



Crook County

Community Development Department
Planning Division

TO: Record for 217-22-000082-PLNG (Crossing Trails Modification)

FROM: Will Van Vactor, CDD Director

DATE: 7/21/22

SUBJECT: Corrected Staff Report

Attached is a corrected staff report. When uploaded initially on 7/20/22, the first page of the staff report referenced a "tentative" staff report. That reference is incorrect. The staff report is intended to be the required staff report per ORS 197.763(4) and CCC 18.172.081(1). These laws require a staff report to be provided seven days in advance of a public hearing. If additional information is provided in advance of the continued hearing, an amended staff report may be provided.

The only revisions from the version that was initially included in the recorded are (1) the removal of the reference to "tentative" at the top of the first page and (2) the report has been printed in color.



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PLANNING COMMISSION STAFF REPORT
217-22-000082-PLNG
Crossing Trails Destination Resort Modification Request

July 21, 2022

OWNER: 818 Powell Butte, LLC
Gene Gramzow
21059 Avery Lane
Bend, Oregon 97702

APPLICANT: Sun Crossing Trails, LLC
c/o Sun Communities, Inc.
27777 Franklin Road, Suite 2000
Southfield, Michigan 48034

AGENT: Atwell LLC
Hal Keever
9755 SW Barnes Rd, Suite 150
Portland, Oregon 97225

ATTORNEY: Wendie Kellington
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**TRANSPORTATION
ENGINEER:** Jacki Gulczynski, PE
Kittleson & Associates
1001 SW Emkay Drive, Suite 140
Bend, Oregon 97702

**ORIGINAL FILE
NUMBER:** DR-08-0092

SUBJECT PROPERTY: 8911 SW Wiley Road, Powell Butte, Oregon 97753 (TL 1515170000100)
4272 SW Parrish Lane, Powell Butte, Oregon 97753 (TL 1515170000106)
Undetermined Situs Address (TL 1515170000110)
Undetermined Situs Address (TL 1515170000109)

LOCATION: The property is generally located north of Highway 126 and east of SW Parrish Lane. It is approximately six miles west of downtown Prineville and 10 miles east of Redmond.

PLANNING COMMISSION HEARING DATE: July 27th and July 28th, 2022

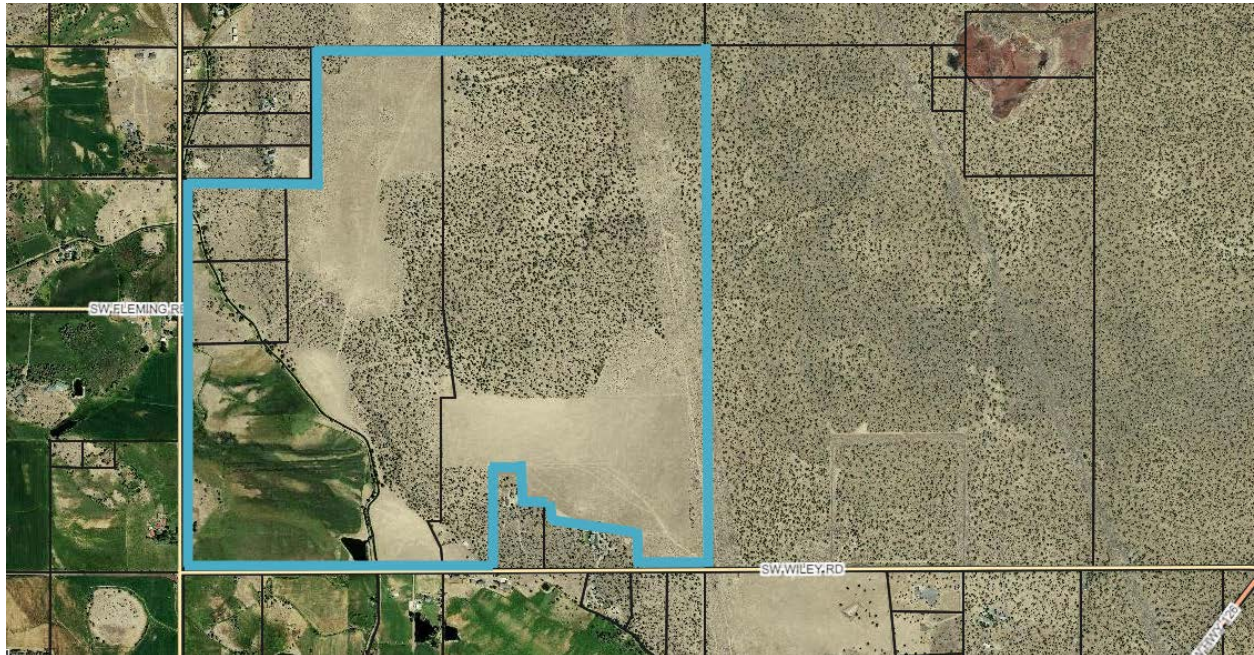
DOCUMENTS: Documents submitted to the record can be view at: <https://co.crook.or.us/planning-commission/page/217-22-000082-plng-crossing-trails-destination-resort-modification>

REQUEST: Atwell, LLC (Applicant) is requesting a modification to the approved Development Plan for the Crossing Trails Destination Resort (DR-08-0092) on a 580-acre site.

I. BACKGROUND:

A. Site and Surrounding Area Description

The Subject Property is located on a 580.58-acre site in the vicinity of Powell Butte and is located north of Highway 126 and east of SW Parrish Lane. It is approximately six miles west of downtown Prineville and 10 miles east of Redmond.



Property Lines are Approximate

The Subject Property is zoned Exclusive Farm Use (EFU-3) and is designated as Agricultural in the Crook County Comprehensive Plan. The Subject Property is located within the Destination Resort Overlay.¹

Privately owned lands surround the Subject Property on all sides, except for a county owned property at the northeast corner. There are irrigated ranch properties to the west and south. Grass Butte is to the east and is mostly open grasslands. There are two nonfarm dwellings on the southern edge of the Property. See Applicant's Context Plan (Sheet C001).

The Subject Property is relatively flat with a gentle slope approximately 280 feet from the southwest to northeast corner of the Subject Property. Approximately 1/7 of the Subject Property contains areas of meadow grass and another 1/10 is industrial hemp production. See Applicant's Narrative, pg. A-4. The remainder is vegetated with juniper and other low growth vegetation common to Central Oregon. There are three developed dwellings on the Subject Property with associated accessory structures.

The Subject Property is bisected by an irrigation canal serving the Central Oregon Irrigation District ("COID") that runs from the southern border to the northwest corner of the Property. See Applicant's Existing Conditions Plan (Sheet C002). COID utilizes the irrigation canal during the irrigation season from April to September of each year. The Subject Property has approximately 163 acres of appurtenant water rights through COID. The Subject Property has two irrigation ponds.

The Subject Property is also bisected by large, regional electric transmission lines owned and controlled by the Bonneville Power Administration ("BPA"). See Applicant's Existing Conditions Plan (Sheet C002). The lines run north to south. There is a 150-foot-wide electrical easement in favor of BPA. There is also a 150-foot-wide Portland General Electric ("PGE") easement east of the BPA easement. Additionally, there is a second BPA easement east of the PGE easement that is 77.5 feet in width. According to Applicant, the terms of these easements limit development opportunities on the eastern portion of the Property.

B. Original Approval

The development plan for Crossing Trails destination resort was originally approved by the Crook County Court on January 2, 2009 (DR-08-0092).

The Original Approval was appealed and then, after remand from the Land Use Board of Appeals ("LUBA"), the final decision was mailed on or about November 3, 2010. A copy of the original development plan approval is attached hereto as **Attachment #1** and referred to herein as the "Original Approval".

According to prior County extension approvals, the Original Approval was set to expire on November 3, 2014. However, four two-year extensions were granted as follows:

1. To November 3, 2016 (Dated August 9, 2013)
2. To November 3, 2018 (Dated October 27, 2016)
3. To November 3, 2020 (Dated October 25, 2018; 217-18-000359-PLNG)
4. To November 3, 2022 (Dated November 10, 2020; 217-20-000846-PLNG)

¹ Per Ordinance 210, Crook County removed its destination resort overlay in 2008, except for the four approved or pending destination resorts, including Crossing Trails. See Attachment #2.

The Original Approval included certain amenities and requirements as summarized here²:

- Restaurant and meeting rooms with seating for a minimum of 100 people (Original Approval, pg. 8)
- Overnight lodging units (“OLUs”) including combination of 154 stand-alone units called “casitas” and multi-family or townhome structures with individual lock off room, with a minimum of 150 OLUs (Original Approval, pg. 9, 48).
- Residential units at no more than 2:1 ratio with overnight lodging units, with a maximum of 500 residential units (Original Approval pg. 9, 48).
- 18-hole golf complex, including course and associated facilities (Original Approval, pg. 11).
- Various other recreational facilities, hiking and running trails, swimming pool, and similar recreational amenities (Original Approval, pg. 11).
- Over 50% of the resort to be open space (Original Approval, pg. 50).
- Perimeter livestock fencing around the entire resort (Original Approval, pg. 50).
- Potable water to be provided by Avion or another commercial water company drawing from the Deschutes Regional Aquifer (Original Approval, pg. 52).

C. Modification Request

Applicant provides the following overview of its modification in its application materials:

The Applicant proposes to substantially modify a previous conditional use approval for a destination resort. That decision, DR-08-0092, approved an exclusive destination resort centered around an 18-hole golf course and associated golf complex facilities. The reason behind the proposed modification is that the Applicant has a history of developing high-quality destination resorts that target a very different market segment – the average family – that does not center around golf as a recreational activity. This proposal will provide a superior destination resort experience that is affordable for everyone, from grocery clerks to teachers and police officers to mechanics, using cost efficient, yet well-crafted, cabins and that provides outdoor recreational experiences that utilize developed swimming and court-sport facilities to hiking trails. In short, Crossing Trails will be an affordable, family friendly, outdoor living experience that anyone can enjoy. See Applicant’s Narrative, pg. A-3.

Applicant further summarizes the program modifications in two categories as follows:

1. **Housing/Lodging:** *The approved development plan includes single family dwellings, 154 casitas and 96 lock off multi-family units. The modified development plan includes three (3) primary types of housing/lodging options in addition to some seasonal rental options. Each of these is briefly described below:*

² A complete list of the approved amenities and requirements, including conditions of approval, can be found in the Original Approval (Attachment C).

- *Vacation Villas (400 Units): These units range in size from 1,600 SF to 2,000 SF. These units are fee simple ownership units with leased parcels.*
 - *Overnight Rentals/Cabins (200 Units): These range in size from 200 SF to 500 SF. These units are available for short term rental.*
 - *Workforce Housing (100 Units): These range in size from 1,000 SF to 1,200 SF. These units are available for long term rentals for workers of resort or nearby area.*
 - *Overnight Seasonal Rentals (50 Spaces): These units are available for available for short term rental and may only be available on a seasonal basis.*
2. **Recreation Facilities:** *The main recreational component in the original approval was an 18-hole golf course. Instead of providing a golf course, the modified development plan will provide a number of smaller recreation areas and or facilities.*

These include:

- *Clubhouse with Outdoor Covered Area*
- *Pool with Cabanas (2 areas)*
- *Spas (2 areas)*
- *Open Air- Shade Structures (Gill & Seating)*
- *Event Lawn*
- *Overlook Park*
- *Neighborhood Parks (3 areas) with playground, with family fire pits, shade pavilions and off-leash area*
- *Sports Courts (Pickleball courts, basketball court)*
- *Open Space (natural area and common area)*
- *Trails System*

As part of the proposed modifications, a new updated TIA has been prepared. For additional information (refer to Appendix 24) in the application submittal.

The proposed modifications have incorporated generalized conditions of approval (COA) from the original approval. The Applicant anticipates that new conditions of approval will be issued as part of the review of the modified development plan. These will be incorporated in the final development plan. See Applicant's Narrative, pg. A-6.

In sum, the proposed modification, referred to herein as the "modified resort", includes reconfiguring the types and number of residential units and overnight lodging units, relocating access points, changing the internal configuration of the resort by removing the golf course and relocating internal streets and development, amending the recreational amenities, and a new water and sewer master plan.

D. Request for Continuance

On July 1, 2022, Applicant requested a continuance. Per CCC 18.172.081(16) an applicant is entitled to a continuance as a matter of right if the request is made prior to the date set for the initial hearing. Accordingly, Applicant is entitled to a continuance.

CCC 18.172.081(16) states “If a continuance request is made after the published or mailed notice has been provided by the county, the hearing authority shall take evidence at that scheduled hearing date from any party wishing to testify at that time after notifying those present of the continuance.” Accordingly, notwithstanding the request for a continuance of the initial hearing, the Planning Commission must take testimony from anyone who wishes to testify at the originally scheduled hearing. At the hearing July 27, 2022, the Planning Commission should set the continued hearing for a time and date certain. Based on Planning Commissioner availability, staff anticipates recommend scheduling the continued hearing for September 7th and 8th.

E. Public Comments

1. Extension Deadlines

Several public comments have argued that the County used the wrong date in calculating when the Original Approval expired. As noted above, the County Court initially issued its decision on January 2, 2009. However, that decision was appealed to LUBA. The Original Approval was upheld, but LUBA remanded the decision on a question relating to fees. The County Court issued an on order on remand dated November 3, 2010. Accordingly, it was determined in 2014 that the initial expiration date was November 3, 2014. Using that date, the County issued four extensions, with the final extension set to expire on November 3, 2022.

Opponents believe that the correct date to base the expiration on is date that the County Court’s decision became final after issuing the initial decision on January 2, 2009. Consequently, opponents believe that the final extension should have expired no later than January 2, 2021.

At the time of the last extension request, planning staff initially indicated that the final extension would expire on January 2, 2021. However, planning staff sent a revised extension decision stating that the final expiration date would be November 3, 2022.

Crook County Code (“CCC”) chapter 18.172.060(2)(a) states: “[a] request for an extension to a land use approval shall be handled administratively by the director without public notice or hearing and is not subject to appeal as a land use decision.”

For that reason, whether prior staff was correct or not, staff does not believe the prior extension decisions are subject to appeal. Alternatively, if the prior extensions are land use decisions, the County cannot collaterally attack those decisions. *Gansen v. Lane County* (LUBA No. 2020-074). For these reasons, staff does not believe this is the proper venue to challenge the prior extension decisions.

2. Modification

Commenters have also questioned whether the proposed modification is in fact a modification or, instead, whether it is an application for a new destination resort. The Crook County Zoning Ordinance (Title 18)

does not include a definition of “modification.”³ The most on point provision in the County’s zoning ordinance is CCC 18.172.100. It states:

(1) The hearing authority may revoke or modify any permit granted under the provisions of this title on any one or more of the following grounds:

(e) The proposed modification will result in a change to the original proposal sought by the permittee or permittee’s successor and meets the applicable standards specified in subsection (3) of this section.

(2) Any modified permit granted pursuant to this title shall become null and void if not exercised within the time period specified in such permit, or, if no time period is specified in the modified permit, subject to CCC 18.172.060. Appeals to higher state authorities challenging a modified permit approval shall toll the running of the periods provided in this section.

(3) The hearing authority shall hold a public hearing on any proposed revocation or modification requested by the hearing authority or the permittee after giving written notice to the permittee and other affected persons as set forth in this title. The hearing authority shall hold a public hearing on any proposed revocation or modification after giving written notice to the permittee and other affected persons as set forth in this title. The hearing on the decision, which is subject to revocation or modification, is subject only to either the standards, criteria and conditions that were applicable when the original permit was issued or in effect at the time of the revocation or modification, whichever is less restrictive. The hearing authority shall render its decision within 45 calendar days after the conclusion of the hearing.

Thus, the County’s Code appears to permit modifications whenever there is a “change” to the original proposal. This broad language does not limit the types of changes that are subject to review. In this case, Applicant is seeking to modify a destination resort approval and is seeking approval of destination resort. If an applicant came into modify a prior destination resort approval with the intent of modifying the approval to operate an aggregate pit, that would clearly be a new application. However, the Code does not limit modifications to only insubstantial changes. As a result, since Applicant is seeking changes to a prior destination resort with the intent of developing a destination resort, the request falls under the broad “change” language in the Code.

Staff notes that, as stated by Applicant, the request is to “substantially modify” the previous approval. Accordingly, many of the approval criteria that would be reviewed under a new proposal will be reviewed as part of this modification request.

3. Other Comments

³ At least one commenter noted that Title 15 includes a definition of modification. However, that definition appear to apply to fire and building codes, and not to land use applications subject to Title 18.

Many comments have addressed traffic and transportation, water, impact on community and farming operations, definition of high value farmland, adequate emergency response, solid waste disposal, and sewage treatment. To the extent those comments relate to approval criteria, staff attempts to address those comments in the proposed findings for related approval criteria.

General statements of opposition to the resort have been included in the record, but unless they address approval criteria, they will not be addressed further in this staff report.

II. APPLICABLE CRITERIA

Crook County Code

Title 18 Zoning

Chapter 18.116 Destination Resort Overlay

Chapter 18.160 Conditional Uses

Chapter 18.172 Administrative Provisions

III. FINDINGS

The applicable criteria are spelled out in *italics*. A cite to the applicable finding in the Original Approval is provided with the bold heading “**ORIGINAL FINDING**”. A proposed finding is identified with the bold heading “**PROPOSED FINDING**”. In response to some code provisions, where a finding is not necessary, staff has provided “**STAFF COMMENT**”.

Crook County Code

Chapter 18.116 Destination Resort Overlay

18.116.010 Purpose.

The purpose of the destination resort overlay zone is to provide a process for the siting of destination resorts on rural lands that have been mapped by the county as eligible for this purpose. The destination resort overlay is intended to provide for property-designed destination resort facilities, which enhance and diversify the recreational opportunities and economy of Crook County. The destination resort overlay will ensure resort development that complements the physical attractiveness of an area without significant adverse effects on adjacent rural residential subdivisions, commercial farming and forestry operations, or the significant natural and cultural features which contribute to the setting. (Ord. 18 § 12.010, 2003)

STAFF COMMENT: The purpose statement provided in CCC 18.116.010 is a generally worded expression of the intent behind adopting Chapter 18.116. Compliance with the above purpose is demonstrated throughout the criteria for a destination resort, and is evidenced within this report.

At least one comment received contends that the modification request does not meet the purpose of the destination resort overlay and cites the above purpose statement. Exhibit 47. Specifically, the commenter notes that the modification appears to be oriented to lower cost residential housing and without a golf

course or other traditional resort recreational facilities, it does not enhance or diversify the recreational opportunities in the County. Exhibit. 47, pg. 2. Staff notes that there is specific approval criterion included in CCC 18.116 designed to ensure that the modification request includes the minimum recreational amenities to qualify as a destination resort. See e.g., CCC 18.116.050(4).

Since the purpose statement is a generally worded expression of intent, compliance is determined through the applicable criteria addressed below.

18.116.020 Applicability.

(1) The provisions of this chapter shall apply solely to development which meets the standards set forth in CCC 18.116.040 or 18.116.050. Development which meets the standards in CCC 18.116.040 shall be referred to hereafter as a “destination resort,” and development which meets the standards in CCC 18.116.050 shall be referred to hereafter as a “small destination resort.” Where special standards or criteria are not specifically called out for small destination resorts, the standards for destination resorts shall apply. For a destination resort application, the standards and procedures of this chapter shall govern in cases where they conflict with the standards or procedures of the underlying zone. Other provisions of this title, made applicable by specific map designations such as the flood plain combining zone (FP), airport obstruction overlay zone, riparian protection zone, and sensitive bird habitat combining zone (SBH), or otherwise applicable under the terms of the county zoning ordinance, shall remain in full force and effect, except as otherwise specified herein.

(2) Destination resorts shall be allowed only on tracts mapped by the county as eligible for destination resort siting and designated as such in the comprehensive plan. The eligibility map (also known as the destination resort overlay) shall be based on reasonably available information, and shall be the sole basis for determining whether tracts of land are eligible for destination resort siting pursuant to ORS 197.435 to 197.467 (i.e., without taking an exception to Goals 3, 4, 11 or 14).

ORIGINAL FINDING: See page 4 of the Original Approval.

PROPOSED FINDING: Not applicable to the modification request. The modification request does not seek any changes to the destination resort overlay, and shall continue to be subject to the provisions of CCC 18.116.040.

In response to comments that the Subject Property is no longer mapped in the destination resort overlay, staff notes per Ordinance 210 and Attachment #1, the Subject Property remains eligible for destination resort siting.

18.116.040 Standards.

A destination resort shall meet the following standards:

(1) Development shall be located on a tract that contains at least 160 acres.

ORIGINAL FINDING: See page 4 of the Original Approval.

PROPOSED FINDING: This criterion is not applicable to the modification request. The location of the proposed resort is unchanged.

(2) Development shall not be located on high value farmland.

ORIGINAL FINDING: See page 4-8 of the Original Approval

PROPOSED FINDING: This criterion is not applicable to the modification request since the Original Approval found that the Subject Property is not high value farmland. The modification request does not require a new finding.

Several comments from the public contend that the Subject Property is high value farmland and at least one opponent notes that there is hemp being grown on the subject property. However, as noted, because the modification request does not change the classification of the underlying land as non-high value farmland, no finding is required.

(3) Development shall include meeting rooms, restaurants with seating for at least 100 persons, and a minimum of 150 separate rentable units for overnight lodging, oriented toward the needs of visitors rather than area residents. However, the rentable units may be phased in as follows:

ORIGINAL FINDING: See page 8 of the Original Approval.

PROPOSED FINDING: As noted, Applicant is proposing a substantial modification that changes the type and configuration of the previously approved amenities, including restaurants and overnight lodging units. Thus, a new finding is necessary for this code provision.

According to Applicant's modification request, the modified resort will contain a restaurant and meeting rooms, each with seating for a minimum of 100 people. Applicant's Narrative, pg. B-6. The proposed eating and meeting rooms will be in the clubhouse in the proposed Amenity Center. See Applicant's Narrative, pg. A-6, and Applicant's Narrative, pg. B-9, B-10.

According to Applicant, the eating and meeting facilities will be oriented towards the needs of visitors staying at the vacation villas, overnight rentals/cabins and overnight seasonal rentals. However, Applicant has not provided any information or explanation as to how the eating and meeting facilities will be oriented towards the needs of visitors staying at the resort. For instance, will these amenities be closed to the public or what limitations will be put in place to ensure the facilities are not oriented toward area residents? Staff suggests Applicant provide additional detail as to how those facilities will be oriented towards resorts guests and not towards area residents.

Condition #1 states:

1. The resort shall contain a restaurant and meeting rooms with seating for a minimum of 100 people.

- a. The minimum required eating and meeting facilities shall be constructed or guaranteed through surety bonding or equivalent financial assurance prior to the sale of individual lots.
- b. The eating and meeting facilities shall be oriented toward the needs of resort visitors rather than area residents.

To ensure the modified proposal complies with the requirement that the eating and meeting facilities are oriented towards the needs of the resort guests and not area residents, staff recommends modifying Condition 1b based on the response from Applicant regarding the steps it will take to ensure compliance.

Regarding overnight lodging units, Applicant states that there will be 200 overnight rentals/cabins and 50 overnight seasonal rentals. Applicant's Narrative, pg. B-6. As allowed by this code provision, the rentable units may be phased in. Applicant proposes phasing the overnight lodging units in over three phases. Applicant's Narrative, pg. B-6. Staff believes because the overnight lodging units cannot be used as full-time residences, they are oriented towards resort visitors.

With the adoption of Condition #2 (described in more detail below), Applicant's modified proposal complies with the number of required separate rental units (150) for overnight lodging requirement of this provision. Additional comment regarding the proposed overnight lodging units and seasonal overnight lodging units is provided below.

If, and until, Applicant provides the requested information and explanation as to how the meeting rooms and restaurants are oriented towards resort visitors and not area residents, staff does not believe Applicant has met its burden of proof in regard to CCC 18.116.040(3).

(a) A total of 150 units of overnight lodging shall be provided as follows:

ORIGINAL FINDING: See page 8-9 of the Original Approval.

PROPOSED FINDING: In the Original Approval, the County found the resort will contain a minimum of 150 units of overnight lodging, as that term is defined in CCC 18.116.030(5). The original applicant had not finalized the make-up and allocation of its overnight lodging units. To fulfill the overnight accommodation requirements, the original applicant proposed to build a combination of stand-alone units, called "Casitas," together with multi-family structures with individual "lock off" rooms. See pgs. 8-9 of the Original Approval.

With this modification, Applicant proposes to change the configuration and location, to also replace the casitas and multi-family units with park models referred to by Applicant as "cabins." Applicant's Appendix 25. Applicant proposes 200 overnight lodging units and 50 seasonal overnight lodging units. Thus, the original findings must be amended to demonstrate compliance with this code provision.

Per CCC 18.116.030(5), the definition of "overnight lodgings" is as follows:

"Overnight lodgings" means permanent, separately rentable accommodations, which are not available for residential use. Overnight lodgings include hotel rooms, lodges, cabins and time-share units. Individually owned units may be considered overnight lodgings if they are available for overnight rental use by the general public for at least 45 weeks per

calendar year through a central reservation and check-in service. Tent sites, recreational vehicle parks, manufactured dwellings, dormitory rooms and similar accommodations do not qualify as overnight lodgings for the purpose of this definition.

In light of this definition, staff believes Applicant's proposal raises two questions of first impression. First, do park models qualify as overnight lodging units? And second, do seasonal overnight lodging units qualify as overnight lodging units under this code provisions?

Are Park Models Overnight Lodging Units?

Staff notes that park models are neither expressly included in the definition of overnight lodgings, nor are park models expressly prohibited in the definition. Thus, the Planning Commission is tasked with interpreting whether the proposed park models meet the definition of overnight lodging units or, instead, if they are a "similar accommodation" to those listed as not qualifying as overnight lodgings. If they do qualify, then staff believes Applicant can comply with the 150-unit requirement. If not, then Applicant likely does not meet this criterion.

Applicant has provided a legal memorandum from its attorney that addresses consistency with the above definition arguing that park models meet the definition of "overnight lodging unit". Applicant's Appendix 25. Applicant's attorney states that park models are permanent and separately rentable. Specifically, the attorney notes that notwithstanding that park models can be towed by a vehicle to different destination, these park models will be permanently sited and secured to foundations. Applicant further equates the park models to "cabins" as allowed under the definition of overnight lodging units.

Staff notes that another plausible interpretation is that park models are more akin to the list of uses expressly declared to not be overnight lodging units. Those listed uses include manufactured dwellings, recreational vehicle parks, and tent sites. These uses are not stick built structures, but like a park model, are built offsite before being relocated. Moreover, like a park model, a manufactured home could be placed on a foundation and made available for rent. Thus, staff notes that park models could be interpreted to be a "similar accommodation" to those uses that are not allowed."

If the Planning Commission agrees that park models qualify as overnight lodging units, Applicant can comply with the criterion as it is proposing 200 overnight lodging units (not counting the seasonal overnight lodging units). Staff recommends the addition of the below Condition of Approval to ensure compliance with this provision:

The proposed park models to be used as overnight lodging units shall be converted to residential structures and meet the R-1 standard in the Oregon Structural Specialty Code. Other park models to be used as vacation villas or other residential units (not used as overnight lodging units), shall be converted to residential structures and meet the applicable standard in the Oregon Structural Specialty Code.

If the Planning Commission does not agree that park models qualify as overnight lodging units, then Applicant has not met its burden for this criterion.

Do Seasonal Overnight Lodging Units Qualify as Overnight Lodging Units?

Applicant also proposes 50 overnight seasonal rentals. Applicant's Narrative B-6. Applicant has not provided detail regarding the nature of the seasonal rentals. See Applicant's Addendum Memorandum, pg. 13. The updated "Conceptual Layout C5" refers generally to "overnight seasonal rentals" without additional detail. Since it is unclear what type of use (e.g., tents, recreational vehicle sites) the seasonal rentals will be comprised of, it is not clear that the seasonal rentals will meet the definition of "overnight lodgings" or one of the other permitted uses under CCC 18.116.060. Accordingly, Staff asks Applicant to submit additional information regarding its intent for the seasonal overnight lodging units so that the Planning Commission can review and ensure it complies with CCC 18.116.

Staff notes that Applicant can meet its burden for this criterion with the 200 overnight lodging units regardless of its findings regarding the proposed seasonal overnight lodging units. However, the nature of the seasonal overnight lodging units is relevant to determining whether Applicant is in compliance with the ratio in CCC 18.116.040(3)(b) (discussed below). It is also relevant to confirming that the seasonal overnight lodging units comply with the definition in CCC 18.116.030(5), and if they are an allowed use under CCC 18.116.060.

(i) At least 75 units of overnight lodging, not including any individually owned homes, lots or units, shall be constructed or guaranteed prior to the closure of sale of individual lots or units through an agreement and security provided to the county in accordance with CCC 17.40.080 and 17.40.090.

ORIGINAL FINDING: See page 9-10 of the Original Approval.

PROPOSED FINDING: The modified proposal changes the number and nature of the overnight lodging units. Applicant proposes to build 200 overnight rentals/cabins. Applicant proposes to construct 82 units during the first phase prior to closure of sale of individual residential units (vacation villas). Accordingly, the modified request must be reviewed for compliance with this criterion.

ORS 197.445(4)(b)(B) now requires that in Eastern Oregon, including Crook County, at least 50 units of overnight lodging must be constructed prior to the closure of sale of individual lots or units. Applicant will construct these units during the first phase of development. The units remaining shall be constructed or guaranteed through surety bonding or equivalent financial assurance prior to the closure of sale of individual lots or units.

Condition #3 (with the proposed modifications), is stated here:

3. The resort shall contain a minimum of 150 rentable units for overnight lodging, oriented toward the needs of visitors rather than area residents. (CCC 18.116.040(3)).

- a. The minimum 150 units of overnight lodging must be constructed within five years of the initial lot sales or units. (CCC 18.116.040(c)).
- b. At least 50 units of overnight lodging must actually be constructed prior to the closure of sale of individual lots or units. (ORS 197.445(4)(b)). Applicant shall construct these units during the first phase of development. An additional 25 units shall be constructed or guaranteed through surety

bonding or other equivalent financial assurance prior to the closure of sale of individual lots or units. (CCC 18.116.050(a)(i)).

- c. After the construction of the first 50 overnight lodging units, the remaining 100 overnight lodging units required to meet the statutory minimum of 150 units must be constructed or guaranteed through surety bonding or equivalent financial assurance within five years of the initial lot or unit or unit sales. (CCC 18.116.050(3)(c)).
- d. **After the initial 82 overnight lodging units are constructed, the remaining shall be provided subject to deed restrictions that limit their use to overnight lodging units. The deed restrictions may be rescinded when the resort has constructed 150 units of permanent overnight lodging as required by this subsection.**
- e. If Applicant guaranteed the construction of any of the required 150 units through surety bonding or other equivalent financial assurance, these overnight lodging units must be constructed within four years of the date of the execution of the surety bond or other equivalent financial assurance. (ORS 197.445(b)(F)).

With the above condition of approval, the request complies with this criterion.

(ii) The remainder shall be provided as individually owned lots or units subject to deed restrictions that limit their use to overnight lodging units. The deed restrictions may be rescinded when the resort has constructed 150 units of permanent overnight lodging as required by this subsection.

ORIGINAL FINDING: See page 10 of the Original Approval.

PROPOSED FINDING: The remaining overnight lodging units will be owned by Applicant, Applicant's successors, and assigns, or sold as individually owned lots or units subject to deed restrictions that limit their use to overnight lodging units, subject to rescission when the resort has constructed 150 units of permanent overnight lodging. Staff recommends adding the previously listed bolded language to Condition #3 to ensure compliance.

(b) The number of units approved for residential sale shall not be more than two units for each unit of permanent overnight lodging provided under subsection (3)(a)(i) of this section; provided, however, after an applicant has constructed its first 150 permanent overnight lodging units, the county may approve a final development plan modification to increase the ratio of units approved for residential sale to units of permanent overnight lodging from two to one to two and one-half to one.

ORIGINAL FINDING: See page 10 of the Original Approval.

PROPOSED FINDING: Since the Original Approval was issued, this provision was amended to allow the County to approve a final development plan modification to increase the ratio of units approved for

residential sale to units of permanent overnight lodging from two to one to two and one-half to one. However, the increased ratio is not applied until after the first 150 overnight lodging units are constructed. At that time, Applicant can seek a modification to its final development plan approval.

Applicant proposes a different mix of residential units and overnight lodging units than what was originally approved. Thus, a new finding for this modification request is necessary. Of note, Applicant now proposes 200 overnight lodging units, 50 seasonal overnight lodging units, 400 residential units (vacation villas) and 100 workforce housing units.

Applicant states that it meets the 2:1 ratio with 400 vacation villas and 200 overnight rentals (cabins). Applicant's Narrative, pg. B-7. In its Amendment Memorandum, Applicant provides additional explanation and states it meets the 2:1 ratio, including workforce housing. To do so, Applicant includes the 50 seasonal overnight lodging units. Thus, Applicant proposes 500 residential units (including workforce housing) and 250 overnight lodging units (including seasonal units) Applicant's Amendment Memorandum, pg. 4. As noted in previous findings, there is not sufficient evidence in the record to determine whether the seasonal overnight lodging units qualify as overnight lodging units. Without that evidence, it cannot be found that Applicant meets its 2:1 ratio.

If the requested evidence is provided, staff recommends modifying Condition of Approval #2 as follows:

2. The number of lots units approved for residential sale, including long term rentals, shall not be more than two lots for each unit of permanent overnight lodging, as that term is defined in Statewide Planning Goal 8, ORS 197.435(5), and CCC 18.116.030(5).
 - a. Applicant shall document compliance with this ratio to the Crook County Community Development Department annually beginning on the first anniversary after the first-long term lease is entered for a vacation villa.
 - b. Pursuant to this development plan approval, the applicant may provide a maximum of 500 single family lots and 250 overnight lodging units to meet the ratio. Multiple overnight lodging units may be provided as "lock-off units" or "keys" within a single dwelling or structure.

Since Applicant is not proposing a traditional resort with subdivision phases prior to sale of individual lots (through which the County has historically confirmed compliance with the ratio), staff recommends amending the condition to require Applicant to provide an annual report to be provided to the County.

Until additional evidence is provided demonstrating compliance with the above criteria, the proposal does not comply.

- (c) The development approval shall provide for the construction of other required overnight lodging units within five years of the initial lot sales.*

ORIGINAL FINDING: See page 10 of the Original Approval.

PROPOSED FINDING: Applicant proposes to construct 82 of the required overnight lodging units in Phase 1. The remaining required 68 units (totaling 150) will be developed in Phase 2. An additional 50 units will be developed in Phase 3.

ORS 197.445(4)(b)(C) requires that after the construction of the first 50 overnight units, at least 50 of the remaining 100 overnight lodging units required to meet the statutory minimum of 150 units must be constructed or guaranteed through surety bonding or equivalent financial assurance within five years of the initial lot sales or long term rentals. The remaining 50 overnight lodging units required by statute must be constructed or guaranteed through surety bonding or equivalent financial assurances within 10 years of the initial lot sales.

Reading the statute together with the Crook County Code and implementing the code where it requires more than the statute, it appears that at least 50 units of overnight lodging must be constructed prior to the closure of sale or long-term rental of the first individual lot or unit. At least 100 more units of overnight lodging must be constructed within five years of the sale of the initial lot or unit sales. Under ORS 197.445(b)(F), if Applicant guarantees the construction of any of the required 150 units through surety bonding or other equivalent financial assurance, these overnight lodging units must be constructed within four years of the date of the execution of the surety bond or other equivalent financial assurance.

The Original Approval included Condition #3 (quoted above with proposed modifications), which will still apply to ensure compliance with this criterion.

(4) Prior to closure of sale of individual lots or units, all required developed recreational facilities, key facilities intended to serve the entire development, and visitor-oriented accommodations shall be either fully constructed or guaranteed by providing an agreement and security in accordance with CCC 17.40.080 and 17.40.090. In phased developments, developed recreational facilities and other key facilities intended to serve a particular phase shall be constructed prior to sales in that phase or guaranteed by providing an agreement and security in accordance with CCC 17.40.080 and 17.40.090. Nothing in this subsection shall be interpreted to require the construction of all approved phases of a destination resort; provided, that the destination resort as developed complies with the minimum development requirements of subsections (3), (5), and (7) of this section.

ORIGINAL FINDING: See pages 10-11 of the Original Approval.

PROPOSED FINDING: This criterion distinguishes between facilities and accommodations intended to serve the entire development and facilities intended to serve a particular phase. Those for the entire development must be physically provided or guaranteed “proportional to the extent of the phased development.” An estimate of the total cost of the facilities and accommodations intended to serve the entire development is provided below.

According to Applicant, the proportionality component of this criterion will be satisfied because all the required developed recreational facilities, key facilities intended to serve the entire development, and visitor-oriented accommodations will be constructed in the first phase.

Staff recommends the following modification to Condition #4 of the Original Approval:

4. All developed recreational facilities and visitor-oriented accommodations required to serve a particular phase the resort shall be constructed or guaranteed through surety bonding or equivalent financial assurances prior to closure of sale or long term rental of individual lots or units in that phase.

With the proposed modification to Condition #4, this criterion can be met.

(5) At least \$7,000,000 shall be spent on improvements for on-site developed recreational facilities and visitor-oriented accommodations exclusive of costs for land, sewer and water facilities, and roads. Not less than one-third of this amount shall be spent on developed recreational facilities. Spending required under this subsection is stated in 1993 dollars. The spending required shall be adjusted to the year in which calculations are made in accordance with the United States Consumer Price Index.

ORIGINAL FINDING: See page 11 of the Original Approval.

PROPOSED FINDING: With this modification request, Applicant seeks a different mix of improvements and a different level of investment. Modifications Include the removal of the golf course as a recreational amenity. Thus, the modification request requires an updated finding for this criterion.

Applicant provided the following table in its Narrative:

Amenity Description	Total
Commercial/Overnight Accommodations	
Micro Retail Buildings	\$4,000,000
Eating Facilities for 100 Persons Minimum	<i>Located in Clubhouse</i>
Meeting Space for 100 Persons	<i>Located in Clubhouse</i>
Main Street Plaza	\$93,750
Overnight Rentals/Cabins	\$30,000,000
Subtotal	\$34,093,750
Recreation Areas	
Clubhouse with Outdoor Covered Area	\$4,455,000
Open-Air Shade Structures (Grill & Seating)	\$300,000
Pool with Cabanas	\$850,000
Spas	\$150,000
Event Lawn	\$200,000
Outdoor Grill Kitchen with Seating	\$225,000
Trail (8' wide)	\$75,000
Pickleball Courts	\$390,000
Basketball Court	\$110,000
Playground	\$185,000
Retaining Walls	\$480,000
Parking Area	\$765,000

Landscaping and Irrigation (clubhouse area)	\$900,000
Signage/Monument Signs/Pavement Marking	\$100,000
Subtotal	\$9,185,000
Total	\$43,278,750

The proposed recreational facilities will include, but are not limited to, a clubhouse with outdoor covered area, pool with cabanas, spas, pickleball courts, and basketball courts. Narrative, pg. B-10. Applicant also lists, as recreational facilities, retaining walls, parking areas, landscaping, and signage. While such improvements may be necessary to support recreational facilities, staff asks for additional detail regarding those expenses to confirm that those improvements are intended to support the proposed recreational facilities and not visitor-oriented accommodations or other components of the proposed resort.

The proposed visitor-oriented accommodations include micro-retail buildings, eating facilities, meeting space, a main street plaza, and overnight rentals. Narrative, pg. B-9. Applicant does not provide a cost estimate for the meeting room or eating facilities. Instead, Applicant notes the cost of those facilities is included in the estimate for the clubhouse. Narrative, pg. B-9. However, the clubhouse is described as a recreational facility and the eating and meeting spaces are described as a visitor accommodation. Applicant should provide detail regarding the expense of the restaurant and the meeting facilities for the reasons stated below.

According to the Bureau of Labor Statistics consumer price index, \$1 in 1993 is equivalent to \$2.02 in May 2022. Therefore, the \$7,000,000 in 1993 dollars has the same buying power as \$14,348,331 in May 2022. One-third of this amount (\$4,782,729) must be spent on developed recreational facilities.

Applicant estimates total investment in these facilities of \$43,278,750, which exceeds the minimum required. However, until Applicant provides clarification regarding the cost of the restaurant and the meeting room (which are currently incorporated into the estimated expense of the clubhouse), it cannot be confirmed that at least one-third of the total amount will be spent on developed recreational facilities. Similarly, Applicant should provide confirmation that expenses related to the retaining walls, parking area, landscaping, and signage, are solely associated to recreational facilities.

Condition #5, as modified and stated here, ensures compliance with the criterion:

5. Applicant shall invest a minimum of **\$14,348,331 (in 2022 dollars)** ~~10,225,329 (in 2008 dollars)~~ for developed recreational facilities and visitor-oriented accommodations, exclusive of costs for land, sewer and water facilities, and roads. At least **\$4,782,729 (in 2022 dollars)** ~~\$3,408,443 (in 2008 dollars)~~ shall be spent on developed recreational facilities. The minimum spending requirements shall be increased to present day dollars at the time of the approval of the bond for the subject improvements, based upon the United States Consumer Price Index. The recreational facilities may include, but shall not be limited to, those listed in App. Ex. 8. ("Crossing Trails Destination Resort Development Plan Recreational Uses").

Nonetheless, if Applicant does not provide the above requested information, staff does not believe there is sufficient evidence to find this criterion has been met, specifically regarding whether one-third of this amount will be spent on developed recreational facilities.

(6) Commercial uses are limited to those listed in CCC 18.116.070(8). Such uses must be internal to the resort, and are limited to the types and levels of use necessary to meet the needs of visitors to the resort. Industrial uses of any kind are not permitted.

ORIGINAL FINDING: See page 10 of the Original Approval.

PROPOSED FINDING: Applicant proposes different commercial uses than in the Original Approval. Thus, a new finding for this criterion is required.

The potential commercial uses that may be developed at the resort are listed in Applicant's Narrative (pg. B-11) and include micro-retail, clubhouse, eating establishment, meeting/conference facilities, miscellaneous (specialty retail, convenience stores, sports equipment leasing, real estate sales, business center). Allowed commercial uses are listed in CCC 18.116.070(8). Some of the listed commercial uses are inconsistent with the list of commercial uses, but are otherwise permitted as part of a destination resort (e.g. eating facilities, clubhouse, meeting facilities). The other listed uses are consistent with CCC 18.116.070(8).

The proposed commercial uses will be in the Amenity Center. Applicant's Narrative, pg. B-11. All commercial uses will be internal to the resort. No industrial uses are proposed.

Conditions #7-10 with proposed modifications, ensure compliance with this criterion.

7. Commercial uses within the resort shall generally be limited to the categories of uses listed in CCC 18.116.070(8) and App. Ex. 9, which is attached to the development plan application. All commercial uses shall be internal to the resort, limited to the types and levels of use necessary to meet the needs of resort visitors, and oriented towards guests rather than the general public.
8. Applicant shall present the final Draft CC&Rs prior to approval of the tentative plan for the first phase of the resort. during FDP review.
9. The final CC&Rs shall expressly restrict all uses to those allowed by CCC 18.116.060 and 18.116.070.

With the above conditions, this criterion can be met.

(7) At least 50 percent of the site shall be dedicated to permanent open space, excluding yards, streets, and parking areas.

ORIGINAL FINDING: See page 13 of the Original Approval.

PROPOSED FINDING: As part of the proposed open space plan, the Original Approval included the proposed golf course. The modification request eliminates the golf course. The modification request further seeks to reconfigure the open space plan. Thus, a new finding is required.

Applicant states that over 50% of the resort will still be allocated as open space. Specifically, a minimum of 291 acres within the development has been identified for open space, representing 50.1%. According to Applicant, this includes 211 acres (36.4%) east of the COID canal that consists of natural open space and common areas. An additional 80 acres (13.8%) is in pastureland located west of the COID canal. Applicant provided an Open Space Plan as Attachment 2 to its Addendum Memorandum. Applicant represents that the Final Development Plan will include at least 50% of the site in natural or common open space. Since Applicant is not proposing a traditional phased subdivision development, compliance should be demonstrated at the time of Final Development Plan ("FDP") review and then documented annually until the resort has been completely built out.

To ensure compliance, Condition #10 (as modified) states:

10. Over 50 percent of the resort site including the area devoted to golf course uses, but excluding yards, streets and parking areas, shall be maintained as open space throughout the life of the resort. Compliance with this standard shall be **affirmed during FDP review and then continuously documented annually until the resort is completely built out.**
 - a. The resort shall maintain compliance with the open space standard pursuant to the ~~Open Space Management Plan attached to the development plan application as App. Ex. 15~~ as depicted on the Development Plan (Sheet C100).
 - b. The CC&Rs shall provide that, at all times, at least 50 percent of the property shall be designated as open space, and make that requirement a covenant and equitable servitude, which cannot be amended without the consent of the County, which runs with the land in perpetuity, and which is for the benefit of all of the property initially included in or annexed to the resort, each homeowner, the declarant, the homeowners' association, and any of the golf clubs developed on the property, as well as the County. Any of these individuals or entities may enforce the covenant and equitable servitude.
 - c. The CC&Rs shall make clear that the open space designated in the ~~Open Space Development Plan~~, as finalized in the FDP, is the open space that is protected by the CC&Rs.
 - d. All deeds conveying all or some of the resort property shall include a restriction specifying that the property is subject to the provisions of the resort FDP and the CC&Rs and noting that the FDP and CC&Rs contain a delineation of open space areas which shall be maintained as open space areas in perpetuity.

With the above condition, this criterion can be met.

(8) If the site includes a resource site designated on the county's Goal 5 inventories as significant, the resource site shall be protected in accordance with the adopted Goal 5 management plan for the site. Sites designated for protection pursuant to Goal 5 shall also be preserved by design techniques, open space designation, or a conservation easement sufficient to protect the resource values of the resource site. Any conservation easement created pursuant to this subsection shall be recorded with the property records of the tract on

which the destination resort is sited prior to development of the phase of which the resource site is a part.

ORIGINAL FINDING: See page 11 of the Original Approval.

PROPOSED FINDING: Not applicable to the modification request. According to the Original Approval, the subject property does not contain any inventoried Goal 5 resources.

(9) Riparian vegetation within 100 feet of natural lakes, rivers, streams and designated significant wetlands shall be retained as set forth in CCC 18.124.090.

ORIGINAL FINDING: See page 14 of the Original Approval.

PROPOSED FINDING: The proposed modification changes the internal configuration of the resort. Thus, through this modification request it must be confirmed that riparian vegetation within 100 feet of natural lakes, rivers, streams and designated significant wetlands are retained.

There are not natural lakes, rivers, or streams on the subject property. Staff understands the term “significant wetlands” to refer to significant wetlands mapped in the County’s Comprehensive Plan. There are no such wetlands mapped in the Comprehensive Plan.

To ensure ongoing compliance, Condition #25 states:

25. If any wetlands are discovered on the property, Applicant shall mitigate for the loss of wetlands through enhancement of the remaining wetlands (if any) or the creation of new wetlands at a different location.

With the above condition of approval, this criterion can be met.

(10) The dimensional standards otherwise applicable to lots and structures in underlying zones pursuant to Chapters 18.16 through 18.112 and 18.120 through 18.140 CCC shall not apply within destination resorts. The planning commission shall establish appropriate dimensional standards during final development plan review.

ORIGINAL FINDING: See page 14 of the Original Approval.

PROPOSED FINDING: The appropriate dimensional standards will be established by the Planning Commission during final development plan review. Applicant has not proposed any dimensional standards (e.g., setbacks, minimum lot sizes, setbacks) with this application. This provision does not require the dimensional standards be determined during development plan review, but instead at the time of FDP review. Thus, the dimensional standards for this proposed modification will be reviewed for the first time as part of the final development plan review.

Condition #11 should be modified as follows:

11. Unless modified during the FDP approval process, the The dimensional standards applicable to lots and structures within the resort shall be the standards attached to the

development plan application as App. Ex. 18. established by the planning commission during final development plan review.

With the above condition of approval, this criterion is met.

(11) Except where more restrictive minimum setbacks are called for, the minimum setback from exterior property lines, excluding public or private roadways through the resort, for all development (including structures and site-obscuring fences of over three feet in height but excepting existing buildings and uses) shall be as follows:

(a) Two hundred fifty feet for commercial development listed in CCC 18.116.070, including all associated parking areas;

(b) One hundred feet for visitor-oriented accommodations other than single-family residences, including all associated parking areas;

(c) Twenty-five feet for above-grade development other than that listed in subsections (11)(a) and (b) of this section;

(d) Twenty-five feet for internal roads;

(e) Twenty-five feet for golf courses and playing fields;

(f) Twenty-five feet for jogging trails, nature trails and bike paths where they abut private developed lots, and no setback where they abut public roads and public lands;

(g) The setbacks of this section shall not apply to entry roadways, landscaping, utilities and signs.

ORIGINAL FINDING: See page 14-15 of the Original Approval.

PROPOSED FINDING: Based on the site plan materials submitted by Applicant, it can comply with the above standards. Since Applicant is not proposing a traditional subdivision, staff recommends the following modification to Condition #12.

12. Compliance with setback requirements shall be documented during each phase of subdivision or site plan review.

With the modified condition, this criterion is met.

(12) Alterations and nonresidential uses within the 100-year flood plain and alterations and all uses on slopes exceeding 25 percent are allowed only if the applicant submits and the planning commission approves a geotechnical report that demonstrates adequate soil stability and implements mitigation measures designed to mitigate adverse environmental effects. Such alterations and uses include, but are not limited to:

(a) Minor drainage improvements which do not significantly impact important natural features of the site;

(b) Roads, bridges, and utilities where there are no feasible alternative locations on the site; and

(c) Outdoor recreational facilities, including golf courses, bike paths, trails, boardwalks, picnic tables, temporary open sided shelters, boating facilities, ski lifts, and runs. (Ord. 296 § 8 (Ex. F), 2016; Ord. 247 § 1, 2011; Ord. 18 § 12.040, 2003)

ORIGINAL FINDING: See page 15 of the Original Approval.

PROPOSED FINDING: Applicant proposes to modify the resort layout, including the configuration of the resort. Thus, compliance with this criterion must be demonstrated with this modification request.

The general physical characteristics of the site are depicted in the series of maps. The maps include a Floodplain Map (Appendix 19), Context Plan (02_C0001), Existing Conditions Plan (03_C002), Overall Site Plan (04_100), and the Grading and Drainage Plan (07_C200). Applicant also submitted Attachment 1 - Flood Exhibit and Attachment 9 – Crossing Trails Illustrative Plan with its Amendment Memorandum.

Appendix 19, “100 Year Floodplain,” is based upon standard Federal Emergency Management Association (FEMA) mapping. The 100-year floodplain is mapped along a corridor that parallels the COID Irrigation ditch as it traverses the subject property. Most, if not all, of the area in the 100-year floodplain falls within areas of right-of-way held by COID. According to Applicant, bridges, canal crossings, and pathways are the only improvements anticipated in this area. Applicant has submitted a geotechnical report (Appendix 15) but it does not specifically address the floodplain or development within the floodplain. To meet this criterion, Applicant must present a Geotechnical Report that the Planning Commission approves regarding the proposed bridges, canal crossings and utilities that may be located in the 100-year floodplain.

Additionally, Attachment 1 and Attachment 9 to the Addendum Memorandum show that some of proposed vacation villas will be located in the FEMA mapped 100-year floodplain. Staff raised this concern and Applicant responded by providing a more detailed map (Attachment 1 – Flood Exhibit) and noting that no development will occur in the floodplain (Applicant’s Amendment Memo, pg. 3). Although the Flood Map appears to still show several housing units within the 100-year floodplain, according to Applicant, the 100-year floodplain is more accurately shown by its engineer in the flood exhibit. The engineer’s certification may be considered substantial evidence regarding the true location of the 100-year floodplain. Based on the information provided by Applicants certified engineer, the Planning Commission can find no residential development is proposed in the 100-year floodplain.

Regarding slopes, according to the Original Approval, except for two minor rock ridgelines, no portion of the site contains slopes more than 25 percent. One of the ridgelines runs parallel to the irrigation canal in the southern portion of the resort. Another rock ridge is in the northeastern portion of the subject property and is largely encumbered by the BPA transmission line easements (discussed in greater detail below). Applicant did not provide a slope analysis with this modification request, however, based on the prior finding and the proposed development plan, it appears that no development is proposed in slopes exceeding 25%.

Staff recommends the following modifications to Condition #24:

24. If Applicant proposes development in the floodplain of the COID waterway or on slopes greater than 25 percent, Applicant shall, prior to tentative plan approval of individual phases in the resort as part of the FDP review, file provide the planning commission for review and approval with the County a geotechnical report that demonstrates adequate soil stability and implements mitigation measures designed to mitigate adverse environmental effects.

Staff also recommends a new condition that states:

Applicant shall comply with all applicable legal and permitting requirements to the extent any structures are constructed in areas impacted by the floodplain.

With the above conditions, the above criteria can be met.

18.116.080 Application procedures and contents.

- (1) *Before submitting a development plan for approval, an applicant proposing a destination resort shall conduct a preapplication conference with the planning department to obtain general information, guidelines, procedural requirements, advisory opinions, and technical assistance for the project concept.*

ORIGINAL FINDING: See page 16 of the Original Approval.

PROPOSED FINDING: Applicant met with planning staff in October 2021 to discuss the modification request.

- (2) *Following a preapplication conference, the applicant shall submit a development plan for review by the planning commission. Fifteen copies of the development plan shall be submitted to the planning department along with a filing fee set by the Crook County court to defray costs incidental to the review process.*

ORIGINAL FINDING: See page 16-17 of the Original Approval.

PROPOSED FINDING: Applicant has paid the required fee and submitted a development plan for review by the planning commission.

- (3) *The development plan shall contain the following elements:*

(a) *Illustrations and graphics to scale, identifying:*

- (i) *The location and total number of acres to be developed as a destination resort;*

ORIGINAL FINDING: See page 17 of the Original Approval.

PROPOSED FINDING: The general vicinity of the Crossing Trails Resort is illustrated on Applicant's Cover Sheet. See Section C – Exhibit Drawings, Sheet C000 – Cover Sheet for additional information.

The conceptual Development Plan Map depicts the boundaries of the approximately 580-acre resort and the general location of all proposed resort uses, including residential, commercial, recreational uses and open space. The conceptual Development Plan map illustrates the general location of the vacation villas, overnight rentals/cabins, overnight seasonal rentals, workforce housing, open space, amenity areas within the resort and ancillary resort uses. Areas of designated "open space" include the common areas and undisturbed areas left in a natural state.

Commercial uses will be located within the Amenity Areas. This includes the Micro Retail Buildings as well as the Clubhouse where the meeting and eating establishments will be located.

See Applicant's Section C – Exhibit Drawings, Sheet C100 – Development Plan (Conceptual) for additional information.

(ii) The subject area and all adjacent tax lots, with existing zoning;

ORIGINAL FINDING: See pages 17-18 of the Original Approval.

PROPOSED FINDING: The subject property and all adjacent tax lots are depicted on Applicant's Context Plan, see Applicant's Exhibit Drawings, Sheet C001. This map shows the location, size and ownership of all properties that abut the proposed resort development. The subject property and surrounding properties are zoned Exclusive Farm Use, EFU-3 (Powell Butte Area), as depicted on the Crook County zoning map. The subject property is also zoned with Crook County's Destination Resort Overlay Zone, shown on Applicant's Appendix 9. This overlay zone includes all of the subject property as well as the adjacent properties to the north, west and east, and four parcels to the south.

(iii) Types and general location of proposed development and uses, including residential and commercial uses;

ORIGINAL FINDING: See page 18 of the Original Approval.

PROPOSED FINDING: Applicant proposes to modify the types and general location of the proposed development and uses as depicted on the conceptual Development Plan map (Sheet C100 – Development Plan (Conceptual)). The Development Plan map depicts the general location of residential housing units, overnight accommodations, commercial areas, maintenance facilities, infrastructure and open space. The Development Plan map also depicts the general location of the looped road system that will serve the resort.

(iv) A general depiction of the characteristics of the site, including:

(A) Goal 5 resources on the county's comprehensive plan inventory;

ORIGINAL FINDING: See page 19 of the Original Approval.

PROPOSED FINDING: According to the Crook County Comprehensive Plan Goal 5 inventory, there are no inventoried sites on the property.

(B) Riparian vegetation within 100 feet of natural lakes, rivers, streams, and designated significant wetlands;

ORIGINAL FINDING: See page 19 of the Original Approval.

PROPOSED FINDING: No natural lakes, rivers, streams or designated significant wetlands exist on the Subject Property. The property is bisected by an irrigation canal operated by the Central Oregon Irrigation District ("COID"). The irrigation canal is in operation during the irrigation season from April to October of each year. An irrigation pond is located on the southern boundary of the subject property adjacent to the canal and SW Wiley Road. This is depicted on Applicant's Conceptual Development Plan. According to Applicant, there are no areas of riparian vegetation associated with the irrigation canal or pond. Applicant has depicted the riparian vegetation as required by this code provision.

(C) Water areas, including streams, lakes, ponds and designated significant wetlands;

ORIGINAL FINDING: See pages 19-20 of the Original Approval.

PROPOSED FINDING: The Subject Property is bisected by the COID irrigation canal. The property also contains an irrigation pond that has been used for the delivery of irrigation water. The location of these features is depicted on the C001 – Context Plan. As noted, there are no significant wetlands on the property per the Comprehensive Plan. However, as noted by Applicant, are wetlands on the property as shown on Appendix 17 – National Wetlands Inventory and Appendix 18 – Wetlands Delineation.

Applicant has depicted the water areas as required by this code provision.

(D) Boundaries of the 100-year flood plain, if present on the site;

ORIGINAL FINDING: See page 20 of the Original Approval.

PROPOSED FINDING: The Floodplain map provided by Applicant (Appendix. 19), and Flood Exhibit (Addendum 1) depict the location of the 100-year floodplain as it affects the subject property. Applicant's Illustrative Plan (O3A), also depicts the floodplain. Appendix 19 is based on the standard Federal Emergency Management Association (FEMA) mapping. The 100-year floodplain is mapped along a corridor that parallels the COID Irrigation ditch as it traverses the subject property. Much of the area that falls within the 100-year floodplain is encumbered by the canal easement held by COID.

Applicant submitted the Flood Exhibit and states that it "more precisely depicts the extends of the 100 year floodplain". Applicant's Amendment Memorandum, pg. 3. The Flood Exhibit is certified by a registered civil engineer in the State of Oregon. The Flood Exhibit shows that the residential development

in the 100-year floodplain is located outside the Base Flood Elevation plain according to Applicant's engineer.

Applicant will comply with all applicable legal and permitting requirements to the extent any structures or previously described uses are constructed within areas subject to the 100-year floodplain.

Applicant has depicted the boundaries of the 100-year floodplain as required by this code provision.

(E) Slopes exceeding 25 percent;

ORIGINAL FINDING: See page 20 of the Original Approval.

PROPOSED FINDING: Applicant's Existing Conditions Plan identifies slopes on the property that exceed 25 percent. Sheet C002 – Existing Conditions. Slopes that exceed 25 percent are found in two primary areas on the subject property. One is a minor rock ridgeline located parallel to the COID irrigation ditch in the southern portion of the property and extending to the north. According to Applicant, the majority of this ridgeline will be utilized as open space. Applicant's Illustrative Map shows the ridgeline as mostly undeveloped. Areas of steeper slopes are also contained in rock ridges found in the northeast corner of the subject property. Most of these areas are shown as undeveloped on the Illustrative Plan. A significant portion of this area is also encumbered by the electric transmission line easements on the property.

Applicant has depicted the slopes exceeding 25 percent as required by this code provision.

(F) Existing topography.

ORIGINAL APPROVAL: See page 20 of the Original Approval.

PROPOSED FINDING: The topography is unchanged from the Original Approval. The natural topography of the site is relatively flat with a gentle slope rising approximately 280 feet from the southwest to the northeast corners of the site. Site topography is depicted on Applicant's Existing Conditions Map (Sheet C002).

Applicant has depicted the existing topography as required by this code provision.

(v) Proposed methods of access to the development, identifying the main vehicular circulation system within the resort and an indication of whether streets will be public or private;

ORIGINAL FINDING: See page 21 of the Original Approval.

PROPOSED FINDING: Applicant proposes to modify the access points and circulation within the resort.

Applicant's Development Plan map, Sheet C100 – Development Plan (Conceptual), shows the main internal road system serving the proposed resort, as well as each of the proposed points of resort access. The resort development is served with a loop road system of interconnected private roadways. This will provide access to residential units (vacation villas), recreational amenities, OLUs (cabins/casitas) and resort infrastructure. The internal road system is designed to promote the safe and efficient circulation of

vehicle traffic inside the resort. As proposed, the resort will have two access points on SW Wiley Road that will distribute project traffic to SW Wiley Road enroute to Oregon Highway 126. An additional access route will be located on SW Parrish Lane to provide access to the residential units. All of the roads within the resort will be private and will be maintained by the developer and the resort homeowners.

Applicant has depicted the proposed methods of access to the proposed modified resort as required by this criterion.

(vi) Major trail systems;

ORIGINAL FINDING: See page 21 of the Original Approval.

PROPOSED FINDING: Applicant proposes to modify the trail system.

The Development Plan map, Sheet C100 – Development Plan (Conceptual), depicts the looped road system that will serve the proposed resort development. Applicant proposes to construct and maintain a trail system that traverses the subject property. Resort trails will be designed to provide pedestrian, bicycle and non-motorized access throughout the resort. The vacation villas and OLUs, as well as seasonal OLUs, will be provided with access to the internal resort trail system.

Trail systems within the resort will provide access to areas of open space and recreational amenities offered by the resort. In addition, the resort trail system will provide pedestrian, bicycle and non-motorized access to the amenity center. Sheet C100 – Development Plan (Conceptual). According to Applicant, the trail network will encourage walking and biking to the primary resort destinations, including the public clubhouse, dining facilities, and other commercial uses. The trail network should be a significant recreational amenity at the resort.

Applicant has provided the required information regarding major trail systems as required by this code provision.

(vii) The approximate location and number of acres proposed as open space, buffer area or common area. Areas proposed to be designated as “open space,” “buffer area” or “common area” should be conceptually illustrated and labeled as such;

ORIGINAL FINDING: See page 21-22 of the Original Finding.

PROPOSED FINDING: The approximate location of proposed open space, buffer areas, and common areas are proposed to change. Thus, this criterion applies to this modification request.

A minimum of 291 acres of the 580-acre resort will be maintained as open space. This acreage includes the area devoted to natural spaces, trails, buffers within the external setbacks, areas below powerlines, canal easements, and common areas. The land devoted to open space is conceptually depicted on the Development Plan map(Sheet C100 – Development Plan), as well as the Attachment 2 – Open Space Plan (Attachment 2), submitted in response to the County’s incomplete letter.

Because the exact boundaries of the space areas are subject to change as the resort development progresses, Applicant will document compliance with the minimum open space standard annually.

(viii) List of proposed recreational amenities and approximate location.

ORIGINAL FINDING: See page 22 of the Original Approval.

PROPOSED FINDING: The Development Plan (Sheet C100 – Development Plan) shows the amenity areas. On page B-24 of Applicant’s Narrative, it lists the following proposed recreational amenities:

- Clubhouse with outdoor covered area
- Pool with cabanas (two areas)
- Spas (two areas)
- Open Air-Shade structures (grill & seating)
- Event Lawn
- Overlook park
- Neighborhood parks (three areas), with playground, fire pits, shade pavilion, and off lease dog area
- Sports courts (pickleball & basketball)
- Open space (natural & common area)
- Trails system

Applicant has provided the required list of recreational amenities and depicted their approximate location as required by this code provision.

(b) A conceptual water and sewer facilities master plan for the site, including a master plan study prepared by a professional engineer certified in the state of Oregon, describing:

(i) An estimate of water demands for the destination resort at maximum build-out;

(ii) Availability of water for estimated demands at the destination resort, including (1) identification of the proposed source; (2) identification of all available information on ground and surface waters relevant to the determination of adequacy of water supply for the destination resort; (3) a copy of any water right application or permit submitted to or issued by the Oregon Water Resources Department (OWRD), including a description of any mitigation measures proposed to satisfy OWRD standards or requirements;

(iii) A water conservation plan including an analysis of available measures, which are commonly used to reduce water consumption. This shall include a justification of the chosen water conservation plan. The water conservation plan shall analyze a wastewater disposal plan utilizing beneficial use of reclaimed water to the extent practicable. For the purposes of subsection (3)(b) of this section, beneficial uses may include, but are not limited to:

(A) Agricultural irrigation or irrigation of golf courses and greenways;

(B) Establishment of artificial wetlands for wildlife habitation;

(C) Groundwater recharge.

ORIGINAL FINDING: See pages 22-23 of the Original Approval.

PROPOSED FINDING: Applicant's modification seeks to change the water and sewer master plan. See Sheet C300 – Water and Sewer Plan, Appendix 20 (Water and Sewer Analysis), and Applicant's Addendum Attachment 3a, 3b, 4. Accordingly, a new finding for CCC 18.116.080(3)(b) is required.

Sheet C300 – Water and Sewer plan illustrates Applicant's water and sewer plan and was prepared by a professional engineer (Brady Berry, PE). Applicant also provided a Water Analysis (Attachment 4) prepared by Mr. Berry. The information provided in those documents provides an estimate for water demands for the resort at maximum buildout as required by subsection (i) above. The estimated demand for water uses at the resort is 384-acre feet per year (Amendment Memorandum, pg. 6). This represents a decrease in estimated demand. The Original Approval noted, with the golf course, the resort would require 802-acre feet per year.

Applicant provides two potential options for domestic/potable water. One source is Avion Water (see Attachment 5 – Letter from Avion). The second source is a potential off-site well (see Appendix 22 – Easement Exhibit).

Subsection (ii) above requires identification of the "source" of the water. While Avion is a water provider, the source of the water (e.g., well location) is not identified. Nor does the letter from Avion confirm that it can provide 384-acre feet of water per year. Additionally, the Original Approval included a condition that domestic water be drawn from the Deschutes Regional Aquifer (Condition #26). Without knowing the source, it is not possible to make a finding regarding the "identification of all available information on ground and surface waters relevant to the determination of adequacy of water supply for the destination resort." Without the missing information, Applicant has not provided all available information on ground and surface waters. Nor can consistency with Condition #26 from the Original Approval be confirmed.

Regarding the alternative source, Applicant identifies the source of the water (e.g., well location). Condition #26 states in full: "[p]otable/domestic water shall be provided by Avoin or another commercial water company drawing from the Deschutes Regional Aquifer". If the alternative well location is to be used, Applicant must confirm the source of the water. Unless a modification to Condition #26 is propose by Applicant, Applicant must also confirm that the alternative source will be provided by Avion or another commercial provider and that the water will be drawn from the Deschutes Regional Aquifer.

The Water Plan does not indicate whether either the Avion water source or the alternative well location will require a new water rights permit. Applicant has not provided a copy of any applicable water right or permit. Appendix 21 does provide information regarding the irrigation water rights for the subject property.

The Water Plan indicates that potential water sources may be available to meet the estimated demand through a combination of COID and other water sources, but additional information is required.

Subsection (iii) requires a water conservation plan to include justification of the chosen water conservation plan and analysis of a wastewater disposal plan utilizing beneficial use of reclaimed water to

the extent practicable. In its Narrative, Applicant proposes to use “highly efficient irrigation sprinkler systems; efficient water conveyance systems; beneficial use of treated wastewater; use of individual water meters; use of drought and low-water use landscaping; low water use plumbing fixtures, use of conditions to implement conservation measures; and public education and outreach.” Applicant has not provided justification for the chosen water conservation plan or analysis of a wastewater disposal plan utilizing beneficial use of reclaim water.

Due to the lack of information required by this section, this criterion has not been met.

(c) A conceptual site drainage plan

ORIGINAL FINDING: See page 23 of the Original Approval.

PROPOSED FINDING: Applicant proposes a new conceptual site drainage plan. The conceptual site drainage plan is described in Applicant’s conceptual Grading and Drainage Plan that is included as Sheet C200 – Grading and Drainage Plan. This requirement has been complied with.

(d) A solid waste management plan;

ORIGINAL FINDING: See page 23 of the Original Approval.

PROPOSED FINDING: Applicant proposes to provide, prior to final develop plan approval, a solid waste management plan. See Applicant’s Addendum Memorandum, pg. 8. Applicant further notes that Republic Services is unwilling to provide a “will serve” letter at this time to confirm that it is available to manage the resort’s solid waste.

Staff notes that CCC 18.116.080(3) states “[t]he development plan *shall* contain the following elements...(d) [a] solid waste management plan.” (*emphasis added*). Thus, the Code requires a solid waste management plan as part of a development plan request and it cannot be postponed for subsequent applications.

Without the required plan, this requirement has not been complied with.

(e) An open space management plan, including:

(i) An explanation of how the open space management plan will ensure that at least 50 percent of the resort is dedicated to open space at all times;

(ii) Proposed conservation easements to protect significant Goal 5 sites pursuant to CCC 18.116.040(8).

ORIGINAL FINDING: See pages 24-25 of the Original Approval.

PROPOSED FINDING: The Original Approval cites to an Open Space Plan and draft CC&Rs that the County ensured 50% of the resort will remain dedicated to open space at all times. The original open space plan included a golf course. Applicant proposes a new Open Space Plan. Applicant’s Addendum, Attachment 2.

Consistent with the Original Approval, Applicant states that the “final location, acreage and dimensions of any open space area are subject to limited refinement during the process of developing a final resort development plan.” Applicant further states that “[a]ll of the open space areas shown on the conceptual Development Plan will be designated as such on the plat and included in the legal description of the property.” Applicant’s Narrative, pg. B-26.

As stated by Applicant, prior to final development plan approval, Applicant will provide CC&Rs that require that title to or a legal interest in the common areas in each phase will be conveyed to a homeowners’ association prior to or concurrently with the conveyance to an owner of the first lot in that particular phase. The board of the homeowners’ association may transfer some common area to a homeowner or the declarant, but only for the purposes of small adjustments not to exceed 2,000 square feet and only if it will not result in less than 50% of the resort being occupied by open space areas. The CC&Rs shall provide that every homeowner will have a non-exclusive right and easement for the ingress, egress, use and enjoyment of the common areas, which shall be appurtenant and shall pass with the title to every lot, subject to stated restrictions. The easements and the rights to use of the common areas shall exist regardless of whether they are also set forth in individual grant deeds to lots.

As also stated by Applicant, the CC&Rs will provide that, at all times, at least 50 percent of the property shall be designated as open space, and make that requirement a covenant and equitable servitude, which cannot be amended without the consent of the County, which runs with the land in perpetuity, and which is for the benefit of all of the property initially included in or annexed to the resort, each homeowner, the declarant, the homeowners’ association, as well as the County. The CC&Rs shall state that any of these individuals or entities may enforce the covenant and equitable servitude. This is sufficient to satisfy the requirement that at least 50 percent of the property be preserved as open space.

Applicant further states, the CC&Rs shall make clear that the open space designated in the Open Space Plan, as finalized in the final development plan, is the open space that is protected by the CC&Rs. Applicant suggests a condition that requires all deeds conveying all or some of the resort property to include a restriction specifying that the property is subject to the provisions of the resort final development plan and the CC&Rs and noting that the final development plan and CC&Rs contain a delineation of open space areas which shall be maintained as open space areas in perpetuity.

Lastly, Applicant notes there are other safeguards in addition to the provisions of the CC&Rs to ensure that the requirements of this criterion are satisfied. As each subdivision plat is submitted to the County, open space designated as such on the plat will be protected. The County land use process for approval of a subdivision plat will require compliance at each phase with the destination resort standards in the statutes and the County code and with the County’s approval of this conceptual master plan application. Applicant states that Under ORS 92.010(7)(b) and ORS 92.070(7)-(8), open space could not be converted to another use unless the County approved a replat or a lot line adjustment. Those cites do not appear to be valid any longer. Nonetheless, since any such replat or lot line adjustment would be subject to the terms of this approval, the preservation of open space would be considered and ensured when the application was reviewed.

Since there are no inventoried Goal #5 resources on the subject property, no conservation easements are required.

To ensure compliance with the above, Condition #10 should be modified as follows:

10. Over 50 percent of the resort site including the area devoted to golf course uses, but excluding yards, streets and parking areas, shall be maintained as open space throughout the life of the resort. Compliance with this standard shall be **affirmed during FDP review and then continuously documented annually until the resort is completely built out.**
- a. The resort shall maintain compliance with the open space standard pursuant to the ~~Open Space Management Plan attached to the development plan application as App. Ex. 15~~ **as depicted on the Development Plan (Sheet C100).**
 - b. The CC&Rs shall provide that, at all times, at least 50 percent of the property shall be designated as open space, and make that requirement a covenant and equitable servitude, which cannot be amended without the consent of the County, which runs with the land in perpetuity, and which is for the benefit of all of the property initially included in or annexed to the resort, each homeowner, the declarant, the homeowners' association, and any of the golf clubs developed on the property, as well as the County. Any of these individuals or entities may enforce the covenant and equitable servitude.
 - c. The CC&Rs shall make clear that the open space designated in the ~~Open Space Development Plan~~, as finalized in the FDP, is the open space that is protected by the CC&Rs.
 - d. All deeds conveying all or some of the resort property shall include a restriction specifying that the property is subject to the provisions of the resort FDP and the CC&Rs and noting that the FDP and CC&Rs contain a delineation of open space areas which shall be maintained as open space areas in perpetuity.

With the above condition, this criterion can be met.

(f) A description of measures intended to mitigate significant project impacts on fish and wildlife and other natural values present in the open space areas;

ORIGINAL APPROVAL: See page 25.

PROPOSED FINDING: Applicant proposes a substantial modification, including changes to access points and internal configuration of the development plan. Thus, the modified resort must comply with this criterion.

With the original 2008 application form, the original applicant provided a signed verification from ODFW confirming that the property does not contain big game habitat winter ranges or sensitive bird habitat. As noted, the property also does not contain any Goal 5 resources in the County's Comprehensive Plan. In 2008, the Commission interpreted this criterion to apply only to significant fish and wildlife resources, as defined by Goal 5 and that no further description of proposed mitigation of impacts to fish and wildlife is required.

However, because it was not clear initially how the Commission would interpret this criterion, the original applicant submitted a Wildlife Evaluation Report. The original applicant and its wildlife consultant worked directly with ODFW to inventory wildlife resources on the subject property and to produce the report. In coordination with ODFW, the original applicant produced a Draft Habitat Evaluation Procedures (“HEP”) Analysis that is attached to the Wildlife Evaluation Report. The original applicant quantitatively evaluated the impact of resort development on wildlife and habitat values.

In response to letters from ODFW dated April 30 and May 20, 2008, and testimony at the hearings by ODFW representatives, the original applicant prepared a draft Crossing Trails Resort Wildlife Mitigation Plan, dated July 31, 2008. This plan updates and elaborates upon the HEP analysis contained in the Wildlife Evaluation Report. It contains a detailed discussion of possible onsite mitigation measures and the possible creation of a fund to address offsite mitigation. Exhibit D of the Wildlife Mitigation Plan is a “Declaration of Covenant for Waiver of Remonstrance Crossing Trails.” In its August 13, 2008, letter, ODFW states the Waiver of Remonstrance “addresses the damage concerns previously expressed by ODFW.”

Applicant, in its Narrative (pg. B-28), states “[t]he resort property does not contain any big game habitat winter range or sensitive bird habitat and is not shown any County Goal 5 habitat maps as containing any habitat.

The Original Approval includes Condition #22 which states:

22. Prior to FDP approval, Applicant shall enter into an MOU with the County that requires Applicant to implement the on-site mitigation measures described (at R 332-36) in the Crossing Trails Wildlife Mitigation Plan dated July 31, 2008 (in the Original Approval). The MOU shall provide that prior to recordation of the plat for Phase 1 of resort development, Applicant shall (a) contribute \$110,000 to an appropriate third-party agency for the benefit of wildlife habitat, located in Crook County if possible, to pay private contractors to implement the off-site mitigation described in the Wildlife Mitigation Plan (R 337-39); and (b) contribute an additional \$40,000 to the agency listed in (a) to maintain ongoing mitigation measures indefinitely.

Applicant has not proposed to modify or remove Condition #22.

This criterion can be met.

(g) A traffic study which addresses: (1) impacts on affected county, city, and state road systems, and (2) transportation improvements necessary to mitigate any such impacts. The study shall be prepared by a licensed traffic engineer in coordination with the affected road authority (either the county department of public works or the Oregon Department of Transportation, or both);

ORIGINAL FINDING: See pages 25-26 of the Original Approval.

PROPOSED FINDING: Applicant submitted a new Traffic Impact Analysis (Appendix 24). The TIA was prepared by Jacqueline Gulcynski a licensed engineer with Kittleson & Associates. The analysis explains potential resort impacts on affected roadways and intersections and proposes mitigation measures Joe

Bessman, a licensed traffic engineer with Transight Consulting, has reviewed and supplemented the traffic data and analysis. See e.g., Traffic Memo, Traffic Review. The Kittleson analysis is discussed in more detail below, in response to the relevant approval criteria. Staff notes that while there has been coordination, as noted in the responses from Transight, there remain unresolved issues with the traffic study. Therefore, compliance with the above criteria cannot be concluded until later findings in this report regarding traffic are found to comply.

(h) A written statement addressing how the proposed destination resort satisfies the standards of CCC 18.116.040 or 18.116.050, and the approval criteria of CCC 18.116.100

ORIGINAL FINDING: See page 26 of the Original Approval.

PROPOSED FINDING: Applicant has submitted the required written statement. Applicant's Narrative and attached reports address how the proposed modification satisfies the applicable resort siting standards of CCC chapter 18.116. The request complies.

(i) A description of any proposed development or design standards, together with an explanation of why the standards are adequate to minimize significant adverse impacts on adjacent land uses within 500 feet of the boundaries of the parcel on which the destination resort is to be developed;

ORIGINAL FINDING: See pages 26-31 of the Original Approval.

PROPOSED FINDING: As noted, Applicant proposes a substantial modification to the Original Approval. Further, unlike with the Original Approval, Applicant has not submitted draft CC&Rs or draft Architectural Design Guidelines. The original application also had proposed dimensional standards for interior lots. Accordingly, this code section requires a new finding.

Applicant states that the CC&Rs and Architectural Design Guidelines, when prepared as part of the FDP, will regulate the style of commercial and residential structures within the resort to ensure structures are compatible with the development and landscape of the area.

In staff's incomplete letter dated February 25, 2022, staff noted that Applicant did not provide detail regarding its design standards. In response, Applicant states that the CC&Rs will require compliance with external setbacks and that there is a sufficient buffer along the perimeter of the property to ensure no adverse impact. Similarly, Applicant states the Architectural Standards will regulate height and lot requirements for vacation villas, overnight rentals and seasonal rentals. See Applicant's Amendment Memorandum, pg. 9.

According to Applicant, all development within the resort will be subject to CC&Rs and Architectural Design Guidelines. The CC&R's will require compliance with the external setbacks established by CCC 18.116 and any additional setbacks established by the County. Also, according to Applicant, the CC&Rs and the Architectural Design Guidelines, when adopted, will regulate the style of commercial and residential structures within the resort to ensure that the structures are compatible with the landscape of the area.

The Original Approval required the applicant to present the final CC&Rs prior to approval of the tentative plan for the first phase of the resort. However, unlike in the Original Approval, where draft CC&Rs and Architectural Standards provided a general framework for development restrictions, Applicant has not done so as part of this modification application. Per the Original Approval, following issuance of the development plan and final development plan decisions, Applicant shall incorporate any additional standards imposed as conditions of those decisions.

Applicant provided the following table listing parcels within 500’ of the subject property. Ownership of lands within the 500’ study boundary are listed by tax lot, along with the size of each parcel, zoning, and the current crop production.

Tax Lot	Owner	Acreage	Zone	Use
1515080000200	James Crawford	160.17	EFU3	Non-farm
1515000002400	Mike Brock	433.20	EFU3	Non-farm
1515170000101	Carole Hancock	9.85	EFU3	Non-farm
1515170000102	Whispering Winds	9.85	EFU3	Non-farm
1515170000103	Alisha Bennett	9.85	EFU3	Non-farm
1515170000104	Steven & Dianna Brauchler	9.85	EUF3	Non-farm
1515180000100	David Fisher Jr	79.56	EFU3	Small Farm
1515180000200	Benny Allen	78.2	EFU3	Small Farm
1515180000500	Danielle Paul	118.20	EFU3	Small Farm
1515200000200	Brian and Neva Allen	22.37	EUF3	Small Farm
1515200000300	Penelope Allen	25.04	EUF3	Small Farm
1515000001206	Crook County (GMRL’s)	170.00	EFU3	Public
1515200000103	Samuel Stafford	5.00	EFU3	Non-farm
1515170000107	Michael and Sue Dunn	10.81	EUF3	Non-farm
1515170000108	Jason & Denis Wilkins	9.78	EFU3	Non-farm
1515210000100	Waibel Joseph & Thelma	263.17	EFU3	Farm
1515180000600	Dorothy Robinson Trust	36.22	EFU3	Small Farm
1515200000105	James Kori Urell	10.27	EFU3	Non-farm
1515190000101	Malott Mark and Ann LLC	79.82	EFU3	Small Farm
1515070000401	John O’Leary	78.55	EFU3	Small Farm
1515180000602	Dorothy Robinson Trust	2.00	EFU3	Small Farm
1515200000100	Samuel Stafford	78.96	EFU3	Small Farm
1515200000104	Samuel Stafford	6.67	EFU3	Non-farm
1515200000301	Brian and Neva Allen	30.79	EFU3	Small Farm
1515080000103	James Crawford	80.55	EFU3	Small Farm

The Subject Property is surrounded by parcels of land that are privately owned, except for the northeast corner of the property where Crook County owns property. The property on the eastern border and the northeastern half of the property is unimproved sagebrush and juniper woodlands. The northwest portion of the property is adjacent to an 80-acre piece of property that is being used for grazing and to four 10-acre parcels of land that are primarily used for residences. The property directly to the northwest, which borders SW Parrish Lane, is primarily irrigated and used for grazing. However, there is a portion of land west of SW Parrish Lane and at the corner of SW Parrish Lane and SW Wiley Road that is being used for

hay production. The property south of SW Wiley Road is irrigated and is used primarily for grazing and/or hay production.

Twenty-five parcels border the proposed resort. Of these parcels, 10 are 12 acres or less, 10 are between 12 and 100 acres, and five have acreage larger than 100 acres. Three of the largest parcels are dryland range.

Crops identified within the 500-foot study area adjoining the proposed resort are irrigated hayfields, pasture, range and livestock. Irrigation is present on a number of parcels. Extending beyond the 500-foot study area, the agriculture remains dedicated to hay and livestock production. Hay fields both in and outside the study area are either mixture of grasses or alfalfa. Where irrigation is present, other field or grain crops can be substituted. Due to the arid nature of the Crook County, dry land crop production is limited. Geographically this area ranges from approximately 3,200 feet to 3,400 feet in elevation. Annual precipitation averages 10 inches.

As found in the Original Approval, grazing of livestock has been demonstrated to be compatible with destination resort development, as evidenced by livestock grazing on the perimeter of Black Butte Ranch, Eagle Crest and other resort properties in Central Oregon. The fencing proposed by Applicant around the resort property will eliminate any potential conflicts and assist the owners of the adjacent properties in their efforts to corral their livestock. To the north and west, the subject property borders four non-irrigated parcels that lie east of SW Parrish Lane. Larger agricultural parcels (ranging from 39 to 118 acres in size) abut SW Parrish Lane to the west. The subject property borders two vacant and non-irrigated parcels to the south. Larger agricultural operations are located adjacent to SW Wiley Road to the south.

Applicant proposes in its Narrative (pg. B-32) possible impacts to agriculture in the study area originating from the proposed resort development and mitigation measures (provided in *italics*) as follows:

- Loss or removal of fences during construction
(Coordinate with landowners to replace fences in a fashion to fully restore livestock grazing capacity.) See Conditions #14 and #17.
- Possible disruption of water source for grazing cattle
(Coordinate with landowner's access to water where needed.) See Condition #17.
- Possible dust impact on hay crops and livestock (during construction)
(Rangeland plants are not very sensitive to dust. The sparse population of cattle grazing per acre on rangeland in the immediate area would eliminate dust as a major concern. In more concentrated pasture-grazing areas to the west and south, the number of cattle per acre increases markedly. However, if dust becomes evident during construction standard water applications and dust control efforts will be employed. Crops can be sensitive to excess dust during pollination and affect grade quality at harvest. Applicant/Contract Purchaser will utilize dust control measures during construction to prevent dust contamination to crops or livestock.) See Condition #19.
- Increased potential for wildfires arising from development
(Wildfire danger is a concern for all rangelands. Based on the Oregon Wildfire Risk Explorer (information assimilated by the Oregon Department of Forestry, Oregon State University

Institute for Natural Resources, the US Forest Service, and a wide variety of stakeholders throughout Oregon), the property is mapped as a “Low” risk for Wildfire Hazard to Structures. The Applicant/Contract Purchaser will be required by state and local codes to reduce and prevent all fire dangers. A wildfire management plan is an important component of development not only for the resort, but also for the adjacent public lands.

The subject property is currently within the Crook County Fire and Rescue’s fire protection District. Crook County Fire and Rescue will respond to any fire on the resort property. Access is currently available to the property along either Wiley Road or Parrish Lane. As the destination resort develops, a series of roadways will interconnect and provide extensive access for emergency vehicles. The proposed primary access off Wiley Road and secondary access off the Parrish Road will offer alternative evacuation routes for future residents.

Development of Applicant/Contract Purchaser’s resort will include construction of a domestic and fire protection water supply system. Based upon similar resort projects in Central Oregon, a minimum fire protection flow rate of 1,000 gallons per minute in residential areas and 1,500 gallons per minute in commercial areas is expected.

Large diameter water mains will be extended throughout the residential and commercial sections of the resort to provide a domestic water supply and to serve fire hydrants. Fire hydrant locations will be subject to the review of Crook County Fire and Rescue and Crook County Road Department and will be installed as each phase of development proceeds. The water supply system will assure an adequate on-site water system for fire protection, throughout all developed areas of the resort property.

The subject property abuts two County roads, SW Parrish Lane and SW Wiley Road to the west and south respectively. A nearly 350 foot wide clearing for power lines lies within the project boundary on the east side. The roads and power line corridor account for excellent fire breaks. The north side of the project is the only section where native conditions are contiguous to both sides of the boundary.

Constructed roadways and trails throughout the developed portions of the resort provide additional fire breaks, in addition to critical access.

In addition, the developer will encourage sound fire protection measures around structures. Fire resistant roofing materials will be required and defensible spaces around structures will be incorporated. Disturbed areas will be restored with landscaping, native bunchgrass, or other native vegetation that will reduce the potential for wildfires, as compared to juniper trees and native brush.

Open space areas within the resort, with emphasis on the open north side, will be thinned and fuels removed. Exterior property boundary setbacks will be thinned, where appropriate, for reduction of wildfire hazards. Thinning and fuel reduction will continue as development proceeds.

Destination resort development assures the presence of construction personnel, resort operations staff and managers, and future residents. These responsible parties will monitor and report illegal activities, trespassers, lightning strikes, and similar activities or events that increase the risk of wildfire. Resort development will assure the presence of responsible parties, but also provide communication services throughout the resort for immediate responses to emergency personnel.)

- **Elevated noise impact on area livestock**
(The proposed resort is spread over a large area and will include activities that are not large generators of noise. The sparse number of livestock on the east and north in the study area should be well insulated from any secondary noise generated by the resort. Trails and buffer areas on the west and south flanks of the resort will insulate what little noise is associated with the listed recreational activities and facility maintenance.)
- **Spread of noxious weeds**
(The Applicant/Contract Purchaser will be responsible for identifying and controlling noxious weeds on its land. The Applicant/Contract Purchaser will conduct a weed survey prior to construction and control any identified weed infestations prior to construction to minimize the possible spread through normal construction activities.) See Condition #17 and #27.
- **Increased traffic on secondary roads**
(Applicant/Contract Purchaser will establish three (3) new entries for the development reducing potential traffic problems on secondary roads. It will work with the County to create an acceptable traffic plan. The primary route to the resort from OR 126 is on SW Parrish Lane, a minor collector, with a single turn to the main entrance on Wiley Road. Travelers coming from the east may take Houston Lake Road, a major collector, from OR 126 to SW Parrish Lane. The only local street that should consistently see resort related traffic is Wiley Road, which provides immediate access to the property. Resort management will work with area landowners to create traffic flow patterns that will not disrupt the flow of agricultural equipment, livestock or other agricultural activities especially during harvest or seasonal fieldwork periods.) See Conditions #33, #34, #36, & #37.
- **Possible increased agricultural practices conflicts with resort residents**
(Applicant/Contract Purchaser is committed to being a good neighbor and realizes that the resort is adjacent to EFU zoned farmland. While a resort-zoned activity has been designated by the County, resort management understands the nature of farming practices on the surrounding farmland. Applicant/Contract Purchaser will make sure through its CC&Rs that any residents and guests of the resort are made aware of accepted farming practices of the area, which include noise, dust, and odor generated through accepted farming practices.) See Condition #15.
- **Night light impact to surrounding ranch and farm residents and livestock.**
(Crossing Trails will employ a dark skies strategy that will greatly reduce the potential that light pollution could emanate from the resort.) See Conditions #13 and #17.

Additional measures, proposed by Applicant, to minimize significant adverse impacts on these adjacent land uses within 500 feet of the boundaries of the resort property include the following:

- *The exterior setbacks imposed by the Crook County Destination Resort Ordinance will provide buffers between the resort uses and the adjacent lands;*
- *Applicant's commitment to low-density single-family lots and the required 50 percent open space, will maintain consistency with the rural landscape;*
- *To minimize light pollution, the resort will use only fully or partially shielded outdoor light fixtures to ensure that light rays emitted by the fixtures are generally projected below the horizontal plane;*
- *The Resort will take its primary access from SW Wiley Road to the south which provides a direct connection to Highway 126. This direct highway connection will minimize the impact of the project on the local street system;*
- *Applicant proposes to maintain perimeter livestock fencing around the entire resort boundary, at Applicant's expense. This will ensure that any surrounding owners of EFU lands who choose to conduct grazing operations on their properties will not face any additional financial impact in order to keep their livestock off of the resort property. It will also provide a clear delineation between the resort and the surrounding parcels, thereby minimizing trespass in both directions;*
- *The resort will include a domestic water supply system with fire protection capacity to minimize risk of wildfire. The resort will also implement and maintain wildfire fuel reduction programs to further reduce the risks of wildfire on and around the resort property;*
- *The resort will implement and maintain a noxious weed program to reduce the spread of noxious weeds on and around the resort property;*
- *The resort will require all property owners to execute waivers of remonstrance to enable ODFW to manage wildlife to protect agricultural and other uses on adjacent lands;*
- *The resort will apply water during periods of construction to minimize dust impacts on any surrounding properties and/or agricultural activities;*
- *The resort will adhere to applicable EPA and ODA pesticide rules to minimize potential spray drift;*
- *The resort will improve SW Parrish Lane and SW Wiley Road to provide better access to agricultural properties surrounding the resort.*
- *The resort will be served by the Crook County Sheriff's Department and will have efficient access to medical and emergency facilities in Prineville and Redmond, and Bend.*

Staff notes that in the Original Approval and Applicant's Narrative it is stated that the resort will take its primary access from Wiley Road which provides direct connection to Highway 126. However, Applicant has proposed closing the intersection of Wiley Road and Highway 126. Applicant should clarify its intent regarding Wiley Road and, if it is to be closed, explain how any change to use of Highway 126 will minimize adverse impacts on adjacent land uses.

The above cited conditions, modified as necessary, will be included to minimize impact on adjacent properties. Additionally, Conditions #18 and #28 are intended to minimize impact and will likewise be included.

Conditions regarding wildfire impact should be included as well. Based on Applicant's proposed wildfire mitigation, staff recommends the following conditions to mitigate wildfire risk:

48. Applicant is required to comply with state and local codes to reduce and prevent wildfire dangers.
49. Applicant will submit for review as part of its FDP review, a wildfire mitigation plan.
50. Applicant shall construct a water supply system with minimum fire protection flow rates of 1,000 gallons per minute in residential areas and 1,500 gallons per minute in commercial areas.
51. Applicant shall install large diameter water mains, the final diameter to be approved by Crook County Fire & Rescue, in the residential (including workforce housing) and commercial areas to provide adequate fire protection.
52. The CC&Rs will require fire resistant roofing material and defensible space around all structured.
53. The CC&Rs will require disturbed areas to be restored with landscaping, native bunchgrass, or other native vegetation.
54. Open space areas, as depicted on Applicant's Open Space Plan, as well as exterior property boundary setbacks, will be thinned and fuels removed for reduction of wildfire hazard.

In the Original Approval, the applicant provided draft CC&Rs that the County relied in finding that the impact of the proposed resort was minimized. Applicant has not provided such documentation with this modification request. However, staff believes that if draft CC&Rs are provided for review and approval during FDP and provisions required in the final decision are incorporated into the CC&Rs, significant adverse impact can be minimized, and this criterion can be met.

(j) A description of the proposed method of providing all utility systems, including the preliminary or schematic location and sizing of the utility systems;

ORIGINAL FINDING: See pages 31-32 of the Original Approval.

PROPOSED FINDING: As noted, Applicant provides a new Water and Sewer Plan and provides the following response:

A conceptual Water and Sewer Plan is included as part of the application submittal.

The water system approach consists of two components: 1) Water Conveyance and 2) Water Service.

1) The conveyance includes:

- *Drill a new well and pipeline to the subject property or exercise service agreement through a water purveyor to subject property.*
- *Build water reservoir.*

2) The Water Delivery consists of constructing mains within the right of way under the road surface (minimum of 10-foot separation from sewer). The sizing of the water mains

is dependent upon number of units within each phase. Water design will accompany each phase of development and will be subject to review and approval by the water provider and the County to ensure the appropriate sizing.

The sewer service also consists of two components: 1) Waste Water Treatment and 2) Sewerage Collection.

1) The Waste Water Treatment consists of a community sewage systems that will treat the waste water and then discharge the treated effluent it on the resort property; and

2) The Sewerage Collection consists of constructing mains within the private road surface (minimum of 10-foot separation from water). The sizing of the sewer mains is dependent upon number of units within each phase. Sewer design will accompany each phase of development and will be subject to review and approval by DEQ and the County to ensure the appropriate sizing.

Other utilities (power, phone and cable TV) are proposed to be in a common trench just outside the road sections. A schematic of the location of the water and sewer system and utilities is include in Section C – Exhibit Drawings, Sheet C300 – Water and Sewer Plan.

This code provision only requires a description of the system. Based on the above description, Applicant has complied with this criterion.

(k) A description of the proposed order and schedule for phasing (if any) of all development including an explanation of when facilities will be provided and how they will be secured, proportional to the level of development, if not completed prior to the closure of sale of individual lots or units;

ORIGINAL FINDING: See page 32 of the Original Approval.

PROPOSED FINDING: As stated in its Narrative, Applicant proposes the following schedule and order of phasing:

Development is expected to occur in numerous phases over the next 20 years. A general illustration of the proposed phasing is shown on App. Ex. 3. Utilities will be developed proportional to the level of development. Final development plans for each area shall be submitted for approval at the time of final platting. Density, overnight lodging/residential lot ratios and total units, and open space ratios will be tracked on a plat-by-plat basis and required ratios shall be maintained throughout the project development.

Water and sewer facilities shall be constructed in phases to respond to demand as the project is built out. As the project progresses, the projected daily flows and requirements shall be refined to better reflect actual contributions and needs. Water and sewer lines will be stubbed to the next phase of development with the completion of the previous phase.

This is consistent with the Original Approval. However, staff notes that in the TIA, Applicant represents that it expects buildout of the resort to be complete by 2026. TIA, pg. 21. Staff requests clarification from Applicant as to its actual order and schedule for phasing.

Staff further notes that Applicant is not proposing a typical resort developed in subdivision phases. Although phases are proposed, no subdivisions will be proposed. Typically, road and utility improvements are required as part of a tentative plan approval. No such process will occur under Applicant's proposed resort. Notwithstanding Applicant's statement that final development plans will be submitted at final platting, it is unclear what will be platted since Applicant is not proposing to subdivide individual lots. Accordingly, it is critical to have a clear understanding how phasing will work with proposed resort.

Staff does not believe there is adequate information to find compliance.

(l) A description of the proposed method for providing emergency medical facilities and services and public safety facilities and services, including fire and police protection. (Ord. 18 § 12.080, 2003)

ORIGINAL FINDING: See page 32 of the Original Approval.

PROPOSED FINDING: Per Applicant, the Crook County Sheriff's Office will provide police protection and fire protection will be provided by Crook County Fire & Rescue. Applicant has provided a letter from Crook County Fire & Rescue confirming it will provide service to the resort. Attachment 8B.

Applicant's description meets this requirement.

18.116.090 Development plan review procedure

(1) Review of the development plan shall be in accordance with the provisions of the planning commission review procedure (Chapter 18.172 CCC).

ORIGINAL FINDING: See page 32 of the Original Approval.

PROPOSED FINDING: This code provision is procedural in nature. Review of the proposed modification is occurring in accordance with the provisions of CCC 18.172. The criterion is met.

(2) The planning commission may attach any conditions (including requirements for improvement assurances) it deems necessary to the development plan approval when directly related to applicable standards and criteria and supported by substantial evidence in the whole record.

(3) The planning commission shall issue a final order of its decision on the development plan. The planning commission's decision may be appealed to the county court. (Ord. 18 § 12.090, 2003)

ORIGINAL FINDING: See page 33 of the Original Approval.

PROPOSED FINDING: Applicant understands that the Planning Commission will attach conditions relating to the approval criteria for this decision. Additional conditions shall be identified during the hearings for the proposed modification, and shall be incorporated into the final decision for final approval.

18.116.100 Approval criteria.

The planning commission or county court shall approve a development plan for a destination resort if it determines that all of the following criteria are met:

(1) The tract where the development is proposed is eligible for destination resort siting, as depicted on the acknowledged destination resort overlay map.

ORIGINAL FINDING: See page 33 of the Original Approval.

PROPOSED FINDING: The resort property is mapped as eligible for resort siting on the acknowledged Destination Resort Overlay map and is deemed eligible for destination resort siting. This criterion is met.

(2) The development plan contains the elements required by CCC 18.116.080.

ORIGINAL FINDING: See page 33 of the Original Approval.

PROPOSED FINDING: As noted above, staff requests additional information regarding CCC 18.116.080(3)(b), (3)(d), (3)(g), and (3)(k). Until that information is provided, this criterion has not been met.

(3) The proposed development meets the standards established in CCC 18.116.040 or 18.116.050, qualifying as a destination resort or a small destination resort, respectively.

ORIGINAL FINDING: See page 33 of the Original Approval.

PROPOSED FINDING: As noted above, staff does not believe certain proposed modifications to the resort, including the overnight lodging requirements (including ratio compliance) and investment requirements, meet the standards under CCC 18.116.040 for a destination resort.

(4) The uses included in the destination resort are either permitted uses listed in CCC 18.116.060, or accessory uses listed in CCC 18.116.070 that are ancillary to the destination resort and consistent with the purposes of this chapter.

ORIGINAL FINDING: See pages 33-34 of the Original Approval.

PROPOSED FINDING: Except for the proposed OLUs, the proposed uses are either permitted uses listed in CCC 18.116.060 or accessory uses listed in CCC 18.116.070. However, because the proposed OLUs may not be permitted, this criterion is not met. If approved, the final CC&Rs shall expressly restrict all uses to those allowed by CCC 18.116.060 and 18.116.070.

(5) The development will be reasonably compatible with surrounding land uses, particularly farming and forestry operations. The destination resort will not cause a significant change in farm or forest practices on surrounding lands or significantly increase the cost of accepted farm or forest practices.

ORIGINAL FINDING: See page 34 of the Original Approval.

PROPOSED FINDING: Applicant has proposed substantial modification, with different access locations, changes to the location of uses shown on the previously approved Development Plan Map, and a new water and sewer plan. Accordingly, as required by this criterion, Applicant must demonstrate that the modified resort will be reasonably compatible with surrounding land uses.

Applicant's Context Plan (Sheet C100) and above list of adjacent property owners indicate ownership, size, locations for surrounding properties. All the surrounding properties are zoned Exclusive Farm Use, EFU-3 (Powell Butte Area).

According to Applicant, the modified resort has been designed in a manner that will ensure compatibility with privately-owned parcels in the surrounding area and will not cause a significant change in or significantly increase the cost of farm uses on those parcels.

The subject property borders privately held landholdings on all sides. Crook County owns a large parcel that touches the northeast corner of the property. Adjacent properties to the north and east are largely undeveloped and vegetated with sage brush and juniper woodlands. Some livestock grazing occurs on parcels to the north and west of the subject property. As previously found by the County, grazing of livestock has been demonstrated to be compatible with destination resort development, as evidenced by livestock grazing on the perimeter of Black Butte Ranch, Eagle Crest, and other resort properties in Central Oregon. The fencing proposed by Applicant around the resort property will eliminate any potential conflicts and assist the owners of the adjacent properties in their efforts to corral their livestock. To the north and west, the subject property borders four non-irrigated parcels that lie east of SW Parrish Lane. Larger agricultural parcels (ranging from 39 to 118 acres in size) abut SW Parrish Lane to the west. The subject property borders two vacant and non-irrigated parcels to the south. Larger agricultural operations are located adjacent to SW Wiley Road to the south.

The original applicant included an Agricultural Survey Report⁴. It discusses the potential for impacts on surrounding properties and concludes the proposed development of the resort will not force a significant change in accepted farm or forest practices or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. The original applicant's Agricultural Survey also concludes that the proposed resort will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. That is because, as explained in the impact study, there will be no impacts that cannot readily be mitigated or avoided, and, without significant impacts, there should be no significant increase in cost.

Applicant has not provided a similar analysis for the modified resort. Instead, Applicant explains:

⁴ Original Application, Ex. 32.

The proposed resort development will not force a significant change in accepted farm or forest practices. This is because (1) the property is entirely surrounded by (mostly private) land dedicated to livestock grazing, alfalfa hay, and small pastures; (2) the impact study area includes livestock (cattle and horses), pasture, and rangeland, grass hay, and alfalfa hay production, which are not likely to be affected by the resort given the compatible uses and required setbacks; (3) all agricultural activities are buffered by roads, open spaces, and small parcels; and (4) all possible impacts can be readily mitigated or avoided through planning and project development as discussed above.

The Waiver of Remonstrance discussed above under CCC 18.116.080(3)(f) will allow neighbors of the resort to address wildlife concerns on their properties without interference from resort management or residents. Similarly, Condition No. 15 in the Original Approval requires Waiver of Remonstrance for all owners in the resort agreeing that they will not or in the future complain about accepted agricultural practices on EFU-3 properties on adjacent properties. Other conditions listed under CCC 18.116. To protect surrounding farms, this condition is necessary. Other conditions discussed above (CCC 18.116.080(3)(i) likewise protect surrounding farm uses.

That said, a number of comments have focused on the impact the proposed resort will have on agriculture as a result of the additional water use. Specifically, farmers in the area are concerned they will lose their water (see e.g., Exhibits 54 & 67). As noted above (CCC 18.116.080(3)(b)), and discussed further below (CCC 18.116.100(7)), staff does not believe adequate information has been provided regarding the proposed water plan, including the source of the water. Thus, determining the impact of the proposed modification, and specifically the new water plan, on surrounding farms cannot be determined.

Comments have also raised the concern that wastewater may contaminate downstream irrigators (see e.g., Exhibit 69). Applicant should address this concern to confirm its wastewater plan will not have a significant impact on surrounding farms.

Accordingly, staff does not believe Applicant meets this criterion based on the record.

(6) The development will not have a significant adverse impact on fish and wildlife, considering mitigation measures.

ORIGINAL FINDING: See pages 35-36 of the Original Approval.

PROPOSED FINDING: Applicant has proposed a substantial modification with different access locations and changes to the location of uses shown on the previously approved Development Plan Map. Thus, the modified resort must be shown to “not have a significant adverse effect on fish and wildlife, considering mitigation measures.

In the Original Approval, the Crook County Court interpreted this provision to mean “that a plain reading of CCC 18.116.90 can lead one to no conclusion other than the determination that adverse impacts on any and all species of fish and wildlife must be considered in reviewing and approving destination resort developments. While not all impacts need be mitigated, “significant adverse impact” must be mitigated.” Original Approval, pg. 36.

From the Original Approval (pg. 36):

ODFW in its final report to the commission [] asserts that based on the applicant's information the proposed development will result in the total loss of between 3,468 and 4,909 habitat units as a result of development. ODFW's representative indicated in his testimony that the habitat being mitigated for was not a "high value" and therefore mitigation did not need to be necessarily on-site or in close proximity off-site.[]. The Court finds that the number of habitat units lost prior to mitigation results in a "significant adverse impact" for this development.

According to the wildlife mitigation plan [] submitted by the applicant's expert, Applicant proposes to mitigate by recovery of 513 on-site habitat units and by recovery of 4396 off-site habitat units (for a total of 4909 habitat units mitigated). As such, the Court finds that there will be no net loss of habitat units.

The Court finds that the applicant's draft wildlife mitigation plan proposal is substantial evidence that a reasonable person would rely on. The Court finds that based on the draft wildlife mitigation plan, the mitigation measures proposed therein and the testimony and evidence provided by the applicant's expert Gary Ivey, that there will be "no significant adverse impact" on fish and wildlife [].

The Court further finds that while ODFW would prefer a higher dollar amount for off-site mitigation [] that the information is not sufficiently developed enough for the Court to rely on. The Court finds that it is not required to adopt ODFW's numbers or its request for more money when ODFW merely expresses a "belief," without further detail and explanation.

The Court, having balanced all the evidence and testimony in the record, is more persuaded by the comprehensive draft wildlife mitigation plan analysis and the testimony and evidence provided by the [a]pplicant's expert, Gary Ivey. The draft mitigation plan proposes a net gain of habitat units, and all that is actually required by the Crook County Code is a finding of "no significant adverse impact" on fish and wildlife. The Crook County Code does not have a "no net loss" requirement although the applicant has proposed a plan that addresses and exceeds this higher standard. As such the Court finds that the mitigation proposed exceeds the requirement of the County Code.

A condition shall be imposed requiring Applicant to enter into an MOU with the County incorporating those proposals contained in the draft mitigation plan prior to receiving FDP approval. In addition, the MOU should require Applicant to pay up front or bond or provide through other financial security such costs in 2008 dollars as Applicant may be reasonably expected to incur related to off-site mitigation measures, and Applicant should be required to augment such additional funds, bonds or financial securities as may be necessary to ensure that adequate funds are available in dollars equivalent to 2008 dollar investment to complete all required off-site mitigation. Pursuant to Crook County Code 18.116.110 the FDP review procedures occur at a hearing with public participation.

In regard to this modification application, Applicant states, “[t]he modifications being requested are generally considered to be less intensive uses compared to the uses originally proposed, particularly with the removal of the golf course.” Applicant’s Narrative, pg. B-40. Applicant further notes it will enter into an MOU with the County incorporating those applicable recommendations contained in the original draft mitigation plan prior to receiving final development plan approval. This requirement is included as Condition # 22.

Applicant included with its application materials a Habitat Map (Appendix 16). This map shows that there are no significant wildlife habitats on the subject property. However, as the County Court interpreted this provision previously, the review is not focused on significant habitat, but rather a determination “that adverse impacts on any and all species of fish and wildlife must be considered in reviewing and approving destination resort developments.”

Applicant has not provided a mitigation plan specific to proposed substantial modification. While Applicant may be correct that removal of the golf course will result in less of an impact on wildlife, there is no evidence in the record to substantiate this claim or to confirm that the other proposed modifications will have less of an impact.

Accordingly, it does not appear that there is substantial evidence to support a finding that the modified resort will not have a significant adverse impact on fish and wildlife, even considering the mitigation measures required in the Original Approval. To demonstrate, Applicant should provide additional evidence in support of this criterion.

(a) The traffic study required by CCC 18.116.080(3)(g) illustrates that the proposed development will not significantly affect a transportation facility. A resort development will significantly affect a transportation facility for purposes of this approval criterion if it would, at any point within a 20-year planning period:

(i) Change the functional classification of the transportation facility;

ORIGINAL FINDING: See page 37 of the Original Approval.

PROPOSED FINDING: Applicant seeks a substantial modification and changes to the approved development plan. As also noted in Applicant’s Transportation Impact Analysis (TIA) (Appendix. 24), the Original Approval was for a 735-unit destination resort. Applicant is now proposing a new site plan with 750 units, including updating the uses and general purpose of the resort. Appendix. 24, pg. 28. As stated in the TIA, the new plan includes recreational activities and open space for resort users, workforce housing for employees on the resort and within the surrounding community, and upscale manufactured homes, RV sites, and overnight villas. Appendix. 24, pg. 28. Accordingly, the modification requires new findings to ensure the modification request complies with this criterion.

The transportation facilities that will be most affected by the proposed development are Hwy 126, Huston Lake Road, SW Wiley Road and SW Parrish Lane. The 2017 Crook County TSP classifies Hwy 126 as a “major arterial”, Huston Lake Road as a “major collector,” SW Wiley Road as a “local street” and SW Parrish Lane as a “minor collector.” Applicant identifies additional affected facilities to include Powell Butte Road “minor arterial, Alfalfa Road “major collector”, Williams Road “minor collector”, and Copley Road “local street”. Applicant’s Narrative, pg. B-40.

Applicant states that the TIA concludes that the proposal will not change the functional classification of any transportation facilities. Applicant's Narrative, pg. B-41, TIA, pg. 38. However, the TIA assumes build out in 2026 and looks at a 2036 horizon year.

This criterion requires Applicant to look at a 20-year planning period. Applicant's TIA only looks at a 2036 horizon year. Thus, there is no factual basis to find whether any transportation facility will be significantly affected by changing its functional classification in the next 20 years.

For that reason, staff does not find that Applicant has complied with this code provision.

(ii) Result in levels of travel or access which are inconsistent with the functional classification of the transportation facility; or

ORIGINAL FINDING: See page 37-38 of the Original Approval.

PROPOSED FINDING: Applicant states in its TIA, in response to this criterion, "[a]ll impacts to the surrounding transportation system are compliant with the functional classification of the facilities." TIA, pg. 39. Staff asks that Applicant provide additional explanation as to why levels of travel and access remain consistent with current functional classifications of the transportation facilities, with emphasis on Parrish Lane, Huston Lake Road, and Wiley Road. Although evidentiary support may exist in the TIA, Applicant's response as quoted should be developed to include substantial evidence.

Further, staff again notes this code provision requires review based on a 20-year planning period, which Applicant has not provided.

Accordingly, staff does not believe this criterion has been met.

(iii) Reduce the performance standards of the transportation facility below the minimum acceptable level identified in the applicable transportation system plan (TSP).

ORIGINAL FINDING: See page 38-42 of the Original Approval.

PROPOSED FINDING: Applicant states in its TIA "impacts to the transportation system and proposed mitigation meet ODOT and County operational standards in the 2036 horizon year and are supported in the analysis from this report." TIA, pg. 39. Staff again asks that this proposed finding be developed with evidence from the TIA to support the above finding.

Transight Consulting states:

The applicant's assessment of OR 126/Parrish Lane shows a failing level of service with resort build-out in 2026. The applicant's suggested mitigation of adding left-turn lanes shows that even with these improvements the intersection continues to operate at a failing level of service that presents serious safety and operational issues for resort patrons and employees. There are additional assumptions in the analysis that could further degrade this performance as discussed herein.

There are several locations cited by the applicant as failing with or without their project. The destination resort creates a significant impact at these locations per Action 1F.1 and Action 1F.5 of the Oregon Highway Plan. While the applicant has proposed pro-rata payments to address these deficiencies, it is unclear how this mitigation is intended to address the relevant criteria within the Transportation Planning Rule. Traffic Review, pg. 1-2.

Applicant provided response to Transight's comments. *Applicant Response to Traffic*, pg. 2. Staff has not received written comment from ODOT regarding Applicant's modification. Additional mitigation, beyond what Applicant has proposed, is likely necessary if the modification request is to be approved. Based on the evidence provided, the request does not comply.

(b) If the traffic study required by CCC (18.116.080(3)(g)) illustrates that the proposed development will significantly affect a transportation facility, the applicant for the destination resort shall assure that the development will be consistent with the identified function, capacity, and level of service of the facility through one or more of the following methods:

(i) Limiting the development to be consistent with the planned function, capacity and level of service of the transportation facility;

ORIGINAL FINDING: See page 43 of the Original Approval.

PROPOSED FINDING: Applicant seeks a substantial modification and changes to the approved development plan. As also noted in Applicant's Transportation Impact Analysis (TIA) (Appendix. 24), the Original Approval was for 735-unit destination resort. Applicant is now proposing a new site plan with 750 units, including updating the uses and general purpose of the resort. Appendix. 24, pg. 28. As stated in the TIA, the new plan includes recreational activities and open space for resort users, workforce housing for employees on the resort and within the surrounding community, and upscale manufactured homes, RV sites, and overnight villas. Appendix. 24, pg. 28. Accordingly, the modification requires new findings to ensure the request is in compliance with CCC 18.116.100(6)(b)(i)-(iii).

Applicant is not proposing limiting development to be consistent with the planned function, capacity and level of service of the transportation facility.

(ii) Providing transportation facilities adequate to support the proposed development consistent with Chapter 660 OAR, Division 12; or

ORIGINAL FINDING: See page 43 of the Original Approval.

PROPOSED FINDING: Applicant seeks to implement this provision. Applicant's Narrative, pg. B-41. Specifically, Applicant states:

Of the three options provided above, the Applicant/Contract Purchaser is seeking to implement option (ii) and the TIA establishes the evidence and requirements for satisfying that option.

Option (ii) cites OAR Chapter 660, Division 12, which concerns transportation planning. OAR 660-012-0060(2) provides that when there is a significant affect to a transportation facility, the proposal must be conditioned to bring the facility up to its identified function, capacity or performance standard at the end of the planning period in the adopted TSP. However, OAR 660-012- 0060(3) provides that when a facility will already fail, a proposal is only required to mitigate the impacts directly related to the proposal; the proposal is not required to mitigate to bring the facility back to its planned capacity. Note also that the County Commissioners in DR-08-0092 that ODOT testified that, while the code references OAR Chapter 660, Division 12, the Transportation Planning Rule does not apply to this type of application.

Also relevant here is ORS 197.460(4), which applies to traffic impact analysis and mitigation for destination resorts. ORS 197.460(4) provides, in relevant part, “[I]f the site is east of the summit of the Coast Range and within 25 miles of an urban growth boundary, the county shall require the Applicant/Contract Purchaser to submit a traffic impact analysis of the proposed development that includes measures to avoid or mitigate a proportionate share of adverse effects of transportation on state highways and other transportation facilities affected by the proposed development, including transportation facilities in the county and in cities whose urban growth boundaries are within the distance specified in this subsection.” Furthermore, this proportionate share approach is consistent with the approach the County Commissioners concluded was appropriate and followed in DR-08-0092. In that decision the Commissioner found that apportioning costs roughly proportionate to anticipated development impacts is not only fair, it is reasonable under the Dolan caselaw and the County code.

The TIA proposed mitigation for each of the four intersections identified to fail as a result of the significant effects on transportation facilities that flow from the proposal. The TIA analysis establishes that, with the proposed mitigation, all four facilities will operate as planned and will no longer fail. The TIA also identifies the pro-rata share that should be provided by the developer to offset the impacts to the regional transportation network. For the OR 126/Parrish Lane intersection, the Applicant/Contract Purchaser should carry the full cost of construction; for the other intersections, the Applicant/Contract Purchaser is to carry a proportionate amount depending on the level of impact from the proposal. In total, the pro-rata payment should be \$675,000.

As noted, there are outstanding concerns regarding Applicant’s TIA that need to be addressed, including the requirement that the traffic study be based on a 20-year planning period.

The Original Approval includes Conditions of Approval #s 35-40 relate to this criterion. These conditions may need to be revised to reflect the modified proposal. However, at this point, staff does not believe the record is sufficient to make final determinations.

(iii) Altering land use densities, design requirements or using other methods to reduce demand for automobile travel and to meet travel needs through other modes.

ORIGINAL FINDING: See page 43 of the Original Approval.

PROPOSED FINDING: Applicant has not proposed alternating density, design requirements, or using other methods to reduce demand for automobile travel.

(c) Where the option of providing transportation facilities is chosen in accordance with subsection (6)(b)(ii) of this section, the applicant shall be required to provide the transportation facilities to the full standards of the affected authority as a condition of approval. Timing of such improvements shall be based upon the timing of the impacts created by the development, as determined by the traffic study or the recommendations of the affected road authority.

ORIGINAL FINDING: See page 43 of the Original Approval.

PROPOSED FINDING: Applicant seeks a substantial modification and changes to the approved development plan. As also noted in Applicant's Transportation Impact Analysis (TIA) (Appendix. 24), the Original Approval was for 735-unit destination resort. Applicant is now proposing a new site plan with 750 units, including updating the uses and general purpose of the resort. Appendix. 24, pg. 28. As stated in the TIA, the new plan includes recreational activities and open space for resort users, workforce housing for employees on the resort and within the surrounding community, and upscale manufactured homes, RV sites, and overnight villas. Appendix. 24, pg. 28. Accordingly, the modification requires new findings to ensure the request is in compliance with CCC 18.116.100(6)(c).

Applicant is required to provide transportation facilities to the full standards of Crook County and ODOT. Timing of the improvements shall be based upon the timing of the impacts created by the development as determined by the TIA or recommendations of the affected road authority. However, until outstanding issues with the traffic study are resolved, the timing of those improvements cannot be determined.

(7) The water and sewer facilities master plan required by CCC 18.116.080(3)(b) illustrates that proposed water and sewer facilities can reasonably serve the destination resort.

ORIGINAL FINDING: See page 43 of the Original Approval.

PROPOSED FINDING: Applicant proposes a new water and sewer facilities plan. See Water and Sewer Plan (Sheet C300), Water and Sewer Analysis (Appendix 20), and Addendum Water Analysis (Attachment 4). Thus, a new finding for this code provision is required.

Adequacy of Proposed Water Facilities:

In its Narrative (pg. B-43), Applicant states:

The total annual water demand for the resort is 300 acre-feet per year at full build out. This total includes water for domestic uses, a variety of commercial uses and roughly 28 acres of landscape irrigation. A minimum fire protection flow rate of 1,000 gallons per minute in residential areas and 1,500 gallons per minute in commercial areas is expected.

Water to meet these requirements will be supplied by a new well and will be conveyed to the subject property. No new water rights are required for the project.

The existing COID water rights authorize a total of 5.45 acre-feet per acre, per year, for irrigation use on 163.45 acres appurtenant to the resort property. The proposed combination of potable water service from a private well or water purveyor, and use of the existing appurtenant COID water rights is sufficient to fully address the estimated need at full build-out of the resort. In addition, Applicant/Contract Purchaser proposes to use treated effluent, as it becomes available to the project, to offset irrigation demand and for recharge purposes.

As noted above in the proposed finding for CCC 18.116.080(3)(b), Applicant has not provided detail regarding the source of the water (no well has been identified). In response to concerns from the public regarding groundwater impact during the original proceeding in 2008, the original applicant provided significant detail in response to those concerns. For one, it noted that it would use the “Nixon Well” for short term needs. Original Approval, pg. 44. The Nixon Well is in the Powell Butte area. Long-term water would come from Avion’s primary wells in the Bend area. Original Approval, pg. 44. As a result, the approved resort did “not draw ground water from the Powell Butte area”. Original Approval, pg. 44. Additionally, the original applicant provided documents showing from the Oregon Water Resources Department (“OWRD”) demonstrating that use of the Nixon Well was not expected to cause any interference or injury to other wells in the area. Original Approval, pg. 44. Here, Applicant has not provided the source of the water. Thus, there is no way to verify that the groundwater in the Powell Butte area will not be impacted.

Additionally, the Original Approval cited to additional analysis in the record from that the proposed source for the Original Approval draws water from the Deschutes Aquifer and not the local Powell Butte aquifer. Pg. 45. Applicant has not provided the source of the water, so it cannot be confirmed that the proposed well will draw from the Deschutes aquifer as required in the Original Approval (Condition of Approval No. 26. Applicant has not proposed any modification to Condition No. 26 to allow the source of water to draw from a different aquifer.

While Applicant’s response provides information regarding the modified resorts water needs and the use of COID irrigation water for non-potable, non-domestic use, staff does not believe Applicant has identified an adequate water facility that can reasonably serve the modified resort. Additional information regarding the source of water for domestic use is necessary to demonstrate compliance with the criterion and applicable conditions from the Original Approval.

Adequacy of Sewer Facilities:

In its Narrative (pg. B-43/44), Applicant states:

The Water and Sewer Plan demonstrates that the proposed community sewage systems can reasonably serve the proposed resort. The community sewerage systems for the project will be constructed and operated under a Water Pollution Control Facilities (“WPCF”) permit issued by the Oregon Department of Environmental Quality (“DEQ”). Collection, treatment, disposal and reuse systems will be designed in accordance with applicable state and local rules, statutes and guidelines. Total projected daily sewage flow for the project is estimated at 183,000 gallons per day, at full build-out. The sewage collection system will be built in phases corresponding to resort development. The

wastewater treatment facility will be completed in Phase 1. Surface and subsurface drip distribution/irrigation reuse systems and/or storage, and solids handling and disposal systems will be expanded per phase.

The original resort had a total projected daily sewage flow estimated at 150,000 galls per day at full build out. The modified resort estimated total projected sewage flows at 183,000 gallons per day at full build out.

Staff notes there have been concerns raised by the public regarding the adequacy of Applicant's wastewater plan. Applicant has provided an outline of a plan, though, and further review of the WPCF permit and DEQ approval will ensure compliance with applicable regulations.

Condition No. 29 in the Original Approval requires that prior to tentative plan approval for the first phase of the resort, that the applicant submit evidence to the Crook County Community Development Department that DEQ has approved the required WPCF permit. Condition #29 (as modified) states:

29. ~~Prior to tentative plan approval for the first phase of the resort~~ **Prior to FPD review**, Applicant shall submit evidence to the Crook County Planning Department documenting DEQ approval of the WPCF permit from DEQ for the resort's sewage treatment facilities.

The reason for the modification is due to the uncertainty regarding the phasing of the modified resort. This modification will ensure that the Planning Department can confirm DEQ approval before development proceeds.

With this condition, the sewer facilities plan requirement is satisfied.

(8) The development complies with other applicable standards of the county zoning ordinance.

ORIGINAL FINDING: See page 46 of the Original Approval.

PROPOSED FINDING: Applicant has proposed different access locations and changes to the location of uses shown on the previously approved Development Plan Map. Thus, Applicant must comply with the road standards in Title 17 of the Crook County Code. Due to the uncertainty of Applicant's proposed phasing, upon clarification, conditions should be adopted to ensure that the timing of the required road improvements are clear.

18.116.110 Final development plan review procedure.

(1) Following approval of the development plan, the applicant shall submit for review a final development plan that meets the requirements of CCC 18.172.040 and addresses all conditions of the development plan.

(2) The planning commission shall review a final development plan. The planning commission shall approve a final development plan if it conforms to the approved development plan and its conditions of approval.

(3) If the planning commission finds that the final development plan is materially different from the approved development plan, the applicant shall submit an amended development plan for review. "Materially different," as used in this subsection, means a change in the type, scale, location, or other characteristics of the proposed development such that findings of fact on which the original approval was based would be materially affected. Submission of an amended plan shall be considered in the same manner as the original application, except that the review of an amended plan shall be limited to aspects of the proposed development that are materially different from the approved development plan. (Ord. 216 § 2, 2009; Ord. 18 § 12.110, 2003)

ORIGINAL FINDING: See page 46 of the Original Approval.

PROPOSED FINDING: Applicant will be subject to final development plan review as required per CCC 18.116.110.

Chapter 18.160 Conditional Uses

18.160.020 General criteria.

In judging whether or not a conditional use proposal shall be approved or denied, the planning director or planning commission shall weigh the proposal's appropriateness and desirability or the public convenience or necessity to be served against any adverse conditions that would result from authorizing the particular development at the location proposed and, to approve such use, shall find that the following criteria are either met, can be met by observance of conditions, or are not applicable:

- 1. The proposal will be consistent with the comprehensive plan and the objectives of the zoning ordinance and other applicable policies and regulations of the county.*
- 2. Taking into account location, size, design and operation characteristics, the proposal will have minimal adverse impact on then(a) livability, (b) value and (c) appropriate development of abutting properties and the surrounding area compared to the impact of development that is permitted outright.*
- 3. The location and design of the site and structures for the proposal will be as attractive as the nature of the use and its setting warrant.*
- 4. The proposal will preserve assets of particular interest to the county.*
- 5. The applicant has a bona fide intent and capability to develop and use the land as proposed and has some appropriate purpose for submitting the proposal, and is not motivated solely by such purposes as the alteration of property values for speculative purposes.*

ORIGINAL FINDING: See page 46-48 of the Original Approval.

PROPOSED FINDING: At the time the Original Approval was made, the subject property was governed by CCC 18.24, which specifically linked destination resorts on EFU-3 to these conditional use criteria. Upon adoption of the model code, Crook County now governs all of its EFU zones under CCC 18.16. This chapter does not provide a link to the conditional use criteria. Accordingly, staff does not believe that these criteria apply at this time to destination resort. CCC 18.172.100(3) states in regard to modifications, “[t]he hearing on the decision, which is subject to revocation or modification, is subject only to either the standards, criteria and conditions that were applicable when the original permit was issued or in effect at the time of the revocation or modification, whichever is less restrictive.” Thus, since the less restrictive standards apply, as between the standards in place at the time of the original approval or now, staff believes that the conditional use criteria do not apply to the modification request.

V. Conclusion

Based on the record to date, staff does not believe there is adequate evidence to approve the request for the reasons stated in this report.

Conditions of Approval

If the Planning Commission finds the criteria are met, staff recommends the development plan for the Crossing Trails Resort be subject to the following conditions of approval, most of which were adopted with the Original Approval. Staff has tried to keep the same numberings from the Original Approval. Proposed modifications to the conditions are shown below (deletions with ~~strike thrus~~ and additions in **bold**. When reference is made to “Applicant,” the reference includes Applicant’s successors and assigns:

1. The resort shall contain a restaurant and meeting rooms with seating for a minimum of 100 people.
 - a. The minimum required eating and meeting facilities shall be constructed or guaranteed through surety bonding or equivalent financial assurance prior to the sale of individual lots.
 - b. The eating and meeting facilities shall be oriented toward the needs of resort visitors rather than area residents.
2. The number of ~~lots~~ **units** approved for residential sale, **including long term rentals**, shall not be more than two lots for each unit of permanent overnight lodging, as that term is defined in Statewide Planning Goal 8, ORS 197.435(5), and CCC 18.116.030(5).
 - a. Applicant shall document compliance with this ratio **to the Crook County Community Development Department annually beginning on the first anniversary after the first-long term lease is entered for a vacation villa.**
 - b. Pursuant to this development plan approval, the applicant may provide a maximum of ~~500~~ 400 single family lots and ~~250~~ 200 overnight lodging units to meet the ratio. ~~Multiple overnight lodging units may be provided as “lock-off units” or “keys” within a single dwelling or structure.~~

3. The resort shall contain a minimum of 150 rentable units for overnight lodging, oriented toward the needs of visitors rather than area residents. (CCC 18.116.040(3)).
 - a. The minimum 150 units of overnight lodging must be constructed within five years of the initial lot sales **or units**. (CCC 18.116.040(c)).
 - b. At least 50 units of overnight lodging must actually be constructed prior to the closure of sale of individual lots or units. (ORS 197.445(4)(b)). Applicant shall construct these units during the first phase of development. An additional 25 units shall be constructed or guaranteed through surety bonding or other equivalent financial assurance prior to the closure of sale of individual lots or units. (CCC 18.116.050(a)(i)).
 - c. After the construction of the first 50 overnight lodging units, the remaining 100 overnight lodging units required to meet the statutory minimum of 150 units must be constructed or guaranteed through surety bonding or equivalent financial assurance within five years of the initial lot **or unit** sales. (CCC 18.116.050(3)(c)).
 - d. After the initial 50 overnight lodging units are constructed, the remaining shall be provided subject to deed restrictions that limit their use to overnight lodging units. The deed restrictions may be rescinded when the resort has constructed 150 units of permanent overnight lodging as required by this subsection.**
 - e. If Applicant guaranteed the construction of any of the required 150 units through surety bonding or other equivalent financial assurance, these overnight lodging units must be constructed within four years of the date of the execution of the surety bond or other equivalent financial assurance. (ORS 197.445(b)(F)).
4. All developed recreational facilities and visitor-oriented accommodations required to serve a particular phase shall be constructed or guaranteed through surety bonding or equivalent financial assurances prior to closure of sale of individual lots or units in that phase.
5. Applicant shall invest a minimum of **\$14,348,331 (in 2022 dollars)** ~~10,225,329 (in 2008 dollars)~~ for developed recreational facilities and visitor-oriented accommodations, exclusive of costs for land, sewer and water facilities, and roads. At least **\$4,782,729 (in 2022 dollars)** ~~\$3,408,443 (in 2008 dollars)~~ shall be spent on developed recreational facilities. The minimum spending requirements shall be increased to present day dollars at the time of the approval of the bond for the subject improvements, based upon the United States Consumer Price Index. The recreational facilities may include, but shall not be limited to, those listed in App. Ex. 8. ("Crossing Trails Destination Resort Development Plan Recreational Uses").
- ~~6. Casitas and "lock offs" shall be at least 400 square feet and shall include a self-contained bath. Any such units shall have a kitchenette, including a sink for food preparation (in addition to the bathroom sink); either a microwave oven or a hot plate; and a refrigerator. The cost to construct~~

~~such overnight lodging shall not be counted toward the investment requirement in CCC 18.116.050(4) for the development of recreational amenities.~~

7. Commercial uses within the resort shall generally be limited to the categories of uses listed in CCC 18.116.070(8) and App. Ex. 9, which is attached to the development plan application. All commercial uses shall be internal to the resort, limited to the types and levels of use necessary to meet the needs of resort visitors, and oriented towards guests rather than the general public.
8. Applicant shall present the ~~final~~ **draft** CC&Rs ~~prior to approval of the tentative plan for the first phase of the resort.~~ **During FDP review.**
9. The ~~final~~ CC&Rs shall expressly restrict all uses to those allowed by CCC 18.116.060 and 18.116.070.
10. Over 50 percent of the resort site ~~including the area devoted to golf course uses, but~~ excluding yards, streets and parking areas, shall be maintained as open space throughout the life of the resort. Compliance with this standard shall be **affirmed during FDP review and then continuously documented annually until the resort is completely built out.**
 - a. The resort shall maintain compliance with the open space standard ~~pursuant to the Open Space Management Plan attached to the development plan application as App. Ex. 15~~ **as depicted on the Development Plan (Sheet C100).**
 - b. The CC&Rs shall provide that, at all times, at least 50 percent of the property shall be designated as open space, and make that requirement a covenant and equitable servitude, which cannot be amended without the consent of the County, which runs with the land in perpetuity, and which is for the benefit of all of the property initially included in or annexed to the resort, each homeowner, the declarant, the homeowners' association, and any of the golf clubs developed on the property, as well as the County. Any of these individuals or entities may enforce the covenant and equitable servitude.
 - c. The CC&Rs shall make clear that the open space designated in the ~~Open Space~~ Development Plan, as finalized in the FDP, is the open space that is protected by the CC&Rs.
 - d. All deeds conveying all or some of the resort property shall include a restriction specifying that the property is subject to the provisions of the resort FDP and the CC&Rs and noting that the FDP and CC&Rs contain a delineation of open space areas which shall be maintained as open space areas in perpetuity.
11. ~~Unless modified during the FDP approval process, the~~ The dimensional standards applicable to lots and structures within the resort shall be the standards attached to the development plan

~~application as App. Ex. 18.~~ **established by the planning commission during final development plan review.**

12. Compliance with setback requirements shall be documented during ~~each phase of subdivision or~~ site plan review.
13. The resort's CC&Rs shall mandate the use of fully or partially shielded outdoor light fixtures to ensure that light rays emitted by the fixtures are generally projected below the horizontal plane.
14. The resort shall maintain perimeter livestock fencing around the entire resort boundary. Applicant may install the fence in segments, concurrent with development of each phase abutting the exterior property boundary. To the degree necessary to prevent livestock from entering the resort property, Applicant shall construct and/or install cattle control devices at entrances to the resort. Applicant shall coordinate the fence design with ODPW to ensure that the fence is "wildlife friendly" where appropriate.
15. Applicant and individual property owners in the resort shall execute and record in the County deed records a waiver of remonstrance agreeing that they and their successors will not now or in the future complain about any accepted agricultural practices on the EPU-3 properties immediately adjacent to the resort. At the time of closure of sale ~~or unit~~ of each individually-owned residential lot or unit, the buyer shall execute and record the waiver of remonstrance in the County deed records.
16. Applicant and individual property owners shall execute and record in the County deed records a waiver of remonstrance agreeing that they and their successors will not now or in the future complain about any authorized wildlife damage control activities conducted within the resort or on properties immediately adjacent to the resort boundaries. The waiver of remonstrance may be in a form substantially similar to the "Declaration of Covenant for Waiver of Remonstrance Crossing Trails," which is Exhibit D to the draft Crossing Trails Resort Wildlife Mitigation Plan, dated July 31, 2008. At the time of closure of sale of each individually-owned residential lot or unit, the buyer shall execute and record the waiver of remonstrance in the County deed records.
17. Prior to FDP approval, Applicant shall submit a plan for approval by the Commission that includes the following mitigation measures, as detailed in the Andrews Agricultural Impact Study: (a) Coordinate with landowners in the replacement of fences in a fashion that will fully restore livestock grazing capacity; (b) In cases where the resort development disrupts water availability to grazing cattle, assist in providing access as needed; (c) Conduct a weed survey prior to construction and control any identified weed infestations prior to construction to minimize the possible spread through normal construction activities; (d) Educate residents and guests to respect accepted farming practices in the area; and (e) Implement "dark sky" measures to control potential light pollution.
18. Prior to FDP approval, Applicant shall submit a plan for approval by the Commission that provides for visual buffering of the resort from adjacent residences through the use of appropriate, varied

vegetation. The plan shall detail the height, width and density of such vegetation to ensure year-round screening.

19. The resort shall apply water during periods of construction to minimize dust impacts on any surrounding properties and/or agricultural activities.
- ~~20. The resort shall adhere to applicable EPA and ODA pesticide rules to minimize potential spray drift from the golf course.~~
21. Applicant shall design all site drainage plans consistent with the Erosion Control and Stormwater Management Program, attached to the development plan as App. Ex. 21, or as amended following consultation with the Crook County Planning Department.
22. Prior to FDP approval, Applicant shall enter into an MOU with the County that requires Applicant to implement the on-site mitigation measures described (at R 332-36) in the Crossing Trails Wildlife Mitigation Plan dated July 31, 2008 **(in the Original Approval)**. The MOU shall provide that prior to recordation of the plat for Phase 1 of resort development, Applicant shall (a) contribute \$110,000 to an appropriate third-party agency for the benefit of wildlife habitat, located in Crook County if possible, to pay private contractors to implement the off-site mitigation described in the Wildlife Mitigation Plan (R 337-39); and (b) contribute an additional \$40,000 to the agency listed in (a) to maintain ongoing mitigation measures indefinitely.
23. Prior to recordation of the final plat for the first phase of the resort, Applicant shall submit documentation of the final plans for solid waste collection, recycling, and/or disposal to the Crook County Planning Department. Recycling programs shall include, but not be limited to, paper, glass, and plastics. Solid waste shall be collected by a hauler and disposed of in the Crook County Landfill.
24. If Applicant proposes development in the floodplain of the COID waterway or on slopes greater than 25 percent, Applicant shall, prior to tentative plan approval of individual phases in the resort, file with the County a geotechnical report that demonstrates adequate soil stability and implements mitigation measures designed to mitigate adverse environmental effects.
25. If any wetlands are discovered on the property, Applicant shall mitigate for the loss of wetlands through enhancement of the remaining wetlands (if any) or the creation of new wetlands at a different location.
26. Potable/domestic water shall be provided by Avion or another commercial water company drawing from the Deschutes Regional Aquifer.
27. Applicant shall document compliance with the Noxious Weed Plan, which is attached to the development plan application as App. Ex. 19, on an annual basis by submitting a written report to the Crook County Weed Master.
28. Prior to tentative plan approval for the first phase of the resort, Applicant shall submit a Conceptual Visual Impact Mitigation Plan. The Plan shall be completed in consultation with a

licensed landscape architect. Applicant shall incorporate the Plan into the resort CC&Rs to ensure compliance with the following Planting and Building Materials Guidelines:

a. Planting Guidelines:

- i. The Planting Guidelines shall require each applicant for a building permit to identify the vegetation to be retained within the subject lot;
- ii. The Planting Guidelines shall contain a planting list identifying the acceptable plants for use on each individual lot and within the open space tracts to provide supplementary screening and aesthetic benefits;
- iii. The plant species on the planting list shall be native species with low water needs, appropriate soil characteristics screening potential, and suitability to the resort site;
- iv. Applicant's CC&Rs and/or Design Guidelines shall establish an Architectural Review Committee (ARC) process to implement the planting guidelines on each lot at the time of building permit review, and within open space tracts.

b. Building Materials Guidelines: The Building Materials Guidelines shall include a list/palette of building materials intended to blend with the natural environment. This list shall require applicants for building permits to use the following types of materials to minimize visual impacts:

- i. Downward or shielded outdoor lights; and
- ii. Facade materials that reflect the natural environment: wood, muted colors, non reflective materials, etc.

29. ~~Prior to tentative plan approval for the first phase of the resort~~ **Prior to FPD review**, Applicant shall submit evidence to the Crook County Planning Department documenting DEQ approval of the WPCF permit from DEQ for the resort's sewage treatment facilities.

30. All new utilities shall be installed underground with the exception of overhead electrical transmission lines, which may remain above-ground.

31. If Applicant elects to extract and process aggregate materials on-site to support the infrastructure needs of the resort, Applicant shall not exceed the scope of what CCC 18.24.010(12) allows. Applicant shall depict the location of the extraction/processing operation on the FDP, either at the time of FDP issuance or through an FDP amendment. Applicant shall also gain all necessary local and state permits necessary to allow the extraction and processing to occur. Under no circumstances may Applicant export aggregate materials from the site for sale or commercial or industrial purposes.

32. Prior to tentative plan approval for each phase of resort development, Applicant shall submit a detailed depiction of the final location and size of all roads and trails within a phase to the Crook County Planning Department and its consulting engineering firm.
33. Primary and secondary resort access points to the resort shall be located on SW Wiley Road, which borders the subject property to the south. An additional access point, for emergency access only, shall be located on SW Parrish Lane. Traffic to Prineville, which is to the east, and Bend/Redmond, which are to the west, are expected to use Highway 126. Applicant shall obtain County road access permits from the County Roadmaster prior to FDP approval.
34. All minor street approaches intersecting with the primary roadways within the resort shall be stop sign or roundabout controlled.
35. As required by ODOT, Applicant shall provide the improvements to Reif Road/Highway 126, Highway 126/SW Wiley Road and Highway 126/SW Parrish Lane listed in Table 3 of OTAK's July 1, 2008 letter to the County (R 566). The improvements to Highway 126/SW Parrish Lane shall be as detailed in ODOT's July 29, 2008, letter (R 248) addressed to Jeffrey Fuchs at Bussard Williams and the attachments to that letter. Prior to FDP approval, Applicant shall complete a MOU with ODOT to establish the timing of these improvements.
36. Prior to FDP approval, Applicant shall complete an MOU with the County and ODOT to facilitate contributions for its proportional share (\$454,950, in 2008 dollars) of funding for the traffic facility improvements (other than those addressed by Condition 35) listed by the County's agent, OTAK, in Table 3 of OTAK's July 1, 2008, letter to the County (R 566). Such contributions shall be guaranteed through bonding or equivalent financial assurances at the time of recordation of the Phase I plat. Payment shall be paid no later than three years after recordation of the Phase 1 plat.
37. Prior to FDP approval, Applicant shall enter into an MOU with the County requiring Applicant to pay the actual cost to improve (a) affected portions of SW Parrish Lane from Highway 126 to the north boundary of the subject property adjoining SW Parrish Lane; and (b) affected portions of SW Wiley Road from its intersection with SW Parrish Lane to Highway 126. Such improvements, to be within the existing right-of-way, shall include overlays, shoulders, two canal bridges on SW Parrish Lane and one canal bridge on SW Wiley Road. The improvements shall be built to any governing jurisdictional standards so that they can adequately serve the proposed development and existing adjacent uses. Timing for such improvements shall be as stated in the MOU.
38. The County Road Department shall monitor pavement conditions on affected portions of SW Parrish Lane and SW Wiley Road prior to construction of the improvements required by Condition 37. If the monitoring reveals, as determined by the County Road Department, that the existing pavement index falls below "60" prior to construction of these improvements, Applicant shall conduct interim repairs, including repairs as necessary to the two existing bridges on SW Parrish Lane and the one bridge on SW Wiley Road, to meet reasonable safety standards as determined by the Crook County Road Department. Applicant shall not be required to repair damage to any road that is caused by third parties, beyond normal wear and tear.
39. If Crook County adopts a systems development charge ("SDC") ordinance or similar mechanism, Applicant shall be exempt from or eligible for credit or reimbursement under the ordinance if: (1)


the ordinance requires Applicant to pay SDC s for an improvement that Applicant is already required to contribute to pursuant to the conditions of this decision, and (2) the subject improvement is listed on the County's Capital Improvement Program ("CIP").

40. Cash obligations upon which a development is conditioned shall be paid in full prior to the approval of the final development plan or prior to recordation of the first phase plat. If bonding or other suitable financial assurances are used to guarantee ultimate payment of any obligations, then these shall be in a form approved by Crook County Counsel and the Crook County Court and drawn on a bonding agent or other source which is acceptable to the Crook County Court. The Court may, at any time, require additional bonding or assurances or a change in the bonding agent or other guarantor as the Court may reasonably determine is necessary to ensure that the County's interest in ensuring completion of the financially-assured elements is protected. If Applicant fails to make a required cash payment or to maintain the level or form of financial assurances required by the Court, the County may enjoin further development or revoke the conditional use permit. In the event that the Court believes at any time that Applicant is in default, the Court shall give Applicant 120 days' written notice and an opportunity to cure the default to the satisfaction of the Court prior to enforcement action by the County.
41. As stated in Condition 3(b), at least 50 units of overnight lodging, as defined in ORS 197.435(5) and as further described in this decision, shall be constructed prior to the sale of any individual lots or units. Prior to approving the sale of lots or units, the County shall certify in writing that the required overnight lodging has been constructed. To be effective, such certification shall be approved by the County Court.
42. Release of bonds or other financial securitization shall be at the sole discretion of the Crook County Court. Bonds or other financial securitization may be reduced in proportion to the amount required to ensure that the work remaining to be completed, but no bonds or securitization shall be released without a finding by the court that the remaining bond or financial securitization is adequate to secure all additional construction anticipated by the conditional use permit and not yet completed.
43. The Court may at any time require an increase in the level of bonding or financial securitization in order to ensure sufficiency of resources to undertake anticipated construction in light of changing construction costs.
44. No plats for individual phases shall be recorded, no construction of overnight units or infrastructure shall commence nor shall the sale of individual lots occur prior to the execution of Memoranda of Understanding related to transportation facilities and wildlife mitigation and any other conditions requiring said memoranda, except as approved by the County Court. Failure to abide by this condition may result in County enforcement action.
45. All utilities placed in county road rights of way shall be installed at the direction of the county road master only upon issuance of a right of way permit. No installation of utilities shall render the use of county roads impassable by the public except by written permission of the road master, and road master shall determine in issuing any such permission that no other feasible and reasonably affordable option exists for the installation of such utilities other than to inconvenience the public

by rendering the roads impassable for a time certain. When permission is granted to render a road impassable, it shall be only for the minimum time necessary to complete installation.

46. **The proposed park models to be used as overnight lodging units shall be converted to residential structures and meet the R-1 standard in the Oregon Structural Specialty Code. Other park models to be used a vacation villas or other residential units (not used as overnight lodging units), shall be converted to residential structures and meet the applicable standard in the Oregon Structural Specialty Code.**
47. **Applicant shall comply with all applicable legal and permitting requirements to the extent any structures are constructed in areas impacted by the floodplain.**
48. **Applicant is required by state and local to codes to reduce and prevent wildfire dangers**
49. **Applicant shall submit for review as part of its FDP review, a wildfire mitigation plan.**
50. **Applicant shall construct a water supply system with minimum fire protection flow rates of 1,000 gallons per minute in residential areas and 1,500 gallons per minute in commercial areas.**
51. **Applicant shall install large diameter water mains, the final diameter to be confirmed as adequate by Crook County Fire & Rescue, in the residential (including workforce housing) and commercial areas to provide adequate fire protection.**
52. **The CC&Rs will require fire resistant roofing material and defensible space around all structured.**
53. **The CC&Rs will require disturbed areas to be restored with landscaping, native bunchgrass, or other native vegetation.**

Prepared by:


Will Van Vactor, Director
Crook County Community Development Department

The Applicant's submittal is available by contacting the Crook County Planning Department.