



Oregon

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April 8, 2010

TO: Land Conservation and Development Commission
FROM: Michael Morrissey, Policy Analyst
SUBJECT: **Agenda Item 6, April 21-23, 2010, LCDC Meeting**

PUBLIC HEARING AND POSSIBLE ADOPTION OF PROPOSED PERMANENT RULE AMENDING OAR CHAPTER 660, DIVISION 43 AREAS OF CRITICAL STATE CONCERN

I. SUMMARY

Consider adoption of the Metolius Area of Critical State Concern management plan by rule, in a new Division 43, with no changes except those specified in statute.

II. RECOMMENDED ACTION

The department recommends that the commission receive the Hearings Officer report from a December 3, 2009 public hearing in Camp Sherman, and adopt the Metolius Area of Critical State Concern management plan in a new rule, OAR 660-043-0100 Areas of Critical State Concern, to meet the requirements of House Bill (HB) 3298.

III. BACKGROUND

House Bill 3298, enacted by the 2009 legislature, declared the Metolius River Basin to be an Area of Critical State Concern (the "Metolius ACSC") and approved an accompanying management plan for the area. That management plan had been submitted to the legislature by LCDC as a recommendation, in accordance with ORS 197.405 – 197.410. The legislature approved the management plan under HB 3298 and directed LCDC to adopt the plan by administrative rule, with no changes, except for three specific changes.

The management plan is contained in **Section VI. Land Use Management Plan** (pp. 36-48) of the Metolius Area of Critical State Concern document, recommended for approval and submission to the legislature by LCDC at its March 2009 meeting, and transmitted to the legislature on April 2, 2009.

The area affected by the management plan includes the Metolius drainage basin and an adjoining area (“Areas 1 and 2,” described in the management plan and referenced by the legislation) located in portions of Jefferson and Deschutes counties. HB 3298 took effect July 15, 2009. The new rules proposed for approval by LCDC in a new division 43 under OAR 660 will take effect following adoption by LCDC and upon filing with the Secretary of State’s office.

The management plan affects only the portions of Jefferson and Deschutes counties that include the legislatively declared Metolius Area of Critical State Concern. Uses prohibited by the management plan include:

- Destination resorts, as defined by Statewide Planning Goal 8 and ORS 197.435 to 197.467.
- New golf courses.
- Certain new residential, commercial, industrial or other new uses, including dwelling units, in excess of the amount stated in the legislation or that cause an average annual consumptive use of water in excess of the amount stated in the legislation, depending whether the land is in Area 1 or Area 2 of the management plan referenced by the legislation.

OAR 660-043-0100 is proposed to be created in a new Division 43, Areas of Critical State Concern. The rule is only applicable to the Metolius Area of Critical State Concern management plan, and no other rule is proposed for the division at this time. The rule adopts the management plan by reference and incorporation. However, at the December 3, 2009 public hearing in Camp Sherman, the Jefferson County Board of Commissioners testified and requested that the text of the management plan be incorporated into the rule so it would be more accessible to citizens. HB 3298 directed that LCDC adopt three amendments to the management plan upon adoption of the plan by rule and these amendments are identified in the rule: the first amendment modifies how future proposed amendments to the plan will proceed—LCDC will be required to give notice of proposed amendments to the governing bodies of Jefferson County and the Confederated Tribes of the Warm Springs, and if either of those entities objects to the proposed amendments certain standards must be met before LCDC could adopt the amendments. The second amendment directs how a small-scale development allowed in Area Two of the ACSC shall be configured. The third amendment defines how the term “average consumptive water use” shall be applied in the management plan.

In order for LCDC to adopt the management plan by rule, several requirements were met. First, adoption of the rule (in a new division 43 Areas of Critical State Concern), was preceded by notice under Measure 56. Measure 56 (ORS 197.047) requires the agency to mail notice at least 90 days prior to the final public hearing on a proposed new or amended administrative rule that restricts the use of private real property. The department mailed that Measure 56 notice on September 3, 2009, and identified December 3, 2009 as the hearing date with regard to the proposed rulemaking.

Next, provisions of ORS 183.335 require that when such rulemaking applies to a limited geographic area within Oregon, the hearing must be held at a place convenient for the majority of residents within that area. The hearing took place in Camp Sherman, on December 3rd, and

was conducted by Richard Whitman, DLCD Director as the designated Hearings Officer, accompanied by John VanLandingham, chair of the Land Conservation and Development Commission. The Hearings Officer's Report is Attachment A to this staff report.

This agenda item is carried over from the January 20-22, 2010 LCDC meeting. At that time a staff report and hearing's officer report were presented to the commission. Testimony was presented by Jefferson County staff, and several suggestions were made in that testimony regarding the Metolius ACSC map and other items. As a result, two proposed amendments were made to the rule by department staff, and a letter was sent to Jefferson County by Director Whitman (Attachment C), explaining those changes and responding to the other concerns. The two proposed amendments to the rule are: 1) Changing the reference to the "Three Rivers unincorporated community" to the "Three Rivers community." Rationale: Three Rivers is not an unincorporated community. 2) Amending section 4(d) to specify a time period (45 days) in which Jefferson County or the Confederated Tribes of the Warm Springs Reservation is allowed to file a written objection to proposed amendments to the ACSC Management Plan. Rationale: Requested by Jefferson County.

IV. DEPARTMENT RECOMMENDATION AND DRAFT MOTION

The department recommends the commission adopt a new rule, OAR 660-043-0100, adopting the Metolius Area of Critical State Concern management plan by rule, as directed by the 2009 legislature in HB 3298.

Proposed Motion: I move the commission adopt OAR 660-043-0100 adopting the Metolius Area of Critical State Concern management plan by rule.

V. ATTACHMENTS

Attachment A. Hearing's Officer Report for the LCDC Public Hearing at Camp Sherman December 3, 2009

Attachment B. Proposed OAR 660-043-0100 (need to incorporate rule into it)

Attachment C. Letter to Jefferson County



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January 7, 2010



To: Land Conservation and Development Commission

From: Richard Whitman, Hearings Officer

**Re: Metolius ACSC Management Plan Adoption by Rule - Hearings Officer
Report from December 3, 2009 Public Hearing held in Camp Sherman,
Oregon**

Background

House Bill 3298, enacted by the 2009 legislature, declares the Metolius River basin to be an Area of Critical State Concern (the "Metolius ACSC") and approves an accompanying management plan for the designated area. That management plan was submitted to the legislature by the commission as a recommendation, in accordance with ORS 197.405 – 197.410. The legislature approved the management plan under HB 3298, and directed the commission to adopt the plan by administrative rule, with three specific changes.

The area affected by the management plan includes the Metolius hydrologic basin and an adjoining area (described in the management plan). The area is located in portions of Jefferson and Deschutes counties. HB 3298 took effect on July 15, 2009. The new rules are proposed for a new OAR division 43, and would take effect following adoption by LCDC and upon filing with the Secretary of State's office.

Uses prohibited by the management plan include:

- Destination resorts, as defined by Statewide Planning Goal 8 and ORS 197.435 to 197.467
- New golf courses
- Other new residential, commercial and industrial uses that would have an average annual consumptive use of water in excess of amounts stated in the management plan.

Provisions of ORS 183.335 require that when rulemaking applies to a limited geographic area within Oregon, a hearing must be held in or near that area. Therefore, the hearing was scheduled to take place in Camp Sherman.

I conducted a public hearing on the Metolius ACSC management plan proposed rule on

December 3 in Camp Sherman, Oregon. One person testified, one person asked a question and two persons submitted written comments on the proposed rule (two written comments were submitted prior to the hearing). The testimony was neutral with regard to the content of the rule, while making suggestions for limited changes to the document. The content of the testimony, including specific recommendations, is summarized in more detail below.

Public Hearing - Summary of Proceedings and Testimony

Before opening the public hearing, I provided an overview of the hearing process; summarized the content of the public notice; outlined LCDC's statutory rulemaking authority; and outlined the process for providing additional comments prior to or at the commission's hearing scheduled for January 20-22, 2010. John VanLandingham, LCDC chair, and Michael Morrissey, department staff, accompanied me at the hearing.

I summarized the effect of the management plan for the approximately 30 people in attendance, summarized hearing protocols and opened the public hearing. The following is a summary of the testimony:

John Hatfield, chair of the Jefferson County Board of Commissioners addressed four points contained in written testimony. First, that the Board would like to see the management plan text incorporated into the rule itself. Second, that a specific legal description of Areas 1 and 2 of the ACSC be produced so that a map could be generated allowing for tax lot specific identification. Third, noting a typo. Fourth, that a specific time (45 days) be identified for response by the Confederated Tribes of the Warm Springs or by Jefferson County to notice of proposed amendments to the ACSC management plan. Commissioner Hatfield also noted that further comments would be presented at the LCDC hearing and possible rule adoption at the commission's January meeting.

I thanked those in attendance for their participation and indicated that further oral comments may be provided to LCDC at their January 20-22, 2010 public hearing in Salem, Oregon.

Recommendation

Based on the testimony at the hearing and HB 3298, I recommend that the commission adopt the proposed rules attached as Attachment B.

DIVISION 43

Areas of Critical State Concern

660-043-0100

Metolius Area of Critical State Concern

(1) The Legal Effect of the Management Plan. This section of the Metolius Area of Critical State Concern contains the operative provisions of the designation. The earlier sections are intended only as background for the land use management plan. The provisions of the management plan will become effective upon filing of this rule with the Secretary of State. No further action by the commission or by Jefferson or Deschutes County is required for the plan to take effect. Specifically, neither county is required to amend its comprehensive plan or land use regulations as a result of this management plan. Instead, the counties will apply the provisions of this management plan directly to any land use decision that the plan applies to (as specified in more detail below). The Management Plan provisions in this rule apply in addition to and (in some cases) instead of other state and local land use statutes, goal, rules, plans and regulations governing land uses within the Area of Critical State Concern. If any statute, goal, rule, plan or regulation conflicts with a provision of this Management Plan, the plan will control upon the effective date of legislation approving the plan. All other programs and regulations of state agencies, Jefferson County and Deschutes County are not affected by this Management Plan. The Management Plan may be amended by the commission, as provided and subject to the limitations contained in section 4 of this rule.

(2) The Boundary of the Area of Critical Concern. The Area of Critical State Concern consists of two areas: The Metolius basin itself, except for the Three Rivers ~~unincorporated~~ community and lands to the east of Three Rivers (defined by surface hydrology as mapped by the Oregon Water Resources Department, and as shown in Exhibit A) (Area 1); and an area along the edge of the basin located to include lands where groundwater use is likely to adversely effect surface water flows in the Metolius basin, or where large-scale development would adversely affect important deer or elk winter range (as shown in Exhibit A) (Area 2). The eastern boundary of Area 1 was adjusted by the commission to remove the Three Rivers ~~unincorporated~~ community from the boundary, along with lands to the east of Three Rivers. The boundary otherwise encompasses the surface drainage of the Metolius River, including Fly Creek. The boundary of Area 2 was developed based on two criteria: the area where groundwater withdrawals are likely to substantially affect surface flows in the Metolius River (by more than 30 percent); and the area identified as especially sensitive big game habitat by ODFW or identified as important winter or transitional deer or elk range by the U.S. Forest Service. The boundary of Area 2 was adjusted to follow section lines to assist in the administration of the Management Plan.

(3) 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 the commission and Jefferson and Deschutes Counties in the implementation of the Management Plan.

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

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

(c) 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 large scale resort or other large-scale development. The level of entitlement for the Metolian property set to offset the costs that have been incurred in preparing detailed development plans for the property. The entitlements for the Ponderosa property reflect the development allowed under existing zoning. The Management Plan does not eliminate statutory claims for compensation the owners may (or may not) have under Measure 49.

(4) Management Plan General Standards and Procedures. The following standards limit the authority of the commission to amend the Management Plan, by prohibiting certain changes to the plan without legislative approval, and by setting general standards for other changes.

(a) Changes Prohibited Without Legislative Approval. The following types of changes in the designation and Management Plan are prohibited without legislative approval:

(A) Any change to the boundary of the ACSC, including its two Areas, of more than 50 acres;

(B) Any change to the prohibition of a destination resort, as defined by Statewide Planning Goal 8 or ORS 197.435 et. seq.; or

(C) Any change that would authorize an exception to a Statewide Planning Goal in order to allow the development of more than 100 residential units.

(b) Other Changes. Other changes to the boundary of the ACSC or Management Plan by the commission 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.

(c) Procedure for Amendments. If the commission proposes to amend, add to or remove the boundary of Area 1 or Area 2, or to amend any provision of the Management Plan in a manner that is subject to subsection (a) of this section, the amendment will not take effect until the effective date of legislation approving the amendment. If the commission proposes to amend, add to or remove the boundary of Area 1 or Area 2, or to amend any provision of the Management Plan in a manner that is not subject to subsection (a) of this section, it shall do so by following the applicable rulemaking procedures specified in ORS 183.325 et. seq. The commission shall hold at least one hearing in Jefferson County on any proposed change to the boundary of the ACSC or any proposed change to the Management Plan.

(d) In addition, the commission shall give notice of proposed amendments to the management plan within to the governing bodies of Jefferson County and the Confederated Tribes of the Warm Springs Indian Reservation. If either governing body files a written objection to the proposed amendment within 45 days, the commission may adopt the proposed amendment only if the commission finds by clear and convincing evidence that the proposed amendment meets the applicable requirements of 2009 Or Laws, chapter 712.

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

(5) Management Plan Supplemental Land Use Regulations, Area 1: Metolius Basin. Area 1 is the area shown as Area 1 on Exhibit A.

(a) Prohibited Uses and Activities (Jefferson and Deschutes Counties). In addition to the existing provisions of state statutes, statewide land use planning goals and rules, and the acknowledged Jefferson County and Deschutes County Comprehensive Plans and land use regulations, the following uses and activities are prohibited on all lands in Area 1:

- (A) Any new destination resort, as defined by Statewide Planning Goal 8 (Recreation) or ORS 197.435 to 197.467;
- (B) Any new golf course;

(C) Any new residential development exceeding 10 dwelling units on a tract, regardless of whether an exception is taken (except as provided in paragraph (b)(D), below);

(D) Any new commercial or industrial development that would have an average annual consumptive use of water of more than five acre-feet, and small-scale, low impact uses allowed under OAR 660-022-0030; and

(E) Any new uses of a tract of land that would have an average annual consumptive use of water in excess of five acre-feet, except as provided in paragraph (b)(D), below.

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

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

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

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

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

(i) Up to twenty-five residential units and up to ten additional overnight accommodations in a lodge format, or including cabins on the lodge footprint, and accessory uses and activities including a small accessory restaurant and recreation-oriented amenities;

(ii) All units must be sited within a single clustered node of development, not to exceed 25 acres in size (access roads to the node and fire buffer areas are not included in the 25-acre limitation). The units must be sited, clustered and designed to minimize conflicts with wildlife in consultation with the Oregon Department of Fish and Wildlife, the U.S. Forest Service and the Confederated Tribes of the Warm Springs.

(iii) Fire siting standards must meet or exceed the standards in Jefferson County zoning code section 426;

(iv) The average annual consumptive water use for this development may not exceed 12.5 acre-feet; however, this limitation does not include water for fire-fighting needs on or off-site;

(v) Individual residential lots may not exceed one acre in size, with a maximum disturbance area of 35 percent;

(vi) Front and rear yard minimum setbacks are 10 feet; minimum side yard setbacks are five feet;

(vii) Roads to serve the residential lots may be private;

(viii) Jefferson County's review of development carried out under this paragraph shall demonstrate compliance with the applicable provisions of this Management Plan, together with applicable county site plan and land division requirements, as set forth in Jefferson County's land use regulations;

(ix) 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;

(x) If the owner of the property described in this paragraph elects to carry out this use, the property not used for residential use or overnight accommodations (including any common facilities) must be dedicated as open space. In addition, if the owner elects to carry out this use, all other property owned by the owner, or any affiliate of the owner, within Area 1 or Area 2 may not be developed with farm, non-farm or forest dwellings that would otherwise be allowed under applicable state and local land use regulations;

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

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

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

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

(C) Non-farm and non-forest uses allowed under Statewide Planning Goals 3 and 4 and their implementing rules (so long as any non-farm or non-forest use does not have an average annual consumptive use of water in excess of five acre-feet).

(6) Management Plan Supplemental Land Use Regulations, Area 2: Metolius Water/Wildlife Buffer Area. Area 2 is that area shown as Area 2 on Exhibit A.

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

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

(B) Any new golf course;

(C) Any new residential development exceeding 20 dwelling units on a tract, regardless of whether an exception is taken;

(D) Any new commercial or industrial development, other than those commercial or industrial uses that would have an average annual consumptive use of water of less

than 10 acre-feet, and other than those small-scale, low impact uses allowed under OAR 660-022-0030; and

(E) 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 subsection (b), below.

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

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

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

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

(i) Up to 100 residential units and up to twenty additional overnight accommodations in a lodge format, or including cabins on the lodge footprint, and accessory uses and activities including a small accessory restaurant and equestrian facilities or other recreation-oriented amenities (not including a golf course);

(ii) All units must be sited within up to 25 clusters that may be connected only by a road system, not to exceed 320 acres in size (access roads to the nodes and fire buffer areas are not included in the acreage limitation). The units and nodes must be 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;

(iii) Fire siting standards must meet or exceed the standards in Jefferson County zoning code section 426;

(iv) The average annual consumptive water use for this development may not exceed 60 acre-feet; however, this limitation does not include water for fire-fighting needs on or off-site;

(v) Individual residential lots may not exceed five acres in size, with a maximum disturbance area of 35 percent;

(vi) Roads to serve the residential lots may be private;

(vii) Jefferson County's review of development carried out under this paragraph shall demonstrate compliance with the applicable provisions of this Management Plan, together with applicable county site plan and land division requirements, as set forth in Jefferson County's land use regulations;

(viii) This use is allowed notwithstanding any state statute in ORS chapters 197 or 215 to the contrary, and notwithstanding any Statewide Planning Goal or implementing rule to the contrary, and notwithstanding any land use regulation or comprehensive plan provision of Jefferson County to the contrary. If the owner of the property described in this paragraph elects to carry out this use, the property not used for residential use or overnight accommodations (including any common facilities) must be dedicated as open

space. In addition, if the owner elects to carry out this use, all other property owned by the owner or any affiliate of the owner within Area 1 and Area 2 may not be developed with farm, non-farm or forest dwellings that would otherwise be allowed under applicable state and local land use regulations.

(7) Special Use Provisions (Deschutes County). The following uses and development in the portion of Area 2 in Deschutes County are not subject to section (6), above:

(a) 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);

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

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

(d) 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 consumptive water use for this development may not exceed five 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 subsection elects to carry out this use, the property not used for residential units and common facilities must be dedicated as open space.

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

Stat. Auth.: ORS 197.040, HB 3298

Stats. Implemented: ORS 197.405; Or Laws 2009, ch 712.

Hist.:

Exhibit A, Metolius ACSC, Map of Area 1 and Area 2

Exhibit B, Metolius ACSC Management Plan, 4/2/2009

DRAFT



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April 5, 2010



Jeff Rasmussen, Jefferson County Administrative Officer
Jon Skidmore, Jefferson County Planning Director
66 "D" Street
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Gentlemen,

At the January 20-22, 2010 LCDC hearing you raised several issues with regard to adoption of the Metolius ACSC Management Plan by rule. At the meeting I indicated that several of those concerns might better be dealt with through correspondence rather than revising the rule itself, and so what follows is the department's response to Jefferson County's concerns. Final adoption of the plan will be considered at the April 22 LCDC meeting in Lincoln City.

1. Map Refinement—Jefferson County asked that a map of the Metolius ACSC be included in the rule of sufficient detail and with supporting documentation, that the county can make defensible and rational land use decisions going forward.

Response: The department has since received agreement from Jefferson and Deschutes counties on the methodologies for mapping the boundaries of the Metolius ACSC, including the boundary between Areas 1 and 2. The large, tax lot specific, map presented at the January LCDC meeting will be incorporated into the rule as a refinement of the map already contained in the management plan, and the protocols used to produce the map have been entered into the record of the January LCDC hearing.

2. Jefferson County requested the proposed rule be amended to specify that if LCDC proposes an amendment to the ACSC Management Plan that the Confederated Tribes of the Warm Springs Indian Reservation and Jefferson County be allowed 45 days from the LCDC notice to respond with written objections.

Response: Amend rule in section (4)(d) as follows:

"In addition, the commission shall give notice of proposed amendments to the management plan to the governing bodies of Jefferson County and the Confederated Tribes of the Warm Springs Indian Reservation. If either governing body files a written objection to the proposed amendment within 45 days of the notice, the commission may adopt the proposed amendment only if the commission finds by clear and convincing evidence that the proposed amendment meets the applicable requirements of the 2009 Or Laws, chapter 712."

3. The Three Rivers area is not an unincorporated community, it is a rural residential area.

Response: The “Three Rivers unincorporated community” is referenced twice in section 2, and once in section 3(a) of the ACSC Management Plan: “The Boundary of the Area of Critical Concern.” The rule should be amended to change references to “Three Rivers unincorporated community” to “Three Rivers community.”

4. Jefferson County would like a definition for “large-scale development” as it appears in the rule. Is a 350 student camp in the woods small scale? Also, the eastern parts of the ACSC could be good sites for alternative energy development. In fact, PGE has recently purchased some land there. Could a 40 turbine 100 mw wind farm considered for approval as a conditional use be “large-scale development?”

Response: Protecting the Metolius ACSC from large-scale development appears in the plan as one of three major plan objectives in Section 3(a) of the rule: “Protect the Basin.” That objective is implemented by the specific prohibitions in Sections 4-6 of the rule. If the use is not prohibited by those provisions, it is not “large scale” development for the purposes of the ACSC.

5. Monitoring actual consumptive water use by new development in the ACSC, consistent with ACSC standards is beyond county’s staff capacity. Maybe applicants for development could obtain some sort of approval from the Water Resources Department.

Response: The rule does not require ongoing monitoring of water use related to development standards in the management plan. Rather, any applicable water use standard in the rule applies at the time of development review. See section 1 of the rule: “The Legal Effect of the Management Plan.” “Specifically, neither county is required to amend its comprehensive plan or land use regulations as a result of this management plan. Instead, counties will apply the provisions of this management plan directly to any land use decision that the plan applies to...”

There are many sources of information concerning how to project the average consumptive use of water of particular land uses. The department will be happy to provide the county with sources of information it has.

6. A small-scale recreational community development is allowed on 320 acres in Area Two. The development allows up to 100 residential units and up to twenty additional overnight in a lodge format, and individual lots are restricted to a five acre maximum. However, the rule does not authorize Jefferson County to waive the 80-acre minimum lot size resource land requirements, under which the property is currently zoned, to allow such development.

Response: Section 1 of the rule directs that provisions of the Management Plan become effective upon filing of the rule with the Secretary of State, and that neither Deschutes nor Jefferson county is required to amend its comprehensive plan or land use regulations

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as a result of the management plan. Further, both the ACSC and HB 3298 provide that if any statute, goal, rule, plan or regulation conflicts with a provision of the management plan, the management plan will control upon the effective date of legislation approving the plan.

Sincerely,



Richard Whitman, Director
Department of Land Conservation and Development