- 3. Reintroduced Fisheries** – Chinook salmon are being reintroduced and many kokanee will become sockeye again with the new passage facility at Pelton Round Butte. Most biologists are of the opinion that the majority of Chinook spawning will take place in the mainstem. The habitat modeling done in conjunction with the reintroduction effort identifies Lake Creek, which runs near the DP site, as one of the big producers. Steelhead are being reintroduced to Whychus Creek, a small stream that has suffered from low flows and high water temperatures for decades, so it is very sensitive to nutrient and other pollutant loads. The good news is that flow and passage restoration is occurring and will be of significant value for the existing fisheries and reintroduced steelhead. Flow and passage restoration is the result of Three Sisters Irrigation District, Deschutes River Conservancy and Upper Deschutes Watershed Council projects.
- 4. Public and Private Investment** – Approximately \$300,000,000 is being invested, or planned for investment, to restore habitat in the upper Deschutes system, including Whychus Creek, and to reintroduce salmon and steelhead to the Deschutes up to Big Falls, the Metolius, Whychus Creek and Crooked River. Of this total, at least \$100,000,000 would logically be allocated to the Metolius and Whychus.
- 5. Size** - The PLC property includes 30,000 acres. The owners asked for approval of zoning for 10,000 acres to develop a resort on Green Ridge five miles east of Camp Sherman. The lands drain primarily to the lower Metolius and tributaries such as Fly Creek, but also Indian Ford Creek, a Whychus tributary, and the Middle Deschutes. PLC suggested that it might limit development to 2500 units on 3500 acres. Black Butte Ranch is about 1,800 acres and the proposed Thornburgh destination resort is to be a little less than 2,000 acres. The City of Sisters is less than 1,200 acres. A map is at <http://noresorts.blogspot.com/2007/05/map-of-metolius-landwatch.html>

If the PLC property is fully developed as a destination resort with 50% open space, the 10,000 acres could have more than 7,500 homes assuming it would be built at the same density as other resorts. Assuming two people per house, the PLC resort could have a population of over 15,000 people at times, and a number of golf courses.

PLC applied for a well system with an annual production of 2,422 acre-feet. This is equivalent to 789 million gallons per year (mgy). The annual Sisters water use in according to the Sisters Public Works Department is 258 mgy, so PLC is planning on using water three times that of the City of Sisters. Assuming a moderate water use of 200 gallons per person per day, the 789 mgy is equivalent to 10,800 people. PLC has applied for a peak rate of 8.8 cfs.

PLC well pumping would reduce critical groundwater/spring flow to the Metolius, Middle Deschutes, Whychus-Indian Ford Creeks, and important Metolius tributaries such as, Lake and Fly Creeks. Oregon Water Resources Department policies would do little to avoid or mitigate such impacts. Eroded sediment from PLC construction and stormwater runoff, and discharges to groundwater from wastewater treatment systems (see **9**) would also affect those streams.

The Dutch Pacific (DP) destination resort would be located on 640 acres three miles WSW of Camp Sherman and one mile north of Suttle Lake. It drains into First and Lake Creeks, which drain into the upper Metolius. For water supply it wants to divert streamflow. There could be hundreds of homes and many more people than now live in the Camp Sherman area.

Such developments would create more urban interface wildfire problems, and the roads in Deschutes County, Sisters and Camp Sherman would be crowded because of the increase in traffic.

- 6. Groundwater, Spring Flow and Streamflow** – Well pumping would reduce the groundwater/spring flow to the Metolius system. The shallow groundwater below the destination resort properties flow in the same general direction as the surface water flow.

The deep groundwater is discussed in the USGS Report "Ground - Water Hydrology of the Upper Deschutes Basin, Oregon, BY MARSHALL W. GANNETT, KENNETH E. LITE JR., DAVID S. MORGAN, AND CHARLES A. COLLINS; Water-Resources Investigations Report 00-4162. The flow map is at http://or.water.usgs.gov/pubs_dir/WRIR00-4162/fig28_eps_040402.pdf.

The USGS, in response to a question from Senator Ben Westlund's office, stated: *"In the Metolius River Basin, ground-water pumping most likely will result in diminished discharge at principal spring complexes that occur at the head of the Metolius, along the main stem, along many of the tributaries, and near the confluence of the Metolius and Deschutes Rivers."*

Mark Yinger, R.G. is a hydrogeologist experienced in the hydrogeology of the upper Deschutes basin. He has applied the USGS model to the Metolius-Whychus system and has stated (letter provided)*--: *"I can state with reasonable certainty that the primary surface water impact of the Ponderosa Land & Cattle Company resort's groundwater pumping will be to reduce spring discharges to the Metolius River and its tributaries upstream of Jefferson Creek. The pumping will also reduce flows from springs that discharge to lower Whychus Creek. Other waters that may be impacted include Fly Creek and Indian-Ford Creek. ... It is reasonable to conclude that the pumping water level in the production wells of the proposed resort will be well below the elevation of the Metolius River headwater springs. The primary surface water influence due to pumping of the production wells will be on the springs that discharge to the Metolius River."*

Groundwater, including future discharges from wastewater systems, flows toward First and Lake Creeks from the DP property. From the PLC property the deep groundwater system flows toward the Middle Deschutes, the lower Metolius and Fly Creek. Much of the shallow system below the property would flow toward Indian Ford Creek.

- 7. Endangered Species Act (ESA)** – Bull trout are listed as threatened under the ESA. The reduction in flow in the Metolius and tributaries such as First and Lake creeks constitutes a "take" under the Endangered Species Act. "Take" is defined in the Endangered Species Act (ESA) as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any threatened or endangered species. Harm may include significant habitat modification where it kills or injures a listed species through impairment of essential behavior (e.g., spawning or reproduction) so the proposed destination resorts are not in compliance with the ESA.

According to ODFW's Brett Hodgson: *"Bull trout have never been stocked in the Deschutes basin. Therefore native (pure) bull trout are present in the Metolius-Lake Billy Chinook ecosystem (and middle Deschutes up to Big Falls) and in the upper Deschutes Basin in Odell Lake-Trapper Creek and Odell Creek. As you are aware historically they were much more widely distributed in the upper Deschutes, however, habitat degradation and water management led to their extirpation outside of Odell."*

- 8. Wild and Scenic Rivers Systems** - The Metolius was added to the national system in 1988 in the Omnibus Oregon Wild and Scenic Rivers Act of 1988. It was added to the State Scenic Waterways Program at the same time and is included in the Warm Springs Wild and Scenic Rivers System.

The purpose of the Wild and Scenic River designation as stated in the original Wild and Scenic Rivers Act of 1968 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."* Both the federal and state programs encourage cooperation between agencies to protect the river and its values.

Special protection is also provided in the WARM SPRINGS TRIBAL CODE; CHAPTER 401; WARM SPRINGS WILD AND SCENIC RIVERS ACT; 401.110 Designation of River Protected Areas. The following rivers and the land adjacent thereto are hereby designated as components of the Warm Springs Wild and Scenic Rivers System: (1) Metolius River. The Metolius River from its headwaters to Lake Billy Chinook. (2) Deschutes River. The Deschutes River from its headwaters to its mouth.

- 9. Wastewater** – These two resorts would bring thousands of people into a watershed draining into one of the world's highest quality streams and fisheries – the Metolius River. Thousands of toilets discharging to the groundwater from wastewater systems would kill the Golden Egg Goose.

Assuming 2-persons/dwelling, the people contributing sewage to the watersheds could range from 5,400 to 16,000 at the two resorts during peak occupancy. At 50 gal/person/day wastewater; 7.0 lbs N/person/yr (46 mg/l) and 90% leaching to groundwater – the two resorts would contribute approximately 34,000 to 100,000 lbs of nitrogen to the groundwater annually. The amount depends on a number of factors, including the type of treatment systems, number of units, quality of installation and maintenance, and soil/geology, but the nitrogen loading would be significant. Sewers and central treatment would need advanced, or tertiary, treatment to reduce the threat and disposal would still be an issue. Golf courses, lawns and landscaping would add more nitrogen to the groundwater.

10. Water Quality – The impacts on groundwater quality from pollutants such as nitrogen, household chemicals and bacteria would be significant, but the primary threat would be to the surface waters that the groundwater systems discharge to. These include the Metolius; tributaries such as First, Fly and Lake Creek; Whychus Creek and its tributary Indian Ford Creek. Additional nitrogen, even in extremely low quantities, can cause algal blooms, excessive plant growth, oxygen depletion, changes in pH, and other important changes that are detrimental to aquatic ecosystems. It is important to note that the guideline for nitrates in drinking water is 10 mg/L, but the guideline for total nitrogen in freshwater (i.e., streams) is 0.12 mg/L, or 1/80th the drinking water guideline.

Metolius water quality is generally excellent, but it and some of the tributaries are currently on the Oregon “303d Listed Streams” list, meaning that they are in violation of Oregon water quality standards. In a letter dated November 2, 2007 to Governor Kulongoski the Oregon Department of Environmental Quality stated, “*Subsurface discharge to shallow soils or land application to the surface of soils may be allowed. Even with substantial removal of nutrients and other constituents from this wastewater prior to discharge, small amounts of nutrients may reach the Metolius River or its tributaries through runoff or seepage to groundwater that flows into the Metolius. The river is sensitive to nutrients, and small increases in nutrients could result in some degradation of water quality, such as decreased dissolved oxygen, increased aquatic plant growth, and changes in pH, among others.*”

11. Erosion and Sedimentation – The soil disturbances necessary during construction activities create exceptionally high surface erosion rates. The soils in the area are very erodible and construction would occur over a long period. The erosion, i.e. the initial movement, of soil and the resulting particle transport and sedimentation of spawning gravels in the Metolius and tributaries would be severe and enduring. Since most of the worst impacts result from bed-load particle movement, much of the phenomenon isn’t detected through standard water quality monitoring per se so it avoids Oregon water quality regulations.

***Tom Davis’ Related Experience** - 35 years experience as an Environmental/Water Resources Engineer - 20 years as a consultant with consulting firms; 15 years in staff positions with local, state, federal and regional agencies. Now retired.

- MSCE degree in Water Resources Engineering – University of Idaho, 1967 (Thesis - surface water – groundwater relationships);
- Registered Civil and Environmental Engineer in Oregon;
- 30-year Oregon resident.

Types of Projects

- Soil disturbance, erosion, stream-sedimentation and forest practices projects for DEQ, US EPA, Pacific Northwest Regional Council, the City of Ashland, Oregon and the Flathead 208 Council, Montana.
- Seven stormwater management plans for five Willamette Valley local jurisdictions including Salem and Portland.
- Project manager of numerous stormwater and flood control designs; and the combined sewer overflow study of the Columbia Slough; as the Stormwater Design Section Supervisor and Environmental Planning Division Manager respectively for the Portland Bureau of Environmental Services ('83 to '89).
- Project Manager for studies and policy actions regarding on-site wastewater systems, nitrate, groundwater and surface water at Boise, Idaho and Washoe County, Nevada
- Management of the engineering facilities and cost analyses subconsultant team for three Portland Metro Area Urban Growth Boundary studies (Metro and City of Hillsboro).
- Staff manager for the Idaho Water Resources Board of groundwater programs, and statewide studies by three Idaho agencies of streamflow needs for a) fish, b) recreation and c) water quality in all major Idaho Rivers.
- Consultant and staff management of flood plain hydrology-hydraulic studies in Oregon, Washington and Idaho.
- Watershed, forest management and erosion analysis of the Ashland Municipal Watershed as a consultant to the City of Ashland, Oregon.
- Water availability evaluation of four potential water sources (Columbia, Clackamas, Willamette and Trask Rivers) as the Project Manager for a consultant project for the Portland Water Bureau.
- Idaho Coordinator of Federal-State Wild & Scenic Rivers Studies – 1971 to 1975.
- Construction management and inspection at a large federal water project in Montana.
- Consultant and staff manager of numerous engineering planning studies in Oregon, Idaho and Nevada concerning municipal drinking water and wastewater.

Richard Whitman - The Source on the Metolius

From: "H. Tom Davis" <tomlin2@bendcable.com>
To: "Richard (DLCD) Whitman" <Richard.Whitman@state.or.us>
Date: 02/26/2009 9:49 AM
Subject: The Source on the Metolius

Metolius Development Rights, and Wrongs

Written by H. Bruce Miller

The Source; Wednesday, 25 February 2009

http://www.tsweekly.com:80/index.php?option=com_content&task=view&id=3950&Itemid=66&mosmsg=Thanks+for+your+vote%21

State officials have come up with a plan that would keep destination resorts away from the Metolius, and the pro-resort forces are, predictably, fuming and sputtering.

The rules now being backed by the state Land Conservation and Development Commission would block both a 640-acre “eco-resort” that Dutch Pacific Resources LLC wants to build within the Metolius Basin and a 2,500-unit monstrosity that Ponderosa Land & Cattle Co. proposed to build on the fringe of the basin.

As a sort of consolation prize the DLCD is offering to let the developers build resorts on land near Round Butte, although they’d have to be a lot smaller than the ones they’ve proposed – 650 units for Ponderosa’s and 350 for Dutch Pacific’s. This offer apparently also is meant to appease Jefferson County, which presently has no destination resorts and would dearly love some.

The Bulletin editorial page – which has written five editorials on the Metolius issue already this year, among other things comparing Gov. Ted Kulongosi to Josef Stalin – was in its usual fine form this morning, claiming Kulongoski was dealing from the bottom of the deck:

“The resort developers would be offered first dibs on land for destination resorts they may not even want near Round Butte, east of Lake Billy Chinook. The resorts would have to be smaller than what might have been allowed in or near the Metolius basin. ...

“Some people will agree with Kulongoski that the Metolius basin deserves better protection. And perhaps they’re right. But if the state is going to slash development rights, it shouldn’t attempt to weasel out of its moral obligation to compensate affected landowners fairly.”

It’s that last sentence that The Eye mostly takes issue with. What “rights,” exactly, are the resort developers being deprived of? What should they be “compensated” for?

Here’s the situation: Dutch Pacific and Ponderosa own forest land near the Metolius. They want to put destinations resorts on it and, hopefully, make a barrel of money. The Jefferson County

Commission has obliged by designating the area encompassing their property for destination resort development. But that designation is still under appeal in the courts.

If Dutch Pacific and Ponderosa are not allowed to build their proposed resorts they'll still own the land and still be free to use it for the purpose it's zoned for – growing timber. They won't have “lost” anything except the purely speculative barrel of money they MIGHT have made IF they had been able to build the resorts and IF the resorts had been successful.

If the state has a moral obligation to compensate developers for that, The Eye thinks it also should compensate us for the \$80 million we would have won in the Powerball lottery if we had bought a ticket and our numbers had come up.

February 27, 2009

LCDC Commissioners
c/o Richard Whitman
635 Capitol St., NE, Suite 150
Salem, OR 97301-2540

DEPT OF
MAR 02 2009
**LAND CONSERVATION
AND DEVELOPMENT**

Re: Proposed Metolius ACSC

Dear Commissioners:

I am writing in response to comments made by Rick Allen of Ponderosa Land & Cattle Co. at the February 26 Madras hearing regarding the original intentions of the Colson family in buying their property and the creation of their destination resort proposal.

As to the Colsons' original intentions, I have no basis to disagree with Mr. Allen's representation that the Colsons were interested in managing the property as timber land. This fact actually substantiates the point that nothing is being taken away from the Colsons in the proposed ACSC that they ever had or expected to have when they bought the land.

As for Mr. Allen's suggestion that I or the Sisters Forest Planning Committee ("SFPC") wanted the development of a destination resort on this land, that is simply not correct. We wanted it to remain completely undeveloped forest land. If there was going to be development, however, we wanted it limited to areas where we thought it would have less impact. (Note also that our discussions were before the reports came out that showed impacts on the Metolius from groundwater withdrawals.)

Not mentioned by Mr. Allen or the January 2004 news article cited by him were our proposals involving conservation easements and land exchanges. We never could get them to engage, though, in a discussion of how many houses they were proposing.

Ultimately, the Colsons took none of our suggestions and ended up proposing totally on their own the gargantuan 10,000 acre destination resort zone on which they have said they want to do development on 3,500 acres of 2,500 homes and three golf courses. The remaining 6,500 acres would presumably be available for expansion of the destination resort. Their water rights permit application filed in 2006 predicted that the development would serve a population of 9,000 people. The suggestion by Mr. Allen that I or the SFPC encouraged the Colsons to come up with

February 27, 2009

Page 2

this destination resort proposal is baseless.¹ The fact that we met with the Colsons doesn't mean we endorsed their ideas.

Very truly yours,



PAUL DEWEY

PD:ao

¹ I do not know the relevance of Mr. Allen's additional comment regarding the SFPC's 2006 appeal to LUBA of the Jefferson County and Madras population forecasts. We challenged the over-optimistic growth assumptions which recent events have proven to be wrong, but we ultimately dropped our appeal before any briefs were filed in an effort to encourage and facilitate the mixed-use planning effort in the Yarrow Development east of Madras.

Lisa Howard - Metolius basin hearings

From: <sae1213@aol.com>
To: HOWARD Lisa <Lisa.Howard@state.or.us>
Date: 02/24/2009 11:14 PM
Subject: Metolius basin hearings

Dear Ms. Howard and the LCDC,

I strongly encourage you to pick another location for the scheduled fourth meeting regarding the Metolius basin. There are a great many people who cherish the Metolius basin who are prohibited from a time and logistics perspective from attending a hearing in Madras. I would strongly suggest Bend or Redmond, either being more centrally located. I would not hesitate to say that credibility is becoming an issue if all the hearings are held in the protagonist's back yard.

Stephen Erickson
Deschutes County

A Good Credit Score is 700 or Above. See yours in just 2 easy steps!

Lisa Howard - The Metolius River

From: Jeff Gottfried <era@gottfried.net>
To: HOWARD Lisa <Lisa.Howard@state.or.us>
Date: 02/24/2009 4:02 PM
Subject: The Metolius River

Dear Ms Howard,

I am writing to you to urge the Land Conservation and Development Commission to give the highest protection to the Metolius River and all lands surrounding it that play a role in its unique hydrology.

I have hiked, fished and been spiritually renewed in and along the Metolius River over the past 40+ years. It is a scenic and ecological, botanical, and geological gem, in addition to being one of the most productive trout streams in the nation.

The Metolius, along with the Columbia River Gorge, the peaks of the high Cascades, the Oregon Coast, Crater Lake and the Steens Mountains are places that define our state. They are integral to the ecology of the state and to our definition of ourselves as Oregonians.

To allow a destination resort and/or a golf course in the Metolius Basin would be a sacrilege. On another level, tens of millions of dollars have been and are currently being spent by Portland General Electric and the Confederated Tribes of Warm Springs in order to restore passage to the Metolius Basin for salmon and steelhead. This project has potential to open up hundreds of miles of streams to these magnificent fish that are currently locked out by dams. This would result in a major input of nutrients and life to the Metolius basin and Central Oregon have large scale positive effects on the ecology of the area. Proposed water withdrawals, large-scale construction and other disruption caused by the proposed destination resort and golf course would certainly threaten the success of the major restoration initiative currently underway.

I urge the LCDC to disallow the requests for destination resorts in the Metolius Basin and give the highest protection to this area.
Thank you for your consideration

Jeffry Gottfried

--
Jeffry Gottfried, Ph.D.
Executive Director/Lead Educator
Educational Recreational Adventures
7040 SW 84th Ave, Portland,OR 97223
www.edurecadv.org 503-750-2416

Friends of the Metolius

*Dedicated to protecting the legacy
& the natural resources of the Metolius Basin*

March 2, 2009

Via email to richard.whitman@state.or.us

Richard Whitman

Oregon Department of Land Conservation and Development

635 Capitol Street N.E., Suite 150

Salem, Oregon 97301

Re: Designation of Metolius ACSC, Draft Management Plan No. 2

Dear Director Whitman:

Friends of the Metolius (FOM) would again like to thank you and your staff for the many hours of diligent work in addressing the important issues surrounding protection of the Metolius River and its basin. There are many thorny and difficult environmental, social and political issues involved in this process and you and your department are handling them remarkably well.

FOM has reviewed the second draft of the ACSC management plan and offers these comments:

- First and foremost, we applaud the DLCD for making significant progress toward protection of the Metolius. Most critically, the second draft accomplishes what we believe is the primary objective, namely, protecting the Metolius watershed by excluding destination resorts from areas 1 and 2.
- With respect to allowing scaled back resorts in newly designated subarea 3, FOM does not have enough information about the area in order to make specific recommendations or to take a position on development there. Our primary concern with development in the Round Butte area is that high value farm land and the water resources must be protected. Public testimony at the hearing on February 26 from farm interests pointed out some of these important concerns very succinctly and articulately. If DLCD continues its exploration of subarea 3, we recommend very close collaboration between DLCD, Jefferson County and local farm interests.
- Jefferson County should be allowed to immediately begin the mapping process to identify other potential sites for destination resorts.
- With respect to allowing Dutch Pacific and Ponderosa to build recreational dwellings on the properties they own, FOM believes this is a generous compromise that allows these property owners to recoup some of their investment, and at the same time allows Jefferson County to build its tax base. However, these dwellings would be built in Forest Management zones that are prone to wildfire and which are in important range for wildlife. As such, specific guidelines should be included in the plan regulating the size of the dwellings and their usage to ensure that

Friends of the Metolius

*Dedicated to protecting the legacy
& the natural resources of the Metolius Basin*

these are not permanent residences. The contemplated regulations relating to water usage are of critical importance and should be maintained in order to protect the watershed. Moreover, FOM suggests that a provision be included to prohibit artificial lakes and other non-natural water features.

FOM will continue to review draft no. 2 and if additional comments are warranted, will send them to you. We will also review and comment on draft no. 3 when it is available. We will attend the next hearing on March 11 and provide additional testimony. In the meantime, please let us know if we may be of any assistance.

Sincerely yours,



Friends of the Metolius
Doug Hancock, Secretary

ec: Michael Morrissey, michael.morrissey@state.or.us
Cheyenne Ross, cheyenne.ross@state.or.us

Doug Hancock
P.O. Box 146
Camp Sherman, Oregon 97730

phone: 541-549-4942
email: hancock.doug@gmail.com

March 4, 2009

Via email to richard.whitman@state.or.us

Richard Whitman
Department of Land Conservation and Development
635 Capitol Street N.E., Suite 150
Salem, Oregon 97301

Re: Jefferson County's Draft of Six Mile Wide Metolius River Protection Zone

Dear Director Whitman,

I am unable to attend the hearing that Jefferson County has scheduled regarding its new Draft of Six Mile Wide Metolius River Protection Zone, a copy of which is attached. I do, however, want to make a few comments on it. I am copying this letter to elected Jefferson County Commissioners.

The County's plan is perhaps best described as bizarre. While allowing both destination resorts that are at the heart of this controversy and which pose substantial environmental threats, it places severe restrictions on existing Camp Sherman residents that have no basis in science or reality. The county plainly puts the interests of developers ahead of the interests of its own citizens and the interests of the State. Perhaps our elected officials feel an emotional need to show their spite to residents of Camp Sherman, who the commissioners obviously perceive as being NIMBYs, but we should expect better from public officials.

I will not spend any time commenting on the substance of the plan—it isn't worth the time. It is worth pointing out, however, that the plan speaks volumes about the approach that Jefferson County and its elected officials have taken to this process. Their childish approach to this draft plan is a reflection of the management style they have taken to the entire land use planning process, and is the strongest evidence that I have yet seen why the State must step in and protect the Metolius.

Sincerely,

Doug Hancock

Attachments: Jefferson County's Draft of Six Mile Wide Metolius River Protection Zone

ec: Michael Morrissey, michael.morrissey@state.or.us
Jefferson County Commission, commissioner@co.jefferson.or.us

Richard Whitman - Jefferson County Comprehensive Plan and ACSC

From: "Douglas Hancock" <doug@hancockhughey.com>
To: <michael.morrissey@state.or.us>, <richard.whitman@state.or.us>
Date: 03/07/2009 8:56 AM
Subject: Jefferson County Comprehensive Plan and ACSC

Dear Director Whitman and Mr. Morrissey,

At the close of the public meeting in Madras last Thursday, I believe that Jefferson County counsel may have asked Jon Jinings whether the ACSC management plan could include an acknowledgment of the county's comprehensive plan.

I do not know whether DLCD is considering counsel's request or even if it has heard of the request. Nonetheless, I wanted you to know that Friends of the Metolius has challenged the legality of certain aspects of the County's comp plan from the very start and those legal challenges are ongoing today. The ongoing legal challenges have nothing whatsoever to do with the destination resort issues. Specifically, the county's current comp plan designates Camp Sherman as an unincorporated community that includes a non-contiguous patchwork of separate parcels of land. FOM's challenge involves the process pursuant to which the county designated Camp Sherman as an unincorporated community. FOM recently filed a notice of appeal to the Oregon Court of Appeals on this issue and FOM's brief in the case will be filed within a few weeks.

There are important legal issues involved in the appeal that have a significant impact on Camp Sherman. These issues need to be considered by the court in the regular land use process--the ACSC should not acknowledge the county's comprehensive plan as that will happen when the legal issues are resolved.

Thank you for your consideration, and please let me know if you have any questions.

Doug Hancock
Secretary
Friends of the Metolius

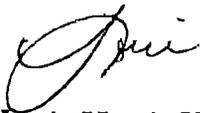
Lorie Harris Hancock
P.O. Box 146
Camp Sherman, Oregon 97730
lorie_hancock@hotmail.com

March 3, 2009

Dear Mr. Whitman and Commissioners;

You have done an outstanding job in preparing draft 2 of the Metolius ACSC management plan. It is clear that you have read and listened and formulated a proposal that protects the Metolius Basin while providing the opportunity for new tax base to Jefferson County and a return of expenditures to the developers. I think that the limitations in 2.4.1 and 2.4.2 on the amount of water that can be consumed by future development are critical. I defer to your judgment as to whether the proposed numbers are too large given testimony by the forest service representative that the Metolius Basin is already at its maximum. Thank you again for your thoughtfulness.

Best Regards,



Lorie Harris Hancock



KARNOPP PETERSEN LLP
ATTORNEYS AT LAW

March 4, 2009

Land Conservation and Development Commission
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540

Re: Comments of the Confederated Tribes of the Warm Springs Reservation of Oregon on
Revised Metolius Management Plan

Dear Commissioners:

This office represents the Confederated Tribes of the Warm Springs Reservation of Oregon ("CTWS" or "Tribe"). Thank you for your hard work in evaluating the wide ranging comments and views regarding a proposed Area of Critical Statewide Concern Management Plan ("management plan" or "plan") for the Metolius Basin and buffer area ("planning area"). The purpose of this letter is to provide additional comments of the Tribe on a revised management plan draft, dated February 23, 2009.

Boundary of the Area of Critical Concern

The Tribe believes that, based on potential fish and wildlife and water impacts, the designated boundary of Subareas 1 and 2, while likely not capturing all potential areas of impact, is nevertheless factually supported by significant evidence in the record.

The Tribe notes that Subarea 3 (Round Butte area) may also involve impacts to recreational resources and water quality associated with the Pelton Project due to increased demand and may also involve the use or exchange of federal lands. This area may very well provide a desirable alternative for resort development; however, the Tribe would like to note that Lake Billy Chinook and associated Pelton Project recreational resources are already heavily used and a significant increase in user numbers may have an impact on these resources—for example water quality impacts or increased law enforcement needs.

In addition, given the geology of the basin, the Tribe has been experiencing growing nitrate problems in surface waters from nearby septic and waste disposal systems. This has been a significant issue for concern in southern Deschutes County and the Tribe has been monitoring the issue on the Reservation and within Jefferson County. As you may recall from the Tribe's earlier comments, the Tribe's drinking water source is from the mainstem of the Deschutes River, downstream from the planning area.

W736.09(a)\338809.doc

In this regard, the Tribe requests that additional approval criteria be added to Subarea 3 that would address protection of water quality from wastewater disposal systems and that would consider whether a mitigation fund creation would be appropriate to address additional user impacts on Pelton Project resources, depending on the estimated impact.

Last, the Tribe notes that Subarea 3 may involve the use or exchange of federal lands. While this is not an issue that would likely be addressed in a state land use management plan, the Tribe would like to make the Commission, the County and any involved individuals aware that the exchange of federal lands can impact tribal treaty resources. As such the involved federal entity will consult the Tribe on any proposed exchange. It is the Tribe's position that any proposed land exchange can not adversely impact the Tribe's off reservation treaty rights. It is further worth noting that such exchanges have certainly occurred in the past and can again in the future.

Dwelling Unit Caps (Subareas 1 and 2)

The Tribe has no specific comment on the dwelling unit caps. Without a resource assessment, it is difficult to identify the resource impacts from the stated caps. The stated caps may be insufficient to protect the viability and health of wildlife resources in the area; however, we do support the required consultation with the Oregon Department of Fish and Wildlife ("ODFW"), the US Forest Service and the Tribe in the design and siting of clustered development to minimize wildlife conflicts. The Tribe also supports efforts to minimize and avoid increased wildfire risks associated with the new uses.

Consumptive Water Usage Caps (Subareas 1 and 2)

Given the general nature of the consumptive water usage provisions, it is difficult to provide specific comments at this time. However, the Tribe remains critically concerned about the potential impacts to any surface water—not just the mainstem of the Metolius River—resulting from consumptive water uses within Subareas 1 and 2. Depending on the location of the withdrawal, even a very small withdrawal could have a noticeable and adverse impact on surface waters.

Importantly, while the Tribe supports consultation with the ODFW and the Tribe on consumptive use rights that may exceed any stated cap, the consultation obligation is currently too narrow to meet the stated management plan objective to "avoid adverse impacts on important fish and wildlife resources." As noted above, the Tribe believes that *any* water withdrawal request in the planning area should undergo assessment and localized impact mitigation requirements not only for scenic Metolius River flows, but for flow and water quality impacts to fishery resources in *all streams with fishery values*. This would include the Metolius and its tributaries as well as Whychus Creek.

In summary, as a co-manager of fish and wildlife in the planning area, a federal licensee in the Pelton Project and in its sovereign capacity to protect the ability of its tribal members to enjoy a

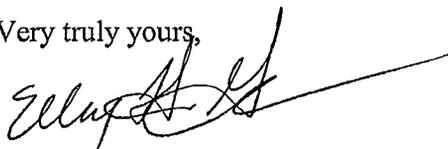
Land Conservation and Development Commission

March 4, 2009

Page 3

healthy quality of life on the Reservation and to exercise off reservation treaty rights, the Tribe appreciates the Commission's efforts to consult with and seek input from the Tribe in this effort. The Tribe understands the multiple interests to be served by the plan, including protection of fishery resources. In the Tribe's view, however, the plan is missing critical provisions that will ensure the long-term viability and recovery of important fisheries in the Deschutes and Metolius subbasins, and the Tribe requests that the plan be amended to remedy this omission. In addition, as noted above, the Tribe is concerned about the growing problem of nitrate-water quality issues and potential impacts to Pelton Project resources that may be increased or caused by a large scale development near the Pelton Project and Deschutes river resources and request that consideration to these issues be included in the management plan.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ellen H. Grover", with a long horizontal line extending to the right.

ELLEN H. GROVER

EHG/ehg

Lisa Howard - Fwd: For Meeting with Jeff. Co. Commissioners at 5:00 PM in Madras

From: <Dicksuekellogg@aol.com>
To: HOWARD Lisa <Lisa.Howard@state.or.us>
Date: 03/05/2009 11:23 AM
Subject: Fwd: For Meeting with Jeff. Co. Commissioners at 5:00 PM in Madras

From: Dicksuekellogg
To: mailto:lisa.howard@state.or.us
CC: commissioner@co.jefferson.or.us
BCC: woolyb@bendcable.com, doug@hancockhughey.com, mpschay@outlawnet.com, grmacmail@gmail.com, tom@outlawnet.com, finneganryan@msn.com, lorie_hancock@hotmail.com, scblau@comcast.net, rthomas26345@msn.com, DennisC13@gmail.com, tomlin2@bendcable.com, eric@centraloregonlandwatch.org
Sent: 03/05/2009 10:37:49 A.M. Pacific Standard Time
Subj: For Meeting with Jeff. Co. Commissioners at 5:00 PM in Madras

March 5, 2009

Land Conservation and Development Commission
Department of Land Conservation and Development
635 Capitol Street, Suite 150
Salem, Oregon 97301-2540

Attention: Lisa Howard - Please expedite for meeting with Jefferson Co. Commissioners at 5:00 P.M. in Madras

Re. Metolius ACSC

Dear Commissioners,

I am compelled to address Jefferson County's Metolius Protection Plan proposal.

This proposal is completely out of bounds and borders on being ludicrous. It is an affront to your efforts, and a childish attempt to cut off a rational planning process conducted by your professional planners.

Does the tone and content of this plan give you some idea of what it has been like for Camp Sherman residents to work with and gain trust in our "local government"? The county commission is cynical and spiteful of DLCD, the Camp Sherman community and all Oregonians who appreciate the basin and are trying to protect it. Honestly, it appears to have been drafted by a misinformed neophyte attorney with little planning background or knowledge of the roles and authority of federal vs. state vs. local jurisdictions.

It fully allows these two massive destination resorts in and adjacent to the Metolius Basin. It ignores the Conferated Tribes' sovereignty. It flies in the face of the Wild and Scenic River's

federal jurisdiction and the states Scenic Waterways. It throws out the county's own acknowledged community plan and zoning ordinances for the basin - and ultimately defers all land use regulation and administration to the state, which is absolutely contradictory to county's long standing position on local control. **If ever there were a perfect case for long lasting litigation, this is it!**

It ignores the concerns and advice of the National Forest Service, Fish and Wildlife, Water Resources - and the sentiment of thousands who love and cherish their personal experience in the Metolius and who want that experience to be available for other generations. And it deals with phantom issues...

The premise of this plan does not acknowledge the diligence and successes of the inhabitants of the basin in protecting the basin's outstandingly remarkable values.

Here are some examples of these actions:

1. For 10+ years *Friends of the Metolius*, in conjunction with the FS has had in place a water quality testing and monitoring program that consistently shows high values in the Metolius – and that is with the existing development in place. Notwithstanding this proven water quality, all summer homes along the river have recently been required to bring their sewage disposal systems up to state standards. These summer home owners have been some of the most dedicated stewards of the river. They are part of the heritage of the Metolius and there is a desire to sustain them.
2. In 1994 the community of Camp Sherman persuaded the county to reduce residential densities from one dwelling per ½ acre to one dwelling per 3 and 5 acres minimums. The densities in the Vacation Rental zone were reduced to 1 unit per gross acre with 50% open space required.
3. In 2007, after successfully fighting with the county to preserve zoning regulations that were tailored to our area, Camp Sherman nudged the county into setting up a Community Planning Advisory Committee for input on land use issues.

The threat to the basin is not the existing development or the lack of care by the basin's inhabitants. The threat is in allowing these massive resorts on forest lands which will increase the in-place human impact on the basin by a factor of 10!

I encourage LCDC to ignore this irrelevant proposal and to continue to pursue your stated objective of **“protecting 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”**.

Thank you for your patience,

Dick Kellogg dicksuekellogg@aol.com
26247 Metolius Meadows Drive
Camp Sherman, Oregon, 97730

cc. Jefferson Co. Commissioners Ahern, Hatfield and Fording (for 4:00 PM hearing)

A Good Credit Score is 700 or Above. See yours in just 2 easy steps!

Lisa Howard - Protection for the Metolius

From: Lynn Kitagawa <lynnkit@earthlink.net>
To: HOWARD Lisa <Lisa.Howard@state.or.us>
Date: 02/25/2009 5:08 PM
Subject: Protection for the Metolius

Dear Lisa,

I am in favor of no destination resorts in the groundwater influence zone of the Metolius, i.e., no destination resorts in zones 1, 2 or 3 of the ACSC.

If you have ever travelled to this beautiful area, you will realize what a special watershed this is. The proximity to urban growth areas has made this basin a target for development. This area is too special and too unique to do anything other than support its protection. Let this system stay untouched and the jewel that it is.

Sincerely,
Lynn Kitagawa
3550 SW Nevada Ct
Portland OR 97219

From: Tom Landis <tom@outlawnet.com>
To: WHITMAN Richard <Richard.Whitman@state.or.us>
Date: 03/02/2009 1:45 PM
Subject: Metolius ACSC

Dear Director Whitman,

Please accept my praise for the timely manner in which DLCD has handled Governor Kulongoski's charge to designate the Metolius Basin an ACSC. I know he did not give you a lot of time to get the job done. In my opinion, the management plan you have developed is admirable in its philosophy and scope. It is particularly meaningful, in my opinion, that, after receiving extensive public testimony in both Sisters and Madras, the second draft incorporated changes that do truly protect both the surface and subsurface water resources of the basin by extending the boundary of the ACSC beyond the actual surface drainage basin.

I have been involved in this controversy for quite some time. In fact, I have been intimately involved in the land use processes of Jefferson County as they relate to the Metolius for over 15 years. I urge you to resist the pressures that will undoubtedly be exerted by the county to alter the existing draft so that some sort of development can be allowed. My long history of dealing with them has proven to me beyond a doubt that they are more interested in the financial benefits that can be derived from development than they are in protecting the outstandingly remarkable natural values of this gem that sits in a far corner of their jurisdiction.

Those of us living in Camp Sherman are not just a bunch of NIMBY's. We feel like we are the protectors of this precious resource for all the people of Oregon. We welcome everyone here and we thank you on both their behalf and ours for your efforts to preserve the Metolius.

Happy Trails,
Tom Landis
26071 SW Cherokee Land, Camp Sherman
541-595-2088

Lisa Howard - Fwd: Jefferson County Plan

From: Richard Whitman
To: Howard, Lisa
Date: 03/04/2009 6:25 PM
Subject: Fwd: Jefferson County Plan
CC: Jinings, Jon; Morrissey, Michael

Please add to Metolius ACSC record.

>>> On 03/04/2009 at 5:23 PM, in message <AD291F73-A6AB-442A-A218-59B635BF636B@outlawnet.com>, Tom Landis <tom@outlawnet.com> wrote:

Dear Director Whitman,

I was stunned beyond belief when I saw the recently released Jefferson County plan for a six mile wide "Metolius River Protection Zone". This plan does nothing whatsoever to address the potential problems presented by the two destination resorts that are in the planning stages.

I thought they might be able to come up with a plan that is a viable alternative to the plan presented by DLCD last week. For many years I have been skeptical of the county's planning process and dismayed by its insensitivity to the outstandingly remarkable natural values of the Metolius. I had hoped for something that might renew my faith in them.

I do not see how the state can take seriously the alternative plan that they have proposed. It is so far off base that, if I were to try to analyze it in detail, I'd have to write a book. I cannot even begin to tell you how disappointed I am in their completely ineffective attempt at a plan. All the plan does is put a set of draconian limitations upon the present residents of Camp Sherman, while allowing the developers of destination resorts to do just what they want.

I urge you in strongest terms to stick you your guns and submit the plan you released last week, without modifying anything to further mollify Jefferson County or the destination resort developers.

Tom Landis
Camp Sherman

From: <dmag@ykw.net>
To: HOWARD Lisa <Lisa.Howard@state.or.us>
Date: 02/24/2009 2:09 PM
Subject: Metolius river developement

Hi Lisa,
I can not make it to the meeting on Feb 26th...but want to say something.
I live near Sisters Oregon and am against any further developement that
would impact the metolius river...I feel this is a special area for all
Oregonians and should be kept pristine and natural.
David Magaret
67215 Trout Lane
Bend OR 97701
541-323-6911

Lisa Howard - Metolius River is a beautiful pristine Public comment

From: "Ted Magnuson" <t.magnuson@verizon.net>
To: <lisa.howard@state.or.us>
Date: 03/09/2009 10:04 AM
Subject: Metolius River is a beautiful pristine Public comment

As the Metolius River is a beautiful pristine area and as Destination Resorts tend to overpower their environs, I am especially concerned that such a development would have a detrimental impact on the environment and would like to see lower impact, more publicly accessible usages addressed in this area.

Ted Magnuson
www.tedmagnuson.com
503 590 7998

March 3, 2002

To: Oregon Department of Land Conservation and Development

From: Thomas McAllister

3374 SW Fairmount Blvd.

Portland, Oregon 97239

(503) 223-2633 / thmblm@aol.com

Regards: My written testimony for the March 11, 2009, hearing in Madras, OR, on designating the Metolius Basin an "Area of Critical Concern."

METOLIUS MULE DEER HERD

I have known the Metolius River country since boyhood in the 1930's and as a wildlife biologist (OSU, class of '50), fly angler, deer hunter and past cabin owner.

The concern not adequately addressed so far is the future for one of Oregon's largest migratory deer herds. An expansive development, as proposed immediately east of Green Ridge, would be right in the midst of this herd's migration route and the upper reach of its winter range.

These are the deer that summer across the Metolius Basin and westward onto the Cascade crest between Mount Washington and Mt. Jefferson. Some, especially the bucks, drop over the divide to summer in the very headwaters of the North Santiam, including Eight Lakes Basin.

By mid-October high summering mule deer are starting east into the Metolius Valley. During rutting season through November and into December most of the deer are drifting east over Green Ridge. The natural crossing or pathway is the gap between the north side of Black Butte and the south end of Green Ridge. The Metolius herd's migration route leads directly into the planned massive development of homes and overnight facilities as the deer move to their winter range ranging from Squaw Back eastward to Wychus Creek on the Lower Desert.

Some deer linger along the Metolius into December and beyond, and I have know those winters where they were trapped and many perished. They yarded up in little bands to keep trails open in the deep crusted snow and resorted to eating white fir needles or wading in the river to feed on aquatic buttercup. Their route out over Green Ridge, some 1,000 feet higher in elevation, j was blocked by deepest snow.

(McAllister testimony p.2)

The State's management objective for this herd is 6,200 animals, but it has not been reached since 1992. The last winter range survey by Oregon Department of Fish and Wildlife showed 4,600 deer in the herd. This is an increase that should continue with excellent forage conditions in the recent burn areas on the summer range.

The Metolius Unit is one of Oregon's most sought after in the annual drawing for buck mule deer tags. For 550 rifle hunt tags last year there were 2,246 applicants. For the muzzleloader hunt there were 28 tags and 240 applicants, and for Metolius bow hunt 48 tags and 1,219 applicants.

I have seen over my lifetime of outdoor experience (I was for 40 years outdoor editor for first The Oregon Journal and with merger The Oregonian newspaper) the attrition in our mule deer herds, in part from widespread and intensive development without regard to critical winter range areas or recognition and planning for natural migration corridors.

Under the State's sovereign right to manage its resident wildlife in trust for all the people it is an obligation to give full consideration to the needs of this Metolius mule deer herd and its essential migratory pattern.

I would also point out that water is scarce east of the Metolius for many forms of wildlife. One of the most important water sources over Green Ridge is Summit Spring on the planned Ponderosa development. It is just west of Little Squaw Back in Section 17. In heat of summer birds and animals for miles about visit this spring in a little draw. Here, long ago stockmen, mostly with sheep bands, improved this critical spring water source as they also moved from winter to summer range.

Summit Spring is a top birding area, and on late July and August mornings, within an hour's time, I have noted the following birds drawn here. Chipping Sparrow, Robin, Red Crossbill, Black-headed Grosbeak, Vesper Sparrow, White-headed Woodpecker, Stellar Jay, Red-shafted Flicker, Pine Siskin, Purple Finch, Mountain Chickadee, Yellow-bellied Sapsucker, Oregon Junco, Western Tanager, Townsend Solitaire, Fox Sparrow, Green-tailed Towhee, White-breasted Nuthatch, , Mourning Dove and Hairy Woodpecker. Through August and September migrating warblers, bluebirds and flycatchers are regulars stopping at Summit Spring for water. It needs to be recognized and protected.

There is so much at stake here for the future of "The Real Oregon."

Lisa Howard - Fwd: Please accept a copy of my testimony on the Sisters City Council resolution on the Metolius resorts

From: Richard Whitman
To: Howard, Lisa
Date: 03/05/2009 7:42 AM
Subject: Fwd: Please accept a copy of my testimony on the Sisters City Council resolution on the Metolius resorts
CC: Jinings, Jon; Morrissey, Michael
Attachments: Comments to Sisters City Council on Metolius resort resolution.doc

For Metolius record.

Richard

>>> On 03/05/2009 at 12:02 AM, in message
<8AFA921BA6A54BEC9D186C9549C70F21@MAIaport>, "Merry Ann Moore"
<merryann@bendcable.com> wrote:

Dear Mr. Whitman, Commissioners Luke, Baney & Unger, Mr. Gutowsky and Ms. Payne:

Thank you for considering my views on these issues related to destination resort development. I will be offering the attached comments at today's city council meeting in Sisters. I appreciate the county's on-going work to update and reform the County Comprehensive Plan, which I hope will address some of the concerns outlined in my comments.

Sincerely,

Merry Ann Moore
69225 Hawksflight Dr.
Sisters, OR 97759
541.549.2468
merryann@bendcable.com

March 5, 2009

Comments to the Sisters City Council RE: Resolution 2009-04

Dear Mayor Kellstrom and Councilors Bogart, Merrill, Thompson & Weed:

Several of you have stated that your primary concern with this resolution is that you wish to uphold the power of local elected bodies in the land use planning process. First I'd like to address that, and then get to what I believe are the very negative potential impacts on Sisters and the Metolius if resorts are sited there.

I've been following the local destination resort planning process for several years now. Our county's approach to this land use process is not something to hold up as a model. It's my experience that the local land use planning process does not strike a fair balance between property rights and the public interest. Here are some of its failures, which will point out some of the many weaknesses in the proposed Resolution 2009-04.

Local authorities have done a poor job enforcing land use requirements for resorts. State and local resort statutes and standards have clear requirements for overnight lodging. My experience in following the Thornburgh resort in Tumalo, the Aspen Lakes conversion proposal here in Sisters and the Crook County resorts are that developers are eager to make promises when their proposals are in the permitting stages. But when overnight lodging isn't built within the allotted timeframe, developers petition for more time, or they ask to increase the ratio of homes to lodging, or they try to change zoning laws. And they usually get their requests.

Second, land use planning in our county seems largely by driven text amendments (code change) requests, which developers ask for so they can change zoning on their land and get their projects get approved. If the two Metolius resorts in question do get the green light, it would not be surprising in the least to see them come back to Jefferson County in a few years, say conditions have changed, and ask for a code change that would dramatically alter what they were actually granted.

Third, the sentiment of our elected bodies seems to be that whatever the project, wherever the project, it can somehow be mitigated. But I don't believe the two proposed resorts can adequately mitigate for the amount of water they will use. My understanding is that the water the Ponderosa project would use annually would be three times what the entire city of Sisters uses each year. The water will come directly from sources that feed the Metolius, Middle Deschutes and Whychus Creek, which are critical for on-going threatened steelhead and salmon reintroductions, and for threatened bull trout. I'm not a hydrologist, but it seems to me that The Metolian's plans to use run-off surface water will mean less water seeping into the ground and recharging the aquifer.

Here are a few other weaknesses of local land use practices regarding mitigation.

- In Deschutes County, the bird maps that are used to create mitigation plans haven't been updated in ten years and the endangered species maps in seven.

- To my knowledge, there's no formal requirement for a developer to report back after a year or so on whether mitigation plans are really doing what they are supposed to—offsetting any potential harm to fish, open space, wildlife and water resources.

So these mitigation plans are not a reassuring aspect of local land use planning either. I doubt Jefferson County is any better in this regard.

On to my second point, potential negative impacts on Sisters and the Metolius. Some of you have said you are not concerned with the effects of two resorts near Camp Sherman on our town or roads. Your resolution suggests you are confident that collaboration with Jefferson County will resolve any issues. Here are several cost and economic impacts I hope you will consider:

Transportation infrastructure costs. Look no further than Redmond's experience with the four Crook County resorts to see how residents in one county may end up footing a very large transportation infrastructure bill engendered by projects across a county line. If we have two Metolius resorts, then the Fidelity plan for a resort up near Three Creeks goes forward, then Aspen Lakes persuades the county they should be allowed to morph from a rural subdivision to a resort, then the costs to our county and Sisters for road improvements will add up very quickly. If it's going to cost us \$1 million just for a stoplight at Barclay and Highway 20, I think the price-tag will be eye-popping.

Loss of revenue from hunting, fishing and wildlife viewing visitors. A new ODFW study¹ just out shows that in Deschutes County in 2008:

- \$20 million was spent on travel-generated expenditures for fishing,
- \$6.7 million for hunting, and
- \$42.8 million for wildlife viewing, for a total of \$69.5 million.

This includes spending on fuel, lodging, groceries, meals, retail purchases and other travel expenses.

Compare this with the tax revenue that resorts bring to the county, as presented by Linda Swearingen. For 2006-7, Deschutes County resorts combined (Sunriver, Caldera Springs, Black Butte Ranch, Eagle Crest, and Pronghorn) brought \$28.7 million in revenue to Deschutes County.² These numbers indicate that Deschutes County will do far better from an economic development standpoint to preserve fish, wildlife and habitat than to build more destination resorts that damage these resources. And we certainly shouldn't let another county damage our resources.

Loss of revenue from cycling tourism

The rural roads around the PCL and Metolian proposed resorts offer some of the most popular routes for road biking in Central Oregon. They are narrow, curvy and cannot accommodate both cyclists and traffic from thousands of new homes. Cycling is a

¹ Fishing, Hunting, Wildlife Viewing, and Shellfishing in Oregon, 2008 Trip Characteristics and Expenditure Estimates, study by Dean Runyan for ODFW

²“Resort Development in Central Oregon: Costs vs. Benefits,” presentation by Linda Swearingen, Bend City Club Forum, 7/17/08

growing and major tourism draw in this area. In Central Oregon we have annual events such as the Cascade Cycling Classic, Cycle Oregon, the Cyclocross National Championships, USA Cycling's Road National Championships not to mention everyday touring by locals. Our region stands to lose many cycling tourists if these resorts are allowed.

Finally, please consider which agencies will be first responders to medical, fire, and traffic emergencies for the new large populations near Camp Sherman. It won't be Jefferson County.

Given all these factors, I urge you to table this resolution.

Failing that, I ask that you at least change the language "new development also brings jobs and economic opportunity to all Oregonians." This is not a supportable statement, when the kind of "new development" in question is the construction of houses and resort amenities. I don't see how that brings "jobs and opportunity" to a software developer trying to start a new business in Sisters.

In fact, it brings him more costs, for things like added emergency and fire first responder calls, school capacity, county and city road improvements and maintenance. If I'm going to pay for those things, I want to support development that means long-term and family-wage jobs, not primarily construction and minimum-wage maid jobs. Let's get Sisters on the sustainable business bus, and go after some of those jobs that are going to be created in the emerging green economy.

Thank you for considering my views. Sincerely,

Merry Ann Moore
69225 Hawksflight Dr.
Sisters, OR 97759
merryann@bendcable.com

cc: Deschutes County Commissioners Luke, Melton & Unger, Richard Whitman, Peter Gutowsky, Terri Payne

Lisa Howard - Metolius

From: Kate OHalloran <katehallowescape@yahoo.com>
To: HOWARD Lisa <Lisa.Howard@state.or.us>
Date: 02/24/2009 8:02 PM
Subject: Metolius

I am a native Oregonian. Growing up, I had the pleasure of traveling all around Oregon with my maternal grandparents. They owned several "patches of grass" here and there throughout the state, which they never developed, rather, they would visit each spot from time to time and camp in their tiny trailer. I grew up believing that all the special places I visited with them, were, in a sense, my birthright. My grandma taught me to fish. I remember the first time I visited The Metolius, The McKenzie, The Deschutes, The John Day, and many other rivers. These rivers need to be left in near pristine condition for future generations of Oregonians and visitors. The Metolius is a supremely beautiful river, with vital importance to the collective watershed, fish habitat, and overall environmental health of our state; these are integral elements to what it means to be an Oregonian. I was taught to care and for and respect our state, to *treasure* it. I am opposed to any further development in the area of the Metolius on the grounds that such developments would have negative impacts on the water quality and the natural biological systems that support this river. Campgrounds abound in the area, if we need another well-thought-out campground to provide the opportunity for more to visit, I am not opposed to that. Good campgrounds have much less impact than long term homes and lodging, there is less environmental impact, and many provide wonderful opportunities for education and learning. People may visit, tread softly, and leave, come back and again, and leave.... no one needs to build homes, condos, golf courses, or second homes there. Let them camp. It was good enough for me. Thank you for passing this on. Kate O'Halloran.

Robert D. Powers

11570 S.W. Pixie Lane
Culver, OR 97734
503.708.4324
bobmarpow@yahoo.com

February 26, 2009

Response to the Metolius Basin Area of Critical Concern Sub-committee Draft.

Dear subcommittee of the Land Conservation and Development Commission:

Remove the following areas from area 1:

1. Three Rivers Recreation Area
2. Three Rivers Recreation Area Waterfront Zone
3. The cabins and private property on the upper end of the lake above Perry South Campground
4. The areas commonly referred to as:
 - A. Grandview
 - B. Rim Park
 - C. Forest Park
 - D. Air Park

Reasons to Remove:

1. These areas are regulated by Jefferson County zoning ordinances.
2. These areas are regulated by the Confederated Tribes of Warm Springs and Portland General Electric as co-licensees of the Pelton-Round Butte Dams, under the authority of the Federal Energy Regulatory Commission.

Pelton Round Butte Project F.E.R.C. project 2030, Shoreline Management Plan

F.E.R.C. project 2030 controls all activity in the lake below the 1945' full pool level. This includes Docks and any structures in the water. F.E.R.C. also controls some activity on lands around the reservoir thru the following:

- A. Shoreline Erosion Plan
- B. Terrestrial Resource Management Plan
- C. Plan to restore Riparian Vegetation
- D. Recreation Resources Implementation Plan
- E. Large Wood Management Plan
- F. Cultural Resource Management Plan

February 26, 2009

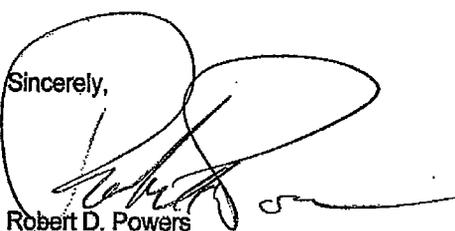
In addition there is a number of State and Federal Agencies involved in regulation on and around Lake Billy Chinook.

Including:

1. Department of State Lands
2. Oregon Department of Forestry
3. Oregon Department of Fish & Game
4. Oregon Department of Environmental Quality
5. State Marine Board
6. Bureau of Land Management
7. Oregon State Parks
8. U.S. Forest Service
9. Crooked River National Grasslands
10. U.S. Army Corps of Engineers
11. Oregon Water Resources Department

Also, The Confederated Tribes of Warm Springs controls fisheries on the Metolius arm of the lake and takes an active role in any land use activity in the area of the Metolius Basin and area adjacent to the Metolius arm of Lake Billy Chinook.

Sincerely,



Robert D. Powers

Resident of 3-Rivers
Member of Jefferson County Planning Commission

Lisa Howard - Fwd: Metolius ASCS plan

From: Richard Whitman
To: Howard, Lisa
Date: 03/04/2009 5:32 PM
Subject: Fwd: Metolius ASCS plan
CC: Jinings, Jon; Morrissey, Michael

Please include in Metolius ACSC record

>>> On 03/04/2009 at 11:07 AM, in message
<49AED158.1040504@outlawnet.com>, The Schay Family
<mpschay@outlawnet.com> wrote:

Dear Mr. Whitman,

I want to thank for leading the effort to prepare a plan that will offer protection to the natural resources in the Metolius Basin while allowing for reasonable recreational uses. I think you're on the right track.

On the other hand, Jefferson County's draft proposal is preposterous.

It's almost as if the county is making a joke of a serious issue. I

will attend the hearing on Thursday, not because a reasonable alternative is being presented, but because it might be the best show Jefferson County has had since the county fair.

I am following DLCD's management plan for the Metolius ASCS with interest and am pleased so far. I look forward to March 11th.

Thanks for all of your work.

Pete Schay
Camp Sherman

From: The Schay Family <mpschay@outlawnet.com>
To: <lisa.howard@state.or.us>
Date: 03/09/2009 1:07 PM
Subject: Re: Metolius ASCS plan

The Schay Family wrote:

> <div class="moz-text-flowed" style="font-family: -moz-fixed">Land
> Conservation and Development Commission
> Department of Land Conservation and Development
>
>
> Dear Lisa,
> After last Thursday's hearing on Jefferson County's draft of the
> Metolius ASCS management plan I have received a few phone calls from
> concerned Camp Shermanites. First, let me say, that no one I have
> talked with believe the county's plan will be taken seriously, but
> many at the hearing were alarmed at some of the restrictions proposed
> in the six mile corridor along the Metolius River. One that I
> remember being of concern was no watering of lawns and gardens. But
> it was the commissioners' response that alarmed some folks.
> Commissioner Ahern said that the provisions in the draft plan were
> from state regulations not county. While most everyone here favors
> LCDC's draft plan some are wondering if there are some Draconian
> restrictions in LCDC's plan that we should be aware of.
>
> I think it would be helpful at this Wednesday's hearing in Madras if
> someone from the LCDC could answer this concern at the start of the
> hearing.
> Maybe some comments on the county's draft plan in general since it
> stirred up folks from the Three Mile community at the head of the
> Metolius arm of Lake Billy Chinook. I don't believe this independent
> community is affected by the LCDC draft plan that I last saw. The
> rationale for the county's approach is hard to fathom but it did get
> people's attention. To many of us it seemed spiteful.
>
> I want to thank you all for the work you've done.
>
> Pete Schay
> Camp Sherman
>
> </div>
>