RECORDING COVER SHEET

Any errors in this cover sheet DO NOT affect the transactions(s) contained in the instrument itself.

STATE OF OREGON } ss 2009001
COUNTY OF CROOK }
I CERTIFY THAT THE WITHIN INSTRUMENT WAS RECEIVED FOR RECORD ON THE 5th DAY OF January, 2009 AT 9:00 A. M. AND RECORDED IN CJRNL RECORDS OF SAID COUNTY MF NO. 2009-001
DEANNA E. BERMAN, CROOK COUNTY CLERK
BY Eloise Brunner DEPUTY

n/c

AFTER RECORDING RETURN TO:

Dave Gordon

UNTIL A CHANGE IS REQUESTED, ALL TAX STATEMENTS SHALL BE SENT TO THE FOLLOWING ADDRESS (only for instruments conveying or contracting to convey fee title to any real estate):

COUNTY COURT, CROOK COUNTY, STATE OF OREGON

DOCUMENT TITLE:

Findings & Decision- Crossing Trails Resort Development Plan

BENEFICIARY:

GRANTOR:

TRUE AND ACTUAL CONSIDERATION PAID

$

THE AMOUNT OF THE CIVIL PENALTY OR THE AMOUNT, INCLUDING PENALITES, INTEREST AND OTHER CHARGES, FOR WHICH THE WARRANT, ORDER OR JUDGMENT WAS ISSUED (for instruments to be recorded in Lien Records):

(56 pgs)

CROOK COUNTY COURT
FINDINGS AND DECISION
CROSSING TRAILS RESORT DEVELOPMENT PLAN
DR-08-0092

APPLICANT: PROPERTY OWNER:	818 Powell LLC c/o Gene Gramzow 380 Q Street, Suite 240 Springfield, OR 97477
ATTORNEY:	Peter Livingston Martha O. Pagel Myles A. Conway Schwabe Williamson & Wyatt 1211 SW 5th Avenue, Suite 1500 Portland, OR 97204
AGENT:	Ron Hand Chelsea Schneider WH Pacific 920 SW Emkay Drive, Suite C-100 Bend, Oregon 97702
ENGINEER:	Jeff Fuchs Bussard Williams 389 Scalehouse Court Bend OR 97702
PROPERTY:	See attached property description
SUBJECT:	Request for Development Plan approval to allow a destination resort on approximately 580 acres of land zoned EFU-3 with a Destination Resort (DR) overlay.

Introduction and Findings of Fact

818 Powell LLC ("Applicant"), seeks to develop the Crossing Trails Resort as a visitor-oriented destination resort in Crook County ("County"). The proposed resort will be located on a 580-acre site in the vicinity of the rural community of Powell Butte. The site is located within the County destination resort overlay zone. The property is north of Oregon Highway 126 and east of SW Parrish Lane. It is approximately six miles west of downtown Prineville and 10 miles east of Redmond. Privately owned lands surround it on all sides, with large ranch properties

adjacent to the south, west and north. The open grasslands of Grass Butte are to the east. The planning commission toured the proposed resort site on June 4, 2008.

The property is relatively flat with a gentle slope rising approximately 280 feet from the southwest to northeast corners of the site. It has prominent views of the Cascade mountain peaks, as well as Smith Rock State Park. Nearly one-third of the property contains areas of meadow grass. The remainder is vegetated with juniper and other low growth vegetation common to Central Oregon.

The property is bisected by an irrigation canal serving the Central Oregon Irrigation District ("COID"), which runs from the southern border of the property to its northwest corner. COID utilizes the irrigation canal during the irrigation season from April through September of each year. The property is also bisected by large, regional electric transmission lines owned and controlled by the Bonneville Power Administration ("BPA"), which run north to south. The property is burdened by a 150-foot-wide electrical utility easement in favor of the BPA. There are also a 150-foot-wide Portland General Electric ("PGE") easement east of the BPA easement and a second BPA easement east of the PGE easement, 77.5 feet in width. The terms of these easements limit development opportunities on the eastern portion.

The property has approximately 163 acres of appurtenant water rights through COID. Portions of these water rights are the subject of a temporary in-stream water lease with the State of Oregon that can be terminated when the water rights are needed for the project. The remainder of the water has been applied to the land in connection with an ongoing, low-scale livestock grazing operation on the subject property. At present, the property is developed with three existing dwellings and associated outbuildings. The property has two irrigation ponds. There are two nonfarm parcels on the southern edge of the property.

The property is located north of Highway 126 and east of SW Parrish Lane. Primary and secondary resort access points to the resort will be located on SW Wiley Road, which borders the subject property to the south. An additional access point, for emergency access only, will be located on SW Parrish Lane. Traffic to Prineville, which is to the east, and Bend/Redmond, which are to the west, will use Highway 126.

The County Planning Commission ("Commission") held hearings on this application on April 30, June 4, June 18, July 2, August 13 and August 27, 2008. The Commission deliberated at public meetings on September 3 and September 9, 2008. Based on written and oral testimony received, the Commission concluded that the resort met all applicable destination resort siting standards in the Crook County Code ("CCC" or "Code") and ORS 197.435-197.467.

On November 3, 2008, the Oregon Department of Transportation ("ODOT") and the Goal One Coalition ("Coalition") filed appeals of the Commission's decisions with the County Court ("Court") under CCC 18.172.110. Under CCC 18.172.110(4), the appeal from the Commission final decision was based on the record made before the Commission. However, as allowed by CCC 18.172.110(12), the Court permitted written argument as follows: (1) Applicant submitted a memorandum dated November 26, 2008, which addressed the issues stated in the notices of appeal; (2) ODOT submitted a letter dated November 26, 2008, containing a legal analysis and a proposed condition 28 (revised and renumbered in this decision to Condition 36) ;

and (3) the Coalition submitted a letter dated December 3, 2008, responding to the Applicant's November 26, 2008 memorandum;

On November 12, 2008 the Court set the schedule for the appeal and considered a motion to take evidence outside the record filed by Jan Wilson of the Coalition on behalf of Anderson et al pursuant to Crook County Code § 18.172.110(12)(a)(vi) which states:

18.172.110(12)(a)(vi) 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 or 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 appellate 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.

The evidence the Coalition sought to introduce related to Crook County appeals fees. The Court elected not to take evidence outside the record because the Court determined that the Coalition had not established that "the supplement is necessary to take into consideration the inconvenience of locating the evidence at the time of the initial hearing, with such inconvenience not being the result of negligence or dilatory act by the moving party" pursuant to the Code. The Court noted that the staff memorandum had been available since June 13, 2008 and that the other information appeared to be the same as the information that was submitted in *Young v. Crook County* (LUBA No. 2007-250 June 11, 2008) , *aff'd* 224 Or App 1, (2008). The Court found that the information could have been submitted into the record during the initial hearings in front of the Commission. The Court further stated that the appropriate forum to bring such a challenge was during the public hearings held to review adoption of the annual county fee schedule, and that the annual schedule adopted had not been appealed to LUBA.

On December 3, 2008, the Court heard testimony from representatives of Applicant, ODOT and the Coalition. Then, as directed by the Court, the parties submitted additional written argument as follows: (1) Applicant submitted an email on December 8, 2008, with three opinions attached and a proposed alternative Condition 28 (revised and renumbered in this decision to Condition 36); and (2) the Coalition submitted a transcript of an omitted public hearing held with respect to this matter held on September 9, 2008 before the Planning Commission; (3) the Coalition submitted a letter dated December 10, 2008, responding to Applicant's email; and (4) Applicant submitted a memorandum on December 12, 2008, addressing the Coalition's letter.

On December 17, 2008, the Court deliberated and required modifications to the Commission's findings and conditions as they pertain to certain issues raised on appeal. Those modifications are incorporated into the findings and conditions below. Except as modified, the Court accepts and adopts the Commissions findings and conclusions as they are stated below. The Court approves the proposed development plan for a destination resort.

18.116.020 Applicability.

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

(2) Destination resorts shall be allowed only on tracts mapped by the county as eligible for destination resort siting and designated as such in the comprehensive plan.

As shown on the Destination Resort Overlay Zone map, Application Exhibit ("App. Ex.") 7, the entire property is eligible for destination resort siting and development.

18.116.040 Standards.

A destination resort shall meet the following standards:

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

The proposed destination resort site is approximately 580 acres.

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

The proposed destination resort will not be located on High Value Farmland. OAR 660-033-0020(8)(a) defines "High Value Farmland" as "land in a tract composed predominantly of soils that are: (A) Irrigated and classified prime, unique, Class I or II; or (B) Not irrigated and classified prime, unique, Class I or II." Similarly, CCC 18.116.030(3) defines High Value Farmland as "a tract composed predominantly of soils that are classified as prime, unique, Class I, or Class II. A tract is composed predominantly of such soils if more than 50% of the acreage of the tract is composed of prime, unique, Class I, or Class II soils."

The resort tract contains no Class I or II soils and no areas of prime or unique soils. Soil data from the Natural Resource Conservation Service ("NRCS") shows that over 50 percent of the tract is composed of soils with a NRCS rating of Class III or higher. The Stuckmond-Lickskillet complex is Class VIe. The Redmond-Stuckmond complex and the Searles-Lickskillet complex are Class IIIe, if irrigated, and Class VIe, if not irrigated. *See* App. Ex. 31. Therefore, because the tract is not composed of predominantly Class I, II, or prime soils, it does not qualify as High Value Farmland under the state or local rules.

Some opponents, including the Coalition and 1000 Friends of Oregon, contend that a resort may not be sited on the subject property for the following reasons:

(1) ORS 197.455 states, "A destination resort must be sited on lands mapped as eligible for destination resort siting by the affected county. The county may not allow destination resorts approved pursuant to ORS 197.435 to 197.467 to be sited in any of the following areas: * * * (b)(B) On a site within three miles of a high value crop area." A high-value crop area is defined by ORS 197.435(2) to mean "an area in which there is a concentration of commercial farms capable of producing crops or products with a minimum gross value of $1,000 per acre per year. These crops and products include field crops, small fruits, berries, tree fruits, nuts or vegetables, dairying, livestock feedlots or Christmas trees as these terms are used in the 1983 County and State Agricultural Estimates prepared by the Oregon State University Extension Service."

(2) ORS 197.455(1) was amended in 2003 as follows (with removed language in *italics* and new language in **bold**):

> A destination resort [*shall*] **must** be sited on lands mapped as eligible for destination resort siting by the affected county. [*A map adopted by a*] **The** county [*shall*] **may** not allow destination resorts approved pursuant to ORS 197.435 to 197.467 to be sited in any of the following areas.

(3) Hay is a "high-value crop," since recently it has been selling at a minimum gross value of $1,000 per acre per year. Since the land is presently producing hay, it is a high-value crop area and cannot be developed as a destination resort.

In response, Applicant states:

(1) Opponents misread ORS 197.455(1), which begins by a reference to "lands mapped as eligible." The statute addresses the mapping process and identifies certain areas that cannot be mapped as eligible for resorts. To focus on one sentence, to the exclusion of the balance of the statute, is to improperly disregard context. ORS 197.455(2) provides, "In carrying out subsection (1) of this section, a county shall adopt, as part of its comprehensive plan, a map consisting of eligible lands within the county. The map must be based on reasonably available information and may be amended pursuant to ORS 197.610 to 197.625, but no more frequently than once every 30 months. The county shall develop a process for collecting and processing concurrently all map amendments made within a 30-month period. A map adopted pursuant to this section shall be *the sole basis for determining whether tracts of land are eligible for destination resort siting* pursuant to ORS 197.435 to 197.467." (Emphasis added.) In other words, a county cannot change the designation of land as eligible for destination resort siting without amending its destination resort map. It cannot make individual eligibility determinations at the time of application for a resort.

(2) The 2003 amendment to ORS 197.455(1) does not change its meaning. In the context of the entire statute, it would be incorrect to rely on a change in one sentence, which was made without mention anywhere in the legislative history of the statute, and which would invalidate a clear history involving case law (*Foland v. Jackson County*, 311 Or 167, 807 P2d 801 (1991)) and subsequent statutory amendments intended to address the *Foland* holding. As stated by the Destination Resort Handbook, published by the Department of Land Conservation

and Development in 1995, "The purpose of mapping is to clearly show areas available for resort development. * * * It is important that counties precisely map eligible areas. The mapping must be property-specific to avoid uncertainty in applying the plan. *The law says that this map is the sole determinant of tracts eligible for destination resorts.*" (Emphasis added.) Goal 8, which addresses destination resort siting, states in the "Implementing Measures": "A map adopted pursuant to this section shall be the sole basis for determining whether tracts of land are eligible for siting of large destination resorts under the provisions of this goal and ORS 197.435 to 197.467."

The Merriam Webster dictionary defines the term "field crop" as "an agricultural crop (as hay, grain, or cotton) grown on large areas." However, while hay is therefore a "field crop" as that term is used in ORS 197.435(2), hay is not a high-value crop. The opponents have not persuaded the Court that hay has had a *consistent* value of more than $1,000 per acre per year.

As explained by Applicant's agricultural consultant, Bruce Andrews, in his August 27, 2008 letter (R 198-99), the per-acre values of hay and alfalfa production in the County have been below $500 per acre for the last five production years. In the production and marketing years of 2006 and 2007, the combined average value (sales) per acre was $319.40 and $364.50.

The Crook County Comprehensive Plan ("CCCP") discusses high value crop areas at length and explains the methodology that was used to map them. CCCP, pp. 76-78. The mapping work was done by Stanley D. Miles, a consultant and Agricultural Economist Emeritus at Oregon State University. As explained by the CCCP, p. 76, "The DLCD Destination Resort Handbook further explains that this standard [for a High Value Crop Area] does not include land that routinely fails to produce High Value Crops, but has an exceptionally productive year."

Concerning the report prepared by Miles ("the Miles Report"), the CCCP states:

> "[T]he concentrations of commercial farms growing High Value Crops in Crook County are located north and northwest of Prineville and in the northwest corner of Crook County. The Miles Report did not identify a concentration of High Value Crops in the Powell Butte Area (generally defined as Range 14 East, Townships 16 South and 15 South). . . .
>
> "To explain why the Powell Butte Area is not a High Value Crop Area, the Miles Report explains that, under Goal 8 and the Destination Resort Handbook, the definition of "High Value Crop Area" emphasizes the productivity of commercial farms and does not focus solely on the potential productivity of a farm based upon soil type alone. Rather, the definition takes into account all factors relevant to the *consistent* production of crops with a minimum gross value of $1,000 per acre per year. The Miles Report shows that the unique factors such as the high elevation, high risk of frost, short growing season, and relatively unproductive soil profiles within the Powell Butte Area limit farmers' ability to cover the costs of production and therefore render the area unsuitable for consistent High Value Crop production. Therefore, the Powell Butte Area does not support a concentration of commercial farms that are capable of producing High Value Crops on a regular or routine annual basis due to climate and topography.

> Because the High Value Crop Area standard 'does not include land that routinely doesn't produce high value crops, but has an exceptionally productive year,' the Powell Butte Area is not a High Value Crop Area." CCCP, pp. 77-78.

In adopted Ordinance 17, Amendments 52 and 53, the County considered the issue of mapping of high value crop lands. The county's findings are to be found in Exhibit A of the Comprehensive Plan relating to Destination Resorts. Therein, the County in painstaking detail explains the process used to map high value croplands in the County at the time of map preparation in a report and subsequent supplement. The mapping relied upon data provided by the U.S. Census of Agriculture, Oregon State University, USDA and Crook and Jefferson County OSU Extension offices. The report noted that the definition of a high value crop area "takes into account all factors relevant to the *consistent* production of crops with a minimum gross value of $1,000 per acre per year." (Emphasis in the original.) The report shows that the "unique factors such as the high elevation, high risk of frost, short growing season and relatively unproductive soil profiles within the Powell Butte area limit farmers' ability to cover the costs of production and therefore render the area unsuitable for consistent High Value Crop production."

Appellants during testimony before the planning commission cited advertising and data to the effect that the value of hay will likely exceed $1,000 per acre in 2008 based on current pricing. That may be so, although data supporting this contention will lag. A one-year anomaly, however, does not a *consistent* trend make. The best data before the Commission is at R 200, and consists of a chart prepared by consultant Bruce Andrews showing that the value of alfalfa hay during the period 2002 to 2007 consistently averaged under $500 per acre. A reasonable decision maker could have and likely did rely on that evidence to conclude that the hay, at this time, is not a high value crop, and even had the decision-makers on the Commission determined otherwise, that would not have relieved them of the obligation to evaluate the siting criteria for the proposed development solely within the context of the adopted overlay map. The concept that a mapping process must precede a determination of viability for high value crop production was previously confirmed by LUBA in *Boyer v. Baker County,* 35 Or LUBA 223 (1998), wherein LUBA concluded: "The statutory order of operations for confirming that a destination resort overlay amendment meets the requirements of Goal 8 and ORS 197.435(2) is to first map the concentrations of commercial farms and then determine which farms could produce the requisite $1,000 per-acre per-year yield. " Appellants request of this court is to do the reverse: to determine the viability of high value crop production on an acre-by-acre basis, and then, based on that analysis, to add property to or delete property from a previously adopted map.

The Court agrees with Applicant that ORS 197.455(1) applies to the mapping process for destination resorts and is not to be applied to individual destination resort applications on land already mapped as eligible for destination resort development. The Court is also persuaded by Applicant's evidence, which is consistent with the analysis in the CCCP, that hay and alfalfa are not "high-value" crops with a minimum gross value of $1,000 per acre per year.

Powell Butte Agreement

Some members of the public contend that a destination resort cannot be sited on the subject property because of a mediated settlement agreement ("Powell Butte Agreement") associated with the appeal of *Burke v. Crook County*, LUBA Nos. 98-200, 98-221, 98-222,

98-223, 98-224, 98-225, 99-037, 99-038, 99-039, 99-040 and 99-041. *Burke* was an appeal of a series of land use decisions called "the exceptions ordinances" and the "non-resource ordinances." It adopts certain policies as part of the County's comprehensive plan, including Policy 2, which provides, "The County will not initiate additional exceptions or nonresource designations within the Powell Butte Study Area until the next periodic review," and Policy 3, which provides, "The land north of Highway 126 shall be retained as exclusive farm use as that land is composed of large parcels and contains less rural residential development than the area south of the highway."

When the County adopted the destination resort map in Ordinance No. 17, Amendment 52 on May 22, 2002, it found as follows:

> "The County Court finds that the Mutual Settlement Agreement entered into by the County to settle LUBA Case Nos. 98-220, 222, 223, 224, 225 and 99-037, 038, 039, 040, 041 does not prohibit the county from implementing Goal 8. The Settlement Agreement governs the reclassification of certain lands within the Powell Butte Study Area. Aside from the zoning map and code amendments approved pursuant to the Agreement, the Agreement prohibits additional exceptions or nonresource designations within the Powell Butte Study Area except in connection with periodic review. However, the Agreement specifically allows the continuation and establishment of uses that are permitted outright or conditionally on resource land. Destination resorts are permitted as a condition use on EFU land pursuant to ORS 215.283(2)(t). Furthermore, Goal 8 and ORS 197.450 specifically authorize destination resorts on resource lands without an exception to Goals 3, 4, 11, or 14. All property underlying the Destination Resort Overlay will maintain its current zoning designation, including properties with *resource designations*." (Emphasis added).

Applicant has properly relied on the County destination resort eligibility map, which was adopted in May 2002. Opponents' contention that the Powell Butte Agreement precludes destination resort development on the subject property is a collateral attack on the final land use decision to adopt the map. The attack is not timely and must be rejected.

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

The resort is planned to contain a restaurant and meeting rooms with seating for a minimum of 100 people. These facilities will be located within the "Core Area" shown on the Development Plan map, App. Ex. 3. Applicant explains that the eating and meeting facilities will be oriented toward the needs of visitors rather than area residents. These facilities will be open for public use.

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

The resort will contain a minimum of 150 units of overnight lodging, as that term is defined in CCC 18.116.030(5):

> "Overnight lodgings" means permanent, separately rentable accommodations which are not available for residential use. Overnight lodgings include hotel rooms, lodges, cabins and time-share units. Individually owned units may be considered overnight lodgings if they are available for overnight rental use by the general public for at least 45 weeks per calendar year through a central reservation and check-in service. Tent sites, recreational vehicle parks, manufactured dwellings, dormitory rooms and similar accommodations do not qualify as overnight lodgings for the purpose of this definition.

Applicant has not finalized the make-up and allocation of its overnight lodging units. To fulfill the overnight accommodation requirements, the resort will build a combination of stand-alone units, called "Casitas," together with multi-family structures with individual "lock off" rooms. Applicant anticipates the development of 154 stand-alone Casita units, each of which will be approximately 400 square feet in size.

In addition to the Casita units, Applicant will develop a number of multi-family and/or townhome structures, each offering a number of separate rentable overnight units. Within these structures, Applicant will utilize the lock-off concept, where an overnight lodging structure is divided into multiple units that can be separately rented. Each such structure will provide several separately rentable units to meet the overnight accommodation requirements of the destination resort code. A number of area resorts employ the lock-off concept. Lock-offs provide more overnight lodging units, with less impact on the landscape.

On appeal to the Court, the Coalition stated concerns about the definition of "Casitas" and "lock off rooms" and how they will be counted toward overnight accommodations. The application of this standard has been an issue in administering previous decisions related to destination resort approvals. At oral argument on December 3, 2008, Applicant represented that all overnight units will be at least 400 square feet and will include a self-contained bath. Any such units should have a kitchenette, including a sink for food preparation (in addition to the bathroom sink); either a microwave oven or a hot plate; and a refrigerator.

The overnight lodging units may also include some individually owned units, subject to the rental availability requirements stated in CCC 18.116.030(5). Applicant will build (or financially assure, to the extent financial assurances are permitted by law) enough overnight lodging units to meet the 150-unit minimum standard and to maintain the required 2:1 ratio.

(i) At least 75 units of overnight lodging, not including any individually owned homes, lots or units, shall be constructed or guaranteed through surety bonding or equivalent financial assurance prior to the closure of sale of individual lots or units.

ORS 197.445(4)(b)(B) now requires that in Eastern Oregon, including Crook County, at least 50 units of overnight lodging must actually be constructed prior to the closure of sale of

individual lots or units. Applicant shall construct these units during the first phase of development. The 25 units remaining of the first increment of 75 units shall be constructed or guaranteed through surety bonding or equivalent financial assurance prior to the closure of sale of individual lots or units.

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

The remaining 75 lots or units shall be owned by Applicant, Applicant's successors and assigns, sold as timeshares or sold as individually owned lots or units subject to deed restrictions that limit their use to overnight lodging units, subject to rescission when the resort has constructed 150 units of permanent overnight lodging.

(b) The number of units approved for residential sale shall not be more than two units for each unit of permanent overnight lodging provided under subsection (3)(a)(i) of this section.

Applicant will maintain the required 2:1 ratio during the life of the resort, documenting ongoing compliance prior to tentative subdivision plan approval for each phase of resort development.

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

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

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

(4) All required developed recreational facilities, key facilities intended to serve the entire development, and visitor-oriented accommodations shall be physically provided or guaranteed, proportional to the extent of the phased development, pursuant to CCC 18.160.040 through surety bonding or equivalent financial assurances prior to closure of sale of individual lots or units. 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. Nothing in this subsection shall be interpreted to require the construction of all approved phases of a destination resort; provided, that the destination resort as developed complies with the minimum development requirements of subsections (3), (5), and (7) of this section.

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

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

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

The proposed recreational facilities will include an 18-hole golf course and associated golf complex facilities, various recreational facilities, hiking/running trails, a swimming pool, and similar recreational amenities. A list of the potential recreational uses/amenities that may be developed at the resort is set forth in App. Ex. 8.

The average Consumer Price Index for urban households, as compiled by the U.S. Department of Labor Bureau of Labor Statistics, indicates that $7 million in 1993 dollars has the same buying power as $10,225,329 in year 2008. Not less than one-third of this amount ($3,408,443) must be spent on "developed recreational facilities" as that term is defined in CCC 18.16.030(2). Applicant will exceed these minimum investment standards.

The following construction cost estimates are based on unit prices taken from Applicant's past construction projects together with an analysis of data developed at similar resort facilities in Central Oregon. The following cost estimate demonstrates that Applicant will exceed the requirements for total expenditures on required resort facilities. Applicant also retains the flexibility to refine the type of amenities and commercial facilities provided within the project.

ESTIMATED TOTAL COST

RESORT FACILITIES	
Eating Facilities for 100 Persons Minimum	$800,000
Meeting Space for 100 Persons	$400,000
154 "Casita" Units (overnight accommodations)	$9,240,000
96 lock off multi-family units (overnight accommodations)	$10,560,000
RESORT FACILITIES SUB-TOTAL:	**$21,000,000**
RECREATIONAL/OPEN AMENITIES SUB-TOTAL	
18-Hole Golf Course, including Driving Range	$4,000,000
Golf Complex and Maintenance	$1,000,000
Trail System	$300,000
Swimming Pool/Jacuzzi	$200,000
RECREATIONAL AMENITIES SUB-TOTAL:	**$5,500,000**
TOTAL ESTIMATED DEVELOPMENT COSTS:	**$26,500,000**

The above-stated minimum construction cost estimate for eating facilities and meeting space is based on the construction of an 8,000 square foot conference facility that will provide sufficient space for both a 4,000 square foot meeting facility and a 4,000 square foot dining facility. Each facility will be designed to accommodate a minimum of 100 persons on site. Applicant projects a $150/per-square-foot construction cost figure for this eating/meeting facility. The total cost of such facility is estimated at $1.2 million.

The above-stated minimum construction cost estimate for overnight accommodation units is as follows. Applicant intends to construct 154 stand alone Casita units that will be approximately 400 square feet in size. The total square footage of Casita units is projected as 61,600 square feet. Applicant believes these units can be constructed for a price of $150 per square foot, for a total cost of $9,240,000. In addition to the Casita units, Applicant anticipates the construction of 32 attached multi-family townhome units. Each of these 32 multi-family units will have three different lock-off units, for a total of 96 additional overnight accommodation units. The 32 multi-family units are expected to be a minimum of 2,200 square feet in size for a total square footage of 70,400 square feet. Applicant anticipates construction of such units for a price of $150 per square foot, for a total investment of $10,560,000.

The golf course construction cost estimate includes clearing and grubbing, rough grading, green and tee construction, bunker drainage, bunker sand, finish grading, seeding and cart paths. The construction cost estimate is based on golf course construction experience as well as an analysis of the costs incurred in the construction of other Central Oregon resort projects.

The total estimated cost of $26,500,000 far exceeds the minimum investment requirement of $10,225,329. In addition, the estimate of $5,500,000 for recreational facilities

far exceeds the minimum investment required of $3,408,443.

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

The potential commercial uses that may be developed at the resort are listed in App. Ex. 9. These uses are consistent with CCC 18.116.070(8). They will be located in the areas designated for Core Area, Core Area/Single Family, Ancillary Resort Uses, and Ancillary Resort Uses as Allowed in Easements on the Development Plan map, App. Ex. 3. All commercial uses will be internal to the resort, limited to the types and levels of use necessary to meet the needs of resort visitors. No industrial uses are proposed.

The Coalition objects that the commercial uses will be of a nature other than those intended to serve the resort community. The Commission specifically addressed this concern in what is now Condition 7, which, by incorporating reference to CCC18.116.070(8), limits commercial services to those "necessary to meet the needs of visitors to the resort." Absent knowing what specific businesses will someday be recruited to the proposed development, it is unclear how the Coalition would have the Court or the Commission further address this condition to provide more specificity or assurance.

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

As depicted on the Development Plan map, App. Ex. 3, and the Open Space Management Plan, App. Ex. 15, over 50 percent of the site, including the area devoted to the golf courses, will be maintained as open space throughout the life of the resort. Compliance with this standard will be continuously documented prior to approval of each subdivision plat. Recorded deed restrictions will ensure that open space within the resort is protected in perpetuity.

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

According to County staff, the resort property does not contain any inventoried Goal 5 resources. The Oregon Department of Fish and Wildlife ("ODFW") has confirmed (on the County comment form submitted as page 4 of the destination resort application cover sheet), that there are no wildlife overlays or designated wildlife ranges on the property. There is also no Sensitive Bird Habitat area anywhere on the property.

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

The dry terrain indicates there are no natural lakes, rivers, streams or designated wetlands on the subject property. However, as noted above, a COID irrigation canal crosses a portion of the future resort site. The canal is used to convey water during the course of the regular irrigation season (April through October). There is no "riparian vegetation," and there are no apparent areas of designated wetlands within or adjacent to the canal. If any wetlands are discovered, Applicant shall mitigate for the loss of wetlands through enhancement of the remaining wetlands (if any) and the creation of new wetlands at a different location.

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

The applicant proposes the dimensional standards set forth in App. Ex. 18. As permitted by this criterion, the final dimensional standards will be worked out during development plan review.

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

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

Applicant shall comply with this standard.

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

Applicant shall comply with this standard.

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

Applicant shall comply with this standard.

(d) Twenty-five feet for internal roads;

Applicant shall comply with this standard.

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

Applicant shall comply with this standard.

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

Applicant shall comply with this standard.

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

Compliance with these setbacks shall be documented during each phase of subdivision or site plan review. As explained below in response to the approval criteria, additional setbacks have been imposed where appropriate to ensure compatibility with surrounding uses.

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

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

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

(c) Outdoor recreational facilities, including golf courses, bike paths, trails, boardwalks, picnic tables, temporary open sided shelters, boating facilities, ski lifts, and runs.

The general physical characteristics of the site are depicted in the series of maps in App. Ex. 4. The App. Ex. 4 maps include easements (App. Ex. 4.1), year 2005 aerial photograph of the site (App. Ex. 4.2), a map of adjacent properties (App. Ex. 4.3), wildlife migration zone map (App. Ex. 4.4), 100-year floodplain (showing floodplains) (App. Ex. 4.5), elevation/topography analysis (App. Ex. 4.6) and slope analysis (App. Ex. 4.7).

The App. Ex. 4.5, "100 Year Floodplain," is based upon standard Federal Emergency Management Association ("FEMA") mapping. As App. Ex. 4.5 demonstrates, the 100-year floodplain is mapped along a corridor that parallels the COID Irrigation ditch as it traverses the

subject property. Most, if not all, of the area in the 100-year floodplain falls within areas of right-of-way held by COID. Bridges, canal crossings, pathways and the golf course amenities are the only improvements anticipated in this area. Applicant shall comply with all applicable legal and permitting requirements to the extent any structures are constructed in areas impacted by the floodplain.

With the exception of two minor rock ridgelines, no portion of the site contains slopes in excess of 25 percent. One of the ridgelines runs parallel to the irrigation canal in the southern portion of the resort. Another rock ridge is located in the northeastern portion of the subject property and is largely encumbered by the BPA transmission line easements (discussed in greater detail below). The Slope Analysis map, App. Ex. 4.7, shows existing slopes on the subject property and the two rock ridgelines.

The Coalition's request for assurances that development will not be allowed on slopes of greater than 25 percent or within the floodplain of the COID waterway without a geotechnical report is a reasonable request to ensure development in accordance with CCC 18.116.040 (12). However, "blob diagrams" in a preliminary concept plan do not provide the knowledge needed to know when, where and whether such development might occur. Prior to tentative plan approval of development on a slope of greater than 25 percent or within the floodplain of the COID, Applicant shall be required to prepare and submit for review by the Commission a geotechnical report demonstrating adequate soil stability and proposing any measures needed to mitigate adverse environmental impacts.

The criteria in CCC 18.116.040 are met.

18.116.080 Application procedures and contents.

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

Applicant and its representatives discussed the subject application with the planning director and the County Road Department on several occasions. Applicant submitted an earlier application in July 2007, which was subsequently withdrawn. Prior to this submittal, a pre-application meeting was held on July 3, 2007, which suffices for this submittal. The signed pre-application verification is part of the destination resort application cover sheet, page 5. In response to comments provided by the County Planning and Road Departments, Applicant submitted a new application.

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

Applicant complied with the applicable procedural requirements in the filing and

submission of this application.

The Coalition argues that the Commission erred in finding the application complete, arguing that the record does not contain evidence that a "new" $25,000 filing fee was paid. CCC18.116.080 (2) provides that the purpose of the paying a fee is to "defray costs incidental to the review process." The record is clear that a fee was paid in conjunction with filing of a previous destination resort application for this same tract of land. When that application was withdrawn, the fee was not refunded and instead was applied to the current application. This is an accounting and bookkeeping issue, not an issue of substantive due process.

The substantive information contained within the application was adequate for the Commission to make a judgment regarding whether the application could meet approval criteria. LUBA has long held that where information has been omitted from an application and the omission does not preclude the jurisdiction's ability to apply the approval criteria, there is no basis for remand or reversal. *Caster v. City of Silverton,* 54 Or LUBA 441 (2007), *Douglas v. City of Salem,* 53 Or LUBA 567 (2007), *Venable v. City of Albany,* 33 Or LUBA 1 (1997), *Le Roux v. Malheur County* 32 Or LUBA (1996), *Champion v. City of Portland,* 28 Or LUBA 618 (1995), *Roth v. Jackson County,* 38 Or LUBA 894 (2000).

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

(a) Illustrations and graphics to scale, identifying:

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

The general location of the Crossing Trails Resort is depicted on the Context Map (vicinity map), App. Ex. 2. The Context Map locates the property relative to the cities of Prineville, Redmond and Bend and to other previously approved Goal 8 destination resort projects in Crook and Deschutes counties. The maps of App. Ex. 4 illustrate the location of the resort property in relation to the local street system in the vicinity of the Powell Butte rural community. The resort property borders SW Wiley Road, which is to the south and SW Parrish Lane, which is to the west. The attached Development Plan map, App. Ex. 3, depicts the boundaries of the 580-acre resort parcel and the general location of all proposed resort uses, including residential, commercial, recreational uses and open space. The Development Plan map illustrates the general location of single family residential units, overnight accommodations, open space, core areas within the resort and ancillary resort uses. Areas of designated "open space" will include the golf course and additional common areas. Commercial uses will be located within the "Core Area, Core Area/Single Family, Ancillary Resort Uses, and Ancillary Resort Uses as Allowed in Easements" illustrated on App. Ex. 3.

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

The Crossing Trails Resort property is located north of Oregon Highway 126 in the vicinity of the SW Parrish Lane/Highway 126 intersection. The property is approximately 6 miles west of downtown Prineville and 10 miles east of Redmond. The subject property is

surrounded by privately owned lands on all sides, with the exception of one parcel at the northeast corner, which is owned by Crook County.

The subject property and all adjacent tax lots are depicted on the Adjacent Property Owners map, App. Ex. 4.3. This map shows the location, size and ownership of all properties that abut the proposed resort development. The subject property and surrounding properties are zoned Exclusive Farm Use, EFU-3 (Powell Butte Area), as depicted on the Crook County zoning map. The subject property is also zoned with Crook County's Destination Resort Overlay Zone, shown on App. Ex. 7. This overlay zone includes all of the subject property as well as the adjacent properties to the north, west and east, and four parcels to the south.

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

The types and general location of proposed land uses within the resort project are depicted on the Development Plan map, App. Ex. 3. The Development Plan map depicts the general location of residential housing units, overnight accommodations, commercial areas, maintenance facilities, infrastructure and open space. The Development Plan map also depicts the general location of the looped road system that will serve the resort. The resort will be developed with relatively low density residential development (0.77 dwelling units/gross acre) centered upon an 18-hole championship golf course. *See* Resort Unit Summary, Density Calculations and Open Space Area calculations, App. Ex. 5.

Commercial activities developed within the resort boundaries will be located within the resort's Core Area shown on the Development Plan map, App. Ex. 3. Resort infrastructure will be located within the designated core areas and the Ancillary Resort Use area depicted on the map. App. Ex. 9 contains a list of the specific types of commercial uses that may be developed in the resort. Commercial uses will be located in the designated areas ("Core Area, Core Area/Single Family, Ancillary Resort Uses, and Ancillary Resort Uses as Allowed in Easements") and will be situated near the primary resort entry on SW Wiley Road. The specific mix and location of commercial uses developed within the resort will be subject to market forces and demand. Any commercial uses developed at the resort will be subject to additional site plan review and approval.

The proposed single-family residential units and overnight lodging units are dispersed throughout the property, to allow resort residents and guests to enjoy the open space amenities of the project. An area designated exclusively for overnight lodging will be located on the eastern portion of the subject property, as depicted on the Development Plan map, App. Ex. 3. A second area, containing a mix of single-family and overnight lodging units, is located in the southwest corner of the property, adjacent to SW Parrish Lane. The golf course and associated recreational amenities will be located in the areas depicted as Open Space on the Development Plan. The golf course will enhance the value of residential lots and provide a recreational element critical to the financial success of the resort. It will be open to public play.

The resort property will be unified by the interconnected looped road system shown on the Development Plan map, App. Ex. 3. The application materials contain a Major Road Plan, App. Ex. 20, which illustrates the location of major roadways, as well as access points to the

resort. The primary resort entry will be located on SW Wiley Road at the location specified in App. Ex. 20. A secondary entry point, for emergency access only, will be located on SW Parrish Lane. An employee and visitor entry is proposed east of the main entry on SW Wiley Road. The looped road system and multiple access points will provide the resort with multiple access and evacuation routes in the case of fire or emergency.

The resort project will also contain a network of pedestrian trails. The trail system will parallel the developed road system contained on App. Ex. 3. The trail system will facilitate and encourage non-motorized transportation to all destinations within the boundaries of the resort. It will include small interpretive sites intended to highlight the natural vegetation of the Central Oregon high desert environment. The trail system will provide access to recreational amenities within the resort, as well as the public clubhouse, resort dining facilities and commercial uses developed within the resort boundary. The trail network is expected to be a significant recreational amenity at the resort.

The Development Plan map is conceptual in nature. It is subject to evolution and refinement through subsequent land use proceedings, as market demand and other factors dictate the final design. As with all resort developments, the economics of the project demand that Applicant construct the Crossing Trails Resort in phases over many years, with the actual development schedule responsive to market demand. The general location of the nine resort phases is illustrated in a diagram on App. Ex. 3.

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

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

According to the Crook County Comprehensive Plan Goal 5 inventory, there are no inventoried sites on the property. The County's Goal 5 Resource material confirms that there are no Goal 5 resource sites.

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

No natural lakes, rivers, streams or designated significant wetlands are believed to exist on the subject property. The property is bisected by an irrigation canal operated by the Central Oregon Irrigation District ("COID"). The irrigation canal is in operation during the irrigation season from April to October of each year. An irrigation pond is located on the southern boundary of the subject property adjacent to the canal and SW Wiley Road. The year 2005 aerial photograph, App. Ex. 4.2, depicts the current location of both the irrigation pond and canal. There are no apparent areas of riparian vegetation associated with the irrigation canal or pond.

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

The subject property is bisected by the COID irrigation canal. The property also contains an irrigation pond that has been used for the delivery of irrigation water. The location

of these features is depicted on the App. Ex. 4.4 aerial photograph. There are no apparent areas of designated wetlands on the subject property.

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

The Floodplain Analysis map, App. Ex. 4.5, depicts the location of the 100-year floodplain as it affects the subject property. App. Ex. 4.5 is based on standard FEMA mapping. The 100-year floodplain is mapped along a corridor that parallels the COID Irrigation ditch as it traverses the subject property. Much of the area that falls within the 100-year floodplain is encumbered by the canal easement held by COID. The area mapped as floodplain is depicted as "canal" on the Development Plan map, App. Ex. 3. Applicant does not propose to erect any buildings, residences or similar above-ground structures within areas mapped for the 100-year floodplain. Bridges, canal crossings, pathways and the golf course are the only amenities anticipated in this area. Applicant will comply with all applicable legal and permitting requirements to the extent any structures or previously described uses are constructed within areas subject to the 100-year floodplain.

(E) Slopes exceeding 25 percent;

A Slope Analysis covering the subject property is attached as App. Ex. 4.7. App. Ex. 4.7 identifies slopes on the property that exceed 25 percent, which are found in two primary areas on the subject property. One is a minor rock ridgeline located parallel to the COID irrigation ditch in the southern portion of the property. The majority of this ridgeline will be utilized as open space. Areas of steeper slopes are also contained in rock ridges found in the northeast corner of the subject property. Most of these areas are depicted as open space on the Development Plan map, App. Ex. 3. A significant portion of this area is also encumbered by the electric transmission line easements on the property.

(F) Existing topography.

The natural topography of the site is relatively flat with a gentle slope rising approximately 280 feet from the southwest to the northeast corners of the site. Site topography is depicted on the Elevation/Topography Analysis, App. Ex. 4.6.

With the exception of the rock ridgelines discussed above, slopes on the site do not exceed 25 percent. The southwest portion of the site is relatively flat. The northern portion is very flat with the typical natural slopes of less than two percent. Nearly one-third of the property contains areas of meadow grass, while the remainder is vegetated with juniper and other low-growth vegetation common to Central Oregon.

The NRCS mapping of soils in Crook County, App. Ex. 31, depicts the following soil types within the boundaries of the resort property:

- Stukmond-Lickskillet- Redmond Complex (type 143)
- Redmond-Stukmond Complex (type 144)

- Searles- Lickskillet complex (type 162)

None of the designated soil types found on the subject property are considered to be prime, unique or high value. *See* App. Ex. 31. The lack of quality soils within the resort property rendered the site eligible for the Destination Resort overlay when the County adopted its overlay map.

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

The Development Plan map, App. Ex. 3, shows the main internal road system serving the proposed resort, as well as each of the proposed points of resort access. The resort development is served with a loop road system of interconnected private roadways. This will provide access to residential units, recreational amenities and resort infrastructure. The internal road system is designed to promote the safe and efficient circulation of vehicle traffic inside the resort. The resort will have two access points on SW Wiley Road that will distribute project traffic to SW Wiley Road en route to Oregon Highway 126. Resort traffic going to Prineville will also use SW Wiley Road. An emergency access route will be located on SW Parrish Lane, in the location depicted on the attached Development Plan map. All of the roads within the resort will be private and will be maintained by the developer and the resort homeowners.

(vi) Major trail systems;

The Development Plan map, App. Ex. 3, depicts the looped road system that will serve the proposed resort development. Applicant will construct and maintain a trail system that parallels the developed road system. Resort trails will be designed to provide pedestrian, bicycle and non-motorized access throughout the resort. Each resort lot, as well as all units of overnight accommodations, will be provided with access to the internal resort trail system. Trail systems within the resort will provide access to areas of open space and recreational amenities offered by the resort. In addition, the resort trail system will provide pedestrian, bicycle and non-motorized access to the core resort area depicted on the Vehicle Circulation and Trail Plan, App. Ex. 20. The trail network will encourage walking and biking to the primary resort destinations, including the public clubhouse, dining facilities, and other commercial uses. The trail network should be a significant recreational amenity at the resort.

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

A minimum of 290 acres of the 580-acre resort will be maintained as open space. This acreage includes the area devoted to the golf courses, trails, buffers within the external setbacks, and natural common areas. The land devoted to open space is conceptually depicted on the Development Plan map, App. Ex. 3, and shown on the Open Space Plan, App. Ex. 15.

Because the exact boundaries of the space areas are subject to change as the resort development progresses, Applicant will document compliance with the minimum open space standard prior to approval of the subdivision plat for each phase.

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

The resort will contain an 18-hole championship golf course and a variety of associated recreational amenities for landowners and guests, including the trail system described above. A list of potential recreational uses is attached as App. Ex. 8. The areas contemplated for recreational facilities and golf fairways are depicted on the Development Plan map, App. Ex. 3.

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

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

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

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

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

(B) Establishment of artificial wetlands for wildlife habitation;

(C) Groundwater recharge.

Applicant provided a Conceptual Water and Sewer Facilities Master Plan ("Master Plan") as part of the application materials. App., App. Ex. 11. The plan was prepared by J. Rob von Rohr, PE; and Jeffrey Fuchs, PE, registered professional engineers with the consulting firm of Bussard Williams, in Bend, Oregon, and complies with the requirements of (i)-(iii) above.

As required under subsection (i), the Master Plan includes an estimate of water demand for various types of water uses at the resort at maximum build-out. That demand is estimated to be 802 acre-feet per year. This estimate includes water for a variety of proposed

resort uses including single family residential, overnight lodging, commercial facilities, golf course irrigation, landscape irrigation and small ponds and water features. App. Ex. 11, Table 1.

As required under subsection (ii), the Master Plan describes the water sources available to meet the estimated demand. Potable water will be supplied by Avion Water Company (Avion) to serve all residential and commercial uses, including residential landscape irrigation, and required fire flows. Avion is a privately-owned public utility regulated by the Oregon Public Utility Commission. The application includes, as App. Ex. 13, a letter from Avion confirming its commitment to serve the proposed project. Non-potable water for golf course and common area irrigation, ponds and water features, and miscellaneous related uses will be provided under existing surface water rights appurtenant to the property and delivered by Central Oregon Irrigation District (COID). A small portion of the COID water rights will also be used to provide a temporary source of water for project construction. A summary of the COID water rights appurtenant to the property is included with App. Ex. 11, Appendix E. The combination of Avion and COID water, provided under existing water rights, is sufficient to meet maximum project demands at full build-out. No new water rights will be required for the project.

As required under subsection (iii), the Master Plan includes a Water Conservation Plan component that analyzes the available measures commonly used to reduce water consumption and justifies the measures chosen at this stage of project planning. Selected conservation measures include: highly efficient golf course irrigation technologies and irrigation sprinkler systems; lining and designing storage ponds to minimize evaporation and seepage losses; efficient water conveyance systems; beneficial use of treated wastewater; use of individual water meters; use of drought resistant and low-water use landscaping; low water use plumbing fixtures, use of conditions, covenants & restrictions ("CC&Rs") to implement conservation measures; and public education and outreach. The Water Conservation Plan also analyzes a wastewater disposal plan utilizing the beneficial use of reclaimed water to the extent practicable. Additional details related to effluent disposal are included in the Sewer Facilities portion of the Master Plan.

(c) A conceptual site drainage plan;

The conceptual site drainage plan is described in Applicant's Erosion Control and Stormwater Management Program that was included as App. Ex. 21.

(d) A solid waste management plan;

Applicant expects to contract for solid waste collection and disposal with an authorized Crook County franchise hauler, such as Prineville Disposal, which has already offered its services. *See* App. Ex. 23.

(e) An open space management plan, including:

The open space management plan is shown as App. Ex. 15.

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

The Open Space Plan, App. Ex. 15, shows the proposed location of open space. The final location, acreage and dimensions of any open space area are subject to limited refinement during the process of developing a final development plan. All of the open space areas shown on the Open Space Plan shall be designated as such on the plat and included in the legal description of the property appended to the CC&Rs.

As set forth in the draft CC&Rs, App. Ex. 24, title to or a legal interest in the common areas in each phase will be conveyed to a homeowners' association prior to or concurrently with the conveyance to an owner of the first lot in that particular phase. The board of the homeowners' association may transfer some common area to a homeowner or the declarant, but only for the purposes of small adjustments not to exceed 2,000 square feet. The CC&Rs provide that every homeowner shall have a non-exclusive right and easement for the ingress, egress, use and enjoyment of the common areas, which shall be appurtenant and shall pass with the title to every lot, subject to stated restrictions. The easements and the rights to use of the common areas shall exist regardless of whether they are also set forth in individual grant deeds to lots.

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

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

There are other safeguards in addition to the provisions of the CC&Rs to ensure that the requirements of this criterion are satisfied. As each subdivision plat is submitted to the County, open space designated as such on the plat will be protected. The County land use process for approval of a subdivision plat will require compliance at each phase with the destination resort standards in the statutes and the County code and with the County's approval of this conceptual master plan application. Under ORS 92.010(7)(b) and ORS 92.070(7)-(8), open space could not be converted to another use unless the County approved a replat or a lot line adjustment.

Since any such replat or lot line adjustment would be subject to the terms of this approval, the preservation of open space would be considered and ensured when the application was reviewed.

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

Because there are no inventoried Goal 5 sites within the resort, no conservation easements are required pursuant to this subsection.

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

The County destination resort application form, page 4, is a signed verification from ODFW confirming that the property does not contain big game habitat winter ranges or sensitive bird habitat. The property also does not contain any Goal 5 resources.

Applicant submitted a Wildlife Evaluation Report as App. Ex. 16. Applicant and its wildlife consultant, Gary L. Ivey, worked directly with ODFW to inventory wildlife resources on the subject property and to produce the report. In coordination with ODFW, Applicant produced a Draft Habitat Evaluation Procedures ("HEP") Analysis that is attached to the Wildlife Evaluation Report as Appendix 3. Applicant quantitatively evaluated the impact of resort development on wildlife and habitat values.

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

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

A Traffic Impact Analysis (TIA) is attached as App. Ex. 10. The TIA was prepared by Scott Ferguson, a licensed traffic engineer with Ferguson & Associates, Inc., in coordination with the County planning director and ODOT. The analysis explains potential resort impacts on affected roadways and intersections and proposes mitigation measures. Chris Clemow, a licensed traffic engineer with Group MacKenzie, has reviewed and supplemented the traffic data and analysis in letters dated March 28, 2008, which is attached as a supplement to App.

Ex. 10, and in two subsequent letters dated June 3 and July 16, 2008. The Ferguson analysis is discussed in more detail below, in response to the relevant approval criteria.

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

This narrative and the attached reports demonstrate how the proposed resort satisfies the applicable resort siting standards of CCC chapter 18.116.

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

(a) Design Standards. All development within the resort will be subject to CC&Rs, App. Ex. 24, and Architectural Design Guidelines, which will implement the Preliminary Architectural Theme Presentation, App. Ex. 19. The CC&Rs will require compliance with the dimensional standards set forth in App. Ex. 18. The CC&Rs will also require compliance with the external setbacks established by CCC chapter 18.116 and any additional setbacks imposed by the County. Finally, the CC&Rs and the Architectural Design Guidelines, when adopted, will regulate the style of commercial and residential structures within the resort to ensure that the structures are compatible with the landscape of the area.

(b) Impacts on Adjacent Land Uses. Applicant shall present the final CC&Rs prior to approval of the tentative plan for the first phase of the resort. App. Ex. 18, 19 and 24 provide only the general framework for development restrictions. Following issuance of the development plan and FDP decisions, Applicant shall incorporate any additional standards imposed as conditions of those decisions.

Ownership of lands within the 500' study boundary is listed by tax lot, along with the size of parcel, zoning, and the current crop production. *See* App. Ex. 32, Agricultural Survey Report and map of agricultural uses.

Tax Lot	Ownership	Acreage	Zoning	Crop
1515170000107	Mendes	11.08	EFU3	Range
1515170000108	Whitaker	10.15	EFU3	Range
1515200000103	Stafford	6.03	EFU3	Range/hay
1515200000100	Stafford	92.10	EFU3	Pasture/hay
1515200000200	Allen, B	22.31	EFU3	Pasture/hay
1515200000301	Allen, C	29.79	EFU3	Pasture/hay
1515200000300	Allen, C	25.74	EFU3	Pasture/hay
1515190000100	Malott	158.95	EFU3	Hay
1515180000600	Robinson	39.3	EFU3	Pasture/hay
1515180000500	Eder	118.44	EFU3	Pasture/hay
1515180000200	Allen, A	76.56	EFU3	Hay

1515180000100	Coleman	80.14	EFU3	Pasture/hay
1515170000103	Hanna	9.84	EFU3	Pasture/hay
1515170000102	Hanna	9.68	EFU3	Range
1515170000104	Brauchler	9.57	EFU3	Range
1515170000101	Garrison	9.29	EFU3	Range
1515080000103	Crawford	78.65	EFU3	Range
1515080000200	Crawford	312.88	EFU3	Range
151500001206	Crook County	169.08	EFU3	Range
151500002400	Schofield	428.73	EFU3	Range

The property is surrounded on all sides by parcels of land that are privately owned, with the exception of the northeast corner of the property. Crook County owns a large piece of property that touches the northeast corner of the property. The property on the eastern border and the northeastern half of the property is unimproved sagebrush and juniper woodlands. The northwest portion of the property is adjacent to an 80-acre piece of property that is being used for grazing and to four 10-acre parcels of land that are primarily used for residences and/or provide dry land grazing. The property directly to the northwest, which borders SW Parrish Lane, is primarily irrigated and used for grazing. However, there is a portion of land west of SW Parrish Lane and at the corner of SW Parrish Lane and SW Wiley Road that is being used for hay production. The property south of SW Wiley Road is irrigated and is used primarily for grazing.

Twenty parcels border the proposed resort. Of these twenty parcels, seven are 12 acres or less, eight are between 12 and 100 acres, and five have acreage larger then 100 acres. The three largest parcels are dryland range.

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

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

Possible impacts to agriculture in the study area originating from the proposed resort development and mitigation measures (*italics*) include:

- Loss or removal of fences during construction

Coordinate with landowners to replace fences in a fashion to fully restore livestock grazing capacity.

- Possible disruption of water source for grazing cattle

  Coordinate with landowner's access to water where needed.

- Possible dust impact on hay crops and livestock (during construction)

  Rangeland plants are not very sensitive to dust. The sparse population of cattle grazing per acre on rangeland in the immediate area would eliminate dust as a major concern. In more concentrated pasture-grazing areas to the west and south, the number of cattle per acre increases markedly. However, if dust becomes evident during construction standard water applications and dust control efforts shall be employed. Crops can be sensitive to excess dust during pollination and affect grade quality at harvest. Applicant shall utilize dust control measures during construction to prevent dust contamination to crops or livestock.

- Potential for spray drift from golf courses

  Current EPA and ODA pesticide rules prevent the drift of pesticides during application. Resort facilities will need to adopt and manage a weed and pest control plan keeping with state and federal laws.

- Increased potential for wildfires arising from development.

  Wildfire danger is a concern for all rangelands. Applicant will be required by state and local codes to reduce and prevent all fire dangers. A wildfire management plan is an important component of development not only for the resort, but also for the adjacent public lands.

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

  Development of Applicant's resort shall include construction of a domestic and fire protection water supply system. Based upon similar resort projects in Central Oregon, a minimum fire protection flow rate of 1,000 gallons per minute in residential areas and 1,500 gallons per minute in commercial areas is expected. Applicant's resort will ultimately be served by an extension of an Avion supply pipeline from Bend.

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

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

Development at of the proposed resort will include an 18-hole golf course. The 18 holes of irrigated turf will meander throughout the central resort core, providing an excellent fire break under wildfire conditions.

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

In addition to the broad scale fire break provided by the golf course and roadways, the developer will encourage sound fire protection measures around structures. Fire resistant roofing materials will be required and ladder fuels around structures will be eliminated. Disturbed areas will be restored with landscaping, native bunchgrass, or other native vegetation that will reduce the potential for wildfires, as compared to juniper trees and native brush.

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

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

- Elevated noise impact on area livestock

The proposed resort is spread over a large area and will include activities that are not large generators of noise. The sparse number of livestock on the east and north in the study area should be well insulated from any secondary noise generated by the resort. Trails and buffer areas on the west and south flanks of the resort will insulate what little noise is associated with the listed recreational activities and facility maintenance.

- Spread of noxious weeds

  Applicant shall be responsible for identifying and controlling noxious weeds on its land. This is consistent with its self-interest, since it must maintain golf courses and other outdoor venues. Applicant will conduct a weed survey prior to construction and control any identified weed infestations prior to construction to minimize the possible spread through normal construction activities.

- Increased traffic on secondary roads

  Applicant will establish a private new entry and road for the development reducing potential traffic problems on secondary roads. It will work with the County to create an acceptable traffic plan. Resort management will work with area landowners to create traffic flow patterns that will not disrupt the flow of agricultural equipment, livestock or other agricultural activities especially during harvest or seasonal fieldwork periods.

- Possible increased agricultural practices conflicts with resort residents

  Applicant is committed to being a good neighbor and realizes that the resort is adjacent to EFU zoned farmland. While a resort-zoned activity has been designated by the County, resort management understands the nature of farming practices on the surrounding farmland. Applicant will make sure through its CC&Rs that any residents and guests of the resort are made aware of accepted farming practices of the area, which include noise, dust, and odor generated through accepted farming practices.

- Night light impact to surrounding ranch and farm residents and livestock.

  Crossing Trails will employee a dark skies strategy that will greatly reduce the potential that light pollution could emanate from the resort.

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

- The exterior setbacks imposed by the Crook County Destination Resort Ordinance will provide significant buffers between the resort uses and the adjacent lands;

- Applicant's commitment to low-density single-family lots and the required 50 percent open space, will maintain consistency with the rural landscape;

- To minimize light pollution, the resort will use only fully or partially shielded outdoor light fixtures to ensure that light rays emitted by the fixtures are generally projected below the horizontal plane;

- The Resort will take its primary access from SW Wiley Road to the south which provides a direct connection to Highway 126. This direct highway connection will minimize the impact of the project on the local street system;

- Applicant proposes to maintain perimeter livestock fencing around the entire resort boundary, at Applicant's expense. This will ensure that any surrounding owners of EFU lands who choose to conduct grazing operations on their properties will not face any additional financial impact in order to keep their livestock off of the resort property. It will also provide a clear delineation between the resort and the surrounding parcels, thereby minimizing trespass in both directions;

- The resort will include a domestic water supply system with fire protection capacity to minimize risk of wildfire. The resort will also implement and maintain wildfire fuel reduction programs to further reduce the risks of wildfire on and around the resort property;

- The resort will implement and maintain a noxious weed program to reduce the spread of noxious weeds on and around the resort property;

- The resort will require all property owners to execute waivers of remonstrance to enable ODFW to manage wildlife to protect agricultural and other uses on adjacent lands;

- The resort will apply water during periods of construction to minimize dust impacts on any surrounding properties and/or agricultural activities;

- The resort will adhere to applicable EPA and ODA pesticide rules to minimize potential spray drift from the golf course;

- The resort will improve SW Parrish Lane and SW Wiley Road to provide better access to agricultural properties surrounding the resort.

The resort will be served by the Crook County Sheriff's Department and will have efficient access to medical and emergency facilities in Prineville, Redmond, and Bend.

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

Water and sewer mains will be constructed within the right of way under the road surface with a minimum of 10-foot separations. The sizing of the water and sewer mains is dependent upon units of density (equivalent dwelling units) within each phase. Water and sewer design will accompany each phase of development and will be subject to review and approval by Avion, the Department of Environmental Quality and the County to ensure the appropriate sizing. Other utilities (power, phone and cable TV) are proposed to be in a common trench just outside the road sections. A schematic of the location of the water and sewer system and utilities is provided in App. Ex. 11, Appendix A. Copies of "will serve" letters from Qwest and Central Electrical Cooperative, Inc. are included in App. Ex. 22; and from Avion in App. Ex. 11, Appendix D.

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

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

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

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

The Crook County Sheriff's Office will provide police protection to the resort property. Fire protection will be provided by Crook County Fire & Rescue. App. Ex. 22 contains a letter from Crook County Fire & Rescue confirming they will provide fire protection to the resort.

Applicant has furnished the information required by CCC 18.116.080. This criterion is met.

18.116.090 Development plan review procedure.

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

The Commission conducted hearings and reviewed written testimony from Applicant and others during the hearings process. The Court has conducted a hearing on the record and considered additional argument from Applicant and appellants ODOT and the Coalition.

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

The Commission attached conditions to this decision. The Court has added several conditions and has expanded and modified certain conditions.

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

These findings support the Court's decision on appeal.

The procedures established by CCC 18.116.090 have been followed. This criterion is met.

18.116.100 Approval criteria.

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

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

The resort property is mapped as eligible for resort siting on the acknowledged Destination Resort Overlay map, App. Ex. 7, and is deemed eligible for destination resort siting.

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

As detailed above, the materials submitted by Applicant satisfy all of the content requirements of CCC 18.116.080.

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

As detailed above, the proposed Crossing Trails Resort qualifies as a destination resort under CCC 18.116.040.

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

All uses proposed within the resort are either permitted or accessory uses listed in CCC Sections 18.116.060 and .070. The final CC&Rs shall expressly restrict all uses to those allowed by Sections 18.116.060 and .070, as amended. *See* App. Ex. 24. Applicant submitted lists of potential commercial and recreational uses as App. Ex. 8 (recreational uses) and App. Ex. 9 (commercial uses).

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

As required by this criterion, the Crossing Trails Resort will be reasonably compatible with surrounding land uses. The Adjacent Property Owner map, App. Ex. 4.3, illustrates the ownership, size and configuration of all surrounding properties. All of the surrounding properties are zoned Exclusive Farm Use, EFU-3 (Powell Butte Area). In addition, many of the surrounding properties are mapped with the County's Destination Resort Overlay. The boundaries of resort overlay zoning are illustrated on the Destination Resort Overlay map, App. Ex. 7.

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

As explained above in response to CCC 18.116.080(3)(a)(i), the subject property borders privately held landholdings on all sides. Crook County owns a large parcel that touches the northeast corner of the property. Adjacent properties to the north and east are largely undeveloped and vegetated with sage brush and juniper woodlands. Some livestock grazing occurs on parcels to the north and west of the subject property. Grazing of livestock has been demonstrated to be compatible with destination resort development, as evidenced by livestock grazing on the perimeter of Black Butte Ranch, Eagle Crest, and other resort properties in Central Oregon. The fencing proposed by Applicant around the resort property will eliminate any potential conflicts and assist the owners of the adjacent properties in their efforts to corral their livestock. To the north and west, the subject property borders four non-irrigated parcels that lie east of SW Parrish Lane. Larger agricultural parcels (ranging from 39 to 118 acres in size) abut SW Parrish Lane to the west. The subject property borders two vacant and non-irrigated parcels to the south. Larger agricultural operations are located adjacent to SW Wiley Road to the south.

The Agricultural Survey Report, App. Ex. 32, discusses the potential for impacts on surrounding properties in the 500' impact area stated in CCC 18.116.080(3)(a)(i), and concludes the proposed development of the resort will not force a significant change in accepted farm or forest practices. This is because (1) the property is entirely surrounded by (mostly private) land dedicated to livestock grazing, alfalfa hay, and small pastures; (2) the impact study area includes livestock (cattle and horses), pasture, and rangeland, grass hay, and alfalfa hay production, which are not likely to be affected by the resort; (3) all agricultural activities are buffered by roads, open spaces, and small parcels; (4) all possible impacts can be readily mitigated or avoided through planning and project development. The Court rejects as anecdotal

and unpersuasive testimony that individuals have driven golf balls onto the property of neighbors of the resort, causing harm to domestic animals and livestock, since such activity is apparently unmonitored and has never originated on Applicant's property. There is no credible testimony to suggest that resort development will force a *significant* change in accepted farm practices.

Applicant's agricultural impact study also concludes that the proposed resort will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. (R 1365) That is because, as explained in the impact study, there will be no impacts that cannot readily be mitigated or avoided, and, without significant impacts, there should be no significant increase in cost. In reaching this conclusion, the Court relies on the expertise of the Applicant's expert, Bruce Andrews, who is a farmer and a former director of the Oregon Department of Agriculture. The Court is more persuaded by the expert testimony and evidence of Bruce Andrews than by the arguments of appellants. (See transcripts April 30, 2008 pages 37-44 and September 3, 2008, pages 32-33).

The Coalition (and other opponents) have not cited or produced any convincing conflicting evidence to indicate a "significant increase" in the cost of accepted farm or forest practices. Opponents have cited no evidence indicating how costs will increase (e.g. fertilizer, chemicals, power, labor, water, and misc. supplies) to contradict the Applicant's expert testimony and evidence. The Court is not obligated to comb the record on behalf of appellants to locate evidence to support their assertion. When faced with conflicting evidence, the Court can choose which evidence it finds more persuasive and credible. The Court finds, having reviewed all of the evidence and testimony in the record, that there is no credible or specific evidence cited by the Coalition in the record to indicate that the development will significantly increase the costs of accepted farm or forest practices. The Court, however, finds that Applicant has met its burden and, based on the evidence and testimony in the record of Bruce Andrews and the mitigation implemented through conditions, that the development will not significantly increase the cost of accepted farm or forest practices.

The Waiver of Remonstrance discussed above under CCC 18.116.080(3)(f) will allow neighbors of the resort to address wildlife concerns on their properties without interference from resort management or residents.

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

ODFW applied its own rules (OAR 635 division 415) in making recommendations for mitigation measures to address impacts on fish and wildlife. Applicant submitted a Wildlife Evaluation Report as App. Ex. 16 and, in response to ODFW concerns, the draft July 31, 2008 Wildlife Mitigation Plan (R 324-71).

The Coalition argues that the Commission's decision inadequately addresses code provisions related to mitigation of impacts on wildlife. CCC 18.116.080(3)(f) provides that an application shall contain "A description of measures intended to mitigate significant project

impacts on fish and wildlife and other natural values present in the open space areas." During oral argument before the Court, the Coalition representative stated that the phrase "present in the open space areas" modifies only the phrase "natural values." The Court disagrees. The inclusion of the adverb "other" in the phrase "fish, wildlife and *other* natural values" (emphasis supplied) suggests that fish and wildlife are themselves considered "natural values" and that the description included in the application must explain only the impact on these natural values only in open space areas.

The second citation relates to approval criteria and is found at CCC18.116.100(6). It is a more problematic sentence for Applicant because it requires a finding that "The development will not have a significant adverse impact on fish and wildlife, taking into account mitigation measures."

The Commission in its decision concluded that "because there are no significant fish and wildlife habitats mapped on the property under Goal 5 . . . with or without mitigation measures, the proposed resort will not have a significant adverse impact on fish and wildlife." (R at 84) The Commission then declined to require applicant to implement a wildlife mitigation plan. In its conditions, the Commission imposes only two conditions related to wildlife mitigation: one regarding wildlife friendly livestock fencing and one regarding non-remonstrance agreements related to wildlife management activities.

The Court believes the Commission errs in conflating the terms "no significant fish and wildlife habitats mapped on the property" and "no significant adverse impact on fish and wildlife." The one relates to specific species of concern. The other—the relevant approval criteria—relates to all species generally. The Court believes that a plain reading of CCC 18.116.090 can lead one to no conclusion other than the determination that adverse impacts on *any and all* species of fish and wildlife must be considered in reviewing and approving destination resort developments. While not all impacts need be mitigated, "significant adverse impact" must be mitigated.

ODFW in its final report to the commission (Record 318-320) asserts that based on the applicant's information the proposed development will result in the total loss of between 3,468 and 4,909 habitat units as a result of development. ODFW's representative indicated in his testimony that the habitat being mitigated for was not a "high value" and therefore mitigation did not need to be necessarily on-site or in close proximity off-site. (August 13, 2008 transcripts pages 11 &12). The Court finds that the number of habitat units lost prior to mitigation results in a "significant adverse impact" for this development.

According to the wildlife mitigation plan at R 324 submitted by the applicant's expert, Applicant proposes to mitigate by recovery of 513 on-site habitat units and by recovery of 4396 off-site habitat units (for a total of 4909 habitat units mitigated). As such, the Court finds that there will be no net loss of habitat units.

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

impact" on fish and wildlife (See September 3 , 2008 transcripts pages 39-35).

The Court further finds that while ODFW would prefer a higher dollar amount for off-site mitigation (R at 320) that the information is not sufficiently developed enough for the Court to rely on. The Court finds that it is not required to adopt ODFWs numbers or its request for more money when ODF&W merely expresses a "belief," without further detail and explanation.

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

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

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

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

The "functional classification" of a road refers to a designation, such as "arterial" or "collector." *Melton v. City of Cottage Grove*, 28 Or LUBA 1 (1994). It does not refer to performance standards, level of service or volume/capacity ratio.

The transportation facilities that will be most affected by the proposed development are Huston Lake Road, SW Wiley Road and SW Parrish Lane. The Crook County TSP classifies Huston Lake Road as a "rural major collector," SW Wiley Road as a "local street" and SW Parrish Lane as a "rural minor collector." The proposed development will not change the functional classification of these transportation facilities.

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

The proposed development will not result in a level of travel inconsistent with the functional classifications of Huston Lake Road, SW Wiley Road and SW Parrish Lane. There is one emergency access proposed onto SW Parrish Lane, which is aligned with Fleming Road. There are two proposed access points to SW Wiley Road, approximately 1,500 feet apart. These are consistent with the County access standards.

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

Because Applicant does not propose an amendment to a functional plan, an acknowledged comprehensive plan or a land use regulation, OAR 660-012-0060 ("Plan and Land Use Regulation Amendments") does not apply to the application. As the ODOT Development Review Guidelines, which are attached as Appendix D to the Ferguson study, explain at p. 3-3-2, "The authority to require a Traffic Impact Study as part of a local land use review comes from the local government's development code."

Applicant submitted the first Traffic Impact Analysis ("TIA"), which was prepared by Ferguson & Associates ("Ferguson"), as a CD as part of App. Ex. 10. Group Mackenzie supplemented the Ferguson work with three letters, dated March 28, June 4, and June 18, 2008. The studies identified the two intersections where the proposed development would "[r]educe the performance standards of the transportation facility below the minimum acceptable level identified in the applicable transportation system plan ("TSP"). They also identified six additional intersections that are already operating below minimum acceptable levels and one intersection (Reif Road/Hwy 126) that will cease to meet the standard at some time between 10 and 20 years, regardless of the resort, and calculated the proportional-share impact of the proposed resort on these intersections. On that basis, Group Mackenzie suggested a contribution amount calculated as the sum of the cost of the two intersection improvements and the proportional share amount ($730,716).

ODOT submitted comment letters dated April 30, June 3, and July 16, 2008. ODOT contends the proposed mitigation is insufficient to satisfy the County's approval criteria, as ODOT interprets those criteria. ODOT makes three arguments: (1) the impacts of the resort will generate mitigation requirements costing about $14,100,000; (2) the County's TSP requires the county to defer to ODOT's mobility standards; (3) The Oregon Highway Plan ("OHP") is the TSP for destination resort applications.

The County's TSP is part of its comprehensive plan (OAR 660-012-0015(4)). It contains goals and policies, with supporting data (like v/c ratios), not criteria applicable to individual applications. Even if the TSP did contain evaluative criteria, none of the provisions quoted by ODOT actually support ODOT's position. ODOT quotes the County TSP as follows: "2.4 Goal – Equity: Developments shall be responsible for mitigating their direct traffic impacts." This supports requiring mitigation proportional to Applicant's direct traffic impacts, not mitigation for the contribution of others.

The OHP is not the TSP for destination resorts. As explained at length in Applicant's

June 3, 2008 memorandum and in Applicant's November 26, 2008 memorandum, and as Applicant explained at the June 3, 2008 and the December 3, 2008 hearings, the OHP does not mention destination resorts. Any analysis based on the OHP is therefore incorrect.

ODOT acknowledges that Applicant has agreed to construct needed mobility improvements at Highway 126/SW Wiley Road and Highway 126/SW Parrish Lane, as well as make a proportional share contribution to additional intersections. ODOT requests that if the application is approved, Applicant, ODOT and the County enter into a memorandum of understanding ("MOU") that requires the agreed improvements be constructed and the agreed contributions are made.

The Goal One Coalition submitted a letter dated June 10, 2008 from Main Street Engineering, a Vancouver, Washington traffic engineering firm. The letter calls for more technical analysis and contends that there will be a "significant impact" on additional intersections.

The Main Street Engineering letter contains no independent traffic data collection or on-site study, which casts doubt on its recommendation that there be more technical analysis. The TIA and Group Mackenzie's supplemental letters were prepared after close consultation with ODOT and Crook County staff, both of whom approved the scope of the study. As shown by its July 29, 2008 letter to engineer Jeff Fuchs, ODOT has approved a design exception for the proposed future intersection improvements at Hwy 126 and SW Parrish Lane.

In a situation where an applicant and opponents rely on experts, the County occasionally commissions an independent expert to provide reliable advice. The county's own traffic consultant, OTAK, prepared a study, dated July 1, 2008, which supports the data and conclusions of Ferguson and Group Mackenzie. OTAK calculated a similar amount ($754,950). Using OTAK's higher number, plus amounts for road improvements and a proposed bridge replacement, Applicant's total contribution will be approximately $1,455,000.

The TIA, Table E-1, shows intersections that do not meet operation standards today, in 10 years or in 20 years. Although many of the intersections are presently failing or will fail during the next 20 years, only the intersection of Highway 126 and SW Wiley Road is shown to fail as a result of the proposed resort. A subsequent study showed that eliminating left-hand turns on SW Wiley Road would redirect north- and south-bound traffic onto SW Parrish Lane, causing the intersection of Highway 126 and SW Parrish Lane to fail. Therefore, the proposed resort can be said to "significantly affect" only two intersections: (1) Highway 126 and SW Wiley Road; and (2) Highway 126 and SW Parrish Lane.

OTAK rebuts arguments made by ODOT in its submissions and effectively agrees with the legal reasoning contained in a Memorandum dated June 3, 2008 submitted by Applicant. The Court agrees with OTAK and Applicant that under *Dolan v. City of Tigard*, 512 US 374 (1994), as it has been interpreted by the Oregon Court of Appeals in *Clark v. City of Albany*, 137 Or App 293, 300, 904 P2d 185 (1995), exactions must be roughly proportional to the impact of a proposed development. The Court specifically incorporates by reference the legal analysis in Applicant's June 3, 2008 memorandum and December 3, 2008 memorandum and concludes that not only does the proposed development not have a "significant affect" on

transportation facilities, as the term is used (in a technical sense) in CCC 18.116.100(6)(a), but the Court cannot constitutionally require Applicant to contribute to make major improvements to already failing transportation facilities, given the small amount of traffic Applicant will be contributing to those facilities. The County has the burden of proof on rough proportionality, and ODOT has not provided any evidence to support a finding of rough proportionality if Applicant were required to pay a sum in excess of 14 million dollars.

To elaborate further: The Coalition asserts that the Commission erred in finding that Goal 12's transportation planning rule ("TPR") either does not apply or is satisfied. ODOT, in verbal testimony to the Court at the hearing of December 3, 2008, asserted that the TPR does not apply to this application, but that the OHP (and specifically its highway mobility standard) does apply. At no point in any pleading does the Coalition concur with ODOT's stipulation, so it is necessary for the Court to address this argument. Exhibit C, which is attached to the ordinances adopting the destination resort overlay zone (Ordinance 17, amendments 52 and 53 and Ordinance 18, amendments 59 and 60), clearly spells out in section 18 (compliance) how the County intended to comply with Goal 12. Section 18 of Exhibit C states: "The County Court finds that the Comprehensive Plan and Zoning Ordinance amendments are consistent with Goal 12, Transportation, because Goal 8 and the Crook County implementing regulations require the resort to be constructed so that it is not designed to attract highway traffic through the use of extensive outdoor advertising signage. Furthermore, the amendments are consistent with OAR 660-012-0060, the TPR implementing Goal 12, because the implementing regulations also require analysis of transportation impacts of specific resort proposals at the time of future development review.

The Court finds that the amendments had the potential to significantly affect a number of transportation facilities under OAR 660-012-0060(2), because the amendments permitted the siting of destination resorts in Crook County, and future resorts are likely to add traffic to existing facilities, which in turn could have a "significant effect," as that term is defined in the TPR. However, the Court finds that OAR 660-012-0060(1) allowed the Court to adopt the subject amendments so long as it "limit[ed] allowed land uses to be consistent with the planned function, capacity, and performance standards of affected transportation facilities." Since compliance with particular performance standards cannot be determined until a specific resort proposal is submitted, the Court finds that the amendment properly limited uses to be consistent with any applicable performance standards by requiring resort applicants to provide a traffic study (CCC 18.116.080(3)(g)) at the time of development review to show that the proposed development will not reduce the level of service of any impacted transportation facility based on the performance standards set forth in the applicable transportation system plan (CCC 18.116.100(6)(a)).

The Court clearly intended at the time the above was adopted to comply with the TPR, as it existed then (including its reference to level of service), and to comply with applicable transportation system plans (including the OHP, when applicable), but to undertake that compliance through the traffic analysis to be implemented and used with each and every application submitted. This approach was not challenged when the destination resort implementing ordinances were passed. DLCD was timely informed of the amendment to the County's comprehensive plan and zoning ordinances prior to adoption, giving the agency plenty of time to object to the County's interpretation. It did not do so. To attempt to reinterpret this

application of Goal 12 now is an impermissible collateral attack on the implementing ordinances for destination resorts, the time for which has passed.

ODOT further asserts that CCC 18.116.100(6)(b)(ii) establishes an approval criterion for destination resort applications, providing that "a resort development will not significantly affect a transportation facility..." [ODOT appears to mis-cite the relevant section, which appears to be CCC 18.116.100(6)(a)]. ODOT places great importance on this phrase, noting that resort-related traffic would "reduce performance standards below an acceptable level" [an apparent reference to CCC 18.100(6)(a)(iii)] and asserting that "The Planning Commission's decision does not require the Applicant to mitigate for the impact of its traffic at the affected intersections. Therefore, the decision cannot be affirmed."

A closer reading of the Crook County Code is instructive. CCC 18.116.100(6)(a) provides that the traffic study must illustrate that the proposed development will not significantly affect a transportation facility. CCC 18.116.100(6)(b) provides that if a proposed development signficantly affects a transportation facility, mitigation may occur in one of three ways: (i) By limiting development (ii) By providing facilities which meet the requirements of Chapter 660, Division 12 (implementing Oregon's Statewide Planning Goals and Guidelines related to Goal 12, Transportation); or (iii) Altering land use densities or adding design requirements to mitigate impacts. CCC18.100(6)(c) further defines how an Applicant will implement sub ii, when that option is chosen, as it has been in this case. Sub ii provides: "The Applicant shall be required to provide the transportation facilities to the full standards of the affected authority as a condition of approval. Timing of such improvements shall be based upon the timing of the impacts created by the development, as determined by the traffic study or the recommendations of the affected road authority."

The relevant phrases are "provide ... to the full standards" and "Timing ...as determined by the traffic study or the recommendations of the affected road authority." These seemingly proscriptive statements, however, must be read in conjunction with *Dolan*, which requires a demonstration of "essential nexus" and "rough proportionality." Because *Dolan* is a U.S. Supreme Court case, its requirements supersede the County code and any applicable provision of Oregon or Crook County statute, rules or code. There is no dispute that the impact of proposed development has an essential nexus to state and local transportation facilities. The crux of the dispute between appellants and Applicants is how to satisfy the "rough proportionality" test. Under *Dolan*, the burden of determining "rough proportionality" falls on the local government. *Art Piculell Group v. Clackamas County* 142 Or App 327 (1996) further addresses how this is applied in Oregon, noting that it is the government's burden, not the developer's, to articulate numerical and other facts necessary to demonstrate rough proportionality between developmental condition and impacts of development for purposes of takings clause analysis. Continuing, the *Picullel* analysis reads, "...concern is not with apportionment of costs for general improvement and general body of benefitted property owners, but with the extent to which a particular property may be burdened because of impacts that are attributable to its development."

The determinative factor in analyzing rough proportionality between developmental condition and impacts of development, for takings clause purposes, must be the relationship between impacts of development and approval conditions, and not the extent of public's needs

for road or other improvements that happen to exist at the time that this particular development is approved. ODOT and appellants would argue that the Applicant has the misfortune to be "last in" and therefore must disproportionately bear the burden of having to construct improvements triggered by the impact of Applicant's proposed development. But the Oregon Court of Appeals citing *Schultz v. City of Grants* Pass, 131 Or App 220, 227, 884 P2d 569 (1994), held that impacts must be narrowly construed to consider the impact of a particular property, not to speculative uses. Those speculative uses might well include the theoretical "ghost traffic" that ODOT and the Coalition are concerned may develop in the future as a result of other previously approved but far-from-certain-to-be-built destination resorts. Because there is uncertainty about the extent and timing of future traffic, the decision of the Commission to apportion costs roughly proportionate to anticipated development impact seems the fairest way to balance Applicant's contribution to demand on public infrastructure.

What is reasonable under both a *Dolan* test and the County code is to consider the timing and extent of payment by the proposed development for its proportional share of improvements. That proportional share is agreed, through the traffic study used in application proceeding, to be $454,950 identified by the County's engineering consultant, calculated as follows: $754,950 for all improvements minus an estimated $300,000 for improvements for which Applicant is solely responsible equals $454,950. Under the County code provision requiring Applicant to mitigate its significant impacts, the Commission elected the option which requires Applicant to "provide" transportation facilities. It is a reasonable interpretation of that clause that "providing" encompasses requiring advance payment or surety bonding or financial equivalent of the $454,950, to be provided and maintained either with County or state in 2008 dollars until such time as the actual improvements are constructed. This represents the amount deemed to be "roughly proportional" to Applicant's identified impact. In addition, Applicant has agreed to make an additional contribution of approximately $700,000 for road and bridge improvements, depending on actual cost. (See Applicant response brief dated Nov. 26, 2008.)

The Commission, in deliberating toward a final decision, was constrained by the record before it. As noted above, the local government, not the Applicant or appellant, bears the burden of demonstrating rough proportionality. The Commission had to rely upon the evidence before it at the time of making its decision. ODOT might well have brought before the Commission additional information which would have increased this number. The Coalition, likewise, might have engaged independent analysis which would have produced a higher number. However, neither of these events happened. The Commission made the most reasonable and defensible decision available to it, considering the evidence before it and considering the extraordinary burden which *Dolan* forces a local government to carry.

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

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

There are no plans to limit the development.

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

Applicant has agreed to enter into a Memorandum of Understanding ("MOU") with ODOT and the County to undertake the planning, and design of necessary improvements at SW Wiley Road and SW Parrish Lane and for proportional contributions to additional intersections, as detailed in Table 3 of the July 1, 2008 OTAK study.

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

There are no plans to alter land use densities, design requirements or use other methods to reduce demand for automobile travel and meet travel needs through other modes.

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

As stated under (b)(ii) above, Applicant shall be required to entire into a MOU with ODOT and the County that states the amount of Applicant's financial contribution to the required improvements and addresses the timing of the impacts created by the development.

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

The Applicant's conceptual Water and Sewer Facilities Master Plan ("Master Plan") contained in App. Ex. 11, along with additional evidence provided in response to public comments, illustrate that the proposed water and sewer facilities can reasonably serve the destination resort.

Adequacy of Proposed Water Facilities

The Master Plan identifies a total annual water demand for the resort of 802 acre-feet per year at full build out. This total includes water for domestic/residential uses, a variety of commercial uses, golf course and common area landscape irrigation, and small ponds and water features. A minimum rate of 1,500 gallons per minute is required for fire protection flows. Water to meet these requirements will be supplied by Avion and COID, under existing water rights. No new water rights are required for the project.

Avion will supply potable water to the resort site through an extension of services currently planned for the Powell Butte area. A letter of commitment provided by Avion, App. App. Ex. 11, Appendix D, confirms that Avion is prepared to deliver water for up to 680 "equivalent dwelling units" and the required fire flow rate of 1500 gallons per minute. A copy of the Avion Master Plan demonstrates Avion's ability to serve the resort. App. Ex. 11, Appendix C. The arrangement with Avion will include construction by Crossing Trails of a 150,000 to 200,000-gallon reservoir on Avion property for resort purposes. The reservoir will ensure capacity to meet peak-hour demands and fire flow requirements for the resort, and will provide a reserve system for emergency use. The water supplied by Avion will be used for all potable water needs, including residential and commercial uses. Avion water will also be used for individual residential irrigation.

Water for golf course and common area irrigation, and related ponds and water features, will be provided by COID, under existing water rights appurtenant to the property. The Master Plan identifies a need for up to 140 acres of non-residential irrigation for the resort, including up to approximately 120 acres for the golf course and the remainder for landscaping in common areas. A total of 420 acre-feet of water per year is estimated for these irrigation purposes, determined on the basis of 3 acre-feet per acre. The COID water rights will also be used to provide the primary source of water for small ponds and water features, estimated at approximately 53 acre-feet.

The existing COID water rights authorize a total of 5.45 acre-feet per acre, per year, for irrigation use on 163.45 acres appurtenant to the resort property, and are therefore sufficient for the golf course, small ponds and water features. The proposed combination of potable water service to be provided by Avion, and use of the existing appurtenant COID water rights is sufficient to fully address the estimated need at full build-out of the resort. In addition, Applicant proposes to use treated effluent, as it becomes available to the project, to offset irrigation demand and for recharge purposes as described in the Master Plan.

During the public hearing process, a number of comments raised concerns about potential impacts from increased use of ground water by Avion to serve the resort. In response to these questions, the Applicant clarified, in a Technical Memorandum dated July 30, 2008, "Supplement to Water and Wastewater Facilities Mater Plan," that Avion water would be provided in two stages: short-term water supply needs will come from an existing well (referred to as the "Nixon Well" by Avion), in the Powell Butte area and long-term water supply will come from Avion's primary wells in the Bend area, following extension of a main-line from Bend. Therefore, the long-term supply for the project will not draw ground water from the Powell Butte area. In addition, the Applicant provided documents from the Oregon Water Resources Department ("OWRD") relating to the state review of the Avion application for a water right for use of the Nixon Well. The documents show OWRD findings that use of the well was not expected to cause any interference or injury to other wells in the area and that the Avion well draws water from the Deschutes regional aquifer. Applicant also confirmed that OWRD has not received any complaints from other well owners regarding operation of the Nixon Well by Avion since it was originally approved and put into use and provided testimony from a hydro-geologist confirming that short-term use of the well is not expected to cause interference with other wells in the area.

The Commission also heard comments about general concerns for possible impacts to the aquifer and ground water supply. In response to these questions, Applicant provided additional analysis by its consultant, Mr. David Newton, P.E., C.E.G., confirming that the Avion water wells draw from the Deschutes regional aquifer and not from the local Powell Butte aquifer. Memorandum dated August 27, 2007, from David Newton. Mr. Newton's analysis confirms the regional aquifer is substantial and, based on information obtained from OWRD, concludes there is adequate ground water available.

A specific concern was raised by a neighboring landowner as to whether the existing COID canal would be relocated or changed in a way that would interfere with his continued use of COID water. In response, the Applicant confirmed there are no plans to alter the location of the canal or make any modification that would impair water flow and use by downstream users. Applicant provided documentation for the record that COID controls the irrigation canal and prohibits changes that would interfere with COID purposes.

Public comments also raised general concerns about the amount of water to be used for the golf course and whether the Applicant has sufficient water rights for golf course irrigation. In response, Applicant provided testimony that the amount of water proposed for the golf course is consistent with the amounts approved for other projects in the area and will be less than the amount historically used for crop irrigation on the property. Applicant's Master Plan explains that the new irrigation system to be installed for the golf course will be highly efficient and minimize water use. As a result, the existing irrigation water rights are sufficient.

Sewer Facilities

The Sewer Facilities Component of the Master Plan demonstrates that the proposed community sewage systems can reasonably serve the proposed resort. The community sewerage systems for the project will be constructed and operated under a Water Pollution Control Facilities ("WPCF") permit issued by the Oregon Department of Environmental Quality ("DEQ"). Collection, treatment, disposal and reuse systems will be designed in accordance with applicable state and local rules, statutes and guidelines. Total projected daily sewage flow for the project is estimated at 150,000 gallons per day, at full build-out. The sewage system will be built in phases corresponding to resort development. Each phase of system will include components for collection, wastewater treatment, subsurface drip distribution/irrigation reuse systems and/or storage, and solids handling and disposal systems.

As described in the Master Plan, Applicant will use a septic tank effluent pump ("STEP") and septic tank effluent gravity ("STEG") system. Primary treatment of sewage will occur in the septic tanks. Effluent will flow from the tanks into a collection system. Where topography will not allow for gravity flow from the tanks, a pumping system will lift effluent to the collection system. Applicant will use membrane bioreactors ("MBR") technology for wastewater treatment. Disposal and reuse options will focus on subsurface drip disposal systems, and seasonal drip irrigation reuse. Any re-use water with potential for human contact, such as water features, will be treated to "Level IV," suitable for any use except direct consumption. Septic tank solids and biological treatment solids will not be treated on site, but instead will be appropriately transported for off-site processing and disposal in accordance with

state and local requirements.

During the public hearing process, comments expressed a general concern about possible odor or ground water contamination due to the proposed sewage treatment facilities. In response, Applicant provided additional evidence describing the "closed system" technology planned for the project that is expected to almost completely eliminate odor. As discussed in the Technical Memorandum dated August 26, 2008, from Jeff Fuchs, P.E., the system will also be required to comply with state DEQ regulations to ensure against potential ground water contamination.

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

The only additional standards applicable to the resort are the road standards. The roads depicted on the Development Plan map are consistent with the County's minimum rural road standards. Applicant will be required to demonstrate consistency with these standards at the time of future subdivision plat review. Applicant has agreed to make any needed improvements to the roads to bring them up to County requirements and also to reconstruct one bridge on SW Parrish Lane and a second bridge on SW Wiley Road, to the south of the property.

The criteria in CCC 18.116.100 are met.

18.116.110 Final development plan review procedure.

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

(2) The planning commission shall review a final development plan pursuant to CCC 18.172.060. The planning commission shall approve a final development plan if it conforms to the approved development plan and its conditions of approval.

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

Compliance with CCC 118.160.020 General Conditional Use Criteria

CCC 18.160.020 sets forth the County's general conditional use criteria. The destination resort ordinance (CCC chapter 18.116) sets forth a very specific set of criteria to govern resorts, and those criteria typically go beyond the conditional use criteria set forth below.

> ***In judging whether or not a conditional use proposal shall be approved or denied, the commission shall weigh the proposal's appropriateness and desirability or the public convenience or necessity to be served against any adverse conditions that would result from authorizing the particular development at the location proposed and, to approve such use, shall find that the following criteria are either met, can be met by observance of conditions, or are not applicable:***
>
> ***(1)The proposal will be consistent with the comprehensive plan and the objectives of the zoning ordinance and other applicable policies and regulations of the county.***

The relevant provisions of the zoning ordinance are addressed above and incorporated herein by reference. CCC chapter 18.116 implements the destination resort chapter of the County comprehensive plan, which itself implements Goal 8. Therefore, because Applicant has demonstrated compliance with CCC chapter 18.116, it is not necessary to directly address the comprehensive plan policies or Goal 8.

Applicant shall address the County's subdivision ordinance as each future tentative plat is submitted. Applicant shall also submit site plans when required for various elements of the resort, following or concurrent with FDP approval.

> ***(2)Taking into account location, size, design and operation characteristics, the proposal will have minimal adverse impact on the (a) livability, (b) value and (c) appropriate development of abutting properties and the surrounding area compared to the impact of development that is permitted outright***

Compatibility and the minimization of adverse impacts on surrounding uses is discussed above in response to CCC 18.116.100(5) and 18.116.080(3)(i). The findings discuss compatibility with abutting properties currently in farm use, and with the surrounding area generally. This criterion does not require Applicant to show that the resort will have no adverse impacts. Rather, it requires Applicant to *minimize* its potential adverse impacts through careful design, location, and mitigation measures. As a result of the development standards and mitigation measures discussed above, the development will have minimal adverse impacts on surrounding properties.

The proposed low density of a destination resort, combined with Applicant's proposal to provide an 18-hole golf course and associated open space features on the central basin of the resort property, will maintain significant open space, consistent with the character of the surrounding farming community. Thus, for these reasons and those set forth above in response

to CCC chapter 18.116, the development will have minimal adverse impacts on the livability, value, and development of surrounding properties.

(3)The location and design of the site and structures for the proposal will be as attractive as the nature of the use and its setting warrants.

The resort will be located in a high desert setting suitable for destination resort development. The design will respect the setting and will incorporate elements appropriate to the high desert, as set forth in Architectural Guidelines. Applicant's stated goal is to use the natural amenities of the property and the region to enhance the proposed resort. Further land use reviews will allow greater focus on the exact design of the proposed development.

The criteria of CCC 18.160.020 are met.

As conditioned below, the proposed development complies with all applicable approval criteria for a destination resort.

Conditions of Approval

The County Court hereby approves the development plan application for the Crossing Trails Resort with the following conditions of approval. When reference is made to "Applicant," the reference includes Applicant's successors and assigns:

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

a. The minimum required eating and meeting facilities shall be constructed or guaranteed through surety bonding or equivalent financial assurance prior to the sale of individual lots.

b. The eating and meeting facilities shall be oriented toward the needs of resort visitors rather than area residents.

2. The number of lots approved for residential sale shall not be more than two lots for each unit of permanent overnight lodging, as that term is defined in Statewide Planning Goal 8, ORS 197.435(5), and CCC 18.116.030(5).

a. Applicant shall document compliance with this ratio prior to tentative subdivision plan approval for each phase of resort development.

b. Pursuant to this development plan approval, the applicant may provide a maximum of 500 single family lots and 250 overnight lodging units to meet the ratio. Multiple overnight lodging units may be provided as "lock-off units" or "keys" within a single dwelling or structure.

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

a. The minimum 150 units of overnight lodging must be constructed within five years of the initial lot sales. (CCC 18.116.040(c)).

b. At least 50 units of overnight lodging must actually be constructed prior to the closure of sale of individual lots or units. (ORS 197.445(4)(b)). Applicant shall construct these units during the first phase of development. An additional 25 units shall be constructed or guaranteed through surety bonding or other equivalent financial assurance prior to the closure of sale of individual lots or units. (CCC 18.116.050(a)(i)).

c. After the construction of the first 50 overnight lodging units, the remaining 100 overnight lodging units required to meet the statutory minimum of 150 units must be constructed or guaranteed through surety bonding or equivalent financial assurance within five years of the initial lot sales. (CCC 18.116.050(3)(c)).

d. If Applicant guaranteed the construction of any of the required 150 units through surety bonding or other equivalent financial assurance, these overnight lodging units must be constructed within four years of the date of the execution of the surety bond or other equivalent financial assurance. (ORS 197.445(b)(F)).

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

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

6. Casitas and "lock offs" shall be at least 400 square feet and shall include a self-contained bath. Any such units shall have a kitchenette, including a sink for food preparation (in addition to the bathroom sink); either a microwave oven or a hot plate; and a refrigerator. The cost to construct such overnight lodging shall not be counted toward the investment requirement in CCC 18.116.050(4) for the development of recreational amenities.

7. Commercial uses within the resort shall generally be limited to the categories of uses listed in CCC 18.116.070(8) and App. Ex. 9, which is attached to the development plan application. All commercial uses shall be internal to the resort, limited to the types and levels of use necessary to meet the needs of resort visitors, and oriented towards guests rather than the general public.

8. Applicant shall present the final CC&Rs prior to approval of the tentative plan for the first phase of the resort.

9. The final CC&Rs shall expressly restrict all uses to those allowed by CCC 18.116.060 and 18.116.070.

10. Over 50 percent of the resort site including the area devoted to golf course uses, but excluding yards, streets and parking areas, shall be maintained as open space throughout the life of the resort. Compliance with this standard shall be continuously documented prior to approval of each subdivision plat.

a. The resort shall maintain compliance with the open space standard pursuant to the Open Space Management Plan attached to the development plan application as App. Ex. 15.

b. The CC&Rs shall provide that, at all times, at least 50 percent of the property shall be designated as open space, and make that requirement a covenant and equitable servitude, which cannot be amended without the consent of the County, which runs with the land in perpetuity, and which is for the benefit of all of the property initially included in or annexed to the resort, each homeowner, the declarant, the homeowners' association, and any of the golf clubs developed on the property, as well as the County. Any of these individuals or entities may enforce the covenant and equitable servitude.

c. The CC&Rs shall make clear that the open space designated in the Open Space Plan, as finalized in the FDP, is the open space that is protected by the CC&Rs.

d. All deeds conveying all or some of the resort property shall include a restriction specifying that the property is subject to the provisions of the resort FDP and the CC&Rs and noting that the FDP and CC&Rs contain a delineation of open space areas which shall be maintained as open space areas in perpetuity.

11. Unless modified during the FDP approval process, the dimensional standards applicable to lots and structures within the resort shall be the standards attached to the development plan application as App. Ex. 18.

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

13. The resort's CC&Rs shall mandate the use of fully or partially shielded outdoor light fixtures to ensure that light rays emitted by the fixtures are generally projected below the horizontal plane.

14. The resort shall maintain perimeter livestock fencing around the entire resort boundary. Applicant may install the fence in segments, concurrent with development of each phase abutting the exterior property boundary. To the degree necessary to prevent livestock from entering the resort property, Applicant shall construct and/or install cattle control devices at entrances to the resort. Applicant shall coordinate the fence design with ODFW to ensure that the fence is "wildlife friendly" where appropriate.

15. Applicant and individual property owners in the resort shall execute and record in the County deed records a waiver of remonstrance agreeing that they and their successors will not now or in the future complain about any accepted agricultural practices on the EFU-3

properties immediately adjacent to the resort. At the time of closure of sale of each individually-owned residential lot or unit, the buyer shall execute and record the waiver of remonstrance in the County deed records.

16. Applicant and individual property owners shall execute and record in the County deed records a waiver of remonstrance agreeing that they and their successors will not now or in the future complain about any authorized wildlife damage control activities conducted within the resort or on properties immediately adjacent to the resort boundaries. The waiver of remonstrance may be in a form substantially similar to the "Declaration of Covenant for Waiver of Remonstrance Crossing Trails," which is Exhibit D to the draft Crossing Trails Resort Wildlife Mitigation Plan, dated July 31, 2008. At the time of closure of sale of each individually-owned residential lot or unit, the buyer shall execute and record the waiver of remonstrance in the County deed records.

17. Prior to FDP approval, Applicant shall submit a plan for approval by the Commission that includes the following mitigation measures, as detailed in the Andrews Agricultural Impact Study: (a) Coordinate with landowners in the replacement of fences in a fashion that will fully restore livestock grazing capacity; (b) In cases where the resort development disrupts water availability to grazing cattle, assist in providing access as needed; (c) Conduct a weed survey prior to construction and control any identified weed infestations prior to construction to minimize the possible spread through normal construction activities; (d) Educate residents and guests to respect accepted farming practices in the area; and (e) Implement "dark sky" measures to control potential light pollution.

18. Prior to FDP approval, Applicant shall submit a plan for approval by the Commission that provides for visual buffering of the resort from adjacent residences through the use of appropriate, varied vegetation. The plan shall detail the height, width and density of such vegetation to ensure year-round screening.

19. The resort shall apply water during periods of construction to minimize dust impacts on any surrounding properties and/or agricultural activities.

20. The resort shall adhere to applicable EPA and ODA pesticide rules to minimize potential spray drift from the golf course.

21. Applicant shall design all site drainage plans consistent with the Erosion Control and Stormwater Management Program, attached to the development plan as App. Ex. 21, or as amended following consultation with the Crook County Planning Department.

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

23. Prior to recordation of the final plat for the first phase of the resort, Applicant shall submit documentation of the final plans for solid waste collection, recycling, and/or disposal to the Crook County Planning Department. Recycling programs shall include, but not be limited to, paper, glass, and plastics. Solid waste shall be collected by a hauler and disposed of in the Crook County Landfill.

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

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

26. Potable/domestic water shall be provided by Avion or another commercial water company drawing from the Deschutes Regional Aquifer.

27. Applicant shall document compliance with the Noxious Weed Plan, which is attached to the development plan application as App. Ex. 19, on an annual basis by submitting a written report to the Crook County Weed Master.

28. Prior to tentative plan approval for the first phase of the resort, Applicant shall submit a Conceptual Visual Impact Mitigation Plan. The Plan shall be completed in consultation with a licensed landscape architect. Applicant shall incorporate the Plan into the resort CC&Rs to ensure compliance with the following Planting and Building Materials Guidelines:

a. Planting Guidelines:

i. The Planting Guidelines shall require each applicant for a building permit to identify the vegetation to be retained within the subject lot;

ii. The Planting Guidelines shall contain a planting list identifying the acceptable plants for use on each individual lot and within the open space tracts to provide supplementary screening and aesthetic benefits;

iii. The plant species on the planting list shall be native species with low water needs, appropriate soil characteristics screening potential, and suitability to the resort site;

iv. Applicant's CC&Rs and/or Design Guidelines shall establish an Architectural Review Committee (ARC) process to implement the planting guidelines on each lot at the time of building permit review, and within open space tracts.

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

i. Downward or shielded outdoor lights; and

ii. Facade materials that reflect the natural environment: wood, muted colors, non reflective materials, etc.

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

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

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

32. Prior to tentative plan approval for each phase of resort development, Applicant shall submit a detailed depiction of the final location and size of all roads and trails within a phase to the Crook County Planning Department and its consulting engineering firm.

33. Primary and secondary resort access points to the resort shall be located on SW Wiley Road, which borders the subject property to the south. An additional access point, for emergency access only, shall be located on SW Parrish Lane. Traffic to Prineville, which is to the east, and Bend/Redmond, which are to the west, are expected to use Highway 126. Applicant shall obtain County road access permits from the County Roadmaster prior to FDP approval.

34. All minor street approaches intersecting with the primary roadways within the resort shall be stop sign or roundabout controlled.

35. As required by ODOT, Applicant shall provide the improvements to Reif Road/Highway 126, Highway 126/SW Wiley Road and Highway 126/SW Parrish Lane listed in Table 3 of OTAK's July 1, 2008 letter to the County (R 566). The improvements to Highway 126/SW Parrish Lane shall be as detailed in ODOT's July 29, 2008 letter (R 248) addressed to Jeffrey Fuchs at Bussard Williams and the attachments to that letter. Prior to FDP approval, Applicant shall complete an MOU with ODOT to establish the timing of these improvements.

36. Prior to FDP approval, Applicant shall complete an MOU with the County and ODOT to facilitate contributions for its proportional share ($454,950, in 2008 dollars) of funding for the traffic facility improvements (other than those addressed by Condition 35) listed by the County's agent, OTAK, in Table 3 of OTAK's July 1, 2008 letter to the County (R 566). Such contributions shall be guaranteed through bonding or equivalent financial assurances at the time of recordation of the Phase I plat and shall be paid no later than three years after recordation of the Phase 1 plat.

37. Prior to FDP approval, Applicant shall enter into an MOU with the County requiring Applicant to pay the actual cost to improve (a) affected portions of SW Parrish Lane from Highway 126 to the north boundary of the subject property adjoining SW Parrish Lane; and (b) affected portions of SW Wiley Road from its intersection with SW Parrish Lane to Highway 126. Such improvements, to be within the existing right-of-way, shall include overlays, shoulders, two canal bridges on SW Parrish Lane and one canal bridge on SW Wiley Road. The improvements shall be built to any governing jurisdictional standards so that they can adequately serve the proposed development and existing adjacent uses. Timing for such improvements shall be as stated in the MOU.

38. The County Road Department shall monitor pavement conditions on affected portions of SW Parrish Lane and SW Wiley Road prior to construction of the improvements required by Condition 37. If the monitoring reveals, as determined by the County Road Department, that the existing pavement index falls below "60" prior to construction of these improvements, Applicant shall conduct interim repairs, including repairs as necessary to the two existing bridges on SW Parrish Lane and the one bridge on SW Wiley Road, to meet reasonable safety standards as determined by the Crook County Road Department. Applicant shall not be required to repair damage to any road that is caused by third parties, beyond normal wear and tear.

39. If Crook County adopts a systems development charge ("SDC") ordinance or similar mechanism, Applicant shall be exempt from or eligible for credit or reimbursement under the ordinance if: (1) the ordinance requires Applicant to pay SDC s for an improvement that Applicant is already required to contribute to pursuant to the conditions of this decision, and (2) the subject improvement is listed on the County's Capital Improvement Program ("CIP").

40. Cash obligations upon which a development is conditioned shall be paid in full prior to the approval of the final development plan or prior to recordation of the first phase plat. If bonding or other suitable financial assurances are used to guarantee ultimate payment of any obligations, then these shall be in a form approved by Crook County Counsel and the Crook County Court and drawn on a bonding agent or other source which is acceptable to the Crook County Court. The Court may, at any time, require additional bonding or assurances or a change in the bonding agent or other guarantor as the Court may reasonably determine is necessary to ensure that the County's interest in ensuring completion of the financially-assured elements is protected. If Applicant fails to make a required cash payment or to maintain the level or form of financial assurances required by the Court, the County may enjoin further development or revoke the conditional use permit. In the event that the Court believes at any time that Applicant is in default, the Court shall give Applicant 120 days' written notice and an opportunity to cure the default to the satisfaction of the Court prior to enforcement action by the County.

41. As stated in Condition 3(b), at least 50 units of overnight lodging, as defined in ORS 197.435(5) and as further described in this decision, shall be constructed prior to the sale of any individual lots or units. Prior to approving the sale of lots or units, the County shall certify in writing that the required overnight lodging has been constructed. To be effective, such certification shall be approved by the County Court.

42. Release of bonds or other financial securitization shall be at the sole discretion of the Crook County Court. Bonds or other financial securitization may be reduced in proportion to the amount required to ensure that the work remaining to be completed, but no bonds or securitization shall be released without a finding by the court that the remaining bond or financial securitization is adequate to secure all additional construction anticipated by the conditional use permit and not yet completed.

43. The Court may at any time require an increase in the level of bonding or financial securitization in order to ensure sufficiency of resources to undertake anticipated construction in light of changing construction costs.

44. No plats for individual phases shall be recorded, no construction of overnight units or infrastructure shall commence nor shall the sale of individual lots occur prior to the execution of Memoranda of Understanding related to transportation facilities and wildlife mitigation and any other conditions requiring said memoranda, except as approved by the County Court. Failure to abide by this condition may result in County enforcement action.

45. All utilities placed in county road rights of way shall be installed at the direction of the county road master only upon issuance of a right of way permit. No installation of utilities shall render the use of county roads impassable by the public except by written permission of the road master, and road master shall determine in issuing any such permission that no other feasible and reasonably affordable option exists for the installation of such utilities other than to inconvenience the public by rendering the roads impassable for a time certain. When permission is granted to render a road impassable, it shall be only for the minimum time necessary to complete installation.

DATED this 2nd day of January, 2009.

Scott R. Cooper, Judge

Mike McCabe, Commissioner

Lynn Lundquist, Commissioner