CROOK COUNTY WORK SESSION

Administration Conference Room
203 NE Court Street, Prineville, OR

Tuesday April 12, 2022 at 9 a.m.

Members of the public and media are welcome to attend in person with social distancing or via WebEx 1-408-418-9388**; Access Code:** 2557 624 5694
Meeting Password: 37qgD2rbpy2

	Requester	Discussion Matter	Packet Docs
1	Will VanVactor Randy Davis	Community Development Update	✓
2	Eric Blaine	Consider Approval of MOU with City for Justice Center Sewer Re-Routing Costs	✓
3	Eric Blaine	Bar Complaint Defense for Deputy DA's	✓
4	Eric Blaine	Scheduling Hearing for Planning Commission Appeal, Brasada Ranch Phase 15, Appeal Record #217-22-000451-PLNG	✓
5	Eric Blaine	Review Statutory Procedure for Consideration of Road Vacation Petition, SW Springfield Street. Consider Direction to Road Master to Draft Report	✓

	Requester	Executive Discussion Matter	Packet Docs
Exec #1		ORS 192.660(2)(e) For the purpose of conducting deliberations with persons designated by the governing body to negotiate **real property transactions**	✓

Items placed on the Work Session agenda are intended for discussion only, without making decisions or finalizing documents unless an emergency exists.

**The Court may add additional items arising too late to be part of this Agenda. Agenda items may be rearranged to make the best use of time.*
**The meeting location is accessible to persons with disabilities. If additional accommodations are required, please submit your request 48 hours prior to the meeting by contacting County Administration at 541-447-6555.*

Requests to be placed on the Work Session agenda are due by 5 p.m. the Thursday before the Work Session

Community Development Department

Mailing: 300 NE Third St. RM 12, Prineville, OR 97754 □ Phone: 541-447-3211

MEMO

TO: Crook County Court

FROM: Will Van Vactor, Director
Randy Davis, Building Official

DATE: April 7, 2022

SUBJECT: Community Development Activity Update

Below is a summary of building, planning and onsite activity for the last month.

Building:

Permits issued summary (March):

Permit Type	Number of Permits
New Residential Dwellings (Site Built or Manufactured)	24
Commercial (plumbing, electrical structural, etc.)	47
Residential Permits (plumbing, electrical, structural etc.)	135
Residential Structural (shops, etc.)	29
Other (e.g. demo)	1
TOTAL	**236**

Current year compared to prior year:

Time Frame	Permits
March 2022	236
March 2021	254
YTD 2022	562
YTD Comparison 2021	644

Currently Under Construction:

CCO3 Data Center
CCO5&6 Data Center
Apple Data Center
Apartments on Peters Road
Shell Occupancy of Portions of Prineville Campus
Extraction Facility at Prineville Campus
Wild Ride Brewing
3 Commercial Structures at Tom McCall Industrial Park

Currently Under Review or Incoming:

PRN1 Retro Fit
Apple Data Center Phase 2 (other half of the building)
2 New Commercial Shell Occupancy Buildings in the Tom McCall Industrial Park
Wilco Building at Ochoco Lumber Site
Mid Oregon Credit Union Tenant Improvement
Kahos Coffee at Prineville Campus
Storage Unit Complex on Lamonta Road
New Developer applying for 28 new homes

Daily Inspections:

Inspection Type	**Amount this month**
Residential	1001
Commercial	372
All	1373

Active Permits:

Inspection Type	**Amount Still Active as of end of March**
Dwellings (Site Built or Manufactured)	289
Residential Structural	230
Commercial Structural	97

Planning:

Applications received (March):

Application Type	Number of Applications (March 2022)	YTD
Variance	0	1
Site Plan Review	27	73
Land Partition	8	11
Road Approach	5	19
Boundary Line Adjustment	1	3
Destination Resort	0	1
Conditional Use	4	9
Miscellaneous	1	6
Road Name/Rename	1	1
Appeals	1	1
Extension	1	1
Amendment	0	1
TOTAL	**49**	**127**

Current year compared to prior year:

Time Frame	Permits
March 2022	49
March 2021	65
YTD 2022	127
YTD Comparison 2021	142

Notable Land Use Applications:

Request	Status
Solar (Powell East, 320 Acres)	Pending
Conditional Use to Operate Aggregate Pit (Knife River)	CUP denied by Planning Commission; appeal period pending
Solar (TSR North)	Appeal scheduled for May 2022
Brasada Phase 15	Appeal application of Brasada Phase 15 received, scheduling hearing with Court.
Destination Resort Modification (Crossing Trails)	Received January 26, 2022, staff reviewing for completeness
Solar Modification (Empire)	Received February 7, 2022; staff reviewing for completeness

On-Site:

Applications (March 2022):

Application Type	Number of Applications
Residential Authorization	2
Construction Permit (Residential)	11
Repair (Major) - Residential	3
Repair (Minor) - Residential	4
Repair (Major) - Commercial	0
Residential Site Evaluation	5
Commercial Site Evaluation	0
Alteration (Minor) – Residential	1
TOTAL	26

Current year compared to prior year:

	Permits
March 2022	26
March 2021	38
YTD 2022	75
YTD Comparison 2021	102

On-Site Notes:

ATT Operation and Yearly Maintenance Reports collected
Upcoming Crossing Trails Community Sewer Treatment Evaluations
Weather held up some permit, now able to move forward again
Cleaned up many compliance issues

Notable City Applications:

Request	Status
New Multi-Family Development	328 apartment units, Madras Hwy; hearing scheduled for April 19 (tentatively)

MEMORANDUM OF UNDERSTANDING
Crook County Justice Center
Sewer Line Cost-Sharing MOU

This Memorandum of Understanding ("MOU") is made by and between the City of Prineville ("City"), an Oregon municipal corporation, and Crook County, a political subdivision of the State of Oregon ("County"). Collectively, City and County may be referred to as Parties, or individually as a Party.

RECITALS

A. *Whereas*, County, in collaboration with the State of Oregon (which is not a party to this MOU), is developing a new facility for the location of a circuit court, law enforcement, public defenders' office, District Attorney, and related services (the "Justice Center") on property located within the jurisdiction of the City at a location commonly known as 260 SW 2nd Street, Prineville, Oregon. The Justice Center development site is bisected by a City sewer line and associated equipment and easement(s); and

B. *Whereas*, to complete the construction of the Justice Center, the City's sewer line and associated equipment require to be re-routed, and the easement(s) bisecting the property require termination. The decommissioning of the existing utilities, the re-routing and installation of the new utilities, and termination of the easement(s), is herein defined as "the Sewer Work;" and

C. *Whereas*, the Prineville City Council has authorized $30,000.00 to assist in the completion of the Sewer Work; and

D. *Whereas*, the City sought bids for the completion of the Sewer Work. The lowest responsive bid received from a responsible bidder was $65,752.50; and

E. *Whereas*, the City and County wish to proceed with the engagement of a qualified contractor to complete the Sewer Work, and to share the costs, as described herein.

AGREEMENT

Now, therefore, in consideration of the mutual covenants contained in this MOU, the sufficiency of which is acknowledged, the Parties agree as follows:

1. Incorporation of Recitals: The above Recitals are incorporated into and made a part of this MOU, as terms of contract and not mere recitals.

2. Effective Date/Duration: This MOU becomes effective on the date when signed by both Parties. Unless sooner terminated as described herein, this MOU will continue in effect until March 30, 2024.

3. Transference of Funds: Within five (5) working days after the Effective Date, County will remit to the City the sum of $35,752.50.

4. City Responsibilities: As soon as reasonably practicable after receipt from County of the sum of $35,752.50, and subject to the requirements of Oregon and City of Prineville public contracting laws, the City shall procure and contract with qualified, responsible contractor(s) to undertake and complete the Sewer Work. The Sewer Work will be completed not later than June 1, 2022.

5. Cooperation After Execution: The Parties will reasonably cooperate with each other in furtherance of this MOU, provided, however, that the City's financial contribution will not exceed $30,000.00, and County will not be required to contract with any third party for the completion of the Sewer Work.

6. Termination: For material cause, either Party may terminate this MOU upon sixty (60) days' prior written notice to the other Party, provided that, if the Party receiving the notice of termination should cure the material breach within thirty (30) days of receipt, the MOU will continue in full force and effect. Termination or expiration of this MOU will not prejudice any right or claim which accrues prior to such termination or expiration.

7. Headings: Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

8. Assignment: Neither this MOU nor any of the rights granted by this MOU may be assigned or transferred by either Party. Notwithstanding the foregoing, the City will engage the services of contractor(s) for some or all of the Sewer Work, provided, however, that the City will remain responsible to County for the completion thereof.

9. Binding Effect: The terms of this MOU shall be binding upon and inure to the benefit of each of the Parties and each of their respective administrators, agents, representatives, successors, and assigns.

10. Agency and Partnership: Neither Party is, by virtue of this MOU, a partner or joint venturer with the other Party and neither Party shall have any obligation with respect to the other Party's debts or liabilities of whatever kind or nature.

11. Indemnification:

a. To the extent permitted by Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, City shall defend, save, hold harmless, and indemnify County and its officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature resulting from or

arising out of, or relating to the activities of City or its officers, employees, contractors, or agents under this MOU.

b. To the extent permitted by Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, County shall defend, save, hold harmless, and indemnify City and its officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature resulting from or arising out of, or relating to the activities of County or its officers, employees, contractors, or agents under this MOU.

c. Neither party shall be liable to the other for any incidental or consequential damages arising out of or related to this MOU. Neither party shall be liable for any damages of any sort arising solely from the termination of this MOU or any part hereof in accordance with its terms.

12. Non-Discrimination: Each Party agrees that no person shall, on the grounds of race, color, creed, national origin, sex, marital status, age, or sexual orientation, suffer discrimination in the performance of this MOU when employed by either Party. Each Party agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Section V of the Rehabilitation Act of 1973 as amended, and all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Additionally, each Party shall comply with the Americans with Disabilities Act of 1990 as amended, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

13. Attorney fees: In the event an action, lawsuit, or proceeding, including appeal therefrom, is brought for failure to observe any of the terms of this MOU, each Party shall bear its own attorney fees, expenses, costs, and disbursements for said action, lawsuit, proceeding, or appeal.

14. No Waiver of Claims: The failure of either Party to enforce any provision of this MOU shall not constitute a waiver by that Party of that provision or of any other provision of this MOU.

15. Severability: Should any provision or provisions of this MOU be construed by a court of competent jurisdiction to be void, invalid, or unenforceable, such construction shall affect only the provision or provisions so construed, and shall not affect, impair, or invalidate any of the other provisions of this MOU which shall remain in full force and effect.

16. Applicable Law: This MOU shall be governed by and interpreted in accordance with the laws of the State of Oregon, with venue reserved for the Circuit Court of Crook County.

17. Entire MOU: This MOU constitutes the entire agreement between the Parties concerning the subject matter hereof, and supersedes any and all prior or

contemporaneous agreements or understandings between the Parties, if any, whether written or oral, concerning the subject matter of this MOU which are not fully expressed herein. This MOU may not be modified or amended except by a writing signed by both Parties.

18. Time of the Essence: Time is of the essence of this MOU.

19. Counterparts: This MOU may be executed in one or more counterparts, including electronically transmitted counterparts, which when taken together shall constitute one and the same original. Facsimiles and electronic transmittals of the signed document shall be binding as though they were an original of such signed document.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Understanding as of the Effective Date described above:

For City of Prineville	**For Crook County**
_____ Signature	_____ Signature
_____ Print Name	_____ Print Name
_____ Title	_____ Title
_____ Date	_____ Date

Crook County Counsel's Office

267 NE 2nd St., Ste 200• Prineville, Oregon 97754 • (541) 416-3919 • FAX (541) 447-6705

For Work Session
April 12, 2022

MEMO

TO: Crook County Court

FROM: Crook County Legal Counsel's Office

DATE: April 7, 2022

RE: Defense of Bar complaints as part of employee compensation
Our File No.: *County Counsel Misc. D*

While working on the office budget for Fiscal Year 22/23, District Attorney Kari Hathorn has been seeking costs for insurance to defend deputy district attorneys from the expenses associated with defending against Bar complaints. The good news is that Prineville Insurance has advised me that under the County's current CIS insurance coverage, up to $7,500.00 is available to defend a complaint against a County employee, and that this would include Bar complaints. Meanwhile, a related matter has resurfaced regarding the interplay of an employer-provided defense and the views of the Oregon Government Ethics Commission.

As more fully explained below, it is my recommendation that the County adopt a policy describing when it would decide to extend defense for Bar complaints, and formally state that such a defense is part of the compensation paid to the employee.[1] This will help prevent the employee from facing a separate complaint to OGEC for violating ORS 244.040(1).

Below is my reasoning:

The Oregon State Bar is the professional organization for all attorneys in the state, and is responsible for issuing and enforcing the Oregon Rules of Professional Conduct. The purpose of these rules is to describe how attorneys may ethically practice law and to help prevent abuse of clients. In the case of attorneys which work for public agencies, these ethics rules are separate from, and in addition to, the public official ethics rules described in ORS Chapter 244 and related authorities. That is, behavior which may not be unethical under one regime could be unethical under the other.

If someone feels that he or she has been treated unethically by an attorney, that individual can file a complaint with the Oregon State Bar.[2] The Bar's "Client Assistance Office" will conduct a review to determine whether they believe the

[1] Or, alternatively, a policy describing how expenses related to defense would be reimbursed.
[2] The Bar may also initiate an investigation on its own, though that is comparatively rare.

complaint alleges a violation of the Rules of Professional Conduct. If the complaint is sufficient to state an allegation, the CAO will ask for a response by the subject attorney. After reviewing the correspondence from the attorney and the complainant, the CAO may close their file, or refer the complaint to the Bar's Disciplinary Counsel's Office for further investigation. If the DCO feels that there is a sufficient basis, they will prosecute the attorney before a Disciplinary Board.

If the disciplinary process concludes that the Rules of Professional Conduct has been violated, the Bar can order a suspension from the practice of law for months or years, or even disbarment. While such a suspension is in effect, a deputy DA would not be able to practice law, appear at trials, make motions, or otherwise perform essential job duties.

When a public employee is alleged to have committed a *tort*, and the alleged tort arose out of the course and scope of official duties, under ORS 30.285 the public employer is required to indemnify and defend that employee. In the case of deputy district attorneys, under ORS 30.285(7) the State will provide that indemnity and defense despite the DDAs being employees of counties.

It is my understanding that the Oregon Department of Justice takes the position that any Bar complaints directed towards DDAs are not covered under the requirements of ORS 30.285(7), because whatever consequences may follow, a Bar complaint is not a tort.

Meanwhile, the Oregon Government Ethics Commission issued an advisory opinion in 2012 regarding the interplay of Oregon public employee ethics rules and the defense of Bar complaints. The question was whether the Attorney General's office would violate Oregon ethics laws if it provided defense to the Bar complaint. OGEC determined that receipt of such funds would not be unethical where:

- The Attorney General has wide latitude to appear in proceedings.
- The decision whether to provide or pay for representation lies with the State, rather than the individual employee.
- The decision of whether to provide the benefit is not made by the individual who receives the benefit, and is "based on the interests of the state."

While finding that the payment for Bar complaint representation under these circumstances is not a violation of ORS 244.040(1),[3] the advisory opinion nevertheless states that "the Commission would encourage DOJ to revise internal policies regarding the [employee's] compensation and reimbursement of expenses to [...] provide more explicit direction regarding any payments or repayments." In short, OGEC states that

[3] That statute reads in relevant part: "Except as provided in subsection (2) of this section, a public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official […] if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office."

employers should make the provision of such defense a part of the employee's compensation. Employee compensation is explicitly deemed ethical under ORS 244.040(2).

Prineville Insurance has advised me that Crook County's insurance coverage through CIS includes a coverage amount of $7,500.00 for complaints made against a public official, separate from the usual policy limits for torts. However, I have not found any formal statement by the County that such coverage, or anything more that the County decides to provide, would be considered employee compensation.

In order to help fend off spurious ethics complaints, especially while the COVID backlog of cases is being addressed, it may be prudent for the County to adopt a formal declaration and policy.

Attached to this memo are examples from Deschutes County, and, if there is interest, additional examples could be obtained. Deschutes County is a self-insured county, rather than being covered under a CIS policy. Their policy describes the option for reimbursing expenses rather than paying for defense itself. Under ORS 244.040(2), such a reimbursement would also be ethical.

Please let me know if you have any questions.

PROFESSIONAL LICENSURE BOARD COMPLAINTS

Statement of Policy

It shall be the policy of the Deschutes County Legal Department (County Legal) to consider, on a case-by-case basis, whether to provide employees with reimbursement for representation costs associated with complaints, investigations or other actions involving boards or other entities regulating professional licensure or certification. For a request for reimbursement to be considered by County Legal, the complaint, investigation or other action must arise out of activities/conduct undertaken by the employee while acting in the course and scope of employment.

Applicability

This policy applies to employees of County Legal who operate pursuant to professional licensure/certification standards.

General

County Legal is not legally obligated to defend employees with regard to professional licensure or certification complaints, investigations or other actions. However, in certain instances, County Legal will consider providing on-going reimbursement of costs incurred by employees with regard to complaints, investigations or other actions involving boards or other entities regulating professional licensure or certification where the subject activities/conduct was undertaken by the employee while acting in the course and scope of his/her employment with County Legal.

Process

If an employee plans to request reimbursement from County Legal with regard to a complaint, investigation or other action involving boards or other entities regulating the employee's professional licensure or certification, the employee shall, at the earliest opportunity, but no later than 120 days after receiving notice of the underlying complaint, investigation or other action, notify his/her immediate supervisor. Thereafter, the employee shall cooperate fully with the supervisor such that the supervisor and the employee may jointly prepare a formal written request for reimbursement. The written request will summarize the relevant information and will include an assessment by the supervisor as to the merits, if any, of the complaint, investigation or other action. The written request will be sent to the Deschutes County Legal Counsel for review and decision. Deschutes County Legal Counsel will then make a written decision on whether or not to approve the request for reimbursement, and identify applicable conditions/limitations. The decision of the Legal Counsel shall be final. Should a complaint investigation or other action be made against Legal Counsel him/herself, the same procedure will apply, but the review shall by performed by the Deschutes County District Attorney. In that case, the decision of the District Attorney shall be final.

Dated: 9/23/19

David Doyle
Legal Counsel

BAR COMPLAINT LEGAL REPRESENTATION POLICY

Statement of Policy

It shall be the policy of the Deschutes County District Attorney's Office to consider, on a case-by-case basis, whether to provide employees with reimbursement for representation costs associated with complaints, investigations or other actions involving the Oregon State Bar Association. For a request for reimbursement to be considered by the Deschutes County District Attorney, the complaint, investigation or other action must arise out of activities/conduct undertaken by the employee while acting in the course and scope of employment and in a manner consistent with DCDA Procedures and Policies.

Applicability

This policy applies to employees of the Deschutes County District Attorney's Office who operate pursuant to professional licensure/certification standards. This policy only applies to bar complaints that are not covered by the District Attorney's bar complaint insurance policy.

General

The Deschutes County District Attorney's Office is not legally obligated to defend employees with regard to professional licensure or certification complaints, investigations or other actions. However, in certain instances, the Deschutes County District Attorney will consider providing on-going reimbursement of costs incurred by employees with regard to complaints, investigations or other actions involving the Oregon State Bar Association where the subject activities/conduct was undertaken by the employee while acting in the course and scope of his/her employment with the Deschutes County District Attorney's Office.

Process

If an employee plans to request reimbursement from the Deschutes County District Attorney with regard to a complaint, investigation or other action involving boards or other entities regulating the employee's professional licensure or certification, the employee shall, at the earliest opportunity, but no later than 120 days after receiving notice of the underlying complaint, investigation or other action, notify his/her immediate supervisor. Thereafter, the employee shall cooperate fully with the supervisor such that the supervisor and the employee may jointly prepare a formal written request for reimbursement. The written request will summarize the relevant information and will include an assessment by the supervisor as to the merits, if any, of the complaint, investigation or other action. The written request will be sent to the District Attorney for review and decision. The District Attorney will then make a written decision on whether or not to approve the request for reimbursement, and identify applicable conditions/limitations. The decision of the District Attorney shall be final.

Reimbursement Cap

If the District Attorney approves the request for reimbursement the maximum amount that will be reimbursed is $15,000.

Approved this 12th day of June, 2018

John Hummel
District Attorney

Crook County Counsel's Office

267 NE 2nd St., Ste 200• Prineville, Oregon 97754 • (541) 416-3919 • FAX (541) 447-6705

For Work Session
April 12, 2022

MEMO

TO: Crook County Court

FROM: Crook County Legal Counsel's Office

DATE: April 7, 2022

RE: Scheduling a hearing for Brasada Ranch Phase 15 appeal
 # 217-22-000451-PLNG
Our File No.: Planning # 73(31)

The County Court has received an appeal filed on behalf of the BR Community Coalition, challenging the approval of Phase 15 of the Brasada Ranch Destination resort.

The matter before the County Court today is limited to only setting a date, time, and place for the hearing. The merits of the appeal would be discussed at that hearing.

Under Crook County Code 18.172.110(10), the County must hold the hearing within sixty calendar days from receipt of the appeal notice. The notice was received on Tuesday, March 29. Sixty days thereafter is Saturday, May 28. The closest regular County Court meeting before that time is Wednesday, May 18.

The setting of the hearing date will also set the date by which the parties would submit documents, and establish the deadline for certain administrative actions to be performed by the County. For instance, notice of the date and time for the hearing must be issued at least 10 days before the hearing.

Once the County Court sets the date, time, and place, staff will prepare the necessary notices to the parties and the general public.

Appeal Record # 217-22-000451-PLNG

Original **RECORD # 217 - 21 - 001013 -PLNG**

Planning Commission: $250
County Court: $2050.00 + 20% of initial application fee (deposit)
Actual costs with deposit required at time of appeal submission

Crook County

MAR 29 2022

Community Development

Crook County Community Development/ Planning Division
300 NE 3rd Street, Room 12, Prineville Oregon 97754
Phone: 541-447-3211
plan@co.crook.or.us
www.co.crook.or.us

APPEAL PETITION TO PLANNING COMMISSION or COUNTY COURT

Appellant Information

Name: BR Community Coalition

Mailing Address: c/o Megan K. Burgess, Peterkin Burgess, 222 NW Irving Avenue

City: Bend State: OR Zip: 97703

Day-time phone: (541) 389 - 2572 Cell Phone: (_____) _____-_____

Email: mburgess@peterkinburgess.com

If group, name of representative: Megan K. Burgess, Attorney

Land Use Application Being Appealed: (file number) 217-21-001013-PLNG

Property Description:

Township 16 South Range 14 East WM Section 26 Tax lot(s) 02805 – part 1614000002805

Township 16 South Range 14 East WM Section 26 Tax lot(s) 02806 – part 1614000002806

Appellant's Signature: [signature] Date: 3/29/22

I/We, the undersigned, wish to appeal the decision made by the Crook County Planning Commission regarding application no. 217-21-001013-PLNG, that a final decision was made on the 17th day of March, 2022.

EVERY NOTICE OF APPEAL SHALL INCLUDE:

1. The appeal shall be in writing and shall contain:
   a. Name, signature, and address of the appellant(s).
   b. Reference to the application title and case number, if any;
2. A statement of the nature of the decision:
   a. A statement of the specific grounds for the appeal, setting forth the error(s) and the basis of the error(s) sought to be reviewed: and
   b. A statement as to the appellant's standing to appeal as an affected party.

3. Proper filing fee in accordance with Section 18.172.050.
4. If the decision appealed from is a decision made without a hearing or without notice to area property owners, written notice of appeal must be filed within twelve (12) calendar days of the date written notice of the decision is mailed to those entitled to such notice. With respect to all other appeals, written notice of appeal must be filed within 10 calendar days of the date written notice of the decision is mailed to those entitled to decision. If the last day of the appeal period falls on a Saturday, Sunday or legal holiday, the notice of appeal is due on the next business day.
5. An appeal shall be filed:
    a. With the County Court for appeals from final decisions by the Planning Commission;
    b. With the Planning Commission for appeals from final decisions by the Planning Director or Planning Department staff; and
    c. Shall cite the specific "Zoning Ordinance Section" and "Comprehensive Plan Policies" alleged to be violated.

The Notice of Appeal must include the items listed above. Failure to complete all of the above will render an appeal invalid. Any additional comments should be included on the Notice of Appeal.

TRANSCRIPT: The appellant must provide a copy of the transcript of the proceedings (at the appellants' expense) appealed to the County Planning Department not less than seven (7) calendar days before the hearing date set by the County Court or Planning Commission.

SCOPE AND STANDARD OF REVIEW OF APPEAL: An appeal to the County Court is not a new hearing; it is a review of the decision. Subject to the exception in paragraph (6) below, the review of the final decision shall be confined to the record of the proceeding below, which shall include, if applicable:

1. All material, pleadings, memoranda, stipulations, and motions submitted by any party to the proceeding and received by the Commission or Court as evidence.

2. All material submitted by Crook County Staff with respect to the application.

3. The transcript of the Planning Commission hearing(s).

4. The written final decision of the Commission and the petition of appeal.

5. Argument (without introduction of new or additional evidence) by parties or their Legal representative.

6. The appellate body may, at its option, admit additional testimony and other evidence from an interested party or party of record to supplement the record of prior proceedings. The record may be supplemented by order of the appellate body upon written motion by a party. The written motion shall set forth with particularity, the basis for such request and the nature of the evidence sought to be introduced. Prior to supplementing the record, the appellant body shall provide an opportunity for all parties to be heard on the matter. The appellate body

may grant the motion upon a finding that the supplement is necessary to take into consideration the inconvenience of locating the evidence at the time of initial hearing, with such inconvenience not being the result of negligence or dilatory act by the moving party.

An appeal from the Planning Director or Planning Department staff to Planning Commission shall be de novo; meaning that the burden of proof remains with the applicant and that new testimony and evidence, together with the existing Planning Department file, may be received at the hearing on the appeal.

STANDARD OF REVIEW ON APPEAL: The burden of proof remains with the applicant. The burden is not met by merely showing that the appellate body might decide the issue differently.

APPELLATE DECISION: Following the hearing of the appeal, the appellate body may affirm, overrule, or modify the Planning Commission's final decision.

This appeal is made pursuant to Section 18.172.110 of the Crook County Code. The required fee has been received by the Crook County Planning Department as the filing fee for this appeal.

I / We are appealing the decision for the following reasons: (be specific)

See Attached Letter

Name (print)	**Signature**	**Address**
Jeff Ramirez Member/Authorized Representative		16324 SW Brasada Ranch Rd Powell Butte, OR 97753

(If additional space is needed attach another sheet)

Each party that authorizes the "Representative" to speak on their behalf must submit a letter stating so, which is signed, dated, and attached to this appeal.

RE: Appeal Petition
Record No. 217-21-001013-PLNG

To Whom It May Concern:

I, Jeff Ramirez, member and authorized representative of BR Community Coalition, appellant in the above-referenced matter, hereby authorize Megan K. Burgess and/or Michael W. Peterkin or Peterkin Burgess to speak, submit written documentation, or otherwise appear on behalf of BR Community Coalition on behalf of its members regarding the above matter.

March 28, 2022

Jeff Ramirez, Member/Authorized Representative
BR Community Coalition

Date

Jeff Ramirez
16324 SW Brasada Ranch Road
Powell Butte, OR 97753

PETERKIN BURGESS
ATTORNEYS AT LAW

March 29, 2022

Via Hand Delivery to:

Crook County Community Development/Planning Division
Attn: Crook County Court
300 NE 3rd Street
Prineville, OR 97754

Via Email to: plan@co.crook.or.us

Re: Appeal of Planning Commission Decision
Brasada Ranch Subdivision Phase 15
File Number: 217-21-001013-PLNG

Dear Crook County Court:

As you know this office represents BR Community Coalition, a nonprofit corporation presently consisting of 18 residential lot owners in Brasada Ranch. The BR Community Coalition was organized for the mutual benefit of its members. This letter is submitted in support of the BR Community Coalition's appeal to the County Court for the above-referenced file and Planning Commission Decision dated March 17, 2022 (the "Decision").

BR Community Coalition requests a public hearing by the County Court under CCC 18.172.110 (2). BR Community Coalition has standing to appeal the Decision pursuant to CCC 18.172.110 (6) because it provided written comments to the Planning Commission.

As you know from the March 9, 2022, letter and attachments from this office submitted into the record (Ex. 4), the BR Community Coalition is primarily concerned about trail systems in Brasada Ranch. The Applicant FNF NV Brasada, LLC is recently constructing a paved trail system in Brasada Ranch that was not shown on final plat maps or is partly outside the trail easements shown on the Phase 2 plat map. The existence, location, use, and surface of a trail within Brasada Ranch are material factors weighed when consumers buy a Brasada Ranch lot, when designing their homes, when receiving Design Review Committee approval, and when landscaping their lots. Only platted trail easements afford purchasers adequate notice of the future existence of a trail.

In the case of Phase 15 that is the subject of this Appeal, a specific condition of approval is necessary to ensure the Applicant shows trails on final plats. Such a requirement is mandatory to comply with the final Development Plan, Improvement Agreement, Destination Resort Overlay Zone, prior approvals, and Crook County Code.

The Development Plan and Final Development Plan (C-CU-DES-001-03) are both referenced and specifically incorporated into the Decision. Decision, § I (Background); § III (Findings of Fact) (17.16.020 Required findings for approval) ("Finding: The resort's Final Development Plan approval addressed compatibility with the surrounding area." "As the development of the resort has progressed, the Applicant has demonstrated compliance with each of the 33 approval conditions, ensuring compatibility with the area surrounding the project site."). The Decision is not accurate because the Applicant has not "demonstrated compliance" with the extensive approval conditions in the Final Development Plan, particularly Condition of Approval No. 15, which states:

> **"15. The applicant shall provide a detailed depiction of the final location, surfacing, and size of all trails within a phase prior to preliminary plat approval for each phase of resort development."**

In its Burden of Proof Statement for Phase 15, the Applicant specifically addressed and made representations concerning its "Compliance with the Destination Resort Development Plan Conditions of Approval". Burden of Proof, § II. Regarding trails, the Applicant quoted the above specific condition and then represented:

> "FNF NV BRASADA LLC considers trails and paths an important amenity for destination resort development and has designed a significant network of trails. FNF NV BRASADA LLC is currently in the process of further enhancing the trail network within the core area of the resort and in the vicinity of the recently platted phases 13 and 14. The remaining undeveloped areas of the resort, including Phase 15, have been preliminarily reviewed and laid out a potential future trail network. Exhibit B is included as part of this burden of proof to illustrate compliance with this section of code."

Applicant's statement does not meet the condition of approval that the final location, surfacing and size of all trails must be shown prior to preliminary plat approval. Applicant must be required to comply with its past development commitments and the County's past conditions of approval. Final trails and trail easements must be shown and specified on final subdivision plats.

The previously approved final Development Plan, which was fully incorporated by reference into the Decision, should be reviewed in detail on appeal to hold Applicant

accountable to its development commitments and conditions of approval that remain almost two decades into the development of Brasada Ranch. *See*, Decision, p. 11 ("Finding: The applicant has provided tentative plan drawings, a burden of proof statement and incorporates, by reference, the previously approved Development Plan, all in accordance with CCC 17.16.010.")

The Development Plan conditions of approval requires Applicant to depict <u>final</u> location of trails prior to plat approval for each phase. The March 19, 2003 application for Brasada Ranch Crook County approval states: "The Applicant proposes to construct a network of walking, biking, and equestrian trails throughout the resort property. The contemplated location of such trails is set forth on the Development Plan Map. However, the trails on the Development Plan Map are conceptual in nature and are subject to modification as each phase of the resort develops. **The final location, surfacing, and size of the trails will be depicted on future subdivision plats.**" (Emphasis added).

CCC 17.20.050 (9) requires easements to be depicted on the final plat. CCC 17.20.060 (8)(a) requires additional information to be submitted with the final plat, including specific information concerning the width and location of sidewalks. The Decision allows Applicant to meet the requirements related to sidewalks with its trail system. *See* Decision, p. 28-29. The "Finding" related to sidewalks states:

> As part of the original development plan, the destination resort was approved for a trail system through the entire development. The initial conceptual plans have been formalized through each subsequent subdivision phase, and a proposed trail map was submitted with phase 15 application.
>
> * * *
>
> These alternative pedestrian routes are proposed instead of sidewalks through the proposed phase, which is in accordance with the above criterion.

BR Community Coalition objects to the above finding in that the trail system has not been "formalized" through each subdivision phase as required. The only way to "formalize" the trails in each phase and ensure compliance with conditions of approval that remain from the original Development Plan and Final Development Plan is to modify the Decision to make it clear that as a specific condition of approval Applicant must show the final location, surfacing, and size of trails on final subdivision plats. Formalizing the trail system should have been achieved by platting the trail easements and building the trail system at subdivision construction just like sidewalks in other subdivisions.

Current owners in Brasada Ranch, including the BR Community Coalition members, want to preserve their property values, their privacy, and their security, all of which

are being adversely affected by the Applicant's current trail building that is occurring on land platted about 15 years prior. Future buyers should have proper notice about the existence and location of trail easements when making purchase decisions.

Development standards for Brasada Ranch as a destination resort requires that prior to closure of lot sales in each phase, "developed recreational facilities" either "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." CCC 18.116.040 (4). "Developed recreational facilities" includes "nature trails".

On or about April 14, 2005, Brasada Ranch, Inc. signed the Improvement Agreement with Crook County (Recorded in the official records of Crook County April 22, 2005, No. 2005-199244). The Improvement Agreement was and is intended to ensure the Development Plan requirements were carried out and included the specific conditions of approval. *See* Improvement Agreement, Ex. A, pp. 38-46 listing conditions of approval including No. 15 related to trails. The Crook County final approval in C-CU-DES-001-03 was incorporated as Exhibit "A" into the Improvement Agreement. It required: "**The final location, surfacing, and size of the trails shall be depicted on future subdivision plats**." Improvement Agreement, Ex. A, p. 15.

The Decision recognizes in other places the requirement that the Applicant submit detailed information on final trails. *See*, for example, Page 23 regarding CCC 17.36.030 "Subdivision ways and public roads" (quoting from the final development plan approval and stating it "applies to the proposed phase". "A system of foot, bicycle, electric cart, and horse trails to be constructed within Phase I, and connected to those in later phases in the future. The submitted plan shows general locations of trails, **but detailed information on trails required by the preliminary conditions of approval** has not yet been submitted.") (Emphasis added).

The Coalition respectfully requests that the County Court modify the Decision and specifically condition final plat approval by requiring Applicant to comply with its Improvement Agreement and Development Plan by specifying trail easements and depicting the final location, surfacing, and size of any trail within Brasada Ranch on the final subdivision plats. This ensures compliance with prior and continuing conditions of approval, appropriately protecting current and future owners in Brasada Ranch.

Separately, and with regard to overnight lodging units, the Coalition shares Mr. Anderson's concerns (Ex. 2 in the record) and requests the County Court consider this issue carefully on appeal. The Applicant's response (identified as Ex. 3, but marked Ex. 4), is not an accurate summary of the Court of Appeals decision in *Central Oregon Landwatch vs. Deschutes County*, 285 Or App 267 (2017). A copy of that opinion is attached for your reference. That case is relevant because in it the Court of Appeals

announced the proper interpretation of ORS 197.435(5)(b). That interpretation applies whether the issue is in Crook County or Deschutes County. The case is of significance because it recognized that whether units qualify as "overnight lodging" under either clause of the statute is not a theoretical question and analysis, but a factual one that must be demonstrated. *Id* at 294.

The Coalition contests the representation by Applicant's agent that "the overnight lodging units are owned by the resort." The Coalition understands that at least some units are individually owned and that requires a different analysis under ORS 197.435 (5)(b). As the Court of Appeals said

> Thus, under this construction of the definition for "overnight lodgings," a unit generally can qualify in one of two ways: either as (1) separately rentable accommodations that are not available for residential use, or (2) as individually owned units that are available for overnight rental use by the general public for at least 38 weeks per calendar year through a central reservation system operated by the destination resort or by a real estate property manager..."

Id at 290-91.

CCC 18.116.030 (5) largely tracks the statute and contains a 45 weeks per calendar year requirement with respect to any individually owned units. The Decision should be modified to include a condition of approval requiring Applicant to submit evidence of the overnight lodging units so the specific, separate analysis under the first and second sentences of ORS 197.435 (5)(b) can be undertaken and properly analyzed. The Coalition contests the current condition that the Applicant provide a "map to the planning department illustrating and depicting the number of residential lots and overnight lodging units within the destination resort" is sufficient. Decision, p. 33. The Decision should be modified so the Applicant is required to submit evidence sufficient to enable the planning department to determine whether and which overnight lodging units qualify under either the first or second sentence of ORS 197.435 (5)(b) as interpreted by the Oregon Court of Appeals, and CCC 18.116.030 (5). For example, Applicant should be required to provide information sufficient to establish ownership of the overnight lodging units. Secondly, if units are individually owned, evidence must be submitted to establish they meet the criteria of the second sentence on a factual basis (i.e., that they are in fact 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).

Further, ORS 197.4145(9) requires the developer to provide an annual accounting to document compliance with the overnight lodging standards. The Court of Appeals noted this indicates that "compliance with the overnight lodging is an ongoing factual determination". It is important to verify the type and number of qualifying overnight

lodging units as that directly impacts the number of additional units required with Phase 15, and necessary bonding requirements. CCC 18.116.040 (4). Further, this analysis ensures that Brasada Ranch meets the standards set forth in CCC 18.116.040 as a Destination Resort with sufficient overnight lodging.

Modifying the Decision in the manner requested will ensure the Applicant/Developer complies with the conditions and standards set years ago, and for the remainder of development in Brasada Ranch. Brasada Ranch has become an integral part of Crook County. Owners in Brasada Ranch want to ensure the Developer is held to the required conditions, approvals, development and improvement agreements, Crook County Code and Oregon law. Doing so ensures predictability and consistency for owners and future buyers alike.

Sincerely,

Megan K. Burgess
Encl. as stated
cc: Client

285 Or.App. 267
Court of Appeals of Oregon.

CENTRAL OREGON LANDWATCH, Respondent Cross-Petitioner,
v.
DESCHUTES COUNTY, Respondent,
and
Pine Forest Development, LLC, Petitioner Cross-Respondent.

A163908
|
Argued and submitted February 16, 2017.
|
May 3, 2017

Synopsis
Background: Developer of expansion to destination resort petitioned for judicial review, and objector cross-petitioned for judicial review, of the Land Use Board of Appeals' (LUBA) decision that concluded that expansion was allowed, but that cabins' individual bedrooms did not qualify as overnight lodgings.

Holdings: The Court of Appeals, Lagesen, J., held that:

[1] expansion of a destination resort is statutorily allowed;

[2] argument that bedrooms did not qualify as overnight lodgings was not collateral attack on prior decisions;

[3] term "individually owned units," within the definition of "overnight lodgings," means units not owned by the resort;

[4] bedrooms were not separately rentable accommodations that were unavailable for residential use;

[5] bedrooms were not functionally same as dormitory rooms, and thus were not categorically excluded from being counted as "overnight lodgings;" and

[6] for preexisting units to be considered overnight lodgings there must be some evidence that units are in fact separate and rentable separately.

Affirmed in part, reversed in part, and remanded.

West Headnotes (10)

[1] Zoning and Planning Decisions of boards or officers in general

In reviewing the Land Use Board of Appeals' (LUBA) interpretation of statutes for legal error, the appellate court is obligated to interpret those statutory provisions correctly, regardless of the parties' assertions of statutory

interpretation.

7 Cases that cite this headnote

[2] **Zoning and Planning** Hotels, lodging, and short-term rentals

The relevant destination resort statutes allow for the expansion of a destination resort, provided that the entire proposed development, the existing resort and the expansion area, meets the statutory criteria for a destination resort. Or. Rev. Stat. §§ 197.445, 197.465(3).

[3] **Zoning and Planning** Effect of determination in general; res judicata and collateral estoppel

Argument that cabins' bedrooms did not qualify as "overnight lodgings," for purposes of satisfying statutory criteria for proposed expansion of destination resort, was not an impermissible collateral attack on county's prior land use decisions approving original resort that counted bedrooms as overnight lodgings; expansion was required to meet criteria as entirely new development, and developer sought to count bedrooms as lodging units to satisfy criteria for proposed development for purposes of what was a new and different proposal. Or. Rev. Stat. § 197.445.

[4] **Zoning and Planning** Hotels, lodging, and short-term rentals

The term "individually owned units," within the definition of "overnight lodgings" in a statute stating the requirements of a destination resort, means units not owned by the resort, rather than units that are separately owned or capable of separate ownership. Or. Rev. Stat. §§ 197.435(5)(b), 197.445(4)(a, b).

[5] **Zoning and Planning** Hotels, lodging, and short-term rentals

Units generally can qualify as "overnight lodgings," for purposes of a destination resort's statutory requirements, in one of two ways: either as (1) separately rentable accommodations that are not available for residential use, or (2) as individually owned units that are available for overnight rental use by the general public for at least 38 weeks per calendar year through a central reservation system operated by the destination resort or by a real estate property manager, unless the unit is one of the types of lodging expressly excluded from the definition of overnight lodgings. Or. Rev. Stat. §§ 197.435(5)(b), 696.010.

[6] **Zoning and Planning** Hotels, lodging, and short-term rentals

Cabins' individual bedrooms, which had individual bathrooms and lockable inside and outside entrances, did not qualify as "overnight lodgings" by way of being separately rentable accommodations that were not available for residential use, as defined in statutory requirements of destination resorts; bedrooms were in single-family homes that were available for residential use.

[7] **Zoning and Planning** Hotels, lodging, and short-term rentals

Cabins' individual bedrooms, which had individual bathrooms and lockable inside and outside entrances, were not functionally same as dormitory rooms, and thus were not categorically excluded from being counted as "overnight lodgings," as defined in statutory requirements of destination resorts; even though there may have been some physical similarities between bedrooms and dormitory rooms, bedrooms were located in single-family vacation home, and there was little in common between well-appointed luxury vacation homes and what would commonly be understood as a dormitory. Or. Rev. Stat. § 197.435(5)(b).

[8] **Zoning and Planning** Hotels, lodging, and short-term rentals

"Overnight lodgings," for purposes of meeting the destination resort criteria, must be separate, rentable units. Or. Rev. Stat. §§ 197.435(5)(b), 197.445(4).

[9] **Zoning and Planning** Hotels, lodging, and short-term rentals

Individually owned units, to qualify as "overnight lodgings" for purposes of meeting the destination resort criteria, must be, as a factual matter, an accommodation that is both its own "separate" unit that is rentable separately from other units. Or. Rev. Stat. § 197.435(5)(b).

[10] **Zoning and Planning** Hotels, lodging, and short-term rentals

Where a developer proposes an expanded destination resort that is based, in part, on existing lodgings, for an existing individually owned unit to count as "overnight lodgings" based on being available for overnight rental for at least 38 weeks per calendar year, there must be evidence that the unit is in fact separate and rentable separately from other units; it is not enough that the unit is theoretically separate and separately rentable, particularly when there is affirmative evidence the claimed separate unit of lodging is, in reality, neither separate nor separately rentable. Or.

Rev. Stat. § 197.435(5)(b).

**970 Land Use Board of Appeals, 2016065

Attorneys and Law Firms

Steven Hultberg, Bend and Seth King, Portland, argued the cause for petitioner-cross-respondent. With them on the briefs were Radler White Parks & Alexander LLP; and Robert L. Aldisert, and Perkins Coie LLP.

David Doyle filed the brief for respondent.

Paul D. Dewey, Bend, argued the cause and filed the brief for respondent-cross-petitioner.

Before Ortega, Presiding Judge, and Egan, Judge, and Lagesen, Judge.

Opinion

LAGESEN, J.

*269 Petitioner Pine Forest Development, LLC (Pine Forest) seeks judicial review, and respondent Central Oregon LandWatch (LandWatch) cross-petitions for review, of an order of the Land Use Board of Appeals (LUBA) that remands to respondent Deschutes County (the county)[1] its decision approving Pine Forest's proposal to expand the Caldera Springs destination resort. The resort was approved in 2006 under the destination-resort land use statutes, ORS 197.435 to 197.467, which were promulgated in accordance with Statewide Planning Goal 8. Pine Forest raises two assignments of error, arguing that (1) LUBA's order was an impermissible collateral attack on prior county decisions concerning the resort and (2) LUBA erred in concluding that certain individual bedrooms in 38 of the resort's vacation homes—which we shall refer to as the "lock-off rooms"—which have full bathrooms and lockable interior and exterior doors, are not overnight lodging units, as defined in ORS 197.435(5)(b), for purposes of meeting the criteria for a destination resort under ORS 197.445(4)(b). LandWatch, in its cross-petition, contends that an expansion of a destination resort is not allowed under ORS 197.445 unless the proposed expansion area meets all of the criteria as a stand-alone resort and that LUBA erred in concluding otherwise.

On review to determine whether LUBA's order is unlawful in substance, ORS 197.850(9)(a), we conclude that LUBA correctly determined that ORS 197.445 does not prohibit the approval of a proposed expansion of a destination resort provided either that the proposed expanded resort, as a whole, satisfies all applicable statutory requirements for the siting of a destination report, or the expanded area, *270 on its own, meets all applicable requirements. We therefore affirm on the cross-petition. As to LUBA's conclusion that that the lock-off rooms do not qualify as overnight lodging under ORS 197.435(5)(b), we agree with Pine Forest that LUBA misconstrued the statute in reaching that conclusion. We disagree, however, with Pine Forest's assertion that the lock-off rooms qualify as "overnight lodgings" as a matter of law under a correct interpretation of the statute and, for that reason, remand to LUBA to consider the matter in the first instance. We therefore reverse and remand on the petition.

I. BACKGROUND AND PROCEDURAL HISTORY

A. *Legal Framework*

To provide context, we first summarize the state and local law applicable to the siting of a destination resort in Deschutes County. Statewide Planning Goal 8 speaks to the siting of destination resorts in Oregon. The purpose of Goal 8 is to " 'satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts' " without ****971** the need for an exception to the resource goals if certain criteria are met. *Friends of Marion County v. Marion County*, 233 Or.App. 488, 494-95, 227 P.3d 198 (2010) (quoting Goal 8).

To implement Goal 8's objectives regarding the siting of destination resorts, the legislature enacted ORS 197.435 through 197.467. Those statutes set forth the criteria that a proposed resort must meet to be approved as a destination resort. The statutes define a destination resort as "a self-contained development that provides for visitor-oriented accommodations and developed recreational facilities in a setting with high natural amenities." ORS 197.445. Further, the legislature has found that destination resorts are intended "to promote Oregon as a vacation destination and to encourage tourism as a valuable segment of our state's economy," that Oregon has "a growing need to provide year-round destination resort accommodations to attract visitors and encourage them to stay longer," and that it is a "difficult and costly process to site and establish destination resorts in rural areas of this state." ORS 197.440.

***271** For destination resorts sited in "eastern Oregon," [2] ORS 197.445 sets forth a number of criteria for "proposed developments." A proposed development must have at least 160 acres with half of the site reserved for permanent open space and must include a $7 million expenditure[3] on recreational facilities and visitor-oriented accommodations. Residential homes can be included in a destination resort, but the resort must have at least 150 overnight lodging units and the ratio of residential homes to overnight lodging units cannot exceed 2.5 to 1. ORS 197.445(4)(b)(A), (E). Under ORS 197.435(5)(b), "overnight lodgings" for destination resorts located in eastern Oregon are defined as:

> "permanent, separately rentable accommodations that are not available for residential use, including hotel or motel rooms, 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 38 weeks per calendar year through a central reservation system operated by the destination resort or by a real estate property manager, as defined in ORS 696.010. Tent sites, recreational vehicle parks, manufactured dwellings, dormitory rooms and similar accommodations do not qualify as overnight lodgings for the purpose of this definition."

Deschutes County, in turn, has enacted its own ordinances to govern the approval of destination resorts proposed to be sited in the county. Pertinent to the issues in this proceeding, Deschutes County Code (DCC) 18.113.025[4] ***272** authorizes the county to approve an expansion of an existing resort if either (1) the proposed expanded resort, viewed as a whole, satisfies the criteria for approval as a destination resort; or (2) the expanded portion, standing alone, meets the criteria for approval as a destination resort.

B. *The Proposed Expansion of the Caldera Springs Destination Resort*

We turn to the particulars of this case. In 2006, the county approved the conceptual master plan (CMP) for the Caldera Springs destination resort on 390 acres of land south of Bend and adjacent to the Sun River destination ****972** resort. Caldera Springs includes 320 single-family residential homesites. The resort also includes 38 of what the resort calls "Caldera Cabins," each of which are privately owned by individuals or entities other than the resort. Each cabin is a three, four, or five bedroom single-family residence that has an added feature—namely, each bedroom has a full bathroom as well as lockable inside and outside entrances. These rooms are referred to as "lock-off rooms." Caldera Springs relies on these cabins, or rather each of the cabin's lock-off rooms, to satisfy the requirement under ORS 197.445(4)(b) that a destination resort must provide at least 150 "overnight lodging" units.

After its initial approval, the resort purchased adjacent land from the United States Forest Service—614 acres of forest land consisting of lodgepole and ponderosa pines and typical high desert understory plants—zoned as forest and subject to overlay zones for wildlife area (for deer migration) and destination resorts. In 2015, Pine Forest submitted an application to the county under DCC 18.113.025 to modify the Caldera CMP to include an expansion of the resort onto the 614 acres. Of the

614 acres, the proposed expansion would apportion 490 acres (125 acres would remain undeveloped for deer migration) to accommodate up to 395 new single-family houses, which would bring the number of single-family houses in the resort to a total of 715. Also proposed was an increase to change the ratio of residential units to overnight lodgings units from 2:1 to 2.5:1, as allowed by ORS 197.445(4)(b)(E). To satisfy its obligation to provide the required number of overnight lodging units, Pine Forest proposed to construct an additional 95 overnight lodging ***273** units, also employing the Caldera Cabin model—individually owned homes with three to five lock-off rooms. Pine Forest did not attempt to demonstrate that the expanded portion of the resort, on its own, would meet the criteria to be approved as a destination resort. Instead, as contemplated by DCC 18.113.025(B), Pine Forest sought to demonstrate that the proposed expanded development, as a whole, would meet the criteria to be approved as a destination resort.

The county hearings officer held several hearings regarding the proposed expansion. LandWatch, in opposition to the proposed development, argued that the Caldera Cabins were merely 38 luxury homes and, therefore, could not be counted as 152 overnight lodging units for purposes of the requirements of ORS 197.445. In particular, LandWatch asserted that the lock-off rooms contained in the Caldera Cabins could not be counted as separate overnight lodging units for purposes of determining whether the proposed expanded resort met the requirements of ORS 197.445. LandWatch submitted an annual report prepared by the resort in 2014 in compliance with ORS 197.445(9) demonstrating that, for that year, none of the lock-off rooms had been separately rented.[5]

The hearings officer ultimately determined that Pine Forest's application should be approved, but expressed skepticism about the extent to which the lock-off rooms met Pine Forest's overnight lodgings obligations. The hearings officer found that the annual report

> ***274** "proves the point that at least in that year each of the 'cabins' was rented in total, and there was not even one instance in which a single bedroom was rented separately from the rest of the home.[6] [LandWatch] ****973** argues that at best these rooms should be categorized as 'dormitory rooms' which do not qualify as overnight rentable units under either ORS 197.435(5)(b) or DCC 18.113.060."

The hearings officer also found that there

> "is no dispute that the units are contained within what otherwise appears to be a single family residence. The distinction is that each bedroom has a separate entrance and a separate bathroom. The applicant states that each of the rooms is separately rentable based on the reservation system. Again, the 2014 rental report shows the homes broken down by bedroom—even if all bedrooms in each home that year were always rented by one guest. This circumstance is preferred by most guests, the applicant argues."

Ultimately, the hearings officer concluded that

> "the applicant's system for making 'rentable units' available for overnight accommodation complies with DCC 18.113.060 and the definitions in 18.04.030. There is no evidence which would cause the Hearings Officer to doubt the veracity of the applicant's statements (see also the letter from Caldera Springs at Exhibit 5 of the applicant's December 25, 2015 letter) [7] or the information about the ***275** Caldera Springs website as presented by [LandWatch].[8] Caldera Springs has interpreted the state definition of '[o]vernight lodging' in a way that turns a large single family residence into a 'cabin', and a five bedroom five bath house into five 'rentable units.' With the addition of the separate entrance for each bedroom and at least the colorable claim to allowing each room to be rented individually, Caldera Springs appears to have finessed DCC 18.113.060 in a way that minimally satisfies the 150 separate rentable unit standard.
>
> "Although [LandWatch] clearly condemns the method that Caldera Springs uses for renting out the homes, there is no evidence that the Hearings Officer has been pointed to in the record that the 38 houses are really simply used as full or part time residences—which is the heart of the standards set in the destination resort statute. And, while additional evidence (such as a deliberate system of actively discouraging the separate rental of individual bedrooms, or a pricing scheme that accomplished the same result) may have swayed the Hearings Officer to find noncompliance, that evidence does not appear ****974** to be in the record. I did not visit the website to search for such evidence since it is outside the record. There also is little help in the legislative findings for ORS 197.435 which might require a conclusion that Caldera Springs's current rental system is forbidden. Consequently, the Hearings Officer finds that the application meets this criterion.

> "For all the same reasons stated above, I also find that Caldera Springs's rental system does not transform the rooms or homes into a 'dormitory.' "

***276** (Underscoring and fourth brackets in hearings officer's findings.)

LandWatch appealed the hearings officer's decision to the county's board of commissioners, which declined to hear the appeal. LandWatch then appealed to LUBA, asserting, among other arguments, that (1) the destination resort statutes do not permit the expansion of a resort; and (2) the proposed expansion did not provide for the requisite number of overnight lodging units because, in LandWatch's view, the lock-off rooms do not qualify as overnight lodgings under ORS 197.435(5)(b) and ORS 197.445. Defending the county's decision, Pine Forest argued that the applicable statutes do not prohibit the approval of the expansion of a destination resort, that the county correctly concluded that the lock-off rooms counted as overnight lodging units, and that LandWatch's argument to the contrary was an impermissible collateral attack on the county's previous approval of the Caldera Springs resort.

LUBA remanded the decision on several bases, but as relevant on review, concluded that the lock-off rooms did not qualify as overnight lodging units because they were not individually owned and were dormitory rooms. Before doing so, LUBA rejected LandWatch's contention that the destination resort statutes prohibited expansion of an existing resort and rejected Pine Forest's assertion that LandWatch's challenge to counting the lock-off rooms as overnight lodging units was an impermissible collateral attack on prior county decisions. Both parties timely petitioned for judicial review.

II. STANDARD OF REVIEW

[1]We review LUBA's order to determine whether it is unlawful in substance, ORS 197.850(9)(a), and do not substitute our judgment for that of LUBA's as to any factual issue, ORS 197.850(8).[2] In this case, the parties frame the issues on review solely as assertions that LUBA misconstrued two destination resort statutes, ORS 197.445 and ORS 197.435. We review LUBA's interpretation of those statutes for legal ***277** error, employing the methodology described in *PGE v. Bureau of Labor and Industries*, 317 Or. 606, 610-12, 859 P.2d 1143 (1993), and *State v. Gaines*, 346 Or. 160, 171-73, 206 P.3d 1042 (2009). *Trautman/Conte v. City of Eugene*, 280 Or.App. 752, 758, 383 P.3d 420 (2016) ("Because LUBA's legal conclusions involve an issue of statutory construction, we apply the principles of statutory construction set out in [*PGE* and *Gaines*]); *Zimmerman v. LCDC*, 274 Or.App. 512, 519, 361 P.3d 619 (2015) ("The 'unlawful in substance' review standard for LUBA orders under ORS 197.850(9)(a) * * * is for 'a mistaken interpretation of the applicable law.' " (Quoting *Mountain West Investment Corp. v. City of Silverton*, 175 Or.App. 556, 559, 30 P.3d 420 (2001).)). In conducting that review, we are obligated to interpret those statutory provisions correctly, regardless of the parties' assertions of statutory interpretation. *Gunderson, LLC v. City of Portland*, 352 Or. 648, 662, 290 P.3d 803 (2012) (citing *Stull v. Hoke*, 326 Or. 72, 77, 948 P.2d 722 (1997)).

III. DISCUSSION

A. *LandWatch's Cross-Petition*

We begin with the issue raised by the cross-petition—that is, whether LUBA's order is unlawful in substance because the destination resort statutes do not allow an expansion of an existing destination resort unless the expanded portion of the resort, standing alone, meets the destination resort ****975** criteria, ORS 197.445. We do so because, if LandWatch is correct as to that point, there would be no need to reach the issues raised in the petition. It is undisputed that the expanded portion of

the proposed enlarged resort does not, on its own, meet the criteria to be approved as a destination resort.

LUBA rejected LandWatch's argument, determining that

> "nothing in the goal or statute limits the maximum number of residential dwellings, overnight lodging units, recreational amenities provided by a destination resort, or the maximum size of such a resort. Further, the destination resort statute expressly contemplates that destination resorts may be approved in phases. *See* ORS 197.465(3) (requiring that in phased developments recreational amenities ***278** intended to serve a phase must be constructed prior to sales of residential units in that phase). While the Caldera resort was not initially approved as a multi-phase development, we believe that it would elevate form over substance to read the destination resort statute as allowing (1) a resort to be developed in two or more phases, but (2) prohibiting expansion of an existing resort that would offer exactly the same balance of uses and visitor-oriented accommodations that could have been approved in a multi-phase development."

On review, both parties focus on the phrase "proposed development" in ORS 197.445. That statute provides, in relevant part:

> "A destination resort is a self-contained development that provides for visitor-oriented accommodations and developed recreational facilities in a setting with high natural amenities. To qualify as a destination resort under ORS 30.947, 197.435 to 197.467, 215.213, 215.283 and 215.284,[10] a *proposed development* must meet the following standards."

(Emphasis added.) LandWatch argues that the phrase "proposed development" signals the legislature's intention that, to be approved as a destination resort, a development cannot include any parts that previously have been developed. In LandWatch's view, such existing parts are not "proposed." Pine Forest, on the other hand, generally argues that that wording does not indicate an intention to preclude proposals for expanded developments that include some portion that is already developed. Based on the context of the phrase "proposed development," we agree with Pine Forest.

As an initial matter, the "following standards" to which ORS 197.445 refers include a minimum number of acres, ORS 197.445(1), fifty percent open space, ORS 197.445(2), an expenditure of $7 million on recreational facilities and visitor-oriented accommodations, ORS 197.445(3), and that it include at least 150 overnight lodging units of ***279** overnight lodgings and a 2.5 to 1 ratio of overnight lodging units to residential units, ORS 197.445(4)(b). Significantly, as LUBA pointed out, there is no limit to a resort's size or number of overnight or residential units. Thus, to the extent LandWatch's argument is premised on the idea that the destination resort statutes are meant to restrain the size of destination resorts, the lack of any limit in the size or quantity of accommodations or residences counters that premise.

Further, other context also suggests that expansion is permitted. ORS 197.465(3) provides, in part, that, 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 through surety bonding." Although we disagree with LUBA that that provision "expressly" contemplates that destination resorts may be approved in phases—that is, phased development does not necessarily mean phased approval—the provision does provide for phased implementation. As LUBA correctly noted, the existing ****976** resort and the proposed expansion could have been approved together as a two-step development, provided it met the criteria of the destination resort statutes and the county's code provisions. Thus, we agree with LUBA's conclusion that "it would elevate form over substance to read the destination resort statute as allowing (1) a resort to be developed in two or more phrases, but (2) prohibiting expansion of an existing resort that would offer exactly the same balance of uses and visitor-oriented accommodations that could have been approved in a multi-phase development."

In arguing for a contrary conclusion, LandWatch points out that we have narrowly construed exceptions to the goals to protect the underlying resource use, *McCaw Communications, Inc. v. Marion County*, 96 Or.App. 552, 773 P.2d 779 (1989), and *Central Oregon LandWatch v. Deschutes County*, 276 Or.App. 282, 367 P.3d 560 (2016), and argues that we must apply the principle guiding those cases to the siting of destination resorts. Both *McCaw* and *Central Oregon LandWatch* are inapposite to the issue in this case: Those decisions concerned statutory exceptions, under ORS chapter 215 (or a county code analog), to lands designated for exclusive farm use. The destination resort statutes are ***280** not goal exceptions. ORS 197.450 provides, in part, that "a comprehensive plan may provide for the siting of a destination resort on rural lands *without taking an exception* to statewide planning goals relating to agricultural lands, forestlands, public facilities and services or urbanization."[11] (Emphasis added.)

[2]Accordingly, we conclude that the relevant destination resort statutes allow for the expansion of a destination resort in the manner contemplated by DCC 18.113.025(B). But such a proposal cannot be approved as a destination resort, of course, unless the proposed development satisfies the criteria for destination resorts.[12] Fulfilling the destination resort criteria is, however, of critical importance: The developer seeking to incorporate facilities, visitor-oriented accommodations, or overnight lodgings from the existing resort into the resort expansion must establish that the entire proposed development—the existing resort and the expansion area—meets the criteria set forth in ORS 197.445. LUBA said much the same thing: "A critical caveat to [permitting expansion] is that the expanded resort, *viewed as a whole*, must meet or continue to meet all applicable standards, as we understand DCC 18.113.025 to require." (Emphasis added.)

B. *Pine Forest's Petition—Impermissible Collateral Attack*

[3]Having concluded that ORS 197.445 does not bar the approval of a proposed destination resort that consists, in part, of an existing destination resort, we turn to the issues raised in Pine Forest's petition. In its first assignment of error, Pine Forest argues that LandWatch's assertion that the existing Caldera Cabin lock-off rooms cannot qualify as "overnight lodging" units for purposes of Pine ***281** Forest's proposed expanded destination resort is an impermissible collateral attack on the county's prior land use decisions approving the existing Caldera Springs resort. In Pine Forest's view, "once a land use decision is final, issues that could have been raised in an appeal of that decision are not cognizable in an appeal to LUBA from a later local land use decision."[13] Pine Forest ****977** also asserts that, because it did not specifically propose "lock-off rooms" as part of the expansion to meet its ratio of residential homes to overnight lodging units, it was error for LUBA to conclude that LandWatch could "challenge the proposed accounting of similar cabins and lock-off rooms in the expansion area."

Below, LUBA rejected Pine Forest's collateral attack argument. It explained that LandWatch was not collaterally attacking the previous approvals of the existing Caldera Springs resort, but rather was challenging whether Pine Forest's new proposal for an expanded resort met the criteria for approval:

> "While petitioner cannot in this appeal challenge the existing Caldera resort's compliance with the applicable standards, it can certainly challenge the proposed accounting of similar cabins and lock-off rooms in the expansion area. Further, because intervenor proposed to count each of the lock-off rooms contained within the 38 Caldera cabins toward the total of overnight lodging units needed to ensure that the expanded resort as a whole continues to provide the minimum 150 overnight lodging units and does not exceed the 2.5 to 1 ratio between residential dwellings and overnight lodging units, we believe petitioner can challenge that proposal, and argue that the existing Caldera lock-off rooms cannot be counted for those purposes."

(Footnote omitted.)

We agree with LUBA. We highlight our conclusion that, under ORS 197.445, the "proposed development" is the entire development, both the existing resort and the ***282** expansion area, and that the proposed development must satisfy the destination resort criteria as an entirely new development. Here, Pine Forest proposes expansion under DCC 18.113.025(B), which requires it to meet "all criteria of DCC 18.113 for the entire development (including the existing approved destination resort development and the proposed expansion area)." Pine Forest seeks to count the Caldera Cabin lock-off rooms to satisfy the criteria for the proposed development for purposes of what is a new and different proposal. Under those circumstances, LandWatch's argument is not susceptible to characterization as collateral attack; it is simply a request that Pine Forest's new proposal be reviewed for a determination as to whether the proposal, in fact, satisfies all applicable requirements.

Arguing otherwise, Pine Forest asserts that our holdings in *McKay Creek Valley Assn. v. Washington County*, 118 Or.App. 543, 848 P.2d 624, *rev. den.*, 317 Or. 272, 858 P.2d 1314 (1993), and *Marshall v. City of Yachats*, 158 Or.App. 151, 973 P.2d 374, *rev. den.*, 328 Or. 594, 987 P.2d 514 (1999), stand for the proposition that this court "has rejected the argument that later decisions require a reexamination of the legality of earlier approvals, finding instead that a redetermination is necessary only if expressly required by the local code."

Pine Forest is wrong. In *McKay*, the petitioners challenged an application to build a dwelling on a "lot or parcel" under a

local ordinance, arguing that the "lot or parcel" did not qualify as such because it was unlawfully created. 118 Or.App. at 545-46, 848 P.2d 624. We concluded that it was unnecessary to answer the question of whether the proposed development was a lawfully created parcel because the county ordinance did not expressly make the legality of the lot or parcel an approval criterion for the application to build a dwelling. *Id.* at 548, 848 P.2d 624. In *Marshall*, citing *McKay*, we concluded that, in the absence of a requirement that the city's legislation required a legal lot of record as a prerequisite to granting a dwelling permit, challenging the legality of the lot was inconsequential to our review of the city's permitting decision. 158 Or.App. at 157, 973 P.2d 374. Neither case, however, aids Pine Forest because the challenge to the proposed development does not hinge on whether the Caldera Cabins were lawfully created, and, more importantly, the entire proposed development must ***283** satisfy the express destination resort criteria set out in ORS 197.445, 285 Or. App. at 280, 396 P.3d at 976.[14]

****978** As to Pine Forest's assertion that it did not rely on additional lock-off rooms in the proposed expansion to satisfy the overnight lodging unit requirements, that assertion is belied by the hearings officer's findings that Pine Forest "anticipates" that the 96 overnight lodging units will be located on the expansion property and that those overnight lodging units will "match the Cadera Cabin model" of the existing resort. For those reasons, we reject Pine Forest's first assignment of error.

C. *Pine Forest's Petition—Overnight Lodgings*

In the alternative to its "collateral attack" argument, in its second assignment of error, Pine Forest contends that LUBA erred in concluding that the 152 bedrooms in the Caldera Cabins—the "lock-off rooms"—do not qualify as "overnight lodging units" as defined in ORS 197.435(5)(b). As noted, a "proposed development" requires a minimum of 150 overnight lodging units and the ratio of residential homes to overnight lodging units must not be greater than 2.5 to 1. ORS 197.445(4)(b)(A), (E). For the reasons we explain below, we conclude that LUBA misconstrued ORS 197.435(5)(b) in determining that the lock-off rooms do not qualify as overnight lodgings and that a correct interpretation of the statute requires a remand to LUBA for further proceedings, including, possibly, a remand to the county for further fact-finding. As previously noted, the two relevant statutes are ORS 197.445 and ORS 197.435. ORS 197.445(4) provides:

> "Visitor-oriented accommodations including meeting rooms, restaurants with seating for 100 persons and 150 separate rentable units for overnight lodging shall be provided. However, the rentable overnight lodging units may be phased in as follows:
>
> "(b) On lands in eastern Oregon, as defined in ORS 321.805:
>
> ***284** "(A) A total of 150 units of overnight lodging must be provided.
>
> "(B) At least 50 units of overnight lodging must be constructed prior to the closure of sale of individual lots or units.
>
> " * * * * *
>
> "(E) The number of units approved for residential sale may not be more than 2-½ units for each unit of permanent overnight lodging provided under this paragraph."

ORS 197.435(5)(b) defines "[o]vernight lodgings" as follows:

> "With respect to lands in eastern Oregon, as defined in ORS 321.805, permanent, separately rentable accommodations that are not available for residential use, including hotel or motel rooms, 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 38 weeks per calendar year through a central reservation system operated by the destination resort or by a real estate property

> manager, as defined in ORS 696.010. Tent sites, recreational vehicle parks, manufactured dwellings, dormitory rooms and similar accommodations do not qualify as overnight lodgings for the purpose of this definition."

As for whether the lock-off rooms were overnight lodging units, Pine Forest argued before LUBA that "nothing in the destination resort statute requires that overnight lodging units be grouped in any particular manner, or prohibits combining multiple overnight lodging units into a single structure" and that "providing a total of 150 lock-off rooms in 38 individually owned cabins is no different than providing 150 hotel rooms in a single structure, for purposes of ORS 197.435(5)(b)." LUBA rejected that argument, reasoning that

> "that argument cannot be squared with the text of the applicable statutes. Under the first sentence of ORS 197.435(5)(b), overnight lodging units can include hotel or motel rooms, cabins and time-share units, ****979** which presumably can (but need not) be owned and rented by the resort operator. The second sentence of ORS 197.435(5)(b) addresses the subset of overnight lodging units that are ***285** 'individually owned units,' and provides in part that '[i]ndividually owned units may be considered overnight lodgings if they are available for overnight rental use * * * ' The pro-noun 'they' refers to 'individually owned units,' and clearly it is the 'individually owned units' that must [be] 'available for overnight rental use.' In other words, an individually owned 'unit' that may be counted as an overnight lodging unit must be a unit that is 'individually owned.' The proposed lock-off rooms are not 'units' of any kind and are not individually owned, or even capable of being individually owned. They are simply bedrooms in a larger structure, a cabin, which is the only unit in the present case that is 'individually owned.' "

(Brackets and omissions in LUBA's order.)

On review, Pine Forest disputes LUBA's construction of the second sentence of ORS 197.435(5)(b) that "an individually owned 'unit' that may be counted as an overnight lodging unit must be a unit that is 'individually owned.' " That is, it disputes LUBA's conclusion that an "individually owned unit" must be owned by *separate* owners. In Pine Forest's view, the term "individually owned units" referred to in the second sentence of ORS 197.435(5)(b) refers to units that are a subset of overnight lodging units that qualify as such under the first sentence—separately rentable accommodations that are "not available for residential use." That "individually owned units" must be made available for overnight rental for 38 weeks per year means, according to Pine Forest, that "individually owned units" are privately owned units. Otherwise, Pine Forest posits, there would be no reason to impose the 38-week overnight rental requirement if the unit was owned by the resort. Moreover, Pine Forest argues, by "requiring that these units be available for rent for the vast majority of the year, it ensures that these otherwise privately owned units meet the requirement from the first sentence that they are 'not available for residential use.' "

[4]We agree with Pine Forest that "individually owned units" means units not owned by the resort. The text indicates that for two reasons. *First*, a unit owned by the destination resort would not need a requirement that it be made available for overnight rental use because a unit owned by the resort would not ordinarily be an accommodation that ***286** is not available to the general public. *Second*, that an individually owned unit must be made available for "overnight rental use by the general public" suggests that, but for that requirement, the unit is not available to the general public, *i.e.*, is reserved for private use because it is not owned by the resort.[15]

Further, ORS 197.445(4)(b), which sets out the criteria for overnight lodging units, suggests that "individually owned" does not mean separately owned. ORS 197.445(4)(b)(B) requires that the developer must first construct at "least 50 units of overnight lodging" before "the closure of *sale of individual* lots or units." (Emphasis added.) That individual lots or units are *sold* by the developer suggests a meaning that individually owned means a unit that is no longer owned by the resort. Further, subparagraph (B) of ORS 197.445(4)(a), which concerns the siting of destination resorts not located in eastern Oregon, provides that at "least 75 units of overnight lodging, not including any individually owned homes, lots or units, must be constructed or guaranteed through surety bonding or equivalent financial assurance prior to the closure of sale of individual lots or units" and that the "remaining overnight lodging units must be provided as individually owned lots or units subject to deed restrictions that limit their use to use as overnight lodging units." ORS 197.445(4)(a)(B), (C). Again, "individual" and "individually" in those provisions appear to refer to units that are not owned by the resort; not necessarily units that are *separately* owned.

****980** Moreover, LUBA's interpretation of "individually owned" to mean "separately owned" is inconsistent with the adoption history of Goal 8 and ORS 197.435(5)(b). *See Gunderson, LLC*, 352 Or. at 662, 290 P.3d 803 (considering as

relevant to discern legislative intent the adoption history of Statewide Planning Goal 15). At the early stage of the drafting of the amendment to Goal 8 by the Department of Land Conservation and Development Commission (DLCD), the ***287** definition for overnight lodgings did not initially include the second sentence of ORS 197.435(5)(b); it was limited to defining "overnight lodgings" as "accommodations not available for full-time residential use (e.g., hotel and motel rooms, cabins or time-share units)." *Proposed Amendments to the Statewide Planning Goals to Allow Destination Resorts* (June 1984). Later, James Ross, the director of DLCD issued a memorandum that explained further DLCD's proposed amendments to Goal 8. In that memorandum, Ross explained that the existing definition did

> "not indicate under what circumstances, if any, individually owned homes or condominiums may be considered overnight lodging. This is an important 'gray area' which needs to be clarified. In some very limited circumstances the Department believes individually owned homes should be counted as overnight lodgings. The Department would consider individually owned units as overnight lodgings when they are available for overnight rental use by the general public for 48 weeks per year through a central reservation and check-in facility."

James Ross, DLCD Memorandum (Oct. 5, 1984). The Goal 8 amendment was adopted on October 11, 1984. The proposed definition of "overnight lodgings" was substantially similar to the definition promulgated in ORS 197.435(5)(b).[16] Ross's explanation for the proposed change, which refers to individually owned homes, or condominiums, indicates that the intended meaning was privately owned homes (as we discuss below, it also indicates that "individually owned units" are a separate category of overnight lodgings rather than a subset of "separately rentable accommodations not available for residential use").

Accordingly, whether a unit is *separately* owned, or whether it is *capable of separate* ownership, as LUBA has concluded, is immaterial.[17] "Individually owned" means not ***288** owned by the resort. LUBA erred by determining otherwise when it construed that phrase as separately owned.

Having concluded that LUBA erred in interpreting the "individually owned" wording of ORS 197.435(5)(b), a question remains: What does qualify as overnight lodgings under the statute and, in particular, do the lock-off rooms qualify as such lodgings? Pine Forest argues that the lock-off rooms are units of overnight lodging because they are "separately rentable accommodations" that are "identical in function" to a hotel or motel room, and that, because they are individually owned, *i.e.*, not owned by the resort, and made available for overnight rental for a minimum number of weeks to the general public, then they are not "available for residential use" and, therefore, each lock-off room necessarily qualifies as a unit of overnight lodging. That construction of ORS 197.435(5)(b), however, is untenable in two ways.

****981** *First*, in support of that construction of ORS 197.435(5)(b), Pine Forest asserts that the individually owned units are a "subset" of what would otherwise qualify as overnight lodging under the first sentence. LandWatch responds that the first and second sentences are separate categories and that, to prevail on its argument, Pine Forest must show that the lock-off rooms fall within the category of lodging created by the second sentence. We agree with LandWatch. The first sentence addresses "separately rentable accommodations that are not available for residential use" whereas the second sentence addresses individually owned units that must be made available to the general public, which implies that individually-owned units are ones that are available for residential use, at least part-time. In other words, implicit in the requirement that an "individually owned unit" must be made available to the general public for part of the year is that, when the unit is not available to the general public for overnight rentals, it is available to ***289** the owner for residential use. Residential use need not mean full-time residence of a dwelling: part-time residential-use availability is consistent with private ownership of a vacation home in a destination resort.[18] Further, we reject the implication of Pine Forest's interpretation that, when the lock-off rooms are not being used as bedrooms in a vacation home, *i.e.*, are not being used residentially, and are rented out, they are—by virtue of an exterior door, a lockable interior door, and bathroom—"not available for residential use" for purposes of the statute. Put differently, the implication of Pine Forest's construction of the statute is that overnight lodgings are separately rentable accommodations that are *not* available for residential use *except when they are* available for residential use.[19]

We also disagree with Pine Forest that the requirement that an individually owned unit must be made available to the general public at least 38 weeks a year "ensures" that the individually owned unit meets the requirement set out in the first sentence of ORS 197.435(5)(b) that "permanent, separately rentable accommodations" are "not available residential use." That is so because the requirement that an individually owned unit be made available to the general public was the condition of allowing, in limited circumstances, 285 Or. App. at 287, 396 P.3d at 980, individually owned units to qualify as overnight

lodging. That requirement was not put in place in reference to "separately rentable accommodations not available for residential use," it was put in place to explain when individually owned units could be counted as overnight lodging units.

Second, we reject Pine Forest's argument that the physical layout of the lock-off rooms, which include a sleeping area and full bathrooms, and their lockable exterior doors, which permit separate entry, make them akin to a hotel or ***290** motel room. Although the lock-off rooms themselves may have some physical features of hotel rooms or motel rooms, the similarities end there. The lock-off rooms are not part of an establishment that provides services or hospitality associated with hotels or motels. That is, a "hotel" is a "building of many rooms chiefly for overnight accommodation of transients and several floors served by elevators" that includes features such as a lobby, meeting rooms, restaurants, and personal services. *Webster's Third New Int'l Dictionary* 1094-95 (unabridged ed. 2002); *see also* Comcast Corp. v. Dept. of Rev., 356 Or. 282, 296, 337 P.3d 768 (2014) ("[A]s stilted as the approach may sometimes seem, we frequently consult dictionary definitions of the terms, on the assumption that, if the legislature did not give the term a specialized definition, the dictionary definition reflects the meaning that the legislature would naturally have intended."). A "motel" is an "establishment ****982** which provides lodging and parking and in which the rooms are usually accessible from an outdoor parking area." *Webster's* at 1474. The Caldera Cabins, which are single-family residences, do not offer the amenities or services of a commercial, overnight-lodging establishment.[20]

[5]Thus, under this construction of the definition for "overnight lodgings," a unit generally can qualify in one of two ways: either as (1) "separately rentable accommodations ***291** that are not available for residential use" or (2) as "[i]ndividually owned units" that "are available for overnight rental use by the general public for at least 38 weeks per calendar year through a central reservation system operated by the destination resort or by a real estate property manager, as defined in ORS 696.010"—unless the unit is one of the types of lodging expressly excluded from the definition of overnight lodgings: "[t]ent sites, recreational vehicle parks, manufactured dwellings, dormitory rooms and similar accommodations." We examine how this construction applies to the lock-off rooms.

[6]As an initial matter, the lock-off rooms do not qualify as overnight lodgings units under the first sentence of the definition. That is, they are bedrooms that are in a single-family home that is available for residential use.[21]

[7]Second, although LUBA concluded otherwise, the lock-off rooms are not among those types of lodging categorically excluded from being counted as overnight lodgings. LUBA reasoned that "there appears to be no functional distinction between the Caldera lock-off room approach and providing dormitory rooms or similar accommodations that offer individual sleeping rooms with shared common areas and kitchen facilities." However, a "dormitory" is defined as "a room intended primarily to be slept in; especially : a large room providing sleeping quarters for many persons and sometimes divided into cubicles" and "a residence hall providing separate rooms or suites for individuals or for groups of two, three, or four with common toilet and bathroom facilities but usually without housekeeping facilities." *Webster's* at 675. Without belaboring the analysis, we conclude that it was error for LUBA to determine that the lock-off rooms were dormitory rooms for much the same reason we rejected Pine Forest's assertion that the lock-off rooms were akin ***292** to motel or hotel rooms: The lock-off rooms are bedrooms in a single-family vacation home and, although, there may be some physical similarities between the rooms and a dormitory room, there is little in common between these well-appointed luxury vacation homes and what would commonly be understood as a dormitory.

The remaining issue is whether the lock-off rooms qualify as overnight lodging units under ****983** the second sentence of ORS 197.435(5)(b)—"Individually owned units may be considered overnight lodgings if they are available for overnight rental use by the general public for at least 38 weeks per calendar year through a central reservation system operated by the destination resort or by a real estate property manager, as defined in ORS 696.010." Because "separately rentable accommodations not available for residential use" and "individually owned" (at least in the sense of being separately owned) are no longer operative factors as to whether the lock-off rooms qualify as overnight lodging units, the following question needs to be answered: What factors qualify a privately owned unit as an overnight lodging unit for purposes of ORS 197.445(4)(b)?

[8]First, we note that Pine Forest's argument that lock-off rooms are "separately rentable accommodations" because "each unit is separately *available* for rent through a central reservation service," depends on the factual premise that, so long as a unit is made available through a reservation system, it is immaterial whether they are, in fact, separately rented. As we have indicated, the "separately rentable accommodation" wording from the first sentence of ORS 197.435(5)(b) is not relevant

when considering whether an individually owned unit qualifies at as overnight lodging unit. However, we point out that ORS 197.445(4) provides that "150 *separate rentable units* for overnight lodging shall be provided." (Emphasis added.) Although "separately rentable accommodations" and "separate rentable units" may, at first blush, seem equivalent, the grammatical difference is significant. That is, in the phrase "separately rentable accommodations," "separately" is an adverb that modifies "rentable." Whereas, in the phrase "separate rentable unit," "separate" is an adjective that modifies "unit." Thus, a unit for purposes of meeting the destination resort criteria is ***293** modified by both "separate" and "rentable," and, as a starting point, an overnight lodging unit must be a separate, rentable unit. And, the focus on "separate" shifts from availability and the reservation service to a more concrete, factual determination of whether the rentable unit is actually a *separate* unit. Further, we note that "separate" means "not shared with another : INDIVIDUAL, SINGLE" or "existing by itself : AUTONOMOUS, INDEPENDENT." *Webster's* at 2069.

Secondly, we note that the text of the second sentence of ORS 197.435(5)(b) states that individually owned units "*may* be considered overnight lodging units if they are available to the general public." (Emphasis added.) Although we need not go into a discussion on the precise meaning of "may" in this context, *see, e.g.*, *Friends of Columbia Gorge v. Columbia River*, 346 Or. 415, 426, 212 P.3d 1243 (2009) (noting that, "in certain contexts, the word 'may' can mean 'shall' and vice versa"), we believe that the adoption history of Goal 8 informs our analysis. As noted, Goal 8 was amended to reflect the concern that a previous iteration of Goal 8 did

> "not indicate under *what circumstances, if any, individually owned homes or condominiums may be considered overnight lodging*. This is an important 'gray area' which needs to be clarified. In *some very limited circumstances* the Department believes individually owned homes should be counted as overnight lodgings. The Department would consider individually owned units as overnight lodgings when 'they are available for overnight rental use by the general public for 48 weeks per year through a central reservation and check-in facility.' "

James Ross, DLCD Memorandum (Oct. 5, 1984) (emphases added). Thus, the addition was meant to count individually owned *homes* in "some very limited circumstances." Although, the text of ORS 197.435(5)(b) refers to individually owned "units," and therefore can allow accommodation types that are not homes, we deem it significant that that allowance was meant to be a stringent requirement. Certainly, the allowance was not intended to encompass a definition of overnight lodging that was susceptible to, as the hearings officer described it, being "finessed."

***294** Additionally, ORS 197.445(9) requires the resort developer to provide an "annual accounting to document compliance with the overnight lodging standards," indicating that ****984** compliance with the overnight lodging is an ongoing factual determination—whether a rentable unit is separate is a question of whether it is *in fact* separate and rentable, at least once the unit is in existence and not a mere proposal on paper. We also find persuasive LUBA's point that the legislative policies of the destination resort statutes, ORS 197.440, "focus on providing facilities and accommodations to attract tourists" and that "one of the main vehicles" for doing so is ensuring that are a minimum number of overnight lodging units and limiting the ratio of residential units to overnight lodging units. As LUBA stated, the

> "proposed Caldera approach minimizes the *actual* number of separate overnight lodgings available for tourist accommodations. At best, that approach *nominally* provides 150 separate overnight lodging units, which does not seem consistent with the policies set out in ORS 197.440, to attract and accommodate tourists, at least compared to an approach that would actually provide 150 or more separate, qualified overnight lodging units."

(Emphases in original.)

[9] [10]Accordingly, we conclude that individually owned units, to qualify as "overnight lodgings," must be, as a factual matter, an accommodation that is both its own "separate" unit that is rentable separately from other units. Where, as here, a developer proposes an expanded destination resort that is based, in part, on existing lodgings, for an existing individually owned unit to count as "overnight lodgings" under the second sentence of ORS 197.435(5)(b), there must be evidence that the unit is in fact separate and rentable separately from other units; it is not enough that the unit is theoretically separate and separately rentable, particularly when there is affirmative evidence the claimed separate unit of lodging is, in reality, neither separate nor separately rentable. In concluding that the lock-off rooms did not qualify as overnight lodging, LUBA applied a different—and, as we have explained, mistaken interpretation of ORS 197.435(5)(b). That renders its order unlawful ***295** in substance. For that reason, we remand to LUBA for further consideration of the issue under a correct interpretation of the law.

Reversed and remanded on petition; affirmed on cross-petition.

All Citations

285 Or.App. 267, 396 P.3d 968

Footnotes

1 The county submitted an answering brief after LandWatch filed its cross-petition and answering brief to Pine Forest's petition. LandWatch moved to strike the county's brief, asserting that the brief did not answer the issue put forth in LandWatch's cross-petition but, rather, echoed the argument's put forth in Pine Forest's petition, and, thus, the county should have filed a petition within 21 days of LUBA's decision, ORS 197.850(3), or a cross-petition within seven days of the filing of the petition, ORAP 4.68. Put differently, LandWatch asserts that the county "cannot file a petitioner's brief in the guise of a respondent's brief." For its part, the county asserts that its answering brief was a "concurrence" to the issues raised in Pine Forest's petition. We need not decide if the county's brief was permissible, however, because the issues and arguments it raises are duplicative of those raised by Pine Forest or not relevant to our analysis.

2 "Eastern Oregon" includes counties that are east of the western boundaries of Wasco, Jefferson, Deschutes and Klamath counties. ORS 321.805(3).

3 The statute requires a $7 million expenditure, but current expenditures are adjusted based on the Consumer Price Index. ORS 197.445(8).

4 DCC 18.113.025 provides:

> "Expansion proposals of existing developments approved as destination resorts shall meet the following criteria:
> "A. Meet all criteria of DCC 18.113 without consideration of any existing development; or
> "B. Meet all criteria of DCC 18.113 for the entire development (including the existing approved destination resort development and the proposed expansion area), except that as to the area covered by the existing destination resort, compliance with setbacks and lot sizes shall not be required.
> "If the applicant chooses to support its proposal with any part of the existing development, applicant shall demonstrate that the proposed expansion will be situated and managed in a manner that it will be integral to the remainder of the resort."

5 ORS 197.445(9) provides:

> "When making a land use decision authorizing construction of a destination resort in eastern Oregon, as defined in ORS 321.805, the governing body of the county or its designee shall require the resort developer to provide an annual accounting to document compliance with the overnight lodging standards of this section. The annual accounting requirement commences one year after the initial lot or unit sales. The annual accounting must contain:
> "(a) Documentation showing that the resort contains a minimum of 150 permanent units of overnight lodging or, during the phase-in period, documentation showing the resort is not yet required to have constructed 150 units of overnight lodging.
> "(b) Documentation showing that the resort meets the lodging ratio described in subsection (4) of this section.
> "(c) For a resort counting individually owned units as qualified overnight lodging units, the number of weeks that each overnight lodging unit is available for rental to the general public as described in ORS 197.435."

6 The 2014 annual report submitted to the county shows the number of nights each room in each cabin was made available for overnight rentals and were in fact rented. Although broken down by room, each room in each cabin was rented for exactly the same number of nights in 2014, *e.g.*, the rooms in 10 Caldera Cabin—10A, 10B, 10C, and 10D—were each rented for 98 nights.

7 Also included was a letter from the property manager for 32 of the 38 Caldera Cabins stating:

> "Each Caldera Cabin includes three, four or five permanent, separately rentable units. Each unit includes separate outside access, a full bathroom including a tub and/or shower and a variety of bed types including king, queen and bunk beds. Each unit can be rented separately or together with other units in the same Caldera Cabin. This is similar to a hotel suite where adjoining rooms have connecting doors to allow occupancy by the same guest."

The property manager also wrote:

> "Caldera Springs could have elected to construct a 150-unit hotel, or two 75-unit hotels utilizing the same exact rooms and amenities as are provided in each Caldera Cabin. Families, extended families and groups of families, however, prefer a cabin setting where they can stay together rather than booking a group of hotel rooms."

8 LandWatch submitted screenshots from the Caldera Springs website. One screenshot included the heading "All Caldera Cabins" and the subheading "38 Vacation Rentals in All Caldera Rentals." Another screenshot described two categories of overnight lodging, the Caldera Cabins, which were marketed as "the perfect place to get away or get together. These two and three bedrooms provide all the luxury you want for your special vacation" and the "custom vacation homes," which "offer high end accommodations for larger families and groups[,] can range from three to five bedrooms and provide unrivaled amenities." LandWatch also submitted a screenshot for an individual "Caldera Cabin," in which the potential renter could make a reservation for the four-bedroom cabin, described as a 2,522 square foot 4 bedroom, 5 bath home with a view of the golf course and which included a master bedroom, two additional bedrooms, and a fourth bedroom with 2 bunk beds and a sofa sleeper. Additional screenshots of other individual vacation homes similarly described the accommodations. None of the screenshots mentioned that the bedrooms were available as separate rentals, or even that the bedrooms included separate outside access.

9 Under ORS 197.850(9)(a), we reverse or remand a LUBA order if we determine the "order to be unlawful in substance or procedure[.]"

10 ORS 30.947 provides that the "fact that a comprehensive plan and implementing ordinances allow the siting of destination resorts or other nonfarm or nonforest uses as provided in ORS 30.947, 197.435 to 197.467, 215.213, 215.283 and 215.284, does not in any way affect the provisions of ORS 30.930 to 30.947." ORS 30.930 to 30.947 concern farming and nonforest practices and are not at issue in this review. ORS 215.213, ORS 215.283, and ORS 215.284 concern lands zoned for exclusive farm use and are also not applicable here.

11 ORS 197.445(6)(b), not applicable to the Pine Forest development, provides different criteria for destination resorts proposed on "land where there has been an exception to any statewide planning goal on agricultural lands, forestlands, public facilities and services and urbanization."

12 We note that Pine Forest raises a persuasive point that LandWatch's interpretation of ORS 197.445 would preclude *any* expansion of a destination resort unless the expansion independently meets the destination resort criteria. That construction would mean that a destination resort could not expand under ORS 197.435 to 197.465 to, for example, add a new golf course to adjacent land—a "developed recreational facility" expressly provided for in ORS 197.435(1)—or to site a hotel to accommodate increased demand for overnight lodging.

13 The previous land use decisions referred to by Pine Forest are (1) the county's amendment of the CMP in 2007 to modify the dimensional standards of the lock-off units and in 2013 to update the plan to conform with changes in state

law allowing availability for overnight use to be 38 weeks per year rather than 45 and (2) a declaratory judgment ruling in which, according to Pine Forest, the lock-off rooms were approved.

14 Pine Forest also cites *Carlsen v. City of Portland*, 169 Or.App. 1, 8 P.3d 234 (2000), but that decision is readily distinguishable. In *Carlsen*, we affirmed LUBA's conclusion that putative errors affecting an earlier decision by the City of Portland that was final could not be raised in an appeal from a later decision from the city. Again, this issue concerns whether the entire proposed development meets the relevant statutory criteria.

15 We note that such a construction of individually owned units does not necessarily mean that the accommodations described in the first sentence of ORS 197.435(5)(b) must categorically be resort-owned, but does mean that a unit that is privately owned must be made available to the public for at least 38 weeks.

16 A prior iteration of the Goal 8 amendments concerning the definition for overnight lodgings proposed the exclusion of "[t]ent sites, recreational vehicle vehicles or pads, mobile homes, dormitory rooms, and similar accommodations" which is reflected in nearly identical language in ORS 197.435(5)(b). James Ross, DLCD Memorandum (Aug. 22, 1984).

17 We note that the first sentence of ORS 197.435(5)(b) does not qualify "separately rentable accommodations that are not available for residential use" as resort-owned. Presumably, if an accommodation is "separately rentable" and "not available for residential use," it could be owned by someone or an entity other than the resort. Further, there may be some manner of accommodation that is not resort-owned that consists of multiple units that are separate rentable units and available for residential use (such as a duplex that available for resident use as a single unit but one or two halves of the duplex can be rented out as a separate unit)—those units must be made available to the public the minimum number of weeks.

18 We note that a previous version of Goal 8 defined overnight lodgings as "accommodations not available for *full-time* residential use." 285 Or. App. at 287, 396 P.3d at 980. The modifier "full-time" was removed when the provision allowing individually owned units to qualify as overnight lodging was added, suggesting that the definition as enacted meant that "available for residential use" was not limited to full-time residences.

19 Presumably, a resort-owned single-family house, condominium, town-house, or duplex could qualify as overnight lodging as defined in the first sentence if it is never available for residential use.

20 Nor are they cabins. The hearings officer found that there "is no dispute" that the lock-off rooms are contained within what "otherwise appears to be a single family residence." Although Caldera Springs evocatively markets the Caldera Cabins as "cabins," they are built in the form of single-family residences featuring amenities that have little in common with the ordinary meaning of a cabin—a "small one-story low-roofed dwelling usually of plain construction * * * used during a vacation especially for hunting and fishing" or a "small typically one-room house suitable for overnight lodging for tourists." *Webster's* at 309. Pine Forest does not assert, nor does the record indicate, that the Caldera Cabins are time-shares.

We recognize that the list of examples (motel or hotel rooms, cabins, or time-shares) of what qualifies as "separately available accommodations not available for residential use" is not an exclusive list. There may be other types of accommodations that qualify as overnight lodgings under that definition. However, the shared characteristics of those accommodations, at least in the context of a destination resort, are that they provide overnight lodging and are not available for residential use. *See State v. Kurtz*, 350 Or. 65, 76, 249 P.3d 1271 (2011) ("When examining the characteristics of a list of examples, for purposes of statutory interpretation, 'the court seeks to find if it can, a common characteristic among the listed examples.' " (Quoting *Schmidt v. Mt. Angel Abbey*, 347 Or. 389, 405, 223 P.3d 399 (2009).)).

21 The hearings officer stated that "there is no evidence that the Hearings Officer has been pointed to in the record that the 38 houses are really simply used as full or part time residences—which is the heart of the standards set in the destination resort statute." That evidence is not required, however: The first category under ORS 197.435(5)(b) is satisfied, in part, if the "separately rentable accommodations" are "not *available* for residential use." Here, because the Caldera Cabins are privately owned and are built as single-family residences, they are available for residential use.

End of Document

Crook County Counsel's Office

267 NE 2nd St., Ste 200• Prineville, Oregon 97754 • (541) 416-3919 • FAX (541) 447-6705

For Work Session
April 12, 2022

MEMO

TO: Crook County Court

FROM: Crook County Legal Counsel's Office

DATE: April 7, 2022

RE: Request to vacate a portion of SE Springfield Street
Our File No.: *Road # 366*

The County has received a petition to vacate a portion of Springfield Street, a road located within Prineville Lakes Acres Unit 1. The petitioners have paid the necessary fee. Eventually, the County Court may be required to hold a public hearing or otherwise consider the petition. Before that must happen, however, there are a number of preliminary steps that must be followed.

Under the requirements of ORS 368.341, a petition to vacate public property (including public roads) must include no fewer than seven separate components:

> (a) A description of the property proposed to be vacated;
> (b) A statement of the reasons for requesting the vacation;
> (c) The names and addresses of all persons holding any recorded interest in the property proposed to be vacated;
> (d) The names and addresses of all persons owning any improvements constructed on public property proposed to be vacated;
> (e) The names and addresses of all persons owning any real property abutting public property proposed to be vacated;
> (f) Signatures, acknowledged by a person authorized to take acknowledgments of deeds, of either owners of 60 percent of the land abutting the property proposed to be vacated or 60 percent of the owners of land abutting the property proposed to be vacated; and
> (g) If the petition is for vacation of property that will be redivided in any manner, a subdivision plan or partitioning plan showing the proposed redivision.

It is my recommendation that this petition is apparently complete – apparently because, after review, the County may determine that there are persons who should have been listed but where not. For now, I believe the petition is adequate for the County to proceed to the next step under the vacation statutes.

After receiving a qualifying petition, the County governing body would direct the Road Master to prepare a report, describing the ownership and uses of the property proposed to be vacated; an assessment of whether the vacation would be in the public interest; and any other information required by the county governing body.

Then, after receiving the report from the Road Master, the County Court would schedule a public hearing on the petition.[1] The public hearing must be scheduled with at least thirty (30) days' notice, and notice must be provided to certain property owners, plus published in a newspaper of general circulation, and posted at the property location.

Those entitled to mail or personal service are those who have a recorded interest in the property described in the petition, own property that is abutting the property described in the petition, or own any improvements on the property. The petition itself states that those individuals have either supported the petition, or indicated that they do not object, and we will see if we can verify that statement.

Public testimony, both written and spoken, would be received prior to and at the public hearing. After the close of the hearing, the County Court would decide whether to approve the petition vacating the portion of the road, or deny it. If the decision is to vacate the portion of the road, the County Court could decide how to divide the property among qualified recipients, or allow the property to vest according to the default rules of ORS 368.366(1). An order approving or denying the petition would be presented to a future County Court meeting.

No road may be vacated if doing so would deprive any owner of a recorded property right of legal access.

Finally, under ORS 368.351, a public hearing may not be necessary where the petition is supported by 100 percent of the underlying and abutting private property owners. The petition here states that the requisite 100 percent has been obtained.

Even if it is not strictly required by the operative statutes, the County may decide to hold such a hearing. This may be wise where the matter might become an issue of controversy. In this case, the County has been informed that at least some residents have used this portion of Springfield Street to access the nearby BLM land.

[1] There are circumstances when a public hearing would not be necessary, examined below.

PETITION FOR ROAD VACATION

(SE Springfield Street)

To the Crook County Court, Crook County, Oregon, in the matter of the vacation of a portion of SE Springfield Street, Prineville, Oregon. (See Exhibit A)

I.

Petitioners, Faustin Gallegos, and Joanne and Richard Tjulander, petition the Crook County Court to vacate SE Springfield Street, as depicted on Exhibit A attached hereto. Based upon the approval of the Court, Petitioners will commission a survey of the Street for the area vacated as determined by the Court.

II.

The Crook County Records show the owners of the 3 parcels adjacent to SE Springfield Street, are the Petitioners:

- Faustin Gallegos, owner of 15626 SE Springfield Street, Prineville, Oregon 97754, Tax Account 3433, Map 161623D0-Tax Lot 2200. (Exhibit B)
- Faustin Gallegos and Joanne and Richard Tjulander, owner of the lot identified as Tax Account #3442, Map 161623D0-02100. There is no situs address for the vacant parcel. (Exhibit C)
- Richard and Joanne Tjulander own Tax Account 3441, at 15551 SE Springfield Street, Prineville, Oregon 97754, Map 161623D002000 (Exhibit D)

III.

No portion of the road proposed to be vacated is situated within the corporate limits of any city.

IV.

The particular circumstances that justify granting a vacation of the described property are:

Use of Property: SE Springfield Street is platted as a part of the Prineville Lake Acres Unit 1 subdivision. (Exhibit E) The road extends down between the adjacent parcels and dead ends at BLM public lands.

The Prineville Lake Acres Unit 1 – Special Road District Association supports the proposal to vacate of the road. (Exhibit F). The Resolution of the Board, item #9, requests that the District be notified of any public hearing held on this matter so that the Board is available to testify if needed.

FITCH & NEARY, P.C.
210 SW 5th St., Suite 2
Redmond, OR 97756
Phone: 541.316.1588
Fax: 541.316.1943

Reason to Vacate:

There is no beneficial use of the road except to access lots 2100 and 2200 which are owned by Petitioners.

The road is within the Prineville Lake Acres, Unit 1, Special Road District, which supports this Petition. The Board has found that the road is an additional, unnecessary liability and obligation for the Association to manage. The Association has never maintained the road. Mr. Gallegos has improved the road surface for personal benefit. His property is the only improved property that is served by the road.

At the terminus of the road is BLM land. The BLM has also indicated support for the vacate of the road because it will limit or restrict public access to that portion of the BLM lands. (Exhibit G) That area of BLM is already seasonally closed for vehicle use with access limited to only designated roads. The area is also closed to all firearm discharge. The BLM has no record of constructing the fence so has assumed that the developer of Prineville Lake Acres, Unit 1, constructed the fence. (Exhibit H) This may have been required to keep the public from accessing the BLM lands consistent with the BLM restrictions.

Condition of Road: The road is within the Prineville Lake Acres, Unit 1, Special Road District jurisdiction, but the District has never maintained the road. The only improvements to the road have been by Petition Faustin Gallegos. The condition of the road is suitable for the use by the adjacent property.

V.

The contact address information for those with an interest in the road, or adjacent to the road are:

Faustin Gallegos (Petitioner)
15626 SE Springfield St
Prineville, Oregon 97754

Richard and Joanne Tjulander (Petitioners)
15551 SE Springfield Street
Prineville, Oregon 97754

Prineville Lake Acres, Unit 1, Special Road District
14344 SE Sharps Street
Prineville, Oregon 97754

VI.

Pursuant to ORS 368.351, attached to this Petition are the acknowledged signatures of the Petitioners, said Petitioners being 100% of the owners of the adjacent property to the road.

FITCH & NEARY, P.C.
210 SW 5th St., Suite 2
Redmond, OR 97756
Phone: 541.316.1588
Fax: 541.316.1943

VII.

Petitioners request that after the giving of notice as required by law, that an order be entered vacating the property more particularly described above.

VIII.

Petitioners acknowledge that the vacated property normally vests in the owners of the land abutting the vacated property by extension of the person's abutting property boundaries to the center of the vacated property.

In lieu of the foregoing, Petitioners respectfully request that the County order that a straight line between the 2 property corners of Tax Lot 2000 and 2200 be surveyed as depicted on Exhibit I. The RED LINE on Exhibit I reflects the proposed survey line, with the vacated property to vest in the owner of Lot 2200.

On Exhibit I, the distance measured between the RED LINE and the southwest property corner of Tax Lot 161623D #2900 (shown in teal), is approximately 55 feet.

To preserve legal access to Tax Lot 2100 and 2200, any access easement necessary will be recorded in the real property records of Crook County, Oregon.

IX.

Based upon the foregoing, the proposed vacation would not deprive an owner of a recorded property right of access necessary for the exercise of that right.

Signature page follows

FITCH & NEARY, P.C.
210 SW 5th St., Suite 2
Redmond, OR 97756
Phone: 541.316.1588
Fax: 541.316.1943

I hereby declare under penalty of false swearing (ORS 162.075 and 162.085) that the above information is true and correct to the best of my knowledge.

Petitioners:

Richard Tjulander

Faustin Gallegos

Joanne Tjulander

STATE OF OREGON

County of Deschutes

Signed or attested before me on 3/21, 2022, by Richard Tjulander.

OFFICIAL STAMP
CHRISTIAN SENNA VANSISE
NOTARY PUBLIC-OREGON
COMMISSION NO. 1000291
MY COMMISSION EXPIRES MAY 25, 2024

STATE OF OREGON

County of Deschutes

Signed or attested before me on 3/21, 2022, by Joanne Tjulander.

OFFICIAL STAMP
CHRISTIAN SENNA VANSISE
NOTARY PUBLIC-OREGON
COMMISSION NO. 1000291
MY COMMISSION EXPIRES MAY 25, 2024

STATE OF OREGON

County of ~~Klamath~~ KB Deschutes

Signed or attested before me on April 1, 2022, by Faustin Gallegos.

OFFICIAL STAMP
KELLY BARBER
NOTARY PUBLIC-OREGON
COMMISSION NO. 994302
MY COMMISSION EXPIRES NOVEMBER 25, 2023

FITCH & NEARY, P.C.
210 SW 5th St., Suite 2
Redmond, OR 97756
Phone: 541.316.1588
Fax: 541.316.1943

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

0 100 200 400 Feet

S.E.1/4 SEC.23 T.16S. R.16E. W.M.
CROOK COUNTY
1" = 200'

16S16E23D

Cancelled
6900

5

EXHIBIT

A

5

Revised: RAA
09/21/2021

16S16E23D

CROOK COUNTY ASSESSOR'S NAME LEDGER

3/8/2022 2:32:05 PM

Account ID	Township	Range	Section	1/4	1/16	Taxlot	Special Interest
3443	16	16	23	D	0	02200	

Sale Price $4,500
Effective Date 25-Oct-1991 12:00 AM **Transaction ID** -45570 **Entry Date** 25-Oct-1991 **Recorded Date** 25-Oct-1991 **Sale Date** 25-Oct-1991

Seq	Voucher ID	Tax Year	Document Source	Type	ID #1	ID # 2	PID	Source ID	PT	Operation	To/From Map
1	-48932	1994	HISTORICAL	WD	1994	102547	1	102547		NAME CHANGE	

Size Totals	Code	Acres	Sqft	Alternate Size

Sale Price $4,000
Effective Date 02-Apr-2013 12:00 AM **Transaction ID** -26384 **Entry Date** 19-Mar-2013 **Recorded Date** 02-Apr-2013 **Sale Date** 02-Apr-2013

Seq	Voucher ID	Tax Year	Document Source	Type	ID #1	ID # 2	PID	Source ID	PT	Operation	To/From Map
1	-27170	2012	HISTORICAL	SW	2013	257074	1	257074		NAME CHANGE	

Name Changes	Status	Name	Name Type	Ownership Type	Ownership %
	A	PERRIN JOHN & PATRICIA	OWNER		

Size Totals	Code	Acres	Sqft	Alternate Size
	0019	0.00	0.00	

Sale Price $29,500
Effective Date 12-Aug-2016 12:00 AM **Transaction ID** -23287 **Entry Date** 01-Aug-2016 **Recorded Date** 12-Aug-2016 **Sale Date** 12-Aug-2016

Seq	Voucher ID	Tax Year	Document Source	Type	ID #1	ID # 2	PID	Source ID	PT	Operation	To/From Map
1	-23778	2015	HISTORICAL	SW	2016	275368	1	275368		NAME CHANGE	

Name Changes	Status	Name	Name Type	Ownership Type	Ownership %
	A	STARBUCK NICHOLAS R & JULIE F	OWNER		

Size Totals	Code	Acres	Sqft	Alternate Size
	0019	0.00	0.00	

Effective Date 01-Sep-2020 12:00 AM **Transaction ID** -2962 **Entry Date** 01-Sep-2020 **Recorded Date** 01-Sep-2020 **Sale Date** 01-Sep-2020

Seq	Voucher ID	Tax Year	Document Source	Type	ID #1	ID # 2	PID	Source ID	PT	Operation	To/From Map
1	-2962	2020	ASSESSOR'S FILE		2020	-3443	1	CONVERSION		CONVERSION	

Size Totals	Code	Acres	Sqft	Alternate Size
	0019	0.00	0.00	

EXHIBIT
13

Account ID	Township	Range	Section	1/4	1/16	Taxlot	Special Interest
3443	16	16	23	D	0	02200	

Sale Price $350,000

Effective Date 28-Jan-2021 9:31 AM **Transaction ID** 480429 **Entry Date** 28-Jan-2021 **Recorded Date** 05-Jan-2021 **Sale Date** 05-Jan-2021

Seq	Voucher ID	Tax Year	Document Source	Type	ID #1	ID # 2	PID	Source ID	PT	Operation	To/From Map
1	483708	2021	CLERK	D	2021	305510	1			NAME CHANGE	

Name Changes	Status	Name	Name Type	Ownership Type	Ownership %
	D	STARBUCK NICHOLAS R	OWNER	OWNER	100.0000
	D	STARBUCK JULIE F	OWNER	OWNER	100.0000
	A	GALLEGOS, FAUSTIN	OWNER	OWNER	

Size Totals	Code	Acres	Sqft	Alternate Size
	0019	0.00	0.00	

5

5

CROOK COUNTY ASSESSOR'S NAME LEDGER

3/8/2022 2:30:46 PM

Account ID	Township	Range	Section	1/4	1/16	Taxlot	Special Interest
3442	16	16	23	D	0	02100	

Sale Price $5
Effective Date 12-Jul-1995 12:00 AM **Transaction ID** -42647 **Entry Date** 12-Jul-1995 **Recorded Date** 12-Jul-1995 **Sale Date** 12-Jul-1995

Seq	Voucher ID	Tax Year	Document Source	Type	ID #1	ID # 2	PID	Source ID	PT	Operation	To/From Map
1	-45621	1997	HISTORICAL	WD	1997	122151	1	122151		NAME CHANGE	

Size Totals	Code	Acres	Sqft	Alternate Size

Sale Price $90,000
Effective Date 31-May-2006 12:00 AM **Transaction ID** -31005 **Entry Date** 31-May-2006 **Recorded Date** 31-May-2006 **Sale Date** 31-May-2006

Seq	Voucher ID	Tax Year	Document Source	Type	ID #1	ID # 2	PID	Source ID	PT	Operation	To/From Map
1	-32344	2006	HISTORICAL	SW	2006	211631	1	211631		NAME CHANGE	

Size Totals	Code	Acres	Sqft	Alternate Size
	0019	0.00	0.00	

Effective Date 01-Sep-2020 12:00 AM **Transaction ID** -2961 **Entry Date** 01-Sep-2020 **Recorded Date** 01-Sep-2020 **Sale Date** 01-Sep-2020

Seq	Voucher ID	Tax Year	Document Source	Type	ID #1	ID # 2	PID	Source ID	PT	Operation	To/From Map
1	-2961	2020	ASSESSOR'S FILE		2020	-3442	1	CONVERSION		CONVERSION	

Size Totals	Code	Acres	Sqft	Alternate Size
	0019	0.00	0.00	

Sale Price $60,000
Effective Date 06-Aug-2021 4:29 PM **Transaction ID** 483045 **Entry Date** 06-Aug-2021 **Recorded Date** 21-Jun-2021 **Sale Date** 21-Jun-2021

Seq	Voucher ID	Tax Year	Document Source	Type	ID #1	ID # 2	PID	Source ID	PT	Operation	To/From Map
1	491361	2021	CLERK	D	2021	309969	1			NAME CHANGE	

AS TIC, EACH WITH UNDIV 50% INT

Name Changes	Status	Name	Name Type	Ownership Type	Ownership %
	D	GILBERT RICHARD B & MARILYN A TRUSTEES	OWNER	OWNER	100.0000
	D	GILBERT LIVING TRUST	OWNER	OWNER	100.0000
	A	TJULANDER, RICHARD C	OWNER	OWNER	
	A	TJULANDER, JOANNE T	OWNER	OWNER	
	A	GALLEGOS, FAUSTIN	OWNER	OWNER	

EXHIBIT
C

Account ID	Township	Range	Section	1/4	1/16	Taxlot	Special Interest
3442	16	16	23	D	0	02100	

OWNER (50%)
TENANTS BY ENTIRETY
HUSBAND
TJULANDER, RICHARD C
WIFE
TJULANDER, JOANNE T
OWNER (50%)
GALLEGOS, FAUSTIN

Size Totals	Code	Acres	Sqft	Alternate Size
	0019	0.00	0.00	

5

5

CROOK COUNTY ASSESSOR'S NAME LEDGER

3/8/2022 2:28:30 PM

Account ID	Township	Range	Section	1/4	1/16	Taxlot	Special Interest
3441	16	16	23	D	0	02000	

Sale Price $5
Effective Date 22-Aug-1997 12:00 AM **Transaction ID** -40739 **Entry Date** 22-Aug-1997 **Recorded Date** 22-Aug-1997 **Sale Date** 22-Aug-1997

Seq	Voucher ID	Tax Year	Document Source	Type	ID #1	ID # 2	PID	Source ID	PT	Operation	To/From Map
1	-43444	1999	HISTORICAL	WD	1999	135879	1	135879		NAME CHANGE	

Size Totals	Code	Acres	Sqft	Alternate Size

Sale Price $0
Effective Date 11-Jul-2006 12:00 AM **Transaction ID** -30793 **Entry Date** 11-Jul-2006 **Recorded Date** 11-Jul-2006 **Sale Date** 11-Jul-2006

Seq	Voucher ID	Tax Year	Document Source	Type	ID #1	ID # 2	PID	Source ID	PT	Operation	To/From Map
1	-32073	2006	HISTORICAL	SW	2006	212847	1	212847		NAME CHANGE	

Size Totals	Code	Acres	Sqft	Alternate Size
	0019	0.00	0.00	

Sale Price $39,000
Effective Date 31-May-2016 12:00 AM **Transaction ID** -23537 **Entry Date** 19-May-2016 **Recorded Date** 31-May-2016 **Sale Date** 31-May-2016

Seq	Voucher ID	Tax Year	Document Source	Type	ID #1	ID # 2	PID	Source ID	PT	Operation	To/From Map
1	-24029	2015	HISTORICAL	SW	2016	274114	1	274114		NAME CHANGE	

Name Changes	Status	Name	Name Type	Ownership Type	Ownership %
	A	TJULANDER RICHARD & JOANNE	OWNER		

Size Totals	Code	Acres	Sqft	Alternate Size
	0019	0.00	0.00	

Effective Date 01-Sep-2020 12:00 AM **Transaction ID** -2960 **Entry Date** 01-Sep-2020 **Recorded Date** 01-Sep-2020 **Sale Date** 01-Sep-2020

Seq	Voucher ID	Tax Year	Document Source	Type	ID #1	ID # 2	PID	Source ID	PT	Operation	To/From Map
1	-2960	2020	ASSESSOR'S FILE		2020	-3441	1	CONVERSION		CONVERSION	

Size Totals	Code	Acres	Sqft	Alternate Size
	0019	0.00	0.00	

EXHIBIT D

Account ID	Township	Range	Section	1/4	1/16	Taxlot	Special Interest
3441	16	16	23	D	0	02000	

Effective Date 17-Sep-2021 1:22 PM **Transaction ID** 484635 **Entry Date** 17-Sep-2021 **Recorded Date** 17-Sep-2021 **Sale Date**

Seq	Voucher ID	Tax Year	Document Source	Type	ID #1	ID # 2	PID	Source ID	PT	Operation	To/From Map
1	494009	2021	TAX OFFICE	TAX	2021	1513	1			MAILING NAME	

Name Changes	Status	Name	Name Type	Ownership Type	Ownership %
	D	TJULANDER RICHARD & JOANNE	AMON		
	A	TJULANDER RICHARD & JOANNE	AMON		

Size Totals	Code	Acres	Sqft	Alternate Size
	0019	0.00	0.00	

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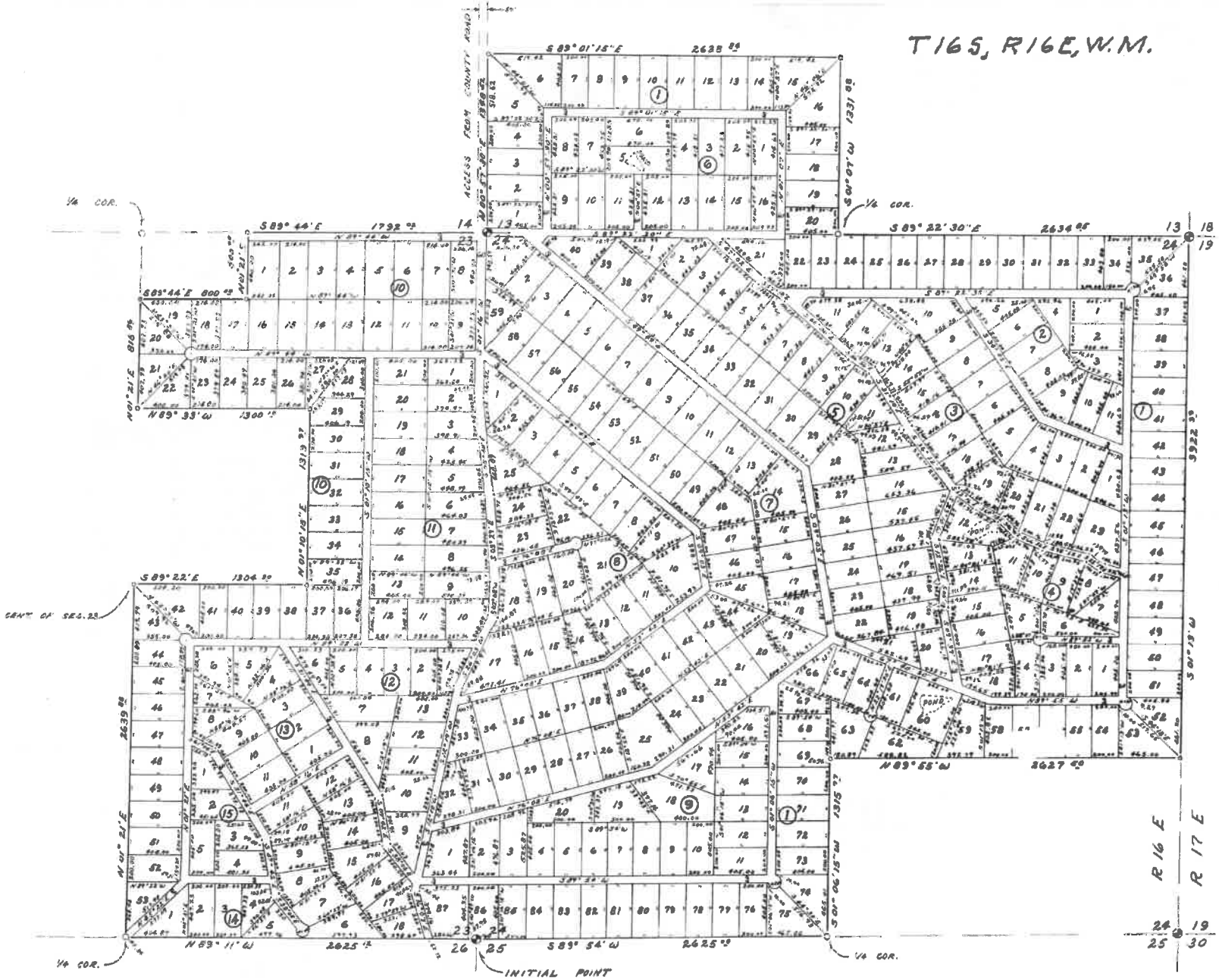
PRINEVILLE LAKE ACRES

T16S, R16E, W.M.



Exam. P. Backlund

EXHIBIT

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PRINEVILLE LAKE ACRES

LOCATED IN T16S, R16E, W.M.
CROOK COUNTY, OREGON
SCALE 1"= 500'   JUNE, 1971

APPROVALS:

E. M. Dorn
Chairman Crook County Planning Comm.

Pursuant to O.R.S. 92.095 all advalorem taxes and all special assessments, fees and other charges required by law to be placed on the 1971 - 1972 tax roll which became a lien during this calendar year, but not yet certified to the Tax Collector for Collection, have been paid to me.

COUNTY ASSESSOR

COUNTY SHERIFF
All taxes are paid to 6-30-71

COUNTY JUDGE

COUNTY COMMISSIONER

COUNTY COMMISSIONER

DEDICATION

Be it known that G.T. Duffy, an individual, is the owner of the lands shown hereon and has caused said lands to be surveyed and platted into streets and lots as shown hereon and does hereby submit for approval and record said PRINEVILLE LAKE ACRES, henceforth to be so known and dedicated Streets and Utility Easements as shown hereon are hereby dedicated as permanent streets and easements for the use of the land owners, present or future, within this plat or in any other plats now being or to be developed by G.T. Duffy in the Crooked River Area

G. T. Duffy

ACKNOWLEDGEMENT
STATE OF OREGON
COUNTY OF CROOK

Be remembered that on this 1st day of June, 1971 before me, the undersigned, a notary public in and for the said State & County, personally appeared G T Duffy, to me known to be the person named in and who executed the foregoing instrument and he acknowledges to me that he executed the same freely and voluntarily.

Marie A. Christensen
NOTARY PUBLIC FOR OREGON
My commission expires 6-2-73

ENGINEER'S CERTIFICATE -

I, Emile R. Bachand, a Registered Professional Engineer in the State of Oregon, do hereby certify that the land described below, was correctly surveyed and marked under my supervision.

Emile R. Bachand

REGISTERED PROFESSIONAL ENGINEER 3700 OREGON EMILE R. BACHAND

PROPERTY DESCRIPTION

Section 13, T16S, R16E W.M. - The S½ and the SW¼
Section 24, T16S, R16E W.M. - The N½, the S W½, and the N½ SE¼
Section 23, T16S, R16 W.M. - The SE¼, The SE¼ NE¼, and the N½ NE¼
except the following described tract: Beginning at the North¼ corner of Sect 23, T16S, R16E W.M.; thence S89°44'E - 800.00 ft along the North line of Sect. 23; thence S1°21'W - 500.00 ft; thence N89°44'W - 800.00 ft to the North-South center line of Sect 23; thence N1°21'E - 500.00 ft to the point of beginning, containing 9.17 ac and subject to all existing Easements and Rights of Ways.

ENDORSEMENT -

This plat is referred to the County Surveyor of Deschutes County, Oregon for Approval in accordance with O.R.S. 92.100 (2) & (3)

DESCHUTES COUNTY SURVEYOR

15140

Filed 2:30 AM PM on the 16th Day of August
Plat Book 9 Pages 15 & 16
(2 sheets)

COUNTY CLERK

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Prineville Lake Acres I Special Road District (PLA1-SRD)

Board of Director's Action

RESOLUTION – File Number 2021-02

Concerning Application to Crook County to Vacate SE Springfield Street within the boundary of the Special Road District (SRD).

I hereby certify that the following is a full, true, and correct copy of the action adopted by the Board of Directors of the Prineville Lake Acres I Special Road District at a meeting of the Board of Directors duly, a Special Meeting was held on the 28th day of December 2021, which a quorum was present and voting, and that the following Resolution was adopted and is now in full force and effect.

WHEREAS, the PLA1-SRD Board of Directors has been asked to support the proposal to Crook County to vacate a portion of SE Springfield Street, a road located within the community of Prineville Lake Acres 1 – Special Road District boundary, that lies between the parcels described as Crook County Tax Assessor, Tax Map 16-16-23D Tax lots, 2100 and 2200, as will be determined by the County.

WHEREAS the Prineville Lake Acres – Special Road District Board of Directors has considered the proposal to vacate a portion of SE Springfield Street, that lies between Tax Lots 2100 and 2200 only. See attached maps.

NOW THEREFORE, THE BOARD ADOPTS THE FOLLOWING RESOLUTION:

1. The PLA1-SRD Board finds that SE Springfield Street has not been maintained by the Special Road District.
2. The PLA1-SRD Board finds that SE Springfield Street is not a necessary or essential road within the community or to the Special Road District.
3. The PLA1-SRD Board finds that it is in the best interest of the Special Road District to allow that portion of the proposed road vacated. It will also remove any maintenance liability from the Special Road District.
4. The PLA1-SRD President Loren Cassidy has verified that the roads within the Special Road District are county roads. The Special Road District is required to maintain the roadways, but we do not own said roadways. As far as vacating said portion of Springfield Street, no compensation can be required by the applicants.
5. The PLA1-SRD Board finds that the subject portion of SE Springfield Street abuts up to BLM property, and there is no access to BLM. A fence divides the end of said roadway. There is no emergency access at this point.

EXHIBIT

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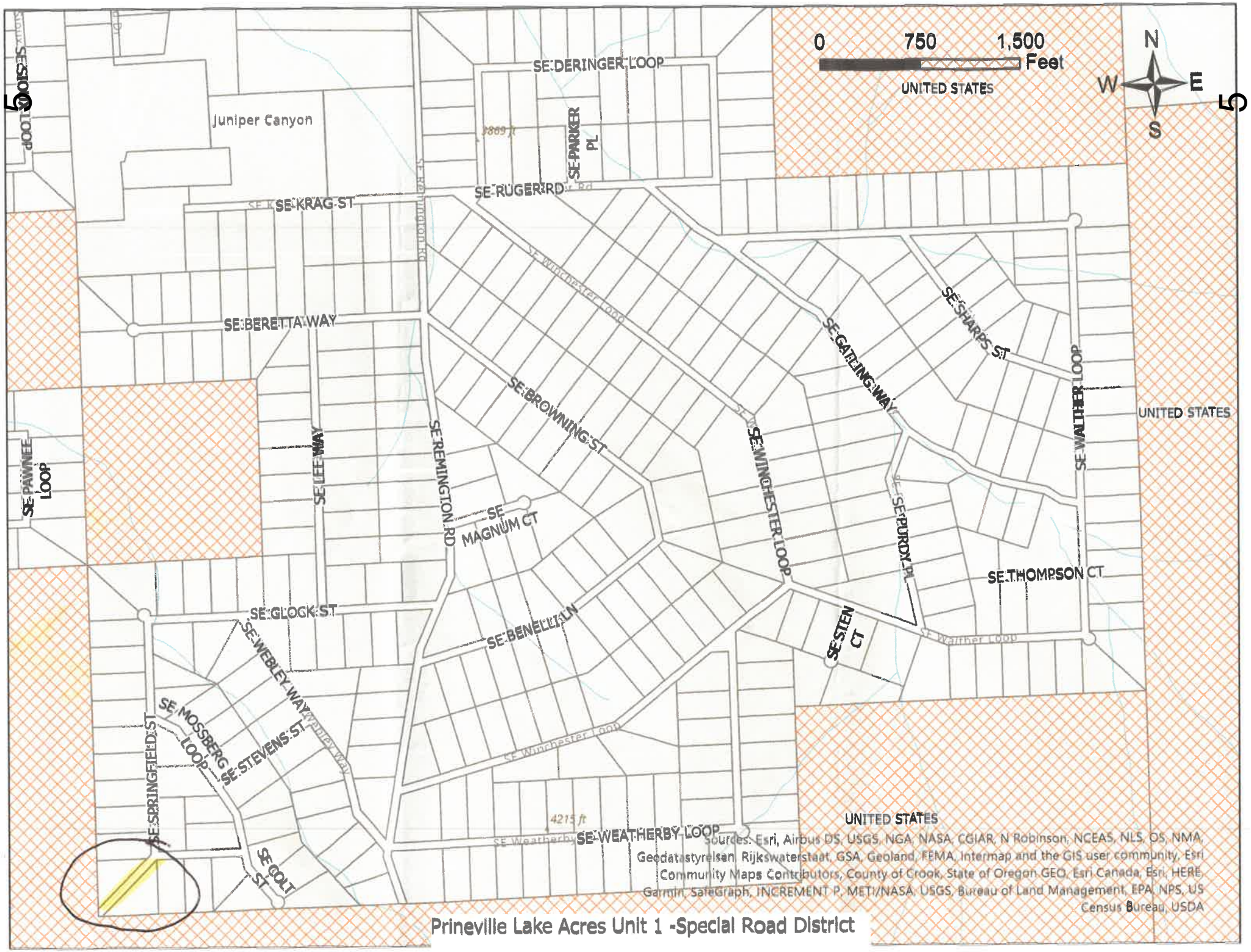
6. The PLA1-SRD has voted and hereby Resolves to SUPPORT the application to the Crook County Court to vacate that portion of Springfield Street. A majority vote passed 2/0. Dan Trump – yes / Debbie Kowalski – yes / Loren Cassidy – absent.
7. The PLA1-SRD Board requests a copy of the "Crook County Court Final Decision" that shows the approval to vacate a portion of Springfield Street.
8. The PLA1-SRD Board requests a copy of the "Final Recorded Plat" that shows the subject property has been processed, and final road vacation has been recorded with the Crook County Clerk's Office.
9. The PLA1-SRD requests to be notified when the Crook County Court holds their public hearing. This would allow the PLA1-SRD Board member(s) to attend said hearing to testify, if needed.

IN WITNESS WHEREOF, I have set my hand and seal this 28th day of December, 2021.

Debra M. Kowalski

By: Debra M. Kowalski, Secretary



Prineville Lake Acres Unit 1 -Special Road District

REAL PROPERTY ACCOUNT NAMES

Account Number: 3442

Map Tax Lot: 16162300-002100-3442

Owner: 2922 NE 23RD ST

OCALA FL 34470-3493

GALLEGOS FAUSTIN	OWNER	
TJULANDER JOANNE	OWNER	
TJULANDER RICHARD	OWNER	
GALLEGOS FAUSTIN	Taxpayer	100.0%

10/22/2021 3:37:36 PM

Lisa Andrach

From: Marella, Cecilia C <cmarella@blm.gov>
Sent: Thursday, September 23, 2021 9:53 AM
To: Lisa Andrach
Subject: Re: [EXTERNAL] RE: Bureau of Land Management-Resource Management Plan map snips for property at 15626 SE Springfield

After talking with our Lands/Realty folks and my supervisor, I can confirm the BLM does not have any concerns about closing the road.

Thank you for inquiring this with us and have a great day!
Cece

Cecilia Marella
Outdoor Recreation Planner-South Zone
Deschutes Field Office
(541) 416-4634

From: Lisa Andrach <lisa@fitchandneary.com>
Sent: Thursday, September 23, 2021 9:41 AM
To: Marella, Cecilia C <cmarella@blm.gov>
Subject: [EXTERNAL] RE: Bureau of Land Management-Resource Management Plan map snips for property at 15626 SE Springfield

Yes.
Thank you.

Lisa Andrach, Attorney

FITCH & NEARY P.C.

Fitch and Neary, PC
210 SW 5th St, Suite 2
Redmond, OR 97756
Ph: 541-316-1588
Fax: 541-316-1943
www.fitchandneary.com

EXHIBIT
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From: Marella, Cecilia C <cmarella@blm.gov>
Sent: Thursday, September 23, 2021 9:39 AM
To: Lisa Andrach <lisa@fitchandneary.com>
Subject: Re: Bureau of Land Management-Resource Management Plan map snips for property at 15626 SE Springfield

Hi again Lisa,

I'm working with our Lands/Realty folks to check the road. To confirm-the road circled in blue is what you're looking to close, correct?

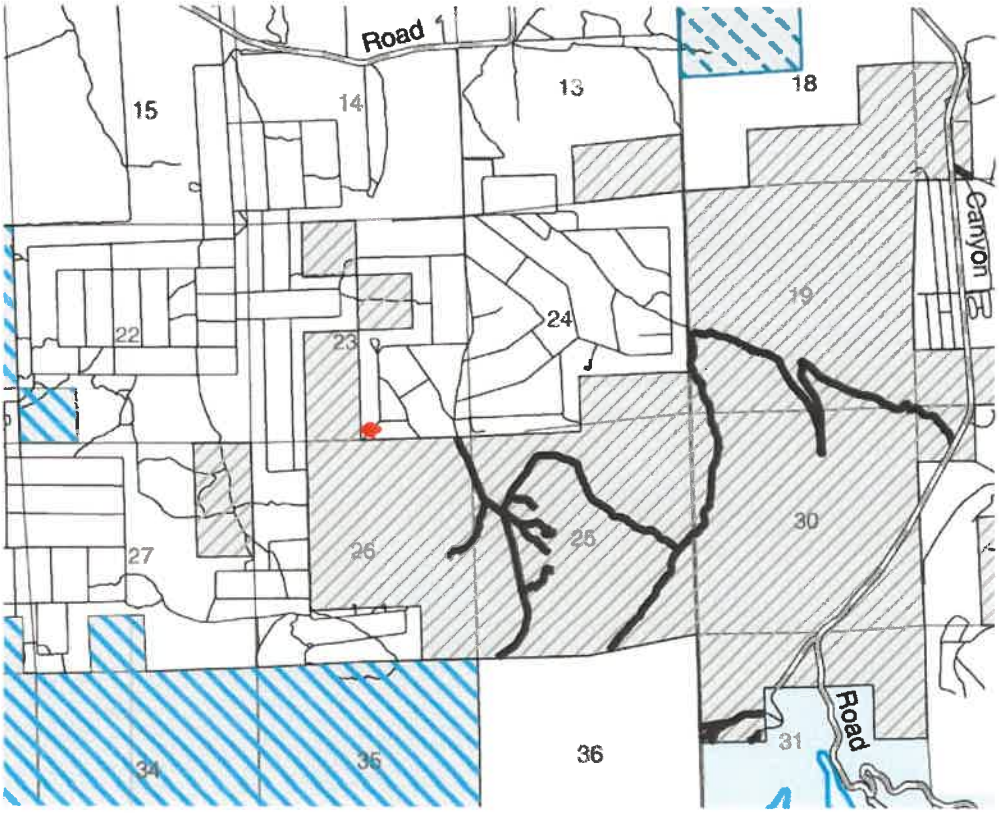
Thanks,
Cece

Cecilia Marella
Outdoor Recreation Planner-South Zone
Deschutes Field Office
(541) 416-4634

From: Marella, Cecilia C <cmarella@blm.gov>
Sent: Wednesday, September 22, 2021 3:15 PM
To: lisa@fitchandneary.com <lisa@fitchandneary.com>
Subject: Bureau of Land Management-Resource Management Plan map snips for property at 15626 SE Springfield

Hi Lisa,

I have included a couple snips of our RMP maps.
First map-red dot roughly at 15626 SE Springfield. Legend for map below.



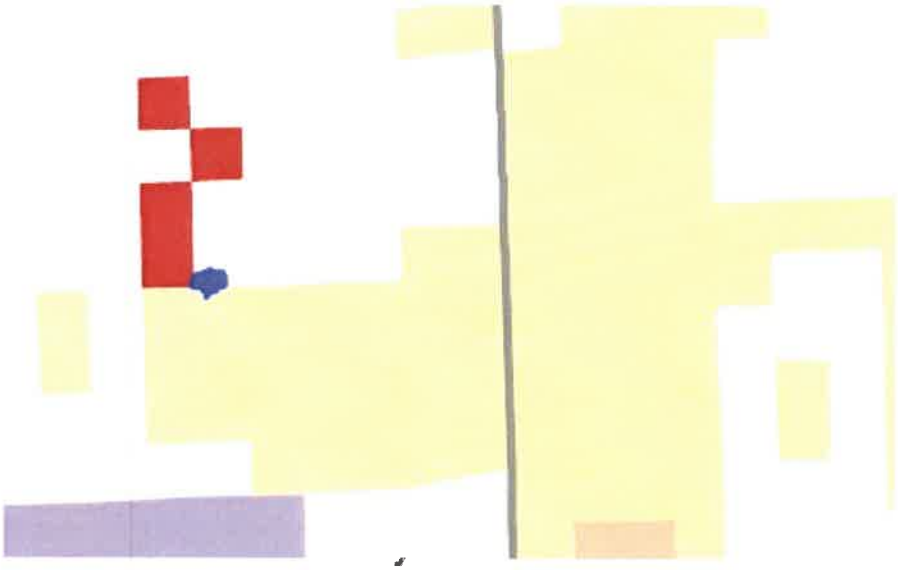
BLM Routes Available for Motorized Travel

Closed Year Round

Limited to Designated Roads Only Year Round

Limited to Designated Roads Seasonally

Second map:
Blue dot roughly on the property (this map isn't as detailed as the first one).



y Closed to All Fiream Discharge

I will find out more information about if we put the gate up, and if we object if the road is vacated.

Thanks and let me know if you have any additional questions!
Cece

Cecilia Marella
Outdoor Recreation Planner-South Zone
Deschutes Field Office
(541) 416-4634

Lisa Andrach

From: Marella, Cecilia C <cmarella@blm.gov>
Sent: Thursday, September 23, 2021 3:27 PM
To: Lisa Andrach
Subject: Re: [EXTERNAL] RE: Bureau of Land Management-Resource Management Plan map snips for property at 15626 SE Springfield

We do not have a record of it, so I'm guessing it was not put up by us.

Cecilia Marella
Outdoor Recreation Planner-South Zone
Deschutes Field Office
(541) 416-4634

From: Lisa Andrach <lisa@fitchandneary.com>
Sent: Thursday, September 23, 2021 1:40 PM
To: Marella, Cecilia C <cmarella@blm.gov>
Subject: [EXTERNAL] RE: Bureau of Land Management-Resource Management Plan map snips for property at 15626 SE Springfield

Thanks for the information Cecilia. I just wanted to follow up to see if you had figured out who might have put up the gate in case the question comes up with the County.

Lisa Andrach, Attorney

FITCH & NEARY P.C.

Fitch and Neary, PC
210 SW 5th St, Suite 2
Redmond, OR 97756
Ph: 541-316-1588
Fax: 541-316-1943
www.fitchandneary.com

EXHIBIT
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Crook County, Oregon

0 0.02 0.04 mi

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Crook County GIS
GEOGRAPHIC INFORMATION SYSTEMS

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