



08/16/2010 10:38:47 AM

Fee: NO FEE

Klamath County Clerk  
AUG 11 AM 11:57

**BEFORE THE KLAMATH COUNTY  
BOARD OF COMMISSIONERS**

**IN THE MATTER OF FILE NUMBER CLUP/ZC 3-09**

**FINAL ORDER**

WHEREAS, JWTR, LLC as applicant, requested approval of an amendment to the Comprehensive Plan Atlas and Zoning Map to revise the Destination Resort Overlay Map, adding approximately 90,000 acres to the Destination Resort Overlay Map; and

WHEREAS, the Klamath County Planning Department provided proper notice of public hearings held on June 23, 2009, May 25, 2010, and June 22, 2010 before the Klamath County Planning Commission and Board of County Commissioners; and

WHEREAS, the applicant submitted said application for the amendment to the Destination Resort Overlay Map in due form for consideration; and

WHEREAS, the applicant provided findings in the record supporting approval of CLUP/ZC 3-09, including a "FINDINGS OF FACT AND CONCLUSIONS OF LAW" document attached as EXHIBIT A ; and

WHEREAS, based on testimony entered and consideration of the whole record, including the proposed Findings of Fact identified in the Staff Report, the Klamath County Planning Commission concluded the application was in conformance with Articles 47 and 48 of the Klamath County Land Development Code and Comprehensive Plan, and forwarded a unanimous recommendation of Approval for Planning File CLUP/ZC 3-09 to the Board of County Commissioners; and

WHEREAS, based on testimony entered and after consideration of the whole record, including attached EXHIBIT A – "FINDINGS OF FACT AND CONCLUSIONS OF LAW"; and, with a unanimous recommendation from the Klamath County Planning Commission, the Klamath County Board of Commissioners acting within their authority adopted Staff's Findings of Fact and unanimously APPROVED Planning File CLUP/ZC 3-09.

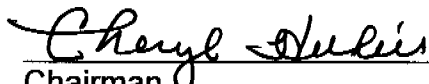
NOW, THEREFORE, THE KLAMATH COUNTY BOARD OF COMMISSIONERS  
ORDERS AS FOLLOWS:

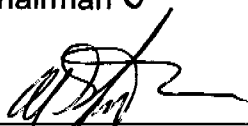
*Direct the Klamath County Planning Director to draft for appropriate adoption by  
the Board of County Commissioners an ordinance implementing the following:*

1. *To amend the Klamath County Comprehensive Plan Atlas and the Zoning Map to add the approximate 90,000 acres to the Destination Resort Overlay Map (DRO) as requested in CLUP/ZC 3-09 and to amend said Map to reflect the addition of these acres as identified in Exhibit B.*

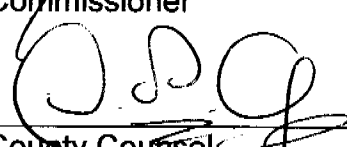
Dated this 4 day of <sup>Aug.</sup>~~July~~, 2010

FOR THE BOARD OF COMMISSIONERS

  
Chairman

  
Commissioner

  
Commissioner

  
County Counsel  
Approved as to form 8/3/10

#### NOTICE OF APPEAL RIGHTS

This decision may be appealed to the Oregon Land Use Board of Appeals (LUBA) within 21 days following the date of the mailing of this order. Contact LUBA for information as how to file this appeal (LUBA by phone 1-503-373-1265 or mail at 550 Capitol Street NE, Suite 235, Salem, Oregon 97301-2552). Failure to do so in a timely manner may affect your rights.

## BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR KLAMATH COUNTY, OREGON

In the Matter of an Application by	)	
JWTR, LLC to Amend the Klamath	)	
County Comprehensive Plan Map and	)	
Zoning Map to Add Approximately	)	
90,000 Acres to the Destination Resort	)	FINDINGS OF FACT AND
Overlay, in Accordance With ORS	)	CONCLUSIONS OF LAW
197.455 and Statewide Planning Goal 8,	)	
"Recreation," and Applicable Provisions	)	KLAMATH COUNTY FILE NO.
of the Klamath County Comprehensive	)	CLUP/ZC 3-09
Plan and Land Development Code	)	

### I. INTRODUCTION

#### A. Classification of Matter.

This application is a legislative matter because it involves 90,000 acres so it is not classified as a quasi-judicial matter.

#### B. Compliance with Post-Acknowledgment Procedures.

The County has complied with the requirements of ORS 197.610(1) and OAR Chapter 660, Division 18 by providing notice to the Oregon Department of Land Conservation and Development ("DLCD") more than 45 days prior to the initial evidentiary hearing before the County. The initial evidentiary hearing was a joint Planning Commission (the "Commission") and Board of County Commissioners (the "Board") hearing held on June 22, 2010.

#### C. Publication Notice.

Klamath County Development Code ("KLDC") requires that notice be published in a newspaper of general circulation in Klamath County on two (2) consecutive days not less than 20 days before the hearing. In this case, the County caused notice to be published in the Klamath Falls Democrat and Herald Newspaper on April 26 and April 27 for a May 26, 2010 hearing.

Pursuant to a request by the JWTR, LLC (the "Applicant"), the Commission and Board opened the public hearing on May 26, 2009 and continued the hearing until the date certain of June 22, 2010.

**D. Requested Action.**

This decision approves an amendment to the Klamath County Comprehensive Plan (Plan") map and Klamath County Zoning Map ("Zoning Map") to add 90,000 acres to the Destination Resort Overlay designation to make such land eligible for a destination resort subject to a subsequent and separate permit application, which is not before the County at this time.

**II. PROCEDURAL STATUS**

**A. Planning Commission and Board of County Commissioners Public Hearings.**

The County considered this matter in a joint Commission and Board public hearing following notice that complied with relevant KLDC notice requirements. The Commission opened its public hearing on June 22, 2010. Five (5) Commissioners, including Chair Shaw, were in attendance thus providing a quorum for the Commission. Chair Shaw announced the process that provided for a staff report, the applicant's testimony and opponents' testimony. No person objected to the procedure. Planning Director Bill Adams confirmed that the entire Planning Department file was physically before the Commission.

Planning Director Adams provided a staff report with nine (9) slides and, at the conclusion of the staff report, recommended approval of the legislative amendment. Planning Director Adams also distributed an 8.5 inch by 11 inch map showing the Root/Thomas properties and responded to the June 17, 2010 letter from Craig Stone on behalf of Root and Thomas. Planning Director Adams also responded to the June 22, 2010 letter from 1000 Friends of Oregon.

Following the staff report, the applicant's attorney testified in favor of the application. Following the applicant's testimony, Catherine Cappel testified against the application.

Following Ms. Cappel's testimony, Tom Collum of the Oregon Department of Fish and Wildlife ("ODFW") testified as a neutral party. Mr. Collum testified that his primary issue was the exclusion of big game habitat from the destination resort. The applicant responded to Mr. Collum's testimony in two ways. First, the applicant noted that none of this area was included on the July 1984 Oregon Department of Fish and Wildlife ("ODFW") sensitive big game habitat area map (which is in the Planning Department file and physically before the Commission and Board. Planning Director Adams testified that the areas were not shown on the KLDC as "especially sensitive big game habitat." The applicant also responded by saying that it would work with ODFW and would provide mitigation as required by ORS 97.460(1) at the time the applicant applies for a destination resort permit.

At the conclusion of public testimony, and with no party having asked that the public hearing be continued or the written record held open, the Commission closed its public hearing. On a motion by Commissioner Palmer, seconded by Commissioner Thompson, to recommend approval of the application to the Board, the Commission voted 5-0 in favor of the motion.

The Board then opened its public hearing. All three (3) Board members were in attendance, thus constituting a quorum for action. The Board received the Commission's unanimous recommendation for approval of the legislative application. On a motion by Commissioner Switzer, seconded by Commissioner Elliott, the Board voted 3-0 in favor of a motion to approve the application. The Board's decision was tentative and it directed the applicant to prepare findings for review by County staff and adoption by the Board.

**B. Coordination with Affected Governmental Entities.**

The Board finds that the County has coordinated as required by Statewide Planning Goal 2 and ORS Chapter 197 with affected governmental entities including but not limited to the Oregon Department of Forestry ("ODF"), ODFW, the Oregon Department of Transportation ("ODOT") and other local and state agencies. The County provided adequate notice of the

application prior to the initial evidentiary hearing, received testimony offered by affected governmental entities and considered their testimony as much as possible. The Board finds that the County has satisfied the coordination requirement.

**C. Staff Report.**

The staff report consists of two documents. The first document is a packet containing a seven (7) page staff report dated June 22, 2010 with 23 exhibits containing a total of 123 pages. The second staff report is a one (1) page June 22, 2010 staff report with two attachments. Both staff reports and their attachments were physically before both the Commission and the Board prior to the Board's decision in this application.

**III. INCORPORATION BY REFERENCE**

The Board herein incorporates the following documents as findings in addition to the findings contained in this document in support of the approval of this application:

- a. June 22, 2010 seven (7) page staff report with twenty three (23) exhibits containing 123 pages.
- b. June 22, 2010 one (1) page staff report with two (2) exhibits.
- c. Applicant's application for legislative amendment to the Plan and the KLDC containing a completed Klamath County application form and findings addressing relevant approval criteria at pages 45-88 of the June 22, 2010 staff report packet.
- d. Applicant's May 7, 2010 three (3) page letter responding to May 4, 2010 letter from Tom Collum, District Wildlife Biologist, Klamath Watershed District, ODFW.
- e. Applicant's June 3, 2010 ten (10) page letter with seven (7) exhibits.
- f. Applicant's June 21, 2010 three (3) page letter responding to June 17, 2010 letter from Craig Stone.

These documents are incorporated in full in these findings and if there is a conflict between these documents and the findings contained in this document, these findings shall control.

#### **IV. RESPONSE TO APPLICABLE APPROVAL CRITERIA**

##### **A. Applicable Statewide Planning Goals.**

The Board finds that Statewide Planning Goals 1, 2, 3,4, 5, 8, 12, and 14 are either relevant or have been raised by other parties and require a response. The Board herein adopts the findings provided by the applicant addressing these relevant approval criteria including but not limited to the findings contained in the applicant's initial application found at pages 45-88 of the June 22, 2010 staff report packet and the June 3, 2010 letter.

For the reasons contained in those documents, the Board finds that the relevant Statewide Planning Goals have been satisfied.

##### **B. Relevant Oregon Administrative Rules.**

The Board finds that the relevant administrative rules are those implementing Statewide Planning Goals 5 and 12. The Board herein adopts the findings contained in the applicant's June 3, 2010 letter addressing both administrative rules. The Board also specifically relies on the evidence found in the May 25, 2010 letter from Kittelson & Associates (Exhibit 5 to the applicant's June 3, 2010 letter) addressing the Transportation Planning Rule (OAR 660-012-0060(1)-(4)) and the May 25, 2010 letter from Rabe Consulting (Exhibit 4 to the applicant's June 3, 2010 letter) addressing the Goal 5 administrative rule. For the reasons contained in the June 3, 2010 applicant's letter and as supported in the two exhibits referenced above, the Board finds that the relevant provisions of the two administrative rules have been satisfied. The Board also notes that the County coordinated with ODOT as required by OAR 660-012-0060(4).

**C. Local Approval Criteria.**

The Board finds relevant approval criteria KLDC 47.030(B)(1)-(3) and 49.030(B)(1)-(3) have been satisfied. The Board relies on the findings contained in the June 22, 2010 staff report and the applicant's original application found at pages 45-88 of the June 22, 2010 staff report and in the applicant's June 3, 2010 letter.

**D. KLDC Chapter 48.030(B)(1)-(3).**

The Board finds for the reasons described in C. above that this application satisfies these relevant approval criteria. The Board additionally finds for the same reasons that Klamath County Comprehensive Plan Article 8 is satisfied as well.

**E. ORS 197.453-467, "Siting of Destination Resorts."**

For the reasons contained in the applicant's initial submittal and its three subsequent letters (dated May 7, June 3, and June 21, 2010) and the two (2) June 22, 2010 staff reports, the Board finds that the relevant provisions of ORS 197.453-.467 are satisfied. In particular, the Board finds that ORS 197.455(1)(a)-(e) are satisfied. Additionally, the Board finds that ORS 197.455(2) is satisfied and the Board expressly notes its adoption earlier in 2010 of the process required by this statute. The Board also finds that ORS 197.465(1) is satisfied because this amendment maps area where a destination resort described in ORS 197.445(1)-(5) is permitted pursuant to ORS 197.455. Finally, the Board notes that exceptions to the statewide planning goals are not required pursuant to ORS 197.450.

**F. Conclusion.**

For the reasons explained herein, the Board concludes that the relevant local and state approval criteria have been satisfied that support the Board's conclusion that this amendment to the plan map and zoning map adding additional acreage eligible for a destination resort are satisfied.



**V.      RESPONSE TO ADDITIONAL ISSUES RAISED  
BY PARTIES TO THE HEARING**

**A.      Additional Findings Regarding Issues Raised by Craig Stone in June 17, 2010 Letter**

The Board finds that both staff and the applicant have addressed the issues raised in Mr. Stone's June 17, 2010 letter. The June 22, 2010 supplemental staff report at page 1 states that based on review of Klamath County's goal 5 destination resort maps there are no "high value crop areas" within three (3) miles of the subject site and there is no "unique or prime farmland" on or adjacent to the subject site. Further, Mr. Stone's letter refers to criterion standards for siting destination resorts found in ORS 197.445, which are not relevant for this application because a destination resort is not proposed. Further, ORS 197.460 requires compatibility with adjacent land uses in the event a destination resort is proposed and approved. The Board finds these responses satisfactorily address the issues contained in Mr. Stone's letter.

The Board also makes the following additional findings. First, the Board notes that the property owned by Mr. Stone's clients is already designated destination resort overlay and would allow destination resort mapping. Second, the Board notes that Mr. Stone's letter does not contain substantial evidence that high value properties have occurred since 2009. Without suggestion of substantial evidence, the Board finds that it has no obligation to conduct a further analysis and that it may rely upon the County's acknowledged maps and the staff report as evidence that such lands do not exist as asserted by Mr. Stone.

**B.      Response to June 22, 2010 Letter from 1000 Friends of Oregon**

1000 Friends of Oregon also asserts that ORS 197.455(1) and (2) have not been satisfied. The Board rejects the assertion that the applicant has not adequately demonstrated that the proposed lands are not on a site with 50 or more contiguous acres of unique or prime farmland, are not within three miles of a high-value crop area, are not on class 1 or 2 forest lands, or not in any especially sensitive big game habitat. The Board relies upon the July 1984 ODFW map and the staff report as evidence that none of these physical conditions are included. The Board also

notes that the 1000 Friends' letter does not assert the specific locations in which these physical conditions apply. Therefore, for these reasons, the Board finds that the issues raised in this letter have been satisfactorily address.

**C. DLCD Comment.**

DLCD commented in 2009 that it could not support the proposed mapping until the process amendment required by ORS 197.455(2) had been addressed. The Board notes that it has adopted the process amendment earlier in 2010 and that the ordinance adopting the process amendment as part of the record in this record. Further, the Board relies on the applicant's March 26, 2010 email to Mr. Jon Jennings of DLCD and Mr. Jennings's March 26, 2010 email response, in which Mr. Jennings indicated that the Board's action earlier in 2010 had probably addressed DLCD's issue. The Board notes that there is no further oral or written testimony from DLCD in the record. Therefore, the Board finds that the DLCD issue has been satisfactorily addressed.

**D. Response to June 23, 2009 letter from Central Oregon Land Watch; June 22, 2009 letter from ODF; June 22, 2009 letter from Central Klamath County Community Action Team; and June 15, 2009 letter from Klamath Tribes.**

The Board finds that the issues identified in these five (5) letters have been satisfactorily addressed by either of the two (2) staff reports, the applicant's original application or the applicant's subsequent three (3) letters.

**VI. CONCLUSION**

Based on the findings contained herein, the Board hereby adopts these findings approving this legislative amendment to the Plan and Zoning Map to add additional lands to the County's destination resort overlay map thereby making them eligible for a destination resort application.

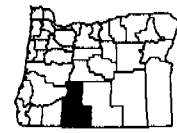


# EXHIBIT <sup>July</sup> B

## Klamath County, Oregon

### Destination Resort Overlay (DRO) Ordinance 44.87

 Destination Resort Eligible Lands



0 2.5 5 10 15 20 Miles

