

31.3.12 Permits – Particular Uses – Destination Resorts. Where a destination resort conceptual master plan approval becomes void under applicable land use regulations if conditions of approval are not “substantially exercised” within two years, and the governing body does not distinguish between conditions based on their importance or the level of difficulty in exercising those conditions, a finding that 19 of 42 conditions have been “fully complied with” is not adequate to establish that the 42 conditions have been “substantially exercised.” *Gould v. Deschutes County*, 71 Or LUBA 78 (2015).

31.3.12 Permits – Particular Uses – Destination Resorts. Where a destination resort conceptual master plan approval becomes void under applicable land use regulations if conditions of approval are not “substantially exercised” within two years, the governing body may not dismiss the significance of the applicant’s failure to exercise 22 of 42 conditions because those conditions required the applicant to secure additional permits as the failure of a “contingency” to occur. The conditions were written in a manner that required the applicant to secure the permits to exercise the condition, such that they were a necessary step to exercise the condition, and the significance of the applicant’s failure to secure the permits may not be dismissed entirely as a failure of a “contingency.” *Gould v. Deschutes County*, 71 Or LUBA 78 (2015).

31.3.12 Permits – Particular Uses – Destination Resorts. Where a destination resort conceptual master plan approval becomes void under applicable land use regulations if conditions of approval are not “substantially exercised” within two years, and the process and complexity of destination resort final master plan approval makes it difficult to do so within two years, the solution is to amend county land use regulations so as not to subject conceptual master plan approval to the two-year deadline or to write conceptual master plan approval conditions so that they can be exercised without first securing final master plan approval. The solution is not to take the position that the two-year deadline to “substantially exercise” the conditions of approval should not be applied, where the county land use regulations as currently written clearly make the two-year deadline applicable. *Gould v. Deschutes County*, 71 Or LUBA 78 (2015).

31.3.12 Permits – Particular Uses – Destination Resorts. Where the county’s land use regulations require the county to find that the failure of an applicant to fully comply with any conditions of conceptual master plan approval within two years is not the “fault of the applicant,” LUBA will defer to a board of commissioner’s finding that the complexity of the proposal and the complexity of the county’s destination resort review process relieves the applicant of any fault in fully complying with the conceptual master plan conditions of approval. *Gould v. Deschutes County*, 71 Or LUBA 78 (2015).

31.3.12 Permits – Particular Uses – Destination Resorts. Nothing in the definition of “tract” in ORS 197.435(7) or any other statute or rule requires a map that shows in totality the locations of an applicant’s land ownership within the county for purposes of satisfying the last sentence of ORS 197.435(7), the destination resort “30% Rule.” *Root v. Klamath County*, 68 Or LUBA 124 (2013).

31.3.12 Permits – Particular Uses – Destination Resorts. Under ORS 197.455(2), the map of lands eligible for destination resort siting that is adopted pursuant to the mapping criteria at ORS 197.455(1) is the “sole basis” for determining whether land is eligible for resort siting, and those mapping criteria are not revisited at the time of destination resort siting. Nonetheless, three of the ORS 197.455(1) mapping criteria include prohibitions and exceptions focused on the specifics of resort development that are difficult to meaningfully address at the mapping stage. *Central Oregon Landwatch v. Deschutes County*, 66 Or LUBA 192 (2012).

31.3.12 Permits – Particular Uses – Destination Resorts. Nothing in the destination resort statutes prohibits a county from placing a site that is classified Fire Regime Condition Class 3 on its map of lands eligible for destination resort siting, as long as conditions or similar restrictions are imposed as part of the mapping decision that effectively ensure that prior to resort development the county has adopted a wildfire protection plan consistent with ORS 197.455(1)(f). *Central Oregon Landwatch v. Deschutes County*, 66 Or LUBA 192 (2012).

31.3.12 Permits – Particular Uses – Destination Resorts. Where the county adds a site to its map of lands eligible for destination resort siting, concludes based on site-specific traffic studies that destination resort development will significantly affect nearby transportation facilities within the meaning of OAR 660-012-0060, identifies the transportation improvements needed to ensure that allowed land uses are consistent with the performance standards of affected facilities, and requires the destination resort applicant to provide those improvements prior to development, the county has not deferred a determination of compliance with OAR 660-012-0060, but instead complied with the rule. That the county prudently imposed conditions requiring a second analysis and requiring additional improvements if needed at the time of development does not constitute an impermissible deferral of compliance with OAR 660-012-0060. *Central Oregon Landwatch v. Deschutes County*, 66 Or LUBA 192 (2012).

31.3.12 Permits – Particular Uses – Destination Resorts. In concluding that a decision adding a site to the county’s map of lands eligible for destination resort development complies with the Transportation Planning Rule, the county may “adopt” measures demonstrating that allowed land uses are consistent with the performance standard of affected transportation facilities within the meaning of OAR 660-012-0060(2)(a) by adopting conditions requiring that the destination resort applicant pay for and provide transportation improvements prior to resort development, and need not require that the improvements be in place on the date the county adds the site to its map of eligible lands. *Central Oregon Landwatch v. Deschutes County*, 66 Or LUBA 192 (2012).

31.3.12 Permits – Particular Uses – Destination Resorts. The requirement at ORS 197.460(4) that an applicant for destination resort siting provide a traffic study that includes measures to mitigate a proportionate share of adverse impacts on transportation facilities is different from, and does not replace, the obligation to evaluate transportation impacts under OAR 660-012-0060 in amending the comprehensive plan map of lands eligible for destination resort siting. While a county might err if it relied entirely on ORS

197.460(4) to ensure compliance with OAR 660-012-0060, there is no error in citing ORS 197.460(4) as an additional basis to conclude that OAR 660-012-0060 is satisfied. *Central Oregon Landwatch v. Deschutes County*, 66 Or LUBA 192 (2012).

31.3.12 Permits – Particular Uses – Destination Resorts. Subsection (2) of ORS 197.455 requires that counties adopt a comprehensive plan map to identify lands within the county that are eligible for destination resort siting, and requires that the map “shall be the sole basis for determining whether tracts of land are eligible for destination resort siting.” *Central Oregon Landwatch v. Deschutes County*, 63 Or LUBA 123 (2011).

31.3.12 Permits – Particular Uses – Destination Resorts. Under ORS 197.455(1), the following types of land may not be included on a county’s comprehensive plan map showing lands eligible for destination resort siting: (1) lands within 24 miles of large city urban growth boundaries, (2) a site with 50 or more contiguous acres of unique or prime farmland, (3) a site within 3 miles of a high value crop area, (4) land that is predominantly Cubic Foot Site Class I or 2 forestlands, (5) land in the Columbia River Gorge National Scenic Area, and (6) areas that have been identified as especially sensitive big game habitat. *Central Oregon Landwatch v. Deschutes County*, 63 Or LUBA 123 (2011).

31.3.12 Permits – Particular Uses – Destination Resorts. Lands that are shown on a county Destination Resort Eligible Lands Map are simply *eligible* for approval of a destination resort, and being included on the map carries with it no guarantee that a destination resort can be approved on the site. *Central Oregon Landwatch v. Deschutes County*, 63 Or LUBA 123 (2011).

31.3.12 Permits – Particular Uses – Destination Resorts. After a proposed destination resort site is included on a county’s comprehensive plan map showing eligible sites, to complete the process and receive county approval for a destination resort, a proposed destination resort must meet the destination resort approval standards set out at ORS 197.445 and other statutory standards. Under the ORS 197.445 approval standards, a destination resort must: (1) be located on a site of 160 acres or more, (2) leave 50 percent of the site dedicated to open space, (3) commit to spend at least seven million dollars on recreation facilities and visitor accommodations, (4) meet certain requirements for visitor-oriented accommodations, and (5) limit commercial uses. *Central Oregon Landwatch v. Deschutes County*, 63 Or LUBA 123 (2011).

31.3.12 Permits – Particular Uses – Destination Resorts. Although the legislature does not use the term “tract” in ORS 197.455(1), which sets out areas and sites that must be excluded from a county map showing lands that are eligible for destination resort siting, the mapping process dictated by ORS 197.455(1) effectively requires that a county examine “tracts,” as ORS 197.435(7) defines that term (*i.e.*, lots, parcels, and contiguous lots and parcels in common ownership), and exclude any tract if more than 30 percent of the tract lies within one or more of the “areas” listed at ORS 197.455(1)(a) through (e). *Central Oregon Landwatch v. Deschutes County*, 63 Or LUBA 123 (2011).

31.3.12 Permits – Particular Uses – Destination Resorts. ORS 197.445 does not require that a proposed destination resort must be sited on a single tract. *Central Oregon Landwatch v. Deschutes County*, 63 Or LUBA 123 (2011).

31.3.12 Permits – Particular Uses – Destination Resorts. Although counties may regulate destination resorts more strictly than they are regulated by ORS 197.445 and 197.455 and related statutes, counties may not adopt destination resort regulations that would allow a county to approve destination resort proposals that do not comply with the statutes governing mapping of eligible lands for and approval of destination resorts. *Central Oregon Landwatch v. Deschutes County*, 63 Or LUBA 123 (2011).

31.3.12 Permits – Particular Uses – Destination Resorts. ORS 197.455 imposes no minimum tract size standard for excluding land from a county's comprehensive plan map showing lands eligible for destination resort siting. *Central Oregon Landwatch v. Deschutes County*, 63 Or LUBA 123 (2011).

31.3.12 Permits – Particular Uses – Destination Resorts. Although ORS 197.445(4)(b)(B) requires that at least 50 units of overnight lodging be built before lots or residential units in a destination resort can be sold, and therefore might preclude approval of a destination resort that includes a previously platted and developed subdivision, there is no statutory requirement that previously platted subdivisions be excluded from a county's comprehensive plan map showing lands eligible for destination resort siting. *Central Oregon Landwatch v. Deschutes County*, 63 Or LUBA 123 (2011).

31.3.12 Permits – Particular Uses – Destination Resorts. Although amendments to county standards for mapping sites that are eligible for destination resort siting are comprehensive plan amendments, and therefore potentially could result in significant affects on transportation facilities that could implicate OAR 660-012-0060, altering the standards for adding sites to the map in the future has no impact on transportation facilities. It is the future map amendments themselves that might significantly affect a transportation facility and implicate OAR 660-012-0060, and a county must consider OAR 660-012-0060 at the time those comprehensive plan amendments are adopted in the future. *Central Oregon Landwatch v. Deschutes County*, 63 Or LUBA 123 (2011).

31.3.12 Permits – Particular Uses – Destination Resorts. If a county has within its boundaries some of the lands described in ORS 197.455(1)(a) through (e), the county must ensure that no tracts that include such ineligible lands are included on the map of eligible lands, since ORS 197.455(2) makes the map the "sole basis for determining whether tracts of land are eligible for destination resort siting." *Root v. Klamath County*, 63 Or LUBA 230 (2011).

31.3.12 Permits – Particular Uses – Destination Resorts. A map adopted by the county does not provide an adequate factual base under Goal 2 for a decision to amend the county's destination resort map where it is not possible to tell by looking at the map where the boundaries of the included properties are located, and the list of properties included in the record identifies properties as entire sections of land within townships and

ranges, or numbered parcels within sections, ranges, and townships but the map does not include any section numbers or locations. *Root v. Klamath County*, 63 Or LUBA 230 (2011).

31.3.12 Permits – Particular Uses – Destination Resorts. Nothing in ORS 197.455(2) obligates the county to re-evaluate or re-qualify lands that have previously been included on the map of eligible lands by virtue of a final, unappealed land use decision, and to remove any of those previously included lands from the map of eligible lands if they are required to be excluded under ORS 197.455(1)(a) – (e). *Root v. Klamath County*, 63 Or LUBA 230 (2011).

31.3.12 Permits – Particular Uses – Destination Resorts. A local government errs in concluding that it is not required to apply Statewide Planning Goal 5 to a post acknowledgement plan amendment (PAPA) that adds lands to the county’s map of lands eligible for a destination resort by relying on an ESEE analysis that was completed and adopted 16 years prior to the proposed PAPA and that does not include any analysis of the new lands proposed for inclusion on the destination resort map. *Root v. Klamath County*, 63 Or LUBA 230 (2011).

31.3.12 Permits – Particular Uses – Destination Resorts. Where it is not clear under a county’s code that the planning commission proceeding on a final master plan application for a destination resort will necessarily be conducted as an ORS 197.763 quasi-judicial hearing with notice, the final master plan proceedings appear to be ministerial under the code, and nothing in the tentative master plan approval requires hearing and notice, the county errs in deferring discretionary tentative master plan approval standards to the proceedings on the application for final master plan approval without ensuring that those proceedings will be infused with the same participatory rights as the tentative master plan approval. *Oregon Coast Alliance v. Curry County*, 63 Or LUBA 324 (2011).

31.3.12 Permits – Particular Uses – Destination Resorts. A destination resort approval standard requiring that “adverse effects on surrounding lands are to be avoided first and minimized if avoidance is not possible” clearly gives priority to avoiding adverse effects. Remand is necessary where the applicant demonstrated and the county considered only whether adverse effects of the destination resort on an adjoining wildlife refuge can be minimized, and the county failed to consider whether adverse effects can be avoided. *Oregon Coast Alliance v. Curry County*, 63 Or LUBA 324 (2011).

31.3.12 Permits – Particular Uses – Destination Resorts. Well reports generated when wells were dug decades ago are substantial evidence that a reasonable decision maker could rely upon to conclude that the wells can supply sufficient water for a proposed destination resort, where there is no countervailing evidence in the record, and the county addresses the possibility that the well reports are no longer accurate by imposing a condition requiring prior to final master plan approval that the applicant conduct pump tests and, if necessary, dig new wells, to ensure sufficient water. *Oregon Coast Alliance v. Curry County*, 63 Or LUBA 324 (2011).

31.3.12 Permits – Particular Uses – Destination Resorts. Where in approving a destination resort in coastal shorelands that is dependent on groundwater the county addresses a number of comprehensive plan policies implementing Goal 17, but does not address a potentially applicable plan policy in the plan Goal 17 element that requires the county take measures to protect groundwater, remand is necessary for the county to either address the policy or explain why it is not applicable. *Oregon Coast Alliance v. Curry County*, 63 Or LUBA 324 (2011).

31.3.12 Permits – Particular Uses – Destination Resorts. ORS 197.640 as amended in 2010 requires that the applicant for a destination resort submit an economic impacts analysis of the proposed development, where the resort is sited within 10 miles of an urban growth boundary. Although the statute does not tell counties what to do with that economic impacts analysis, the analysis must consider the potential negative economic impacts of the resort, if any, and cannot simply describe the anticipated positive impacts of the resort. *Oregon Coast Alliance v. Curry County*, 63 Or LUBA 324 (2011).

31.3.12 Permits – Particular Uses – Destination Resorts. ORS 197.455(2) requires that counties adopt a comprehensive plan map that shows lands that are eligible for destination resort siting, and excludes lands identified in ORS 197.455(1)(a) through (e), and ORS 197.455(2) provides that that comprehensive plan map is to be “the sole basis for determining whether tracts of land are eligible for destination resort siting pursuant to ORS 197.435 to 197.467.” A county is not required to determine at the time decisions are made regarding individual applications for destination resort approval whether the proposal includes any of the prohibited lands identified in ORS 197.455(1)(a) through (e), if the adopted comprehensive plan map shows that the proposed lands are eligible for destination resort siting. *Eder v. Crook County*, 60 Or LUBA 204 (2009).

31.3.12 Permits – Particular Uses – Destination Resorts. Where petitioner assigns error under OAR 660-012-0060, arguing that the county inadequately mitigated for the traffic impacts of a proposed destination resort, but petitioner neither assigns error to the county’s finding that the destination resort will not “significantly affect” the transportation facilities within the meaning of OAR 660-012-0060 nor challenges the legal reasoning that the county adopted in support of that finding, LUBA will deny the assignment of error. *Eder v. Crook County*, 60 Or LUBA 204 (2009).

31.3.12 Permits – Particular Uses – Destination Resorts. Where a petitioner assigns error to a county’s failure to require an applicant for destination resort approval to pay the required \$20,000 application fee, but the record shows that (1) the applicant paid the required \$20,000 application fee for a previous application for destination resort approval that was withdrawn and replaced by the destination resort application on appeal and (2) the county applied the prior application fee to the second application for destination resort approval, petitioner’s assignment of error will be denied. *Eder v. Crook County*, 60 Or LUBA 204 (2009).

31.3.12 Permits – Particular Uses – Destination Resorts. A self-contained development providing visitor-oriented accommodations and developed recreational

facilities, including a golf course, that a county previously approved as a “destination resort” under Goal 8 is a “destination resort” as that term is used in Goal 8 and under ORS 197.435 through 197.467. *Friends of Marion County v. Marion County*, 59 Or LUBA 323 (2009).

31.3.12 Permits – Particular Uses – Destination Resorts. The standards for approving a destination resort under Goal 8 and ORS 197.435 through 197.467 function as a “safe harbor” that allows local governments to approve resorts that meet minimum standards, without the necessity of adopting exceptions to Goals 11 and 14. However, the statutory process is not the only means of approving a destination resort, and counties continue to have the option of approving a destination resort subject to exceptions to Goals 3, 4, 11 and 14. *Friends of Marion County v. Marion County*, 59 Or LUBA 323 (2009).

31.3.12 Permits – Particular Uses – Destination Resorts. A county may rely on the reasons that justified a Goal 4 exception earlier approved by the county and Land Conservation and Development Commission (LCDC) for a proposed destination resort to justify reasons exceptions to Goals 11 and 14, where the record supports the county’s finding that the Goal 4 reasons are still valid and the Goals 11 and 14 exceptions merely implement and complete the earlier county and LCDC approval. *Friends of Marion County v. Marion County*, 59 Or LUBA 323 (2009).

31.3.12 Permits – Particular Uses – Destination Resorts. Because Goal 11 and Goal 14 serve congruent policy objectives, the reasons sufficient to justify a Goal 14 exception for a destination resort may also be sufficient to justify an exception to Goal 11 to authorize a community sewer system to serve the destination resort. *Friends of Marion County v. Marion County*, 59 Or LUBA 323 (2009).

31.3.12 Permits – Particular Uses – Destination Resorts. Where the county and the Land Conservation and Development Commission previously approved a Goal 4 exception for a destination resort under conditions requiring specified on-site accommodations and facilities, and the county imposed an overlay zone to ensure that the resort includes those on-site accommodations and facilities, in later adopting a reasons exception to Goal 14 to complete the proposed resort the county can consider those required accommodations and facilities to be essential characteristics of the proposed use, for purposes of the alternative sites analysis required under OAR 660-014-0040(3)(a). In that circumstance, the county does not err in concluding that alternative sites within urban growth boundaries cannot reasonably accommodate the proposed use. *Friends of Marion County v. Marion County*, 59 Or LUBA 323 (2009).

31.3.12 Permits – Particular Uses – Destination Resorts. Remand is necessary where the local government adopts exceptions to Statewide Planning Goals 11 and 14 to approve a destination resort, but fails to address comprehensive plan transportation policies that appear to implement Statewide Planning Goal 12 (Transportation), for which the local government did not adopt an exception, and the decision fails to explain why those policies are either satisfied or not applicable. *Friends of Marion County v. Marion County*, 59 Or LUBA 323 (2009).

31.3.12 Permits – Particular Uses – Destination Resorts. A county errs in failing to address whether a mitigation plan for a destination resort is consistent with applicable comprehensive plan policies governing wildlife protection, and instead finding that issues raised regarding compliance with those policies will be addressed by requiring the applicant to obtain approval of the plan from the Oregon Department of Fish and Wildlife. *Friends of Marion County v. Marion County*, 59 Or LUBA 323 (2009).

31.3.12 Permits – Particular Uses – Destination Resorts. Under ORS 197.455(2), counties are to adopt a map showing areas that are eligible for destination resorts. ORS 197.455(2) prohibits amending that map more frequently than once each 30 months. An ordinance that was adopted to repeal and replace a destination resort map 22 months after the map was amended to make additional property eligible for destination resorts violates ORS 197.455(2). *Remington Ranch, LLC v. Crook County*, 59 Or LUBA 361 (2009).

31.3.12 Permits – Particular Uses – Destination Resorts. In applying a destination resort approval standard that requires that destination resorts employ mitigation measures to ensure “no net loss of wildlife,” a county may allow an applicant to utilize data developed in approval of a nearby destination resort that utilized seven indicator species to estimate the nature and extent of the damage that must be fully mitigated. A reasonable person would rely on such data unless opposing data is submitted to show the analysis that relies on indicator species missed or inadequately addressed some aspect of the wildlife resource. *Gould v. Deschutes County*, 59 Or LUBA 435 (2009).

31.3.12 Permits – Particular Uses – Destination Resorts. Where a destination resort approval standard requires that destination resorts employ mitigation measures to ensure “no net loss of wildlife,” an assignment of error that a county erred by applying that standard to allow one species to be replaced by another provides no basis for reversal or remand, where the applicant’s approach to demonstrating compliance with the “no net loss of wildlife” standard does not in fact propose to replace existing species with other species and proposes to fully mitigate all expected damage to wildlife habitat. *Gould v. Deschutes County*, 59 Or LUBA 435 (2009).

31.3.12 Permits – Particular Uses – Destination Resorts. In applying a destination resort approval standard that requires that destination resorts employ mitigation measures to ensure “no net loss of wildlife,” a county does not err by focusing on wildlife habitat rather than the wildlife itself. In developing a destination resort, wildlife itself is generally not purposefully harmed; the harm is caused through destruction or damage to the wildlife habitat. *Gould v. Deschutes County*, 59 Or LUBA 435 (2009).

31.3.12 Permits – Particular Uses – Destination Resorts. A mitigation plan that is submitted to comply with a destination resort approval standard that requires that destination resorts employ mitigation measures to ensure “no net loss of wildlife” is inadequate where that mitigation plan proposes off-site mitigation and the location of the 4,501 acres that provide the needed mitigation, the nature of the habitat on those 4,501 acres, and the particular mix of mitigation measures that will be employed on those 4,501

acres are all unknown. Those details must be supplied at a stage where opponents still have a meaningful opportunity to challenge the adequacy of the proposed mitigation plan. *Gould v. Deschutes County*, 59 Or LUBA 435 (2009).

31.3.12 Permits – Particular Uses – Destination Resorts. Where a county hearings officer's findings show she was persuaded that additional mitigation measures were necessary to address thermal impacts of destination resort groundwater use on a nearby cool water creek, the hearings officer's decision to accept the applicant's proposal to provide additional mitigation by reducing surface withdrawal from that cool water creek is inadequate where there was opposition testimony that the proposed mitigation would not mitigate the thermal impact. While there may be a simple answer to the opposition testimony, where that answer is missing in the record and the hearings officer's decision does not address that opposition testimony, the decision must be remanded. *Gould v. Deschutes County*, 59 Or LUBA 435 (2009).

31.3.12 Permits – Particular Uses – Destination Resorts. Where the record includes conflicting believable evidence about whether an applicant's assumption that 90 percent of the groundwater withdrawn for use by a destination resort will be returned to the subsurface hydrologic system and the county hearings officer findings recognize the conflicting evidence but choose to rely on the applicant's expert's position, which had been accepted by the Oregon Water Resources Department, the hearings officer's findings on that question are supported by substantial evidence. *Gould v. Deschutes County*, 59 Or LUBA 435 (2009).

31.3.12 Permits – Particular Uses – Destination Resorts. In applying a destination resort conceptual master plan condition of approval that requires that the final master plan "specify all recreational facilities," a county does not err by approving a final master plan that lists proposed recreational facilities but makes it clear that not all of the proposed recreational facilities necessarily will be built. While the condition could be interpreted to require more certainty and specificity, it need not be interpreted to require more certainty and specificity than was provided by the list of proposed recreation facilities. *Gould v. Deschutes County*, 59 Or LUBA 435 (2009).

31.3.12 Permits – Particular Uses – Destination Resorts. The requirement that destination resorts be limited to lands that are located "in a setting with high natural amenities" appears in the ORS 197.445 criteria that apply to individual destination resort applications, not the ORS 197.455 standards that identify lands that are potentially eligible for destination resort siting. A county is not required to find that all lands that it maps as potentially eligible for destination resort siting provide "a setting with high natural amenities." *Johnson v. Jefferson County*, 56 Or LUBA 72 (2008).

31.3.12 Permits – Particular Uses – Destination Resorts. Under ORS 197.445(4), destination resorts must provide at least 150 units of "overnight lodging." ORS 197.435(5)(b) defines "overnight lodging" as "permanent, separately rentable accommodations that are not available for residential use" and then provides a nonexclusive list of examples that qualify as overnight lodging and a list of examples that

do not qualify as overnight lodging. A land use regulation that expands on the list of examples that qualify as overnight lodging does not necessarily run afoul of the ORS 197.435(5)(b) definition. *Johnson v. Jefferson County*, 56 Or LUBA 72 (2008).

31.3.12 Permits – Particular Uses – Destination Resorts. Under ORS 197.445(4), destination resorts must provide at least 150 units of “overnight lodging.” Where a zoning ordinance that was adopted to implement ORS 197.445(4) is ambiguous, such that the zoning ordinance could be interpreted to be inconsistent with ORS 197.445(4) or consistent with ORS 197.445(4), the county would be required to interpret the zoning ordinance to be consistent with ORS 197.445(4). *Johnson v. Jefferson County*, 56 Or LUBA 72 (2008).

31.3.12 Permits – Particular Uses – Destination Resorts. ORS 197.445(5) limits commercial uses to “types and levels of use necessary to meet the needs of visitors” to destination resorts. A zoning ordinance that allows “commercial and entertainment” uses in destination resorts is likely consistent with ORS 197.445(5) since entertainment uses are likely to be commercial uses. But if an entertainment use were proposed that was not a commercial use, the county would be obligated to interpret the term entertainment consistently with ORS 197.445(5) and deny the proposed entertainment use. *Johnson v. Jefferson County*, 56 Or LUBA 72 (2008).

31.3.12 Permits – Particular Uses – Destination Resorts. Where a zoning ordinance amendment that potentially allowed more individual lots or units in a destination resort than permitted under applicable statutes at the time the zoning ordinance amendment was adopted, the decision need not be remanded where the statute was subsequently amended to allow the number of individual lots or units authorized by the zoning ordinance amendment. *Johnson v. Jefferson County*, 56 Or LUBA 72 (2008).

31.3.12 Permits – Particular Uses – Destination Resorts. ORS 197.445(1) requires a minimum site size of 160 acres for destination resorts. A zoning ordinance that allows internal rights of way to be included in determining whether a proposed destination resort complies with the ORS 197.445(1) 160-acre minimum site size does not violate the statute, because ORS 197.445(1) does not expressly require that rights of way be excluded when computing site size and even if the statute did require that rights of way be excluded, the statutory requirement would have to be satisfied. *Johnson v. Jefferson County*, 56 Or LUBA 72 (2008).

31.3.12 Permits – Particular Uses – Destination Resorts. A hearings officer’s failure to address arguments that the applicant should improve transportation facilities affected by a proposed destination resort provides no basis for reversal or remand, where a prior development agreement and two earlier development approvals conclusively established the type and extent of transportation improvements the applicant is obligated to make in developing the resort, and the petitioners cite no authority for the hearings officer to require different improvements in approving a subdivision within that resort. *Broken Top Community Assoc. v. Deschutes County*, 54 Or LUBA 84 (2007).

31.3.12 Permits – Particular Uses – Destination Resorts. A subdivision approval standard requiring preservation of natural features that is written to apply to circumstances where there have been no previous efforts to identify natural features plays a more limited role where the subdivision application is preceded by two final, binding land use decisions that have already largely determined which natural features will be preserved and which will be lost to development. *Broken Top Community Assoc. v. Deschutes County*, 54 Or LUBA 84 (2007).

31.3.12 Permits – Particular Uses – Destination Resorts. By statute, the ratio of residential units to overnight lodging units may not exceed 2:1. A county is not free to ignore inconsistencies or errors in a destination resort conceptual master plan regarding the statutorily required 2:1 ratio, and assume that the final master plan will correct those errors. *Gould v. Deschutes County*, 54 Or LUBA 205 (2007).

31.3.12 Permits – Particular Uses – Destination Resorts. Because ORS 197.445(4)(b)(B) requires that the first 50 units of the required 150 units of overnight lodging in a destination resort be constructed before sales may close on individually owned lots or residential units, a county code standard that was adopted to implement the statute that allows those first 50 units to be financially assured rather than constructed is inconsistent with the statute and the statute controls. *Gould v. Deschutes County*, 54 Or LUBA 205 (2007).

31.3.12 Permits – Particular Uses – Destination Resorts. A county is not required to separately approve two villages that make up a single destination resort, even though the properties where the two villages would be constructed only touch corners in two places, the properties are topographically separated and the properties are connected by roadways that must travel onto adjoining properties. *Gould v. Deschutes County*, 54 Or LUBA 205 (2007).

31.3.12 Permits – Particular Uses – Destination Resorts. The legal requirement that a destination resort have “direct access” onto an arterial or collector road is satisfied by one such access and a destination resort may have additional accesses that are not “direct.” *Gould v. Deschutes County*, 54 Or LUBA 205 (2007).

31.3.12 Permits – Particular Uses – Destination Resorts. Roadways that cross exclusive farm use zoned land to connect two villages in a destination resort are properly viewed as “[a]ccessory transportation improvements for a use that is allowed” in the exclusive farm use zone, within the meaning of OAR 660-012-0065(3)(a). *Gould v. Deschutes County*, 54 Or LUBA 205 (2007).

31.3.12 Permits – Particular Uses – Destination Resorts. Where there is no dispute that a road that would be needed to provide access to a destination resort could be constructed across BLM land, the applicant need only demonstrate that securing the needed right of way from BLM is not precluded as a matter of law. *Gould v. Deschutes County*, 54 Or LUBA 205 (2007).

31.3.12 Permits – Particular Uses – Destination Resorts. An erroneous assumption in a traffic study that was submitted in support of an application for approval of a destination resort provides no basis for reversal or remand where the error had no effect on the validity of the traffic study. *Gould v. Deschutes County*, 54 Or LUBA 205 (2007).

31.3.12 Permits – Particular Uses – Destination Resorts. Where a petitioner argues that the traffic study that was submitted in support of an application for approval of a destination resort should have examined a larger area, but cites no legal standard that would require consideration of a larger area, petitioner’s argument provides no basis for remand. *Gould v. Deschutes County*, 54 Or LUBA 205 (2007).

31.3.12 Permits – Particular Uses – Destination Resorts. Approval of a destination resort requires a finding that negative impacts on fish and wildlife resources will be “completely mitigated.” A finding that it is feasible to satisfy that requirement is sufficient where such impacts are identified, methods for mitigating such impacts on-site and off-site are identified, refinements to those methods are developed with the Oregon Department of Fish and Wildlife and the federal Bureau of Land Management, and both agencies indicate that those refined methods will succeed. *Gould v. Deschutes County*, 54 Or LUBA 205 (2007).

31.3.12 Permits – Particular Uses – Destination Resorts. An applicant for destination resort approval must demonstrate that there will be adequate water available to serve the proposed destination resort. An applicant’s demonstration that there is no legal barrier to securing the needed permits to withdraw groundwater to serve the destination resort is sufficient. The applicant need not secure the mitigation credits that ultimately will be needed prior to conceptual master plan approval. *Gould v. Deschutes County*, 54 Or LUBA 205 (2007).

31.3.12 Permits – Particular Uses – Destination Resorts. Even if intersection improvements that are required in approving a destination resort will maintain acceptable levels of service on nearby roads and key intersections, it does not necessarily follow that there will not be conflicts between the increased levels of traffic the proposed destination resort will generate on these roads and agricultural traffic (including livestock and large slow-moving agricultural vehicles) seeking to negotiate these same roads. However, where the relevant approval standard only requires “reasonable compatibility,” and the testimony on both sides of the seriousness of the conflicts from such traffic is speculative, LUBA cannot say the county was unreasonable in finding the destination resort will be “reasonably compatible” with nearby farm use and farm traffic. *Burke v. Crook County*, 48 Or LUBA 23 (2004).

31.3.12 Permits – Particular Uses – Destination Resorts. Oregon Laws 1993, chapter 590, section 6 allows counties to avoid implementing statutory changes to the destination resort requirements until no later than their next periodic review. Even if a county has not concluded its next periodic review, it cannot substantially amend its pre-1993 destination resort regulations without implementing those changes. *Stevens v. Jackson County*, 47 Or LUBA 381 (2004).

31.3.12 Permits – Particular Uses – Destination Resorts. Without some explanation or evidence regarding how 100 proposed time share units, with separate “lock-out” suites, will be marketed and made available for overnight lodging, the application fails to assure that the proposed destination resort will offer at least 150 separate rentable units for overnight lodging, as required by ORS 197.445(4). *Wetherell v. Douglas County*, 44 Or LUBA 745 (2003).

31.3.12 Permits – Particular Uses – Destination Resorts. A finding that a proposed destination resort is located in a setting with “high natural amenities” as required by ORS 197.445 is inadequate and not supported by substantial evidence, where neither the county’s decision nor the record identifies or describes any high natural amenities near the proposed resort. *Wetherell v. Douglas County*, 44 Or LUBA 745 (2003).

31.3.12 Permits – Particular Uses – Destination Resorts. Because ORS 197.445 provides that a destination resort may provide for individually owned lots or units, and does not prohibit location of a major destination resort near a highway, the fact that a proposed resort offers 200 single-family lots and is located near a highway does not convert the proposal into something other than a destination resort, if it otherwise complies with all applicable statutory and local requirements. *Wetherell v. Douglas County*, 44 Or LUBA 745 (2003).

31.3.12 Permits – Particular Uses – Destination Resorts. ORS 197.467 requires imposition of a conservation easement to protect Goal 5-designated resources on the site of a proposed destination resort, and that requirement is not obviated by the fact that the Oregon Department of Fish and Wildlife has indicated that it will not require a conservation easement. *Wetherell v. Douglas County*, 44 Or LUBA 745 (2003).

31.3.12 Permits – Particular Uses – Destination Resorts. A county errs in interpreting a one dwelling per 40 acres density standard intended to protect Goal 5 wildlife habitat to be satisfied if the average dwelling density over a 1.2 million-acre area of the county does not exceed the standard, where the county’s interpretation gives the standard no regulatory effect until over 28,000 dwellings are built in the area, and is inconsistent with the purpose of the standard to protect wildlife habitat. *Wetherell v. Douglas County*, 44 Or LUBA 745 (2003).

31.3.12 Permits – Particular Uses – Destination Resorts. A local standard imposing a one dwelling per 40 acre density limitation on Goal 5-protected wildlife habitat must be construed in a way that is consistent with its purpose and context to allow no more than one dwelling per 40 acres on the subject property. As applied to a destination resort, such a standard may effectively prohibit a resort that proposes 200 single-family residential lots in a 500-acre area. *Wetherell v. Douglas County*, 44 Or LUBA 745 (2003).

31.3.12 Permits – Particular Uses – Destination Resorts. Facilities such as an “internet café,” a “music festival stage,” a lounge and dance area, and facilities

intended to benefit permanent residents do not qualify as “developed recreational facilities” for purposes of statutes requiring a minimum expense on recreational facilities in order to qualify as a destination resort. *Wetherell v. Douglas County*, 44 Or LUBA 745 (2003).

31.3.12 Permits – Particular Uses – Destination Resorts. Whether certain persons are "applicants" for destination resort preliminary development plan approval, as defined in the local code, requires an interpretation by the local governing body in the first instance. *Skrepetos v. Jackson County*, 29 Or LUBA 193 (1995).

31.3.12 Permits – Particular Uses – Destination Resorts. Findings which do not identify the ways a destination resort preliminary development plan is different from the previously approved conceptual site plan, the magnitude of such differences or why the local government believes the differences are minor, are not adequate to establish compliance with a code standard requiring the preliminary development plan to conform to the conceptual site plan and alterations, if any, to be minor in nature. *Skrepetos v. Jackson County*, 29 Or LUBA 193 (1995).

31.3.12 Permits – Particular Uses – Destination Resorts. Under the requirement of ORS 197.455(2) and Goal 8(1)(b) that a destination resort not be located on a "site" with 50 or more contiguous acres of prime farmland, the "site" does not include adjacent property purchased by the applicants as a source of water rights, that will neither be designated for nor used as part of the proposed destination resort. *Bouman v. Jackson County*, 23 Or LUBA 628 (1992).

31.3.12 Permits – Particular Uses – Destination Resorts. Where a county adopts a plan map designating land within three miles of the county's borders as available for destination resort siting, without determining whether such land is within three miles of high-value crop areas located in a neighboring county, the county has failed to comply with the requirement of ORS 197.455 and Goal 8 that land within three miles of high-value crop areas not be available for destination resort use. *Alliance for Resp. Land Use v. Deschutes County*, 23 Or LUBA 476 (1992).

31.3.12 Permits – Particular Uses – Destination Resorts. Use of a process, established by county plan and ordinance provisions, which allows a county to refine its mapping of areas where destination resorts are permitted, with regard to prime farmland, through determination of compliance with the statutory and goal siting criteria on a case-by-case basis, is not precluded by the destination resort statute. *Foland v. Jackson County*, 18 Or LUBA 731 (1990).

31.3.12 Permits – Particular Uses – Destination Resorts. Under ORS 197.445(2), Goal 8(1)(b) and plan criteria that a destination resort not be approved "on a site with 50 or more contiguous acres of * * * prime farmland identified and mapped by the United States Soil Conservation Service [SCS]," a county must rely on the SCS's identification of prime farmlands. *Foland v. Jackson County*, 18 Or LUBA 731 (1990).

31.3.12 Permits – Particular Uses – Destination Resorts. In addressing the statutory, goal and plan "prime farmland" criterion, a county is not required to rely on published SCS county soil maps and inventories, but rather may rely on other up to date, site-specific SCS identification and mapping of prime farmlands. *Foland v. Jackson County*, 18 Or LUBA 731 (1990).

31.3.12 Permits – Particular Uses – Destination Resorts. The requirement to comply with ordinance criteria applicable to the resolution/conceptual site plan stage of the destination resort review process cannot be avoided by deferring those determinations to the preliminary development plan stage of the review process, through restatement of the first stage approval criteria as conditions of approval for the second stage. *Foland v. Jackson County*, 18 Or LUBA 731 (1990).

31.3.12 Permits – Particular Uses – Destination Resorts. Compliance with a criterion that "adequate sewer [and] water * * * services will be provided" to serve a proposed destination resort requires identification of an available method for providing adequate sewage disposal and domestic water service to the proposed development that is reasonably certain to comply with applicable standards and produce the desired result. *Foland v. Jackson County*, 18 Or LUBA 731 (1990).