



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

Certificate of Water Right Ownership Update

NOTICE TO SELLERS & BUYERS:

By law, all water belongs to the public (ORS 537.110). In almost every instance, a permit or water right certificate from the Water Resources Department is needed before using, diverting or storing water (ORS 537.130). However, most domestic wells do not require water rights. A certificate of water right stays with the land. In order to keep track of water right ownership, the Department requests that this form be submitted to the Department. ***If for multiple rights, a separate form for each right will be required.***

Water that has been used for a long time in one place or that involves a water structure (like a dam) that already exists is no guarantee that there is a water right which would allow the water use to continue.

If you have any questions about this form or water right requirements, please contact your local watermaster or call the Water Resources Department at 503-986-0900.

Note: Please type or print legibly when filling in the following information. Use additional paper if necessary.

PROPERTY SELLER INFORMATION

Applicant(s): Cline Butte Utility Co.
Mailing Address: 1230 Golden Pheasant Dr.
Redmond OR 97756
City State Zip
Phone: _____
Home Work Other

PROPERTY BUYER INFORMATION

Applicant(s): Cline Butte Utilities, LLC
Mailing Address: P.O. Box 1215
Redmond OR 97756
City State Zip
Phone: 541-548-9374
Home Work Other

PROPERTY DESCRIPTION (attach additional pages if necessary):

County: Deschutes Township: 15 South Range: 12 East Section: see certificate

Tax Lot Number(s): _____

Street address of water right property: 1522 Cline Falls Road, Redmond OR 97756

Water Right Information (attach copy of water right permit or certificate & final proof map):

Application #: G-12905 Permit #: G-11762 Certificate or Page #: 85471

Will all the lands associated with this water right be owned by the buyer? ☒ Yes ☐ No

Name of individual completing this form: Simon Hallgarten Phone: 203-259-1004

Signature: _____ Date: 9-27-11

Please be sure to attach a copy of your property deed or legal description of the property.

RECEIVED

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WATER RESOURCES DEPT
SALEM, OREGON

September 29, 2011

Herb Mosgard
Water Rights and Adjudications Division
Oregon Water Resources Department
725 NE Summer Street, Suite A
Salem, OR 97301

RE: Ownership Update for Certificate 85471 / Transfer T-10929 (Application G-12905)

Dear Mr. Mosgar:

The water right formerly evidenced by Water Right Certificate 85471, which was cancelled upon approval of Transfer T-10929, is currently in the name of Cline Butte Utility Co. Cline Butte Utility Co. was recently converted to Cline Butte Utilities, LLC. (See enclosed Articles of Conversion.)

As a result of this conversion, Cline Butte Utilities, LLC is now the holder of the water right formerly evidenced by Water Right Certificate 85471. I am enclosing a Certificate of Water Right Ownership Update form that describes this change in ownership. We would request that the Oregon Water Resources Department update its records accordingly.

Please contact Alan Van Vliet at 541-548-9374 if you have any questions.

Sincerely,



Simon Hallgarten

Enclosure: Certificate of Water Right Ownership Update form
Articles of Conversion

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WATER RESOURCES DEPT
SALEM, OREGON



Secretary of State
Corporation Division
255 Capitol Street NE, Suite 151
Salem, OR 97310-1327

Phone: (503) 986-2200
Fax: (503) 378-4381
www.filinginoregon.com

Registry Number: 550556-86
Type: FOREIGN LIMITED LIABILITY COMPANY

Next Renewal Date: 12/23/2010

CLINE BUTTE UTILITIES, LLC
PO BOX 1215
REDMOND OR 97756

Acknowledgment Letter

The document you submitted was recorded as shown below. Please review and verify the information listed for accuracy.

If you have any questions regarding this acknowledgement, contact the Secretary of State, Corporation Division at (503) 986-2200. Please refer to the registration number listed above. A copy of the filed documentation may be ordered for a fee of \$5.00. Submit your request to the address listed above or call (503) 986-2317 with your Visa or MasterCard number.

Document

ARTICLES OF CONVERSION

Filed On
12/29/2010

Jurisdiction
DELAWARE

Name

CLINE BUTTE UTILITIES, LLC

Principal Place of Business

7555 FALCON CREST DR
REDMOND OR 97756

Registered Agent

CORPORATION SERVICE COMPANY
285 LIBERTY ST NE
SALEM OR 97301

Mailing Address

PO BOX 1215
REDMOND OR 97756

THEJOH
AGK
12/29/2010

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WATER RESOURCES DEPT
SALEM, OREGON



Articles of Conversion - Business Entities

Secretary of State - Corporation Division - 255 Capitol St. NE, Suite 151 - Salem, OR 97310-1127 - <http://www.filinginOregon.com> - (800) 451-7820

FILED

DEC 29 2010

OREGON
SECRETARY OF STATE

REGISTRY NUMBER: 550556 86

In accordance with Oregon Revised Statutes 192.410-192.490, the information on this application is public record.
We must release this information to all parties upon request and it will be posted on our website.

For office use only

Please Type or Print Legibly in Black Ink.

1) NAME OF BUSINESS ENTITY PRIOR TO CONVERSION:

Cline Butte Utility Company

2) TYPE OF BUSINESS ENTITY PRIOR TO CONVERSION:

Oregon Domestic Business Corporation

3) NAME OF BUSINESS ENTITY AFTER CONVERSION:

Cline Butte Utilities, LLC

4) TYPE OF BUSINESS ENTITY AFTER CONVERSION:

Delaware Limited Liability Company

5) ☒ A COPY OF THE PLAN OF CONVERSION IS ATTACHED.

6) PROVIDE ADDITIONAL INFORMATION REQUIRED FOR NEW ENTITY TYPE

The name and address of the registered agent in Delaware for the converted business entity is:

Corporation Service Company
2711 Centerville Road, Suite 400
Wilmington, Delaware 19808

7) EXECUTION (Must be signed by an officer or director for a corporation, a member or manager for a limited liability company, a general partner for a limited partnership, or a partner for a limited liability partnership.)

By my signature, I declare as an authorized authority, that this filing has been examined by me and is, to the best of my knowledge and belief, true, correct, and complete. Making false statements in this document is against the law and may be penalized by fines, imprisonment or both.

Signature

Printed Name

Title

[Signature]

Cary A. Kleinman

Member

Member

CONTACT NAME: (To resolve questions with this filing.)

Eric Ideta

PHONE NUMBER: (Include area code.)

213 229-7079

FEES

Delaware Registered Privacy Fee \$100

Foreign Registered Privacy Fee \$275

Condominium Copy (Optional) \$5

Processing Fee: \$5 (non-refundable)

Please note that fees payable to "Vermont State Drivers"

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WATER RESOURCES DEPT
SALEM, OREGON

PLAN OF CONVERSION
FOR
CLINE BUTTE UTILITY COMPANY,
an Oregon domestic business corporation

December 2, 2010

The undersigned, being all of the duly elected members of the board of directors (the "Board") of Cline Butte Utility Company, an Oregon domestic business corporation (the "Company"), acting in accordance with Sections 60.341, 60.472, 60.474, and 60.487 of the Oregon Revised Statutes, hereby consent in writing to the adoption of the Plan of Conversion (the "Plan"), such action to have the same force and effect as a unanimous vote of the Board at a meeting duly called and held.

RECITALS

WHEREAS, the Company was formed on December 23, 1996, in the State of Oregon;

WHEREAS, Eagle Crest Resort Corporation, an Oregon domestic business corporation, is the sole shareholder (the "Shareholder") of the Company;

WHEREAS, the Board deems it advisable and in the best interests of the Company and the Shareholder to convert the Company to Cline Butte Utilities, LLC (the "Delaware LLC"), a Delaware limited liability company (the "Conversion"); and

WHEREAS, the Board deems it advisable and in the best interests of the Company and the Shareholder to (i) convert the Shareholder's 100% interest in the Company into a 100% limited liability company membership interest in the Delaware LLC, and (ii) transfer Shareholder's 100% interest in the Delaware LLC to JELD-WEN Development, LLC ("JWD, LLC"), an Oregon domestic business corporation.

NOW, THEREFORE, BE IT RESOLVED, that all of the elected members of the Board hereby agree as follows:

1. The Board hereby approves the Conversion.
2. The name of the converted entity shall be "Cline Butte Utilities, LLC".
3. The Board intends to file (i) a Certificate of Conversion of the Company with the Secretary of State of Delaware, attached as Exhibit A, (ii) a Certificate of Formation of the Delaware LLC with the Secretary of State of Delaware, attached as Exhibit B, (iii) Articles of Conversion of the Company with the Secretary of State of Oregon, attached as Exhibit C, and (iv) an Application for Authority to Transact Business with the Secretary of State of Oregon, attached as Exhibit D, thereby canceling the existence of the Company and completing the Conversion.

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SALEM, OREGON

4. Upon the Conversion, the Shareholder's 100% interest in the Company shall be (i) converted into a 100% limited liability company membership interest in the Delaware LLC, and (ii) transferred to JWD, LLC.

5. Upon Conversion, the registered agent of the Delaware LLC in Delaware shall be Corporation Service Company (the "Agent"). The Agent's registered office is located at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

6. The Board hereby recommends that the Shareholder consent to the approval and adoption of the Plan.

7. The Board hereby submits the Plan to the Shareholder for approval, in a manner consistent with applicable law.

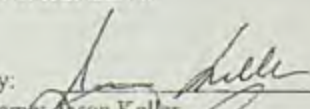
[Signature page follows.]

RECEIVED

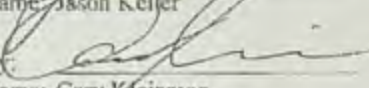
OCT 12 2011

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SALEM, OREGON

IN WITNESS WHEREOF, the undersigned have executed this Plan of Conversion for
Cline Butte Utility Company as of the date first written above.

By: 

Name: Jason Keller

By: 

Name: Cary Kleinman

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SALEM, OREGON

EXHIBIT A
DELAWARE CERTIFICATE OF CONVERSION
[See attached.]

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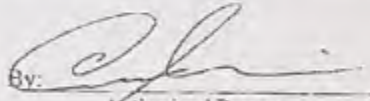
OCT 12 2011

WATER RESOURCES DEPT
SALEM, OREGON

STATE OF DELAWARE
CERTIFICATE OF CONVERSION
FROM A CORPORATION TO A
LIMITED LIABILITY COMPANY PURSUANT TO
SECTION 18-214 OF THE LIMITED LIABILITY ACT

- 1.) The jurisdiction where the Corporation first formed is Oregon
- 2.) The jurisdiction immediately prior to filing this Certificate is Oregon
- 3.) The date the corporation first formed is December 23, 1996
- 4.) The name of the Corporation immediately prior to filing this Certificate is
Cline Butte Utility Company
- 5.) The name of the Limited Liability Company as set forth in the Certificate of
Formation is Cline Butte Utilities, LLC

IN WITNESS WHEREOF, the undersigned have executed this Certificate on the
2nd day of December, A.D. 2010

By: 
Authorized Person

Name: Cary Kleinman
Print or Type

RECEIVED

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WATER RESOURCES DEPT
SALEM, OREGON

EXHIBIT B

DELAWARE CERTIFICATE OF FORMATION

[See attached.]

RECEIVED

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WATER RESOURCES DEPT
SALEM, OREGON

STATE of DELAWARE
LIMITED LIABILITY COMPANY
CERTIFICATE of FORMATION

• First: The name of the limited liability company is Cline Butte Utilities, LLC

• Second: The address of its registered office in the State of Delaware is
2711 Centerville Rd, #400 in the City of Wilmington
Zip Code 19808

The name of its Registered agent at such address is Corporation Service Company

• Third: (Insert any other matters the members determine to include herein.)

In Witness Whereof, the undersigned have executed this Certificate of Formation this
2nd day of December, 2010

By: 
Authorized Person(s)

Name: Cary Kleinman
Typed or Printed

RECEIVED

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WATER RESOURCES DEPT
SALEM, OREGON

EXHIBIT C
OREGON ARTICLES OF CONVERSION

[See attached.]

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WATER RESOURCES DEPT
SALEM, OREGON



Articles of Conversion - Business Entities

Secretary of State - Corporation Division - 250 Capitol St. NE, Suite 111 - Salem, OR 97313-1127 - <http://www.FilingInOregon.com> - (800) 455-2200

DEC 29 2010

OREGON
SECRETARY OF STATE

REGISTRY NUMBER: 550556 R6

In accordance with Oregon Revised Statute 192.410-192.490, the information on this application is public record. We must release this information to all parties upon request and it will be posted on our website.

For office use only

Please Type or Print Legibly in Black Ink.

1) NAME OF BUSINESS ENTITY PRIOR TO CONVERSION:

Cline Bute Utility Company

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Oregon Domestic Business Corporation

3) NAME OF BUSINESS ENTITY AFTER CONVERSION:

Cline Bute Utilities, LLC

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Delaware Limited Liability Company

5) ☒ A COPY OF THE PLAN OF CONVERSION IS ATTACHED.

6) PROVIDE ADDITIONAL INFORMATION REQUIRED FOR NEW ENTITY TYPE

The name and address of the registered agent in Delaware for the converted business entity is:

Corporation Service Company
2711 Centerville Road, Suite 400
Wilmington, Delaware 19808

7) EXECUTION (Must be signed by an officer or director for a corporation, a member or manager for a limited liability company, a general partner for a limited partnership, or a partner for a limited liability partnership.)

By my signature, I declare as an authorized authority, that this filing has been examined by me and is, to the best of my knowledge and belief, true, correct, and complete. Making false statements in this document is against the law and may be penalized by fines, imprisonment or both.

Signature

Printed Name

Title:

Member

Member

CONTACT NAME: (To resolve questions with this filing.)

Eric Ideta

PHONE NUMBER: (include area code)

213-229-7079

FEES

Domestic Registered Partnership Fee

\$100

Foreign Registered Partnership Fee

\$275

Conformity Copy (Optional) \$5

Processing Fee for notarial seal

Please make check payable to "Corporation Division"

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WATER RESOURCES DEPT
SALEM, OREGON

EXHIBIT D

OREGON APPLICATION FOR AUTHORITY TO TRANSACT BUSINESS

[See attached.]

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WATER RESOURCES DEPT
SALEM, OREGON



Application for Authority to Transact Business - Foreign Limited Liability Company

Secretary of State - Corporation Division - 255 Capitol St. NE, Suite 181 - Salem, OR 97310-1327 - <http://www.FilingInOregon.com> - Phone: (503) 596-2200

REGISTRY NUMBER:

For office use only

In accordance with Oregon Revised Statute 182A.10-182A.450, the information on this application is public record. We must release this information to all parties upon request and it will be posted on our website.

For office use only

Please Type or Print Legibly in Black Ink - Attach Additional Sheet if Necessary

1) NAME: Cline Butte Utilities, LLC

NOTE: (Must contain the words "Limited Liability Company" or the abbreviations "LLC" or "LLC,") Must be identical to the name on the Certificate of Existence. See #2

2) STATE OR COUNTRY OF ORGANIZATION:

Delaware

Date of Organization December 3, 2010

7) REGISTERED AGENT'S PUBLICLY AVAILABLE ADDRESS:

(Must be an Oregon Street Address, which is identical to the registered agent's business office)

285 Liberty Street NE

Salem, OR 97301

3) CERTIFICATE OF EXISTENCE:

☒ A Certificate of existence, current within 60 days of delivery to this Division, authenticated by the official having custody of the organization, is attached

8) ADDRESS OF PRINCIPAL OFFICE OF THE BUSINESS:

7555 Falcon Crest Drive

Redmond, OR 97756

4) DURATION: (Please check one)

☐ Limited date upon which the entity is to dissolve to

or

☒ Duration shall be perpetual

9) ADDRESS WHERE THE DIVISION MAY MAIL NOTICES:

PO Box 1215

Redmond, OR 97756

5) THIS FOREIGN LIMITED LIABILITY COMPANY SATISFIES THE REQUIREMENTS OF ORS 63.714(3).

10) HOW WILL THIS LIMITED LIABILITY COMPANY BE MANAGED?

☒ This LLC will be member-managed by one or more members

☐ This LLC will be manager-managed by one or more managers

11) EXECUTION: (At least one member or manager must sign)

By my signature, I declare as an authorized authority, that this filing has been examined by me and is, to the best of my knowledge and belief, true, correct, and complete. Making false statements in this document is against the law and may be penalized by fines, imprisonment or both.

Signature

Printed Name:

Cary Kleinman

Title:

Member

CONTACT NAME: (To resolve questions with this filing)

Eric Ideta

PHONE NUMBER: (include area code)

213-229-7079

Required Filing Fee: \$275

Confirmation Copy (Optional): \$5

Processing Fees are non-refundable. Please make check payable to Corporation Division.

(For Application for Authority to Transact Business - Foreign Limited Liability Company (06/10))

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DEC 1 2 2011

WATER RESOURCES DEPT
SALEM, OREGON

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "CLINE BUTTE UTILITIES, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE SEVENTH DAY OF DECEMBER, A.D. 2010.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "CLINE BUTTE UTILITIES, LLC" WAS FORMED ON THE THIRD DAY OF DECEMBER, A.D. 2010.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE NOT BEEN ASSESSED TO DATE.

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WATER RESOURCES DEPT
SALEM, OREGON

4907301 8300

101156497

You may verify this certificate online
at corp.delaware.gov/authver.shtml




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 8404914

DATE: 12-07-10

EAGLE CREST II
EAGLE RIDGE DEVELOPMENT CORPORATION
WATER RIGHT APPROPRIATION APPLICATION EXHIBITS
OREGON WATER RESOURCES FILE # G-12905

LIST OF EXHIBITS

1. OREGON WATER RESOURCES DEPARTMENT SATISFACTORY REPORT OF TECHNICAL REVIEW--APRIL 19,1993
2. WATER RIGHT APPROPRIATION APPLICATION--APRIL 28, 1992
3. APPLICATION MAP--MARCH, 1992
4. UPDATED LAND USE COMPATIBILITY STATEMENT--FEBRUARY 22,1993
5. HYDROGEOLOGIC STUDY EAGLE CREST PHASE II--APRIL, 1992
6. TECHNICAL REVIEW OF EAGLE CREST, PHASE II HYDROGEOLOGIC STUDY--BY JOSEPH B. GONTHIER--OCTOBER, 1992
7. HYDROGEOLOGIC STUDY EAGLE CREST PHASE II SUPPLEMENTAL FINDINGS--SEPTEMBER, 1993
8. TECHNICAL RECONNAISSANCE REPORT SURVEY OF GROUNDWATER RESOURCES UPPER DESCHUTES RIVER BASIN, OREGON--BUREAU OF RECLAMATION--OCTOBER 1, 1991
9. CONCEPTUAL MASTER PLAN DECISION OF DESCHUTES COUNTY HEARINGS OFFICER--JANUARY 13, 1994
10. BALL JANIK & NOVACK CORRESPONDENCE REGARDING LAND USE COMPATIBILITY REQUIREMENTS FOR THE PENDING EAGLE CREST APPLICATION--APRIL 1, 1993

EAGLE CREST II WELL LOGS

EAGLE CREST II PERMIT # G-11313



Creative Solutions . . . Superior Service

Oregon

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APR 21 1993
WATER
RESOURCES
DEPARTMENT

April 19, 1993

W & H PACIFIC INC

EAGLE RIDGE DEVELOPMENT CORP.
PO BOX 1215
REDMOND, OR 97756

REFERENCE FILE: G-12905

This letter informs you of the current status of your application for a water use permit and accompanies the Satisfactory Report of Technical Review For Water Use Permit(s). We apologize for the delay in transmitting this information and Report to you and for any inconvenience the wait may have caused you.

The enclosed Report of Technical Review is the Department's summary of a specialized analysis of various legal and scientific aspects of your application and proposed water use. We are required by the state of Oregon's administrative rules (in OAR 690-11-160) to conduct this official technical review of each application submitted to the Oregon Water Resources Department for a water use permit. This process was designed to insure that your application receives a fair evaluation and to secure protection of existing water rights and of the public at large.

AS THE RESULT OF OUR TECHNICAL EVALUATION OF YOUR APPLICATION, WE HAVE DETERMINED THAT YOUR APPLICATION SATISFIES THE REQUIREMENTS OF THE TECHNICAL REVIEW.

The Department will now move your application to the next phase of processing. This phase includes a public interest review of your proposed water use. No final action may be taken on your application until the public interest review is completed.

You should also note that the Report of Technical Review describes conditions currently anticipated which may limit the water use proposed in your application.

If you wish to object to any of the analyses contained in the Report, you must submit your objection to the Department in writing within 60 days of the date of mailing of this Report or by the date specified below. Your objection must allege that the technical review is defective and you may also submit evidence which demonstrates that your proposed water use will not impair or be detrimental to the public interest.

3850 Portland Rd NE
Salem, OR 97310
(503) 378-3739
FAX (503) 378-8130

Copies of the Report of Technical Review will be distributed to all persons who have filed comments or otherwise expressed an interest in the water use proposed in your application. Interested parties must also submit their objections within the prescribed objection period. Those objections must allege that the technical review is defective and/or that the proposed water use may impair or be detrimental to the public interest.

If an objection contains allegations that the technical review is defective, it must be accompanied by facts which support such allegations. If an objection contains allegations that the proposed water use may impair or be detrimental to the public interest, the objection must specify the particular public interest standards which apply as set out in Oregon Revised Statutes (ORS 537.170(5)) and Oregon Administrative Rules (OAR 690-11-195) and state facts showing how such standards would be violated.

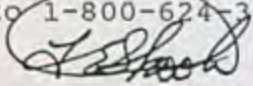
All evidence and objections must be received by our Salem office no later than 5:00 p.m. on or before JUNE 30, 1993, or the Department may presume there is no opposition to any of the analyses set out in the technical review report. Evidence and objections must be addressed and delivered to: Oregon Water Resources Department, Water Rights Section, 3850 Portland Road, Northeast, Salem, Oregon 97310.

If objections and evidence are submitted on or before the above time and date, the Director of the Water Resources Department will evaluate each issue raised in the objections and either accept or deny them. Objectors are encouraged to indicate whether they would be interested in resolving their concerns through alternative dispute resolution.

If any of the objections are denied, the objector will be allowed thirty days to submit a protest to the denial. The protest must meet the standards set forth in OAR 690-02-030 through 080.

If you have any questions, please feel free to telephone me or any of the Department's Water Rights Section staff. My telephone number is 378-3739, in Salem, or you may call toll free from within the state to 1-800-624-3199.

Sincerely,



THOMAS E. SHOOK

Enclosures

CC: WATERWATCH OF OREGON
WATERMASTER, DISTRICT 5
W&H PACIFIC
BALL, JANIK, AND NOVAK
REPRESENTATIVE CLARNO

Report Date: APRIL 19, 1993

OREGON WATER RESOURCES DEPARTMENT

REPORT OF TECHNICAL REVIEW

FOR WATER USE PERMIT

OBJECTIONS TO THE PROPOSED WATER USE AS DESCRIBED BELOW MUST BE RECEIVED IN WRITING BY THE WATER RESOURCES DEPARTMENT, 3850 PORTLAND ROAD

N.E., SALEM, OREGON, 97310, ON OR BEFORE 5 P.M., JUNE 30, 1993.

1. APPLICATION FILE NUMBER - G-12905
2. MINIMUM APPLICATION INFORMATION

Applicant name/address/county/phone:

EAGLE RIDGE DEVELOPMENT CORPORATION
PO BOX 1215
REDMOND, OR 97756
DESCHUTES Co. 503-923-0807

Date application received for filing and/or tentative date
of priority: 5/ 4/1992

(APPLICATION SUBMITTED 4-28-92)

SOURCE: THREE WELLS WITHIN THE DESCHUTES RIVER BASIN

Purpose and/or use: GROUP DOMESTIC FOR 900 FAMILIES INCLUDING
THE IRRIGATION OF LAWN AND NONCOMMERCIAL GARDEN OF NOT TO
EXCEED 1/2 ACRE PER UNIT

Flow: 4.01 CUBIC FOOT PER SECOND (CFS) ✓

Point of Appropriation Location:

T 15 S, R 12 E, SEC. 14, SW 1/4 ~~SW~~ 1/4, SEC. 15, SW 1/4 SE 1/4
NW ✓

Place of use:

OK {	E 1/2 SW 1/4	✓	N 1/2 NE 1/4
	SE 1/4	✓	SE 1/4 NE 1/4
	SECTION 10	OK	SE 1/4 SE 1/4
✓	SW 1/4 SW 1/4		SECTION 22
✓	SECTION 11	OK {	ALL
✓	SW 1/4 SW 1/4		SECTION 23
✓	SECTION 13	✓	W 1/2 W 1/2
✓	W 1/2	✓	SECTION 24
✓	SE 1/4	OK {	NW 1/4 NE 1/4
✓	SECTION 14		N 1/2 NW 1/4
✓	E 1/2		SECTION 26
✓	SECTION 15	OK {	NE 1/4 NE 1/4
			SECTION 27

T 15 S, R 12 E, W.M.

GROUNDWATER AVAILABILITY

This is an application for use of groundwater. The Groundwater/Hydrology Section report indicates that:

Pursuant to OAR 690-09-040, the proposed groundwater withdrawal will not have the potential to cause substantial interference with surface water.

In addition, the Groundwater/Hydrology Section has reported the water is likely to be available to supply the proposed use.

CONFLICTS WITH OTHER WATER RIGHTS:

There are existing rights from this point of appropriation. See permit conditions.

There are existing water rights appurtenant to the lands described in the application. See permit conditions.

REPORT CONCLUSIONS:

Water in the amount of 3 CFS is likely available for 12 months of the 12 months normal period of use. Therefore, the Director finds that water is available in sufficient amount and during periods which will reasonably support the proposed use.

THE PROPOSED WATER USE, AS CONDITIONED, SATISFIES THE REQUIREMENTS OF THIS TECHNICAL REVIEW.

This Report of Technical Review sets out the Director's technical analysis of the application. In addition to this technical analysis, the Director will evaluate this application to determine whether the proposed water use might impair or be detrimental to the public interest under the standards set out in ORS 537.170(5) and OAR 690-11-195. Matters relating to public interest in the proposed water use which are raised in objections will be evaluated following the 60-day objection period.

PROPOSED PERMIT CONDITIONS

Application: G-12905

The following conditions will apply to water use under the permit, and will appear in the permit, if issued.

1. Use of water under this permit is subject to all prior rights.
2. Period of allowed use: YEAR ROUND
3. Rate of use: 3 CFS
4. A regulating device shall be installed pursuant to ORS 540-310.
5. A measuring device, installation and reporting are required pursuant to ORS 540-435.
6. The PERMIT HOLDER shall obtain a static water-level measurement for each well during MARCH of each year and report the measurement to the Department within thirty days. The measurement shall be made by a certified water-rights examiner, registered professional geologist, or professional engineer. Water levels shall be reported as depth-to-water below ground level and shall be accompanied by supporting calculations. If a well listed on this permit displays a total static water-level decline of 25 or more feet over any period of years, as compared to the reference level, then the PERMIT HOLDER shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s). Such action shall be taken until the water level recovers to above the 25-foot decline level or until the Department determines, based on the PERMIT HOLDER'S or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or senior water rights. The reference level for water-level declines shall be the second annual measurement taken after water use begins under the terms of this permit. The PERMIT HOLDER shall in no instance allow excessive decline to occur within the aquifer as a result of use under this permit.

7. Water use development requirements:
 - A) Begin construction by (one year from issuance of permit).
 - B) Complete construction by October 1, 1995.
 - C) Completely apply the water to beneficial use by October 1, 1996.
8. Failure to comply with any of the provisions of the permit may result in action including, but not limited to, restrictions on the use, penalties, or cancellation of the permit.
9. The permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.
10. The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.
11. The well shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times. When required by the department, the permittee shall install and maintain a weir, meter, or other suitable measuring device, and shall keep a complete record of the amount of ground water withdrawn. The use of water shall be limited when it interferes with any prior surface or ground water rights.
12. Pre-application discussions between Deschutes County officials and the applicant suggest that land use approval will be obtained. No water may be appropriated under the terms of this permit until the a proper land use statement has been filed with the Water Resources Department.
13. Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

For existing rights on point of appropriation:

14. In the event of a request for a change in point of appropriation, an additional point of appropriation or alteration of the appropriation facility associated with this authorized diversion, the quantity of water allowed herein, together with any other right, shall not exceed the capacity of the facility at the time of perfection of this right.

For existing rights on place of use:

15. This right is limited to any deficiency in the available supply of any prior right existing for the same land.



Creative Solutions . . . Superior Service



April 28, 1992

OWRD FILE # G-12905

Mr. Steve Brown
Oregon Water Resources Department
3850 Portland Road, N.E.
Salem, Oregon 97310

Re: Eagle Ridge Development Corporation
Water Right Appropriation Application
526-0101

Dear Steve:

I have enclosed a groundwater appropriation application, four copies of an application map, and a land use compatibility statement for a proposed expansion of water rights. In addition, I have enclosed an application fee in the amount of \$450.00. The application fee was calculated as noted below:

Examination Fee	\$ 200.00
Initial One CFS Quasi-Municipal Use	\$ 100.00
Each Additional CFS Quasi-Municipal Use @ \$50.00/each	<u>\$ 150.00</u>
Total	\$ 450.00

On August 12, 1991, Eagle Ridge Development Corporation was granted permit number G-11313 to appropriate groundwater for golf course irrigation and associated golf course commercial activities. Subsequently, two wells have been constructed and land use approvals have been obtained for residential development. A copy of our irrigation permit and well logs are enclosed for your review and use. A hydrogeologic study including pump test results for two wells is also enclosed.

At this time, Eagle Ridge Development Corporation is completing construction of the initial 18-hole golf course. Based upon pump test results from the initial production well, an adequate water supply will be available for irrigation and initial residential development. When the second 18-hole golf course is constructed, we expect to drill an additional well to provide the necessary irrigation and domestic supplies.

Well locations shown on the attached application map are intended to coincide with permit number G-11313, and the subsequent OWRD correspondence dated October 18, 1991. No wells in addition to these on permit G-11313 are proposed.

We have designated a quasi-municipal use on the enclosed application and intend water to be utilized for domestic, commercial, landscape irrigation, fire protection, construction watering, lake maintenance, swimming pools, and similar resort related purposes.



Mr. Steve Brown

April 28, 1992

Page 2

In addition, we expect to construct a pipeline between the Eagle Ridge well and the existing Eagle Crest Resort to allow a reliable back-up supply for both projects. Typically, the back-up supply will only be utilized periodically, but provides a significant reliability factor for all residents. For this reason, I have included the Eagle Crest Resort project, and other adjacent lands, that are expected to be within the domestic water system service district.

The existing and proposed Eagle Ridge wells will be utilized for both irrigation and domestic purposes, through appropriate valving and piping networks. Approved backflow prevention assemblies will be provided at all connection points to irrigation systems. All use of domestic water will be regulated by the Oregon Health Division and the Public Utility Commission.

Please consider the enclosed documents and contact me with any questions or needs for additional information. Your assistance is sincerely appreciated and your advice solicited.

Very truly yours,
W&H Pacific

A handwritten signature in cursive script, appearing to read 'Tom Walker', written in dark ink.

Thomas A. Walker, P.E., C.W.R.E.
Senior Associate

cc: Bill Lyche

RECEIVED
OCT 22 1991

Oregon

W & H PACIFIC INC.

WATER
RESOURCES
DEPARTMENT

October 18, 1991

Eagle Ridge Development Corporation
P.O. Box 1215
Redmond, OR 97756

Reference: File G-12429, Permit G-11313

The Department has reviewed your request to change the location of the wells as authorized under your permit G-11313.

Staff has concluded that your proposal to place the wells no closer than 2000 feet from the Deschutes River is acceptable and will be allowed under your permit.

If you have any questions, please contact me.

Sincerely,

Stephen C. Brown
Senior Water Rights Specialist
Field Operations Division

cc: Mr. Tom Walker, PE, CWRE
Mr. Donn Miller, WRD
Mr. Bob Main, Region Manager

0550



3850 Portland Rd NE
Salem, OR 97310
(503) 378-3739
FAX (503) 378-8130

Thomas Walker

RECEIVED

AUG 23 1991

W & H PACIFIC INC

STATE OF OREGON

COUNTY OF DESCHUTES

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

EAGLE RIDGE DEVELOPMENT CORPORATION
P.O. BOX 1215
REDMOND, OREGON 97756

to use the waters of THREE WELLS in the DESCHUTES RIVER BASIN for IRRIGATION OF 317.22 ACRES AND COMMERCIAL USE (GOLF COURSE).

This permit is issued approving Application G-12429. The date of priority is FEBRUARY 26, 1991. The use is limited to not more than 4.28 CUBIC FEET PER SECOND (CFS); BEING 3.97 CFS FOR IRRIGATION AND 0.31 CFS FOR COMMERCIAL USE, or its equivalent in case of rotation, measured at the wells.

1921 gpm

The wells are located as follows:

WELL 1 - NE 1/4 NE 1/4, SECTION 22, T 15 S, R 12 W, W.M.; 350 FEET SOUTH AND 1170 FEET WEST FROM NE CORNER, SECTION 22;

WELL 2 - NW 1/4 SE 1/4, SECTION 15, T 15 S, R 12 W, W.M.; 840 FEET SOUTH AND 200 FEET EAST FROM C 1/4 CORNER, SECTION 15;

WELL 3 - SE 1/4 NE 1/4, SECTION 22, T 15 S, R 12 W, W.M.; 2300 FEET SOUTH AND 150 FEET WEST FROM NE CORNER, SECTION 22.

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 3.0 acre-feet for each acre irrigated. The use of water for irrigation may be made at any time that water can be put to beneficial use.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the proposed place of use under this permit is as follows:

SW 1/4 NE 1/4	1.43 ACRES AND COMMERCIAL USE
NW 1/4 NW 1/4	20.15 ACRES AND COMMERCIAL USE
SW 1/4 NW 1/4	17.24 ACRES AND COMMERCIAL USE
SE 1/4 NW 1/4	7.26 ACRES AND COMMERCIAL USE
NE 1/4 SW 1/4	19.38 ACRES AND COMMERCIAL USE
NW 1/4 SW 1/4	23.32 ACRES AND COMMERCIAL USE
SW 1/4 SW 1/4	24.27 ACRES AND COMMERCIAL USE
SE 1/4 SW 1/4	13.08 ACRES AND COMMERCIAL USE

SECTION 14

SW 1/4 NE 1/4	11.87 ACRES AND COMMERCIAL USE
SE 1/4 NE 1/4	19.31 ACRES AND COMMERCIAL USE
NE 1/4 SE 1/4	20.07 ACRES AND COMMERCIAL USE
NW 1/4 SE 1/4	16.15 ACRES AND COMMERCIAL USE
SW 1/4 SE 1/4	14.56 ACRES AND COMMERCIAL USE
SE 1/4 SE 1/4	26.58 ACRES AND COMMERCIAL USE

SECTION 15

NE 1/4 NE 1/4	26.88 ACRES AND COMMERCIAL USE
NW 1/4 NE 1/4	23.36 ACRES AND COMMERCIAL USE
SE 1/4 NE 1/4	11.04 ACRES AND COMMERCIAL USE

SECTION 22

NE 1/4 NW 1/4	COMMERCIAL USE
NW 1/4 NW 1/4	21.27 ACRES AND COMMERCIAL USE

SECTION 23

TOWNSHIP 15 SOUTH, RANGE 12 EAST, W.M.

PAGE TWO

The well shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times. When required by the department, the permittee shall install and maintain a weir, meter, or other suitable measuring device, and shall keep a complete record of the amount of ground water withdrawn.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

Actual construction work shall begin on or before August 12, 1992, and shall be completed on or before October 1, 1993. Complete application of the water shall be made on or before October 1, 1994.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for beneficial use of water without waste. The water user is advised that new regulations may require use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water shall be limited when it interferes with any prior surface or ground water rights.

Issued this date, AUGUST 12, 1991.

William H. Young
Water Resources Department
William H. Young
Director

STATE OF OREGON
WATER WELL REPORT
(as required by ORS 537.765)

DOJ NEW NOT SNOITCARTNI

(START CARD) 36697

(1) OWNER: Well Number: PW #1
Name Eagle Ridge Development Corporation
Address P.O. Box 1215
City Redmond State OR Zip 97756

(2) TYPE OF WORK:
☒ New Well ☐ Deepen ☐ Recondition ☐ Abandon

(3) DRILL METHOD
☒ Rotary Air ☐ Rotary Mud ☐ Cable
☐ Other

(4) PROPOSED USE:
☐ Domestic ☐ Community ☐ Industrial ☒ Irrigation
☐ Thermal ☐ Injection ☐ Other

(5) BORE HOLE CONSTRUCTION:
Special Construction approval Yes ☐ No ☒ Depth of Completed Well 800 ft.
Explosives used ☐ ☒ Type _____ Amount _____

HOLE			SEAL			Amount	
Diameter	From	To	Material	From	To	sacks or pounds	
17	0	47	cement	0	47	80	sacks

How was seal placed: Method ☐ A ☐ B ☒ C ☐ D ☐ E
☐ Other

Backfill placed from _____ ft. to _____ ft. Material _____
Gravel placed from _____ ft. to _____ ft. Size of gravel _____

(6) CASING/LINER:							
Diameter	From	To	Gauge	Steel	Plastic	Welded	Threaded
Casing: 18	+1	47	.250	☒	☐	☒	☐
				☐	☐	☐	☐
				☐	☐	☐	☐
				☐	☐	☐	☐
Liner: 14"	+2	800	.375	☒	☐	☒	☐
				☐	☐	☐	☐

Final location of shoe(s) 800'

(7) PERFORATIONS/SCREENS:
☒ Perforations Method Factory perforated
☐ Screens Type _____ Material _____

From	To	Slot size	Number	Diameter	Tele/pipe size	Casing	Liner
510	790	4X3	8000	14"		☐	☐
						☐	☐
						☐	☐
						☐	☐

(8) WELL TESTS: Minimum testing time is 1 hour
☐ Pump ☐ Bailor ☒ Air ☐ Flowing
Yield gal/min _____ Drawdown _____ Drill stem at _____ Time _____

800 (est.) 750 1 hr

Temperature of water _____ Depth Artesian Flow Found _____
Was a water analysis done? ☐ Yes By whom _____
Did any strata contain water not suitable for intended use? ☐ Too little

☐ Salty ☐ Muddy ☐ Odor ☐ Colored ☐ Other _____
Depth of strata: _____

(9) LOCATION OF WELL by legal description:
County Deschutes Latitude 42° 12' N Longitude 120° 12' W
Township 15 S Range 12 E Section 15
Subdivision SW 1/4
Tax Lot 1500 Lot _____ Block _____
Street Address of Well (or nearest address) N/A

(10) STATIC WATER LEVEL: 518 ft. below land surface Date 2/20/92
Artesian pressure _____ lb. per square inch Date _____

(11) WATER BEARING ZONES:
Depth at which water was first found 540

From	To	Estimated Flow Rate	SWI
540	800	800	518

(12) WELL LOG: Ground elevation _____

Material	From	To	SWI
Sand & cobbles	1	4	
Broken lava red and brown	4	40	
Basalt gray hard	40	55	
Lava cinders red	55	68	
Lava brown	68	80	
Basalt gray and brown hard	80	85	
Basalt softer	85	93	
Lava red & brown broken soft	93	111	
Basalt gray hard	111	157	
Basalt gray softer w/ red cinder	157	162	
Lava red	162	185	
Lava brown w/sandstone	185	299	
Lava dark brown w/pumice	299	330	
Andacite brown hard	330	375	
Andacite gray	375	400	
Andacite Gray & brown hard	400	469	
Andacite gray softer	469	502	
Andacite hard brown	502	524	
Andacite light brown softer	524	568	
Rock black and red	568	600	
Andacite brown hard	600	608	
Red cinder	608	612	
Andacite brown hard	612	620	

Date started 1/20/92 Completed 2/20/92

(unbonded) Water Well Constructor Certification:
I certify that the work I performed on the construction, alteration, abandonment of this well is in compliance with Oregon well construction standards. Materials used and information reported above are true to my best knowledge and belief.
Signed [Signature] WWC Number 1358 Date 3/4/92

(bonded) Water Well Constructor Certification:
I accept responsibility for the construction, alteration, or abandonment work performed on this well during the construction dates reported above. Work performed during this time is in compliance with Oregon well construction standards. This report is true to the best of my knowledge and belief.
Signed [Signature] WWC Number 723 Date 3/4/92

36697

Well Number: PW 41

Final location of sheet(s) _____

Temperature of water 11.1 Artemesian Depth Artesian Flow Found 212 11/11/11
 Was a water analysis done? ☐ Yes By whom Artemesian
 Did any strata contain water not suitable for intended use? ☐ Too little
☐ Salty ☐ Muddy ☐ Odor ☐ Colored ☐ Other _____
 Depth of strata: _____

(bonded) Water Well Constructor Certification: I accept responsibility for the construction, alteration, or abandonment work performed on this well during the construction dates reported above. Work performed during this time is in compliance with Oregon construction standards. This report is true to the best of my knowledge and belief.

Signed: [Signature] WWC Number 72
Date 3/4/02

(START CARD) # 34267

(9) LOCATION OF WELL by legal description:

County	Latitude	Longitude
Township 15S	Range 12E	Section 22
Section 22	SE 1/4	NE 1/4

Subdivision

✓ () Street Address of Well (or nearest address) Chase Falls NY

(10) STATIC WATER LEVEL:

Artesian pressure _____ lb. per square inch. Date _____

(11) WATER BEARING ZONES: and for
 Depth at which water was first found 608 ft (A 100 ft)

From	To	Estimated Flow Rate	FSW
608	615		

720	735	750	765	780	795	810	825	840	855	870	885	900	915	930	945	960	975	990	1005	1020	1035	1050	1065	1080	1095	1110	1125	1140	1155	1170	1185	1200	1215	1230	1245	1260	1275	1290	1305	1320	1335	1350	1365	1380	1395	1410	1425	1440	1455	1470	1485	1500	1515	1530	1545	1560	1575	1590	1605	1620	1635	1650	1665	1680	1695	1710	1725	1740	1755	1770	1785	1800	1815	1830	1845	1860	1875	1890	1905	1920	1935	1950	1965	1980	1995	2010	2025	2040	2055	2070	2085	2100	2115	2130	2145	2160	2175	2190	2205	2220	2235	2250	2265	2280	2295	2310	2325	2340	2355	2370	2385	2400	2415	2430	2445	2460	2475	2490	2505	2520	2535	2550	2565	2580	2595	2610	2625	2640	2655	2670	2685	2700	2715	2730	2745	2760	2775	2790	2805	2820	2835	2850	2865	2880	2895	2910	2925	2940	2955	2970	2985	3000	3015	3030	3045	3060	3075	3090	3105	3120	3135	3150	3165	3180	3195	3210	3225	3240	3255	3270	3285	3300	3315	3330	3345	3360	3375	3390	3405	3420	3435	3450	3465	3480	3495	3510	3525	3540	3555	3570	3585	3600	3615	3630	3645	3660	3675	3690	3705	3720	3735	3750	3765	3780	3795	3810	3825	3840	3855	3870	3885	3900	3915	3930	3945	3960	3975	3990	4005	4020	4035	4050	4065	4080	4095	4110	4125	4140	4155	4170	4185	4200	4215	4230	4245	4260	4275	4290	4305	4320	4335	4350	4365	4380	4395	4410	4425	4440	4455	4470	4485	4500	4515	4530	4545	4560	4575	4590	4605	4620	4635	4650	4665	4680	4695	4710	4725	4740	4755	4770	4785	4800	4815	4830	4845	4860	4875	4890	4905	4920	4935	4950	4965	4980	4995	5010	5025	5040	5055	5070	5085	5100	5115	5130	5145	5160	5175	5190	5205	5220	5235	5250	5265	5280	5295	5310	5325	5340	5355	5370	5385	5400	5415	5430	5445	5460	5475	5490	5505	5520	5535	5550	5565	5580	5595	5610	5625	5640	5655	5670	5685	5700	5715	5730	5745	5760	5775	5790	5805	5820	5835	5850	5865	5880	5895	5910	5925	5940	5955	5970	5985	6000	6015	6030	6045	6060	6075	6090	6105	6120	6135	6150	6165	6180	6195	6210	6225	6240	6255	6270	6285	6300	6315	6330	6345	6360	6375	6390	6405	6420	6435	6450	6465	6480	6495	6510	6525	6540	6555	6570	6585	6600	6615	6630	6645	6660	6675	6690	6705	6720	6735	6750	6765	6780	6795	6810	6825	6840	6855	6870
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(12) WELL LOG: *Use local data for*

Material	From	To	SW
0	0	0	0

broken rock	2	12	
sand black coarse dry	12	25	

broken rock red & grey	25	36
Rock harder	36	42

sandstone soft brown	42	48	10
lava porous grey & brown	48	65	10

broken lava red & grey	55	83	100
lava harder red & grey	83	132	100

basalt grey hard	132	1.60	1.32
lava red med	160	2.05	1.60

lava red w/white pumice	185	203	
multi colored lava brn/red/gr	208	210	

broken lava red/brown	1810	1875	1875
rock brn med	1875	1892	1892
rock brn med	1892	1892	1892

rock grey w/white paint	392	400
rock grey and white	400	435
rock brn/grey/white	435	442

basalt grey hard	442	451
andact to grey/bn hard	461	468

clinders or pumice	608	615
quartzite/andacite adhered	615	10/20

6-brown sandstone weathered	11/12/91	9/20	4735	H5
Data collected 9/18/91 with the TSC-2000. Compiled on 10/11/91 by [illegible]				

(unbonded) Water Well Constructor Certification: _____

I hereby certify that the work performed on the construction, installation, abandonment of this well is in compliance with Oregon well construction standards. Materials used and information reported above are true to my knowledge.

WWC Number: 10124761

(bonded) Water Well Constructor Certification: 11-2-2014 to 11-2-2016

I accept responsibility for the construction, alteration, or abandonment of work performed on this well during the construction dates reported above. The work performed during this time is in compliance with [Oregon]

construction standards. This report is true to the best of my knowledge
belief. WWC Number 722

Signed [Signature] Date 11/17/20
 D COPY - CONSTRUCTOR THIRD COPY - CUSTOMER

ORIGINAL & FIRST COPY - WATER RESOURCES DEPARTMENT SECOND COPY - CONSTRUCTOR THIRD COPY - CUSTOMER

STATE OF OREGON

WATER WELL REPORT

(as required by ORS 537.765)

(START CARD) / 34267

(1) OWNER: Eagle Ridge Development Well Number: PAGE 2
Name: Eagle Ridge Development
Address: _____
City: _____ State: _____ Zip: _____

(2) TYPE OF WORK: ☐ New Well ☐ Deepen ☐ Recondition ☐ Abandon

(3) DRILL METHOD

☐ Rotary Air ☐ Rotary Mud ☐ Cable

☐ Other _____

(4) PROPOSED USE:

☐ Domestic ☐ Community ☐ Industrial ☐ Irrigation

☐ Thermal ☐ Injection ☐ Other _____

(5) BOREHOLE CONSTRUCTION:

Special Construction in approval Yes No Depth of Completed Well _____

Yes No ☐ ☐

Explosives used ☐ ☐ Type _____ Amount _____

HOLE		SEAL		Amount		
Diameter	From	To	Material	From	To	sacks or pounds

How was seal placed? Method ☐ A ☐ B ☐ C ☐ D ☐ E
☐ Other _____

Backfill placed from _____ ft. to _____ ft. Material _____
Gravel placed from _____ ft. to _____ ft. Size of gravel _____

(6) CASING/LINER:								
	Diameter	From	To	Gauge	Steel	Plastic	Welded	Threaded
Casing:					☐	☐	☐	☐
					☐	☐	☐	☐
					☐	☐	☐	☐
					☐	☐	☐	☐
Liner:					☐	☐	☐	☐
					☐	☐	☐	☐

Final location of sheet(s) _____

(7) PERFORATIONS/SCREENS:

☐ Perforations Method _____

☐ Screens Type _____ Material _____

[illegible]

(8) WELL TESTS: Minimum testing time is 1 hour

☐ Pump	☐ Bailer	☐ Air	☐ Flowing Artesian
Yield gal/min	Drawdown	Drill stem at	Time

	1 hr.

Temperature of water _____ Depth Artesian Flow Found _____

Was a water analysis done? ☐ Yes ☐ No By whom _____

Did any strata contain water not suitable for intended use? ☐ Too little

☐ Salty ☐ Muddy ☐ Odor. ☐ Colored ☐ Other _____

Depth of strata: _____

(9) LOCATION OF WELL by legal description:

County _____ Latitude _____ Longitude _____
Township _____ N or S, Range _____ E or W, WM. _____
Section _____ 1/4 _____ 1/4 _____
Tax Lot _____ Lot _____ Block _____ Subdivision _____
Street Address of Well (or nearest address) _____

(10) STATIC WATER LEVEL: _____ ft. below land surface. _____ Date _____
Artesian pressure _____ lb. per square inch. _____ Date _____

(11) WATER BEARING ZONES:

Depth at which water was first found _____

From	To	Estimated Flow Rate	SW

(12) WELL LOG: _____ Ground elevation _____

Material	From	To	SW
brown andacity hard	735	765	
andacite red/grey w/pumice sft	765	765	
andacite hard	765	765	
andacite softer	765	765	

...C Number /92
t of my knowledge and
e with Oregon well
es reported above. all
n, or abandonment

1992
1358
ber
ue to my best
construction
eration, or

Date started 9/18/91 Completed 10/11/91

(unbonded) Water Well Constructor Certification:

I certify that the work I performed on the construction, alteration or abandonment of this well is in compliance with Oregon well construction standards. Materials used and information reported above are true to my knowledge and belief.

Signed Dgm [Signature] WWC Number 120
Date 10/24/11

(bonded) Water Well Constructor Certification:

I accept responsibility for the construction, alteration, or abandonment work performed on this well during the construction dates reported above. Work performed during this time is in compliance with Oregon construction standards. This report is true to the best of my knowledge and belief.

Signed _____ Date 10/24/11 WWC Number 1024

Application No. _____

State of Oregon
WATER RESOURCES DEPARTMENT

Application for a Permit to Appropriate Ground Water

Applicant(s) Eagle Ridge Development Corporation
(Please print or type - use dark ink)

Mailing Address: P.O. Box 1215
Redmond, Oregon 97756 (503) 923-0807
City State Zip Daytime Phone No.

I (We) make application for a permit to appropriate the following described ground waters of the State of Oregon:

1. **THE DEVELOPMENT** (number of wells, tile lines, infiltration galleries, etc.): The development
is expected to include the expansion of use for two existing wells and one proposed
well.

If development is less than one mile from a natural stream, give the following:

Distance from development to stream: 2,000 feet minimum

Elevation difference between streambed and development: + 300 feet

NOTE: Wells must be constructed according to standards set by the department for the construction and maintenance of water wells. If the well is already constructed, please enclose a copy of the well driller's log with this application, and skip to Section 2 below.

Existing Well #2 and Proposed Well #3: 17"
Diameter of well: Existing Well #1: 8" Depth in feet: 800 feet

Type and size of well casing: 14" casing/6" casing No. of feet: 800 feet

Estimated depth to water: 520 feet

Type of access port or measuring device: Air tube and standard casing vent.

Wells to be drilled by: Staco Well Services, Inc.

Address: 220 Academy Street Mt. Angel, Oregon 97362

If the water well is flowing artesian, describe your water control and conservation works: Based
upon completion of wells on this property and review of well logs in the vicinity,
artesian flow is not expected.

2. **TOTAL AMOUNT OF WATER** to be applied to beneficial use: 4.01 cubic feet per
second, OR 1,800 gallons per minute. If water is to be used from more than one
ground water source, give the quantity of water from each: Existing well number one: .45 cfs,
Existing well number two: 1.78 cfs, and proposed well number three: 1.78 cfs.

3. **INTENDED USE(s) OF WATER:** Quasi-Municipal

If for more than one use, give the quantity of water from each source for each use; _____

If for **DOMESTIC** use, state the number of households to be supplied; _____

If for **MUNICIPAL OR QUASI-MUNICIPAL** use, state the present population to be served, and an estimate of the future requirements; (List population projections, water needs, anticipated areas to be provided water.) The proposed domestic water supply system will serve an estimated 900 dwelling units in the proposed expansion of the Eagle Crest Resort and 42 dwellings in the existing Cline Falls Oasis subdivision, provide a reliable backup supply for the + 420 dwelling units at the existing Eagle Crest Resort, and serve recreation, commercial landscape irrigation, fire protection, and construction uses.

If for **MINING** use, state the nature (gold, silver, etc.) of the mines to be served; _____

If for **IRRIGATION**, or other land area use, state the **TOTAL** number of acres to be developed under each use;

Irrigation _____

Other (describe) _____

4. **DESCRIPTION OF WATER DELIVERY SYSTEM:** Include dimensions and type of construction of diversion works, length and dimensions of supply ditches or pipelines, size and type of pump and motor. If for irrigation, describe the type of system (i.e., flood, wheel line, hand line, drip, other).

The system is ultimately expected to include two 250 HP line shaft turbine well pumps, one 50 HP submersible well pump, a + 300,000 gallon storage reservoir, approximately 50,000 lineal feet of 6", 8", 10", and 12" distribution main, and the associated valves, hydrants, and appurtenances.

5. **PROJECT SCHEDULE:** (List month and year)

Proposed date construction work will begin April, 1992

Proposed date construction work will be completed October, 1997

Proposed date water use will be completed October, 2002

NOTE: A map prepared by a Certified Water Right Examiner (CWRE) and a complete legal description of the subject property are required under ORS 537.140 and OAR 690 as a part of your application. The legal description may be copied from your deed, title insurance policy, or land sales contract.

6. a) In the event any deficiencies are noted involving the application map enclosed herein, please return the map with instructions for correction to (check one):

 Applicant X CWRE Other (Identify in REMARKS section)

- b) In the event any deficiencies are noted involving the application, please return the application with instructions for correction to (check one):

 Applicant X CWRE Other (Identify in REMARKS section)

7. Are all lands involved (including the proposed diversion site, place of use, and access for conveying the water) under your ownership? NO . If not, list in the REMARKS section below, or on an attached sheet, the names and mailing addresses of the legal owners of all property involved in the proposed development.

NOTE: Prior to receiving a certificate of water right, the permit holder must submit to the Water Resources Department the results of a pump test meeting the department's standards. The Director will require water level or pump test results every ten years thereafter.

REMARKS: _____

_____ Please reference the attached application map for a listing of all land owners and their mailing address. _____

NOTE: The permit, when issued, is for the beneficial use of water without waste. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan. It is possible the land use you propose may not be allowed if it is not in keeping with the goals and acknowledged plan. Your city or county planning agency can advise you about the land-use plan in your area.

William D. Lyche
Signature of Applicant

April 28, 1992
Date

Signature of Co-Applicant, if any

Date

EAGLE CREST PARTNERS LTD. & AFFILIATES REDMOND, OREGON 97756

0031486

DATE	INVOICE NO.	DESCRIPTION	INVOICE AMOUNT	DEDUCTION	BALANCE
4-30-92	430	CIP E/R LOTS	450.00	.00	450.00
CHECK DATE	4-30-92	CHECK NUMBER 32486	TOTALS	450.00	.00
					450.00

PLEASE DETACH AND RETAIN THIS PORTION FOR YOUR RECORDS.



EAGLE CREST PARTNERS LTD. & AFFILIATES
P.O. BOX 1215 • 923-2453
REDMOND, OREGON 97756

First Interstate Bank of Oregon, N.A.
Bend Branch P.O. Box 1191
Bend, OR 97709
24-12
1230

0031486

Pay: Four hundred fifty dollars and no cents

CHECK NO. 31486 \$*****450.00**
DATE April 30, 1992

OREGON WATER RESOURCES
DIVISION

PAY
TO THE
ORDER
OF

Paul E. Andrew
Gawn Miller

AUTHORIZED SIGNATURE



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Description of Water Use

Note to Applicant: This sheet will provide local planning staff with a basic description of your proposed water use. Please fill out this sheet before bringing the attached land use form to your local planning office. It will help local planning offices complete your land use information form quickly.

Note to Local Planning Officials: Please initial this sheet. Do not separate it from the land use information form. If needed, please make a separate copy for your records.

Applicant Name: EAGLE RIDGE DEVELOPMENT CORPORATIONAddress: P.O. BOX 1215REDMOND, OREGON 97756Phone: (503) 923-0807

Please indicate what you will use the water for. Check all boxes that apply and fill in the blanks with key characteristics of the project

- ☐ Irrigation (crop type, golf course, nursery or greenhouse): _____
- ☐ Livestock (type of livestock, feedlot, slaughterhouse): _____
- ☒ Residential (# units, single or multi-family, # lots if partition or subdivision): Approximately 900
equivalent dwelling units, including 450 single-family, 150 multi-family, and 250 room
- ☐ Commercial (i.e., retail, office, restaurant, gas station, hotel, service, etc.): _____
- ☐ Industrial (i.e., factory, pulp mill, research and development, processing, etc.): _____
- ☐ Institutional (i.e., school, library, etc.): _____
- ☐ Mining (aggregate, metal, open pit, placer, etc.): _____
- ☐ Recreation (park, campsite, pond, etc.): _____
- ☐ Fish and Wildlife (pond, hatchery, etc.): _____
- ☐ Hydropower (dam, reservoir, power generating or transmitting facilities): _____
- ☐ Other (Name and list key characteristics): _____

Indicate sources for the proposed water use below:	Indicate the estimated quantity of water the use will require.
☐ Surface Water Name sources: _____ _____ _____	<u>4.01</u> Cubic feet per second. _____ Gallons per minute. _____ Acre-Feet
☐ Reservoir or pond	
☒ Ground Water	

Land Use Information Form: Permits, Hydroelectric Licenses, Water Uses in
Addition to Classified Uses

This information is needed to determine compatibility with local comprehensive plans as required by ORS 197.180. The Water Resources Department will use this and other information to evaluate the water use application. DO NOT FILL OUT THIS FORM IF water is to be diverted, conveyed, and/or used only on federal lands.

Applicant's Name: EAGLE RIDGE DEVELOPMENT CORPORATION
Address: P.O. BOX 1215
City: REDMOND State: OR Zip: 97756 Day Phone: (503) 923-0807

Please provide information as requested below for all tax lots on or through which water will be diverted or used. (Attach extra sheets as necessary.) Applicants for municipal use, or irrigation uses within irrigation districts, may substitute existing and proposed service area boundaries for the tax lot information requested below.

Tax Lot or Local I.D.#	Plan Designation/Zoning (e.g. Rural Residential/RR-5)	Check All That Apply		
		Water Diverted	Water Conveyed	Water Use
TL 1500	T15S R12E EFU 40	X	X	DOMESTIC
TL 100 & 101	T15S R12E SECTION 22 EFU 40	X	X	DOMESTIC
TL 1500	T15S R12E SECTION 23B EFU 40	X	X	DOMESTIC

Please list all counties and cities within which water is proposed to be diverted, conveyed, and/or used.

The following section must be completed by a planning official from each county and city listed unless your project will be located entirely within city limits. In this case, only the city planning agency must complete this form. Please request extra forms as needed.

For Local Government Use Only

Local government planning officials are to complete the remainder of this form. If this form can not be completed while the applicant waits, please sign and detach the receipt as instructed below. Please mail the completed form directly to the Water Resources Department (3850 Portland Rd. NE, Salem, OR, 97310) within 60 days of the date of receipt as shown below. If the form is not completed within 60 days, the Department may take action to approve the water use.

a) Check the appropriate box below and provide requested information.

☐ Land uses to be served by proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s): _____ Go to section b) on reverse side.

☒ Land uses to be served by proposed water uses (including proposed construction) involve discretionary land use approvals as listed in the table below. Note: Please attach documentation of applicable local land use approvals which have already been obtained. (Record of Action plus any accompanying findings is sufficient.)

Type of Land Use Approvals Needed (e.g.: plan amendments, rezones, conditional use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Please check the box that applies:		
		Already Obtained	Already Denied	Being Pursued Satisfactorily
Conditional Use	Ch. 18.113 of Title 18			☒
Subdivision Approval	Title 17 of D.C.C.			☒

(over)

Receipt for Request for Land Use Information

WRD Applicant Name: _____

This receipt must be signed by a local government representative and returned to the applicant for inclusion in the WRD application IF the local government can not provide the above requested land use information while the applicant waits.

City or County: _____

Staff Contact: _____ Phone: _____

Signature: _____ Date of Information Request: _____

(For Local Use Continued)

b) Please provide printed name and written signature.

Name: Dale Van Valkenburg

Title: Associate Planner

Date: 2-22-93

Phone: 388-6575

Signature: Dale Van Valkenburg

Local governments are invited to express special land use concerns or make recommendations to the Department regarding this proposed use of water below, or on a separate sheet. For additional information call Roberta Jortner or Rick Bastasch at 378-3671.

Additional Comments:

Applicant has applied for all relevant land use applications. Review process is currently stalled due to circumstances beyond applicants control.

See specificall section 18.113.050(B)(K) attached.

development including an explanation of when facilities will be provided and how they will be secured if not completed prior to closure of sale of individual lots or units;

* i. An explanation of how the destination resort has been sited or designed to avoid or minimize adverse effects or conflicts on adjacent lands. The application shall identify the surrounding uses and potential conflicts between the destination resort and adjacent uses within 660 feet of the boundaries of the parcel or parcels upon which the resort is to be developed. The application shall explain how any proposed buffer area will avoid or minimize adverse effects or conflicts;

j. A description of the proposed method for providing emergency medical facilities and services and public safety facilities and services including fire and police protection;

~~k. A study prepared by a hydrologist, engineering geologist or similar professional certified in the State of Oregon describing:~~

1. An estimate of water demands for the destination resort at maximum buildout, including a breakdown of estimated demand by category of consumption, including but not limited to, residential, commercial, golf courses and irrigated common areas;

2. 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) identification of the area that may be measurably impacted by the water used by the destination resort (water impact area) and an analysis supporting the delineation of the impact area; and (4) a statistically valid sampling of domestic and other wells within the impact area;

X 3. 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 conserva-

tion plan shall include a waste water disposal plan utilizing beneficial use of reclaimed water to the maximum extent practicable.

For the purposes of this section, beneficial uses shall include, but are not limited to:

X i. Irrigation of golf courses and greenways;

X ii. Establishment of artificial wetlands for wildlife habitation.

l. An erosion control plan for all disturbed land, as required by ORS Chapter 468. This plan shall include storm and melt-water erosion control to be implemented during all phases of construction and permanent facilities or practices for the continuing treatment of these waters. This plan shall also explain how the water shall be used for beneficial use or why it cannot be used as such;

m. A description of proposed sewage disposal methods;

n. Wildfire prevention, control and evacuation plans;

o. A description of interim development including temporary structures related to sales and development;

p. Plans for owners' associations and related transition of responsibilities and transfer of property;

q. A description of the methods of ensuring that all facilities and common areas within each phase will be established and will be maintained in perpetuity;

r. A survey of housing availability for employees based upon income level and commuting distance;

s. An economic impact and feasibility analysis of the proposed development prepared by a qualified professional economist(s) or financial analyst(s) shall be provided which includes:

1. An analysis which addresses the economic viability of the proposed development;

2. Fiscal impacts of the project, including changes in employment, increased tax revenue, demands for new or increased levels of public services, housing for employees and

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.

c. Access within the project shall be adequate to serve the project in a safe and efficient manner for each phase of the project.

H. The development will not create the potential for natural hazards identified in the County Comprehensive Plan. No structure will be located on slopes exceeding 25 percent. A wildfire management plan will be implemented to ensure that wildfire hazards are minimized to the greatest extent practical and allow for safe evacuation. With the exception of the slope restriction of this section, which shall apply to destination resorts in forest zones, wildfire management of destination resorts in forest zones shall be subject to the requirements of Section 18.40.070, where applicable, as to each individual structure and dwelling. (Ord. 92-032 § 1. 1992)

I. Adequate public safety protection will be available through existing fire districts or will be provided on-site according to the specification of the state fire marshal. If the resort is located outside of an existing fire district, the developer will provide for staffed structural fire protection services. Adequate public facilities to provide for necessary safety services such as police and fire will be provided on the site to serve the proposed development.

J. Streams and drainage. Unless otherwise agreed to in writing by the adjoining property owner(s), existing natural drainages on the site will not be changed in any manner which interferes with drainage patterns on adjoining property. All surface water drainage changes created by the development will be contained on-site in a manner which meets all standards of the Oregon State Department of Environmental Quality (DEQ). The erosion control plan for the subject development will meet all standards of ORS Chapter 468.

K. Adequate water will be available for all proposed uses at the destination resort, based upon the water study and a proposed water conservation plan. Water use will not reduce the availability of water in the water impact areas identified in the water study considering existing uses and potential development previously approved in the affected area. Water sources shall not include any perched water table. Water shall only be taken from the regional aquifer. Where a perched water table is pierced to access the regional aquifer, the well must be sealed off from the perched water table.

L. The waste water disposal plan includes beneficial use to the maximum extent practicable. Approval of the CMP shall be conditioned on applicant's making application to DEQ for a Water Pollution Control Facility (WPCF) permit consistent with such an approved waste water disposal plan. Approval shall also be conditioned upon applicant's compliance with applicable Oregon Administrative Rules regarding beneficial use of waste water, as determined by DEQ. Applicant shall receive approval of a WPCF permit consistent with this provision prior to applying for approval for its final master plan under this chapter.

M. The resort will mitigate any demands it creates on publicly owned recreational facilities on public lands in the surrounding area.

N. Site improvements will be located and designed to avoid or minimize adverse effects of the resort on the surrounding land uses. Measures to accomplish this may include establishment and maintenance of buffers between the resort and adjacent land uses, including natural vegetation and appropriate fences, berms, landscaped areas and similar types of buffers, and setback of structures and other developments from adjacent land uses.

O. The resort will be served by an on-site sewage system approved by DEQ and a water system approved by the Oregon State Health Division, except where connection to an existing public sewer or water system is



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HYDROGEOLOGIC STUDY
EAGLE CREST PHASE II

Prepared for:

Eagle Crest Partners Limited
Redmond, Oregon

April 1992



DAVID J. NEWTON ASSOCIATES, INC.

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PURPOSE AND SCOPE

This report presents the findings of a hydrology study for Destination Resorts at their Eagle Crest Expansion Site, known as Eagle Crest Phase II, Deschutes County, Oregon.

David J. Newton Associates, Inc. (DNA) evaluated geologic and hydrogeologic conditions within the site area to determine the impact to groundwater resources resulting from recent drilling operations on the Eagle Crest Phase II site. The evaluation was prepared to comply with Deschutes County ordinance requirements.

The study includes:

- ♦ Availability of water for estimated demands at the destination resort, including (1) identification of the proposed source; (2) ground and surface waters relevant to the determination of adequacy of water supply for the destination resort; (3) identification of the area that may be measurably impacted by the water used by the destination resort (water impact area) and an analysis supporting the delineation of the impact area; and (4) a statistically valid sampling of domestic and other wells within the impact area.
- ♦ An estimate of water demands, based on development plans and calculated by WH Pacific for the destination resort at maximum buildout, including a breakdown of estimate demand by category of consumption, including but not limited to residential, commercial, golf courses, and irrigated common areas. It, also, includes water demands for fire protection.

Available water well logs were obtained, encompassing an area west of Cline Buttes and east of Redmond, along with relevant geologic and hydrogeologic reports for the Cline Buttes-Redmond area. General area-wide hydrogeologic conditions were evaluated to determine the overall impact to the regional aquifer systems that water well development on the Eagle Crest Phase II site might have, realizing the complex nature of the subsurface geology.

Three exploratory borings were drilled on the site. One hole, Pilot Hole #2 (PH-2) was abandoned due to a low yielding water-bearing zone. Two of the borings were converted to wells, Pilot Hole #1 (PH-1) and Eagle Crest Phase II well #1 (EC II-1), and each was pump tested. The information gathered from examination of the drilling cuttings collected from each well, and aquifer flow test information, yielded significant information about the productive zone at the Eagle Crest Phase II site, and how pumping that zone might impact other existing wells in the Cline Buttes area.

Recent studies of groundwater quantity within the Deschutes Drainage Basin by the Bureau of Reclamation, Maddox, Sceva, and this office have determined that there are large quantities of unused water within the aquifer systems. A trend towards urban growth and

away from irrigation has been noted, which will decrease current groundwater demands, as well.

FINDINGS AND CONCLUSIONS

A highly productive, deep aquifer was encountered during the drilling program initiated at Eagle Crest Phase II during the Fall of 1991 and the Winter of 1992. Groundwater elevations within this aquifer are at least 100 feet lower than elevations within surrounding domestic and agricultural wells, including adjacent Eagle Crest Resort wells. The difference in head indicates that this is a separate and unique aquifer to the Cline Buttes area. Interpretation of well cuttings places this deep aquifer, at least in part, within Deschutes Formation volcanic rocks and the John Day Formation.

Results from pump testing of the deep aquifer indicates that pumping the well at 1,500 gpm will have no impact on surrounding wells. Pumping rates as high as 1,500 gpm were discharged from EC II-1 with no more than 2.15 feet of drawdown. PH-1, the observation hole, 35 feet away from EC II-1, had a drawdown of only 0.1 feet. Studies of wells in other parts of the Deschutes Drainage Basin indicate that transmissivities of units increase within deeper units of the Deschutes Formation. This was what was found during this investigation when comparing the aquifer within EC II-1 and PH-1 with surrounding shallower Deschutes Formation sedimentary aquifers.

There is no usable surface water source within the boundaries of Eagle Crest Phase II. The high yielding groundwater source is needed to meet the ultimate water demands. An ultimate water need of 2,331 gallons per minute (gpm) was calculated (domestic and commercial) for the Eagle Crest Phase II development. 1,780 gpm of the total will be needed when the two 18-hole golf courses are completed. The second golf course will be built subject to future market demand. EC II-1 and PH-1 will supply the first golf course and 551 gpm demand for domestic purposes (1,440 gpm). Water samples collected and analyzed from the aquifer indicate analyzed constituents well within EPA drinking water quality standards.

SITE DESCRIPTION

The project site is located approximately four miles west of Redmond in Sections 14, 15, 22, and 23, Township 15 South, Range 12 East, Deschutes County, Oregon (Figure 1).

Eagle Crest is a resort development located on the eastern slope of Cline Buttes (Figure 2). Topography is varied, ranging from gentle to steep slopes. The site ranges in elevation from 2900 feet mean sea level (MSL) to 3200 feet MSL climbing from east to west up the slopes of Cline Buttes. Cline Buttes is a silicic volcanic dome which rises abruptly above the relatively flat Deschutes Basin floor which is covered by sedimentary and volcanic rocks.

The horizon is dominated by other volcanoes, cinder cones, and volcanic vents which attest to the volcanic history of Deschutes County. These features include Powell, Tethrow, and Fork Horn Buttes, and Smith Rocks to the northeast. To the west of Cline Buttes are the foothills of the Cascades and High Cascades.

Near the eastern edge of Cline Buttes is the canyon of the Deschutes River, one of three major rivers within the Deschutes Drainage Basin. This river originates to the southwest in the Cascade Mountains and follows a northerly course towards the Columbia River. At Cline Falls State Park, it has formed a steep walled canyon which can be seen from the park and from Highway 126 where it crosses the river. The northeasterly boundary of Eagle Crest Phase II is approximately one-quarter of a mile west of the river.

Climate within the Cline Buttes-Redmond area is semi-arid. Rainfall averages about 11.5 inches per year. There are a few intermittent drainages which direct water from precipitation down from Cline Buttes. Vegetation consists of Junipers, sagebrush, rabbit brush, and other low shrubs and grasses.

Eagle Crest Phase II is a planned resort community. We understand that at proposed maximum buildout there will be two, eighteen hole golf courses, 450 single family homes, 150 townhomes, and a 250 room hotel. Public and irrigation water demands will be provided from deep water supply wells. The locations of the two completed wells, EC II-1 and PH-1, are shown on Figure 2.

GEOLOGY AND HYDROGEOLOGY

Regional Geology

Eagle Crest Phase II rests on the eastern flank of Cline Buttes. The area is on the eastern edge of the High Cascade region of Oregon, adjacent to the Volcanic Plateaus of Central and Eastern Oregon. The geologic history of the area is composed primarily of recurrent episodes of volcanism (Peterson, et al, 1976).

As indicated in Figure 2, the site area is underlain by a varied assortment of volcanic dikes and flows, ash flow tuffs, cinder cones, and volcanically derived sediments. The rocks exposed at the surface vary in age from 54 million years old to recent.

Cline Buttes is composed of the oldest exposed rock within the site area. Peterson (1976) describes Cline Buttes as a rhyolitic intrusive-extrusive dome of John Day age (Tpp - Early (?) - middle Oligocene to early Miocene). The Clarno Formation (Tpp) is exposed to the southeast at Forked Horn Buttes.

The Deschutes Formation (QTds) of early Pliocene to early Pleistocene lies unconformably on top of the Pre-Pliocene rocks. Widespread volcanic activity produced an assortment of

volcanic flows and related events. Several hundred feet of Deschutes Formation was deposited during this time. Units within the Deschutes are relatively flat-lying to gently sloping. It was deposited on a highly irregular and varied relief landscape (Stensland, 1970). Some slopes within the John Day Formation, a few miles north of Eagle Crest Phase II, have been estimated to be as high as 60 degrees.

The Deschutes Formation is composed of a variety of volcanics and volcanically derived sediments. Stensland (1970) identified nine distinct ash-flow tuff units, eleven interbedded and intracanyon basalt flows, a mudflow breccia originating from Forked Horn Butte, and various sedimentary and cinder and pumice units. These units are observable in outcrop within the region.

The deepest wells within the area were drilled for the City of Redmond. Drillers logs for the wells indicate that the Deschutes Formation is at least 500 feet thick within the Redmond area, east of Cline Buttes.

Overlying the unconformity at the top of the Deschutes Formation are Late Pleistocene intracanyon and plateau-forming basalt flows (Qb) and other recent surficial deposits including alluvium (Qal) and slopewash.

Site Specific Geology

Three exploratory borings were drilled at the Eagle Crest Phase II Site. The locations of these borings (now converted to water-supply wells, or abandoned) are shown on Figure 2. The borings were correlated to wells outside the site area. A schematic geologic cross section of the site and area to the west and east is shown on Figure 3. The subsurface geology is highly variable and complex. Numerous canyons were formed as the ancestral Deschutes River made its way north through the area. Canyons were often filled with basalt flows which separated and isolated originally single sedimentary or volcanic units.

Sedimentary deposits within the Deschutes formation thin from up to 400 feet in thickness near Redmond to less than 100 feet in the subsurface on the flanks of Cline Buttes. Up to 400 feet of volcanic units were encountered in the EC II-1 (Figure 3 and Appendix A). EC II-1 was drilled to a total depth of 800 feet. Volcanic rocks were encountered from 300 feet to total depth. They have been interpreted primarily as ash-flow tuffs to welded tuffs with interbedded cinder deposits. These units are light brown to light gray and pinkish to light orange. At approximately 560 to 610 feet, several units of black cindery rock were encountered. Samples of some of the tuff units had visible pinhole porosity. The cindery units appeared to be uncemented to slightly cemented. A 15 foot white unit was encountered at 761 feet in depth and have been described as pumice by the driller. Based on the detailed descriptions given by Stensland and other authors, the tuffs have been interpreted as part of the Deschutes Formation. John Day rocks may have been penetrated in the last 40 feet of the boring.

In Figure 3, it is apparent that the amount of sedimentary rocks associated with the Deschutes Formation increases to the east, replacing volcanics at depth. Sediments tend to increase in thickness, in all directions, away from the flanks of Cline Buttes.

Regional Hydrogeology

The John Day and Clarno Formations generally have very low permeability, which prohibit their ability to be used for high yield water-supply wells. According to Stearns (1930), of the wells he studied that were successful in these zones, and yielded ample water for domestic purposes, most produced from 5 gallons per minute (gpm) to 15 gpm. Some interflow zones might yield higher amounts, but to date, no known wells have penetrated them.

Maddox (1978) performed a detailed study of the groundwater resources within the Redmond area. Four general aquifer systems were defined in this study of over 200 drillers' logs. These zones were identified by different static water levels or heads and generally consist of "A", the shallowest zone which is unconfined with an average static water level elevation of 2,932 feet; "B", a zone with an average static water level elevation of 2,827; "C", the regional groundwater system with an average static water level elevation of 2,727 feet; and "D", a deeper aquifer believed by Maddox to be within the John Day Formation with a static water level elevation of 2,474 feet.

Water production occurs within shallow alluvium. These aquifers are unconfined and are sensitive to changes in climate (precipitation amounts). Recharge generally comes from surface water bodies, rivers or creeks and the great amount of water seepage from the miles of canal systems within the area (Bureau of Reclamation, 1991). The canal system supplies water to other aquifers, as well.

Other aquifers occur within the Quaternary Basalt flows and interflow zones, and within volcanic sediments within the Deschutes Formation.

The third or "C" aquifer of Maddox is the regional water system for most of Deschutes County. The majority of wells, domestic and other, within the Redmond area, produce water from this zone. This aquifer is in the Deschutes Formation and occurs at an average elevation of 2,700 feet within the Cline Buttes - Redmond area. Water within this aquifer is confined - meaning that the aquifer is isolated from the atmosphere by impermeable geologic formations. Groundwater within this aquifer flows towards the north, generally at the gradient of the Deschutes River. The estimated transmissivity for the Deschutes Formation aquifer studied in Maddox's report was 60,000 gallons per day per foot (gpd/ft). The City of Bend study (Becon 1979), reported transmissivities up to a few hundred thousand gpd/ft and estimated that the velocity of flow within the Deschutes Formation of 25 feet per day or less. The City of Bend study, also stated that within the formation permeability and transmissivity increased within deeper units. The deep City of Redmond

wells confirm the hypothesis, producing up to 1,000 gpm with very little drawdown of water levels.

In general, the flow gradient within the regional groundwater system slopes gently towards the north, there are some anomalies within the system. These areas include Bend, Awbrey Butte, and Forked Horn Butte near Redmond. At Forked Horn Butte there is a marked steepening of the gradient adjacent to the butte. This groundwater flow depression, mapped by Maddox, has been explained as high vertical permeability in the vicinity of the volcanic vent, directing groundwater into deeper flow systems. The Deschutes River in the vicinity is perched above the regional groundwater table.

The fourth, or "D", zone of Maddox was found in a well in the center of Redmond, with an anomalously deep static water level, 2,528 feet - MSL. The static water level within the water-bearing zone in this well was almost 200 feet deeper than the regional water system. At the time of the report, Maddox hypothesized that this zone was John Day Formation gravels.

Few deep groundwater wells have been drilled within the Cline Buttes area. In the past, deep wells have yielded only a small amount of water. The Deschutes Formation, at least the sedimentary units which are the prolific producers within the Redmond-Cline Falls area, thins dramatically onto Cline Buttes (Figure 3). This thinning section tends to be higher in elevation than the regional water system, so it is often dry.

Groundwater Quantity

Groundwater quantity within the Deschutes Basin is of concern to the Oregon Water Resources Department (OWRD) and to residents within the basin. Several studies have been completed to answer the groundwater quantity question. Maddox (1970) and Sceva (1968) have estimated aquifer recharge and losses. The latest study of groundwater resources was undertaken by the Bureau of Reclamation, Pacific Northwest Region, a part of the United States Department of the Interior, the last half of 1991. To quote part of their report:

"There are large amounts of recharge from precipitation, and irrigation, canal, reservoir, stream and lake losses. The Watermaster's Office estimates that generally the stream losses for the Deschutes River range from 7 to 18 percent and the canal conveyance losses range from 30 to 50 percent (Clark, personal communication, 1991). The canal losses mostly occur as they pass over basalt and porous sediments. Frink (1968) reported that an estimated 1,122,000 acre-feet (1.004×10^9 gallons per day) of groundwater passes under the area each year. Of this, an estimated 450,000 to 575,000 acre-feet is lost from reservoirs, lakes, streams and rivers. The balance of the recharge is from irrigation losses and precipitation on the area..."

The report goes on to talk about the importance of water conservation measures and how certain measures might positively or negatively impact water users. Latest predictions for growth within the Deschutes Groundwater Basin is toward urban growth, rather than agricultural growth. The last sentence in the report states "Because of the large unused groundwater resource, it is unlikely that increased growth and the associated additional groundwater usage will have any significant effect on the regional aquifer."

This office presented a groundwater study of the Deschutes Drainage Basin for the Deschutes County Planning Commission describing the general groundwater characteristics. In the study DNA did a preliminary assessment of water availability within the basin taking into consideration precipitation, recharge, water losses, geologic formations, the groundwater and surface water dynamics within the basin, and groundwater storage in order to ascertain a reasonable groundwater quantity. All available reports were utilized, and numerous drillers' logs evaluated. In general this is what was presented to the county in a presentation in June 1991:

To visualize the amount of groundwater in the zones supplying water to Deschutes County users, it is best to compare volumes with tangible objects. The Deschutes River is a good example.

Gauging station records for the period between 1914 and 1989 indicate that low flow in July on the river just north of Bend averages about 30 cfs. This is the flow remaining after canal diversions at upstream points. This flow rate corresponds to about 20 million gallons per day.

The amount of water consumed each day in Deschutes County is about 22 million gallons per day. This estimate is based on 63,000 residents and a average consumption rate of 350 gallons per day per person. Therefore, the mean July flow of the Deschutes River just north of Bend is comparable to the amount of water consumed each day by County residents.

We can estimate groundwater quantities in terms of the Deschutes River flow and daily consumption.

Review of well logs for points throughout Deschutes County indicate that the prevailing depth range is between 200 and 400 feet. Reviews indicate that the water-bearing zones supplying water to the wells are generally within a 200 foot thick zone.

Since ground water flow is south to north, if we were to look at a representative cross-section length of 30 miles, and a saturated thickness of 50 feet, adjusted from 200 feet allowing for water concentration in narrow zones between basalt flows, the saturated cross-sectional area is 8 million square feet. However, water is contained only in the void space of this area.

Assuming about 30 percent void space, the actual saturated area is about 2 1/2 million square feet. Of this saturated area, we can extract about 25 percent of the water. Therefore, the extractable saturation area is about 625,000 square feet.

The July Deschutes River flow is about 30 cubic feet per second. We can visualize the amount of ground water moving through the cross-section by determining the number of rivers it would take to fill the extractable water area of the cross-section. To do this, we must find out how big a cross-section is requiring in the ground to pass the 30 cfs river flow, then we can estimate how many "equivalent rivers" it takes to fill the extractable saturation zone.

The size of an equivalent river cross-section depends on groundwater velocity and porosity of the water-bearing zone. Groundwater velocities are estimated to range between 10 and 25 feet per day. Therefore, the equivalent subsurface area required to transmit 30 cfs based on a 10 foot per day groundwater velocity is about 250,000 square feet.

Based on an extractable groundwater area of 625,000 square feet, the available groundwater passing through the cross-section is equivalent to 2 1/2 times the flow in the Deschutes River just north of Bend in July. This flow is about 2 1/2 times the current daily consumption of all County residents.

For a groundwater flow velocity of 25 feet per day, the equivalent subsurface area required to transmit 30 cfs is about 104,000 square feet. At this velocity, the available groundwater passing through the cross-section is equivalent to about 6 times the Deschutes River flow, and about 6 times current daily consumption.

Groundwater investigations for the City of Redmond estimated groundwater flow at 1/2 to 2 1/2 million gallons per day through sections across 1 out of 4 water-producing zones. This amounts to the 50 gallons per day per foot of extractable water along a line crossing the direction of groundwater flow. Taking a 30 mile cross-section length, the extractable groundwater flow is about 8 million gallons per day for this single water-bearing zone. Discounting the shallowest zone, the total flow for the 3 remaining zones currently tapped by wells would be about 25 million gallons per day. Based on this estimate, the extractable groundwater is about 1/4 times the Deschutes River flow at Bend and about 1/8 times the current daily consumption.

These estimates are highly conservative and underestimate the extractable ground water by a significant margin. The reason for underestimation is no allowance for additional groundwater reserves in basalt and sediment formations below the zones currently tapped for water supply. The basalt and

interlayered system and Deschutes formation materials extend for several hundred feet below the prevailing range of well depths in the County. Allowing for this additional thickness, and considering demonstrated continuous pumping capacity of large city and irrigation wells, it is reasonable to estimate extractable groundwater at 5 to 10 times the July flow of the Deschutes River, or 5 to 10 times the current estimated daily consumption.

Site Hydrogeology and Aquifer Characteristics

Because of the need for groundwater for the development at the Eagle Crest Phase II site, careful consideration of the regional groundwater system was made in planning for water-supply wells. Several factors had to be included in the planning for drilling sites: (1) Need for high yielding wells; (2) Location of wells needed to be a significant distance from the Deschutes River to comply with Oregon Water Resources Department (OWRD) requirements of non-interference with surface water bodies by wells; (3) Non-interference, "no impact", to residential wells; (4) Precarious position of site where known thinning of Deschutes Formation sediments occurs, potential of penetrating John Day Formation rocks (Cline Buttes) at shallow depths, and lack of high yielding wells within the John Day Formation; (5) Cost of finding and producing necessary water for development purposes.

Three exploratory borings were drilled on the site from Fall 1991 to Winter 1992. Each of the three borings were located over one mile from the river.

PH-1 is located in the SW 1/4, SE 1/4 of Section 15, T15S, R12E. It was drilled to a total depth of 800 feet. Sedimentary rocks were encountered in the upper 60 feet, only, at this location. Volcanic rocks, of varying nature, were encountered from 60 feet to total depth. The drillers' log indicates that basalt, pumice, cinders, and andesite were encountered during drilling. Colors ranged from black to gray to red to brown. At a depth of 608 feet, a water-bearing cinder zone was encountered. An air test indicated that this zone could produce only 30 gpm, with unknown drawdown. The boring was left open, temporarily, while Pilot Hole #2 (PH-2) was drilled. The static water level in PH-1 was estimated to be between 520 to 540 feet below ground surface. The static groundwater elevation would be between 2,580 and 2,600 feet - MSL, over 100 feet deeper than in the wells at Eagle Crest Phase I.

PH-2 was drilled in the SE 1/4, NE 1/4 of Section 22, T15S, R12E. Sedimentary and volcanic units were encountered to 390 feet in depth. From 380 to 390 feet, a thin water bearing zone was encountered near the base of a sandstone and conglomerate unit. An air test indicated that this unit could yield approximately 25 gpm. The hole was deepened and volcanic rocks were encountered from 390 feet to total depth. The water-bearing zone at 380 feet in depth, $\pm$ 2700 feet - MSL, corresponds to water-bearing zones in other area wells, including Eagle Crest Phase I wells, one mile to the northeast. No static water level could be measured because the hole collapsed when the drill pipe was removed. Similar

volcanic rocks to PH-1 were encountered in this boring. No other water-bearing zone was encountered.

A 6-inch-diameter steel casing was then installed in PH-1 to 800 feet, with the hopes that this well might yield more than the initial 30 gpm discharge during the air test. The steel casing was perforated in zones known to have been water bearing during drilling, 600 to 620 feet and 700 to 800 feet. A short pump test was performed on the well. The static water level was measured at 519.6 feet in depth, 2592 feet - MSL. The well was pumped at 215 gpm, average, with no drawdown - within 2 minutes the water level stabilized at the original static water level.

EC II-1 was drilled 35 feet northeast of PH-1. The 17-inch-diameter boring was drilled to a total depth of 800 feet. About 100 feet of interbedded sandstone and volcanic rocks were penetrated during drilling, from approximately 200 to 300 feet in depth. Volcanic rocks were penetrated from 300 feet to total depth. Water was encountered in several zones from 540 to 800 feet. Drilling samples were collected and a portion of the samples (540 to 620 feet) sent to this office for interpretation and determination of proper screen sizing. The samples were predominantly pinkish to light grayish brown tuffs to welded tuffs. At 570 feet, a broken basaltic vitrophyre or cinder zone was identified. This zone was apparent through 610 feet. There appeared to be a color change at 610 feet to a darker brownish gray tuff. Pinhole porosity was apparent on surfaces in many of the cuttings. Age identification of this interval is difficult. However, it appears possible that at least the upper interval of tuffs are similar in nature to those identified by Stensland as part of the Deschutes Formation (Figure 3).

14-inch-diameter factory perforated casing was placed from 510 to 790 feet in depth, with a 10-foot-steel tailpipe from 790 to 800 feet. The static water level was measured at 519.3 feet, or ± 2591 feet - MSL. A pump test was performed on this well March 17, 1992. PH-1 was used for an observation well. No other wells were utilized as observation holes because of the distance to the closest wells were over 3000 feet away.

Figure 4 illustrates the results of the pump test within the pumped well. An initial discharge rate of 700 gpm was set in order to see how the aquifer would respond. One minute water level measurements were taken in the pumping well and two minute interval water level measurements taken in the observation hole, PH-1. Within three minutes, the pumping well stabilized with a drawdown of 1.26 feet. PH-1 stabilized at four minutes with a drawdown of .05 feet. After 12 minutes the pump was shut off. Both wells recovered immediately. The pump was started again and set for a discharge rate of 1,050 gpm. Within six minutes the pumping well stabilized with 1.62 feet of drawdown. PH-1 stabilized within two minutes with .1 feet of drawdown. This pumping rate was continued for eight hours with no increased drawdown in either well. At eight hours, the pumping discharge rate was increased to 1,200 gpm. The water level stabilized within eight minutes with 1.83 feet in EC II-1 of drawdown. At 9 hours, the discharge rate was increased again to 1,500 gpm. The water level in EC II-1 stabilized within six minutes with 2.15 feet of drawdown. The

observation well was unaffected by the increasing pumping rates and remained stabilized with .1 foot of drawdown.

In comparing pumping rates with feet of drawdown, it was calculated that the well became more efficient with increased pumping rates. The ultimate pumping rate of the EC II-1 will be limited by casing diameter, pump size, and feet of perforations. Determination of the transmissivity of the producing zone in EC II-1 is difficult due to the flat time/drawdown curves for each pumping rate. The zone can probably be compared to wells within the Bend area which have transmissivities in the few hundred thousand gallons per day per foot range. The hydrologic characteristics of the completed zone is not completely understood. However, zones of fractured volcanic rocks and cinders were encountered which can be highly permeable. Also, the tuffs appeared quite porous from the samples collected. Primary or secondary fracturing of these sections would enable large amounts of water to flow through them.

The highly productive zone encountered in EC II-1 and PH-1 are anomalous for the area. Two possible explanations for the deep static water levels are (1) The zone is hydraulically separate from other producing wells within the area by a thick layer of impermeable volcanic rocks. It may be related to the anomalous aquifer in the Redmond area (Maddox' Zone "D"), or the highly productive deeper units penetrated in the deep City of Redmond wells. Static water levels within the City of Redmond wells may be higher than EC II-1 because of commingling of hydraulically separate aquifers in the city wells, or because the varying lithology and effects of wedging of sediments onto Cline Buttes have formed several isolated confined zones; (2) Cline Buttes may also provide a local anomaly like that of Forked Horn Butte. The fractured volcanic rocks which make up Cline Buttes may cause a localized groundwater depression.

The pump test performed at Eagle Crest Phase II indicated that groundwater impact will be immeasurable based on the data recovered. Figure 4, the graph of the eight hour pump test, shows the drawdown of the aquifer water level, in feet, in relation to the time since the pump was started, and the pumping rate at which the drawdown occurred. As is evident from the graph, even at 1,500 gpm drawdown flattened out within a few minutes, indicating an equilibrium of the pumping rate and maximum drawdown at that rate. The cone of depression formed from the pumping of EC II-1 intercepted PH-1, 35 feet away, at ≤ 0.1 foot. In PH-1, a graph of drawdown versus time at different pumping rates would be flat throughout the entire testing period. This indicates that no increased stress was placed on the aquifer 35 feet away from the pumping well, even when the well was pumped at 1,500 gpm. No boundary effects were indicated during the eight-hour pump test. This indicates that even though a probable permeability barrier exists at the contact between the Deschutes Formation and John Day Formation (Cline Buttes) and it is a short distance away from the pumping well, water availability/quantity was great enough that the presumed contact had no effect. It is evident from pump testing that, at a minimum, a pumping rate of 1,500 gpm in EC II-1, should not interfere or impact area domestic or agricultural wells based on evidence gathered from monitoring EC II-1 and PH-1.

ULTIMATE WATER DEMANDS

An estimate of water demands for the resort at maximum buildout was accomplished by determining the water needs of each public and irrigation use planned. Ultimate buildout is not expected for several years, so along with maximum buildout water demand, is an estimate for short term needs and uses. Needs and uses will be subject to market demand for the resort's facilities. No perennial surface water source exists on the flanks of Cline Buttes or within the site boundaries, so all water utilized must come from groundwater.

Combined water uses will include residential, commercial, golf courses, irrigated common areas, and fire protection. At ultimate buildout the following consumptive uses and estimated gallons per day (gpd) per use and gallons per minute (gpm) needed to cover each use are expected to be as follows:

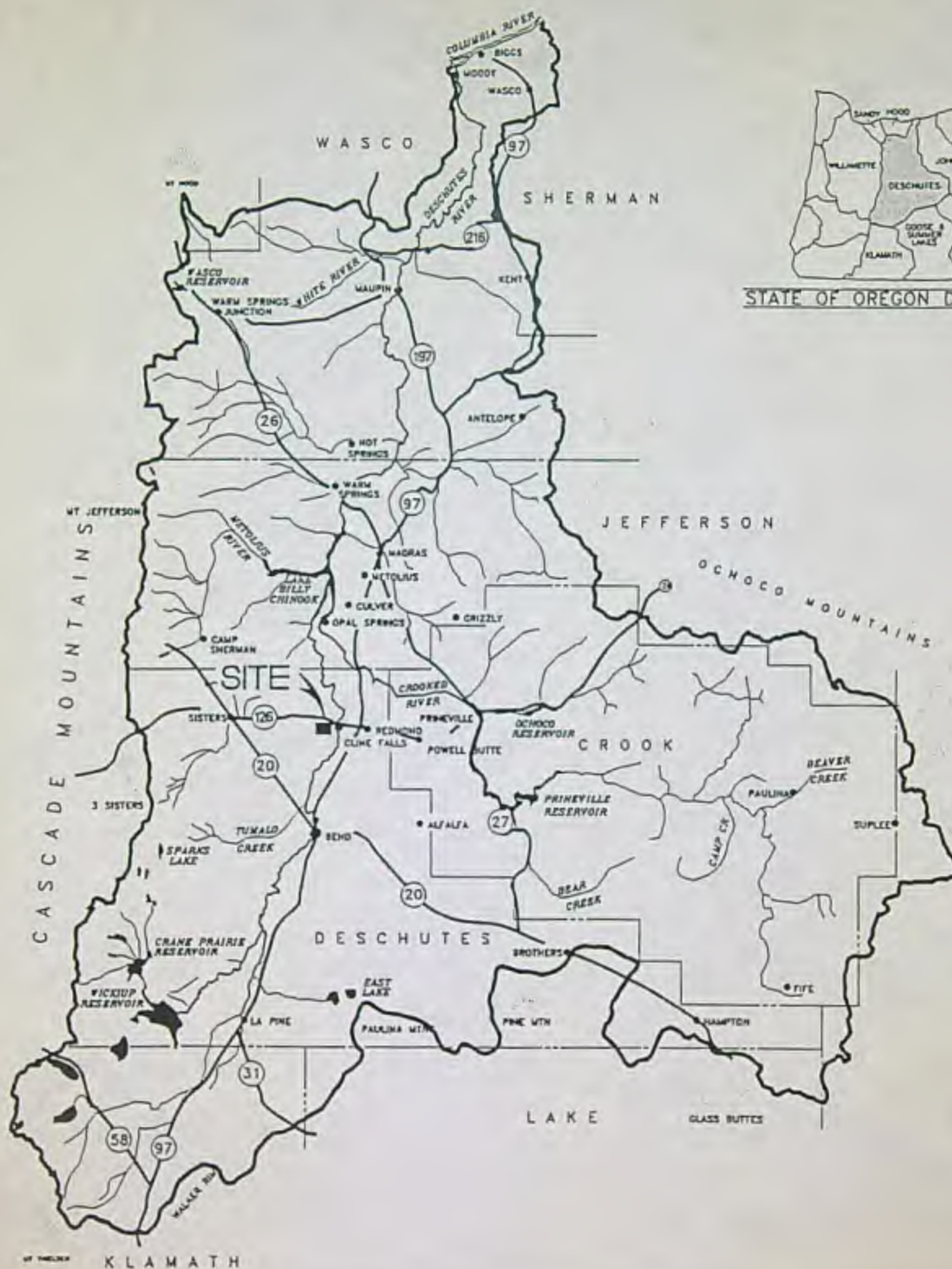
	<i>Interim</i>	<i>Ultimate</i>
Domestic Uses:		
450 Single Family Homes-1,250 gpd/home	±391 gpm	391 gpm
150 Townhomes-1,250 gpd/unit	±130 gpm	130 gpm
250 Hotel Rooms-180 gpd/room	± 31 gpm	31 gpm
Subtotal	±552 gpm	552 gpm
Commercial Uses:		
Golf Course Irrigation and Commercial (inc. 2 - 18 hole golf courses)	± 890 gpm	1,780 gpm
TOTAL	±1,442 gpm	2,332 gpm

In the event of a fire, golf course irrigation water will be diverted directly to fire protection.

Initially, only one 18 hole golf course will be completed at the resort. Housing units and hotel rooms will be built as the resort develops. The estimate of water demand for start-up of the resort will be 980 gpm for the golf course and related commercial uses. This demand will increase as the resort incrementally develops.

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STATE OF OREGON DRAINAGE BASINS

DATE
APR, 1992

PROJECT NO.
215 192

DAVID J. NEWTON ASSOC.
INCORPORATED



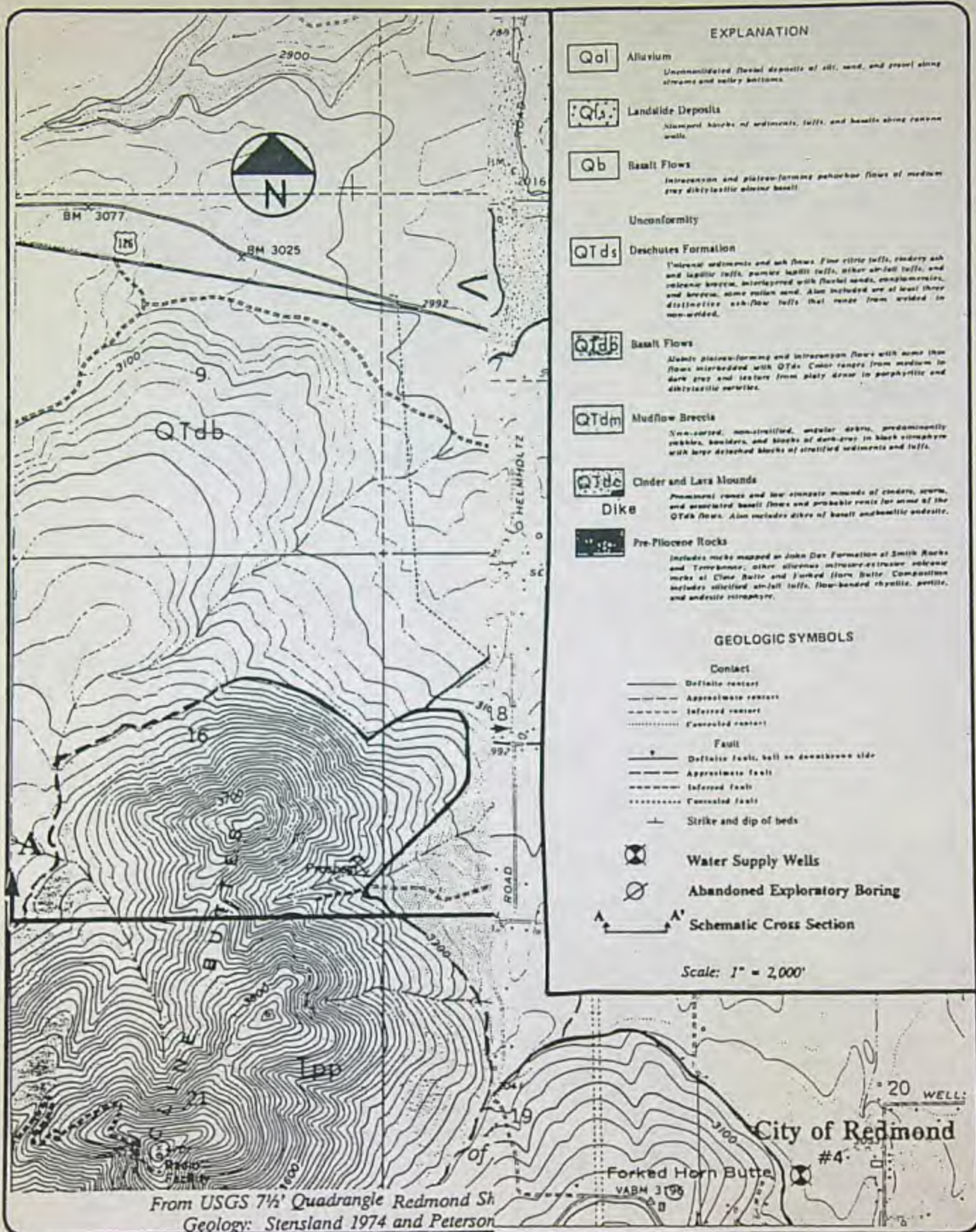
CIVIL & GEOLOGICAL ENGINEERING
1201 S.W. 12TH AVE., SUITE 400
PORTLAND, ORE. 97205 • 228-7718

VICINITY MAP

Eagle Crest Phase II
Deschutes County, Oregon

FIGURE

1



DATE
3/27/92

PROJECT NO.
215 192



DAVID JEA, OREGON

INC

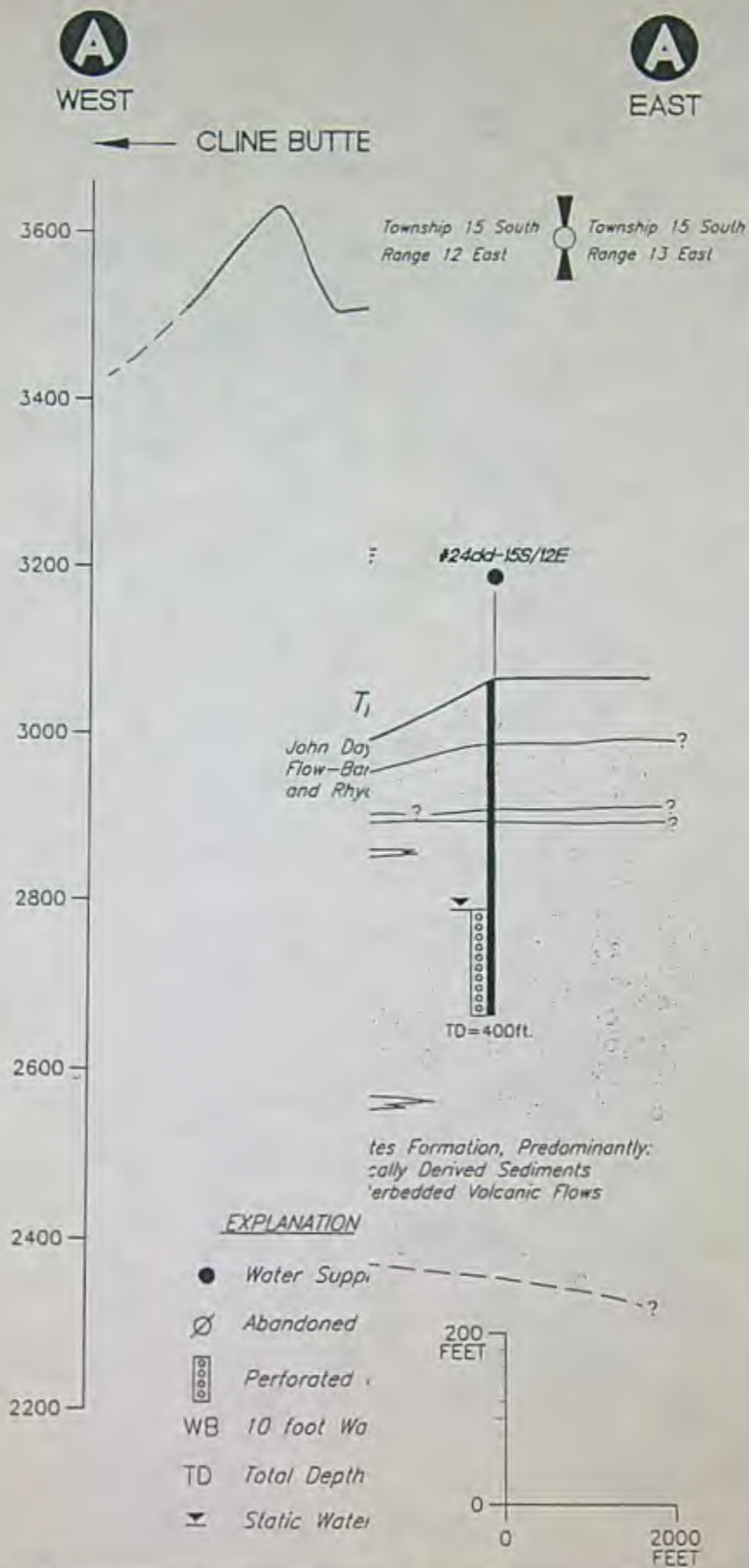
CIVIL & GEOLos County, Oregon

FIGURE

2

FIGURE

3



DAVID J. NEWTON ASSOC.
INCORPORATED

CIVIL & GEOLOGICAL ENGINEERING
1201 S.W. 12TH AVE., SUITE 400
PORTLAND, ORE. 97205 • 228-7718 • FAX 228-7781

SCHEMATIC CROSS SECTION

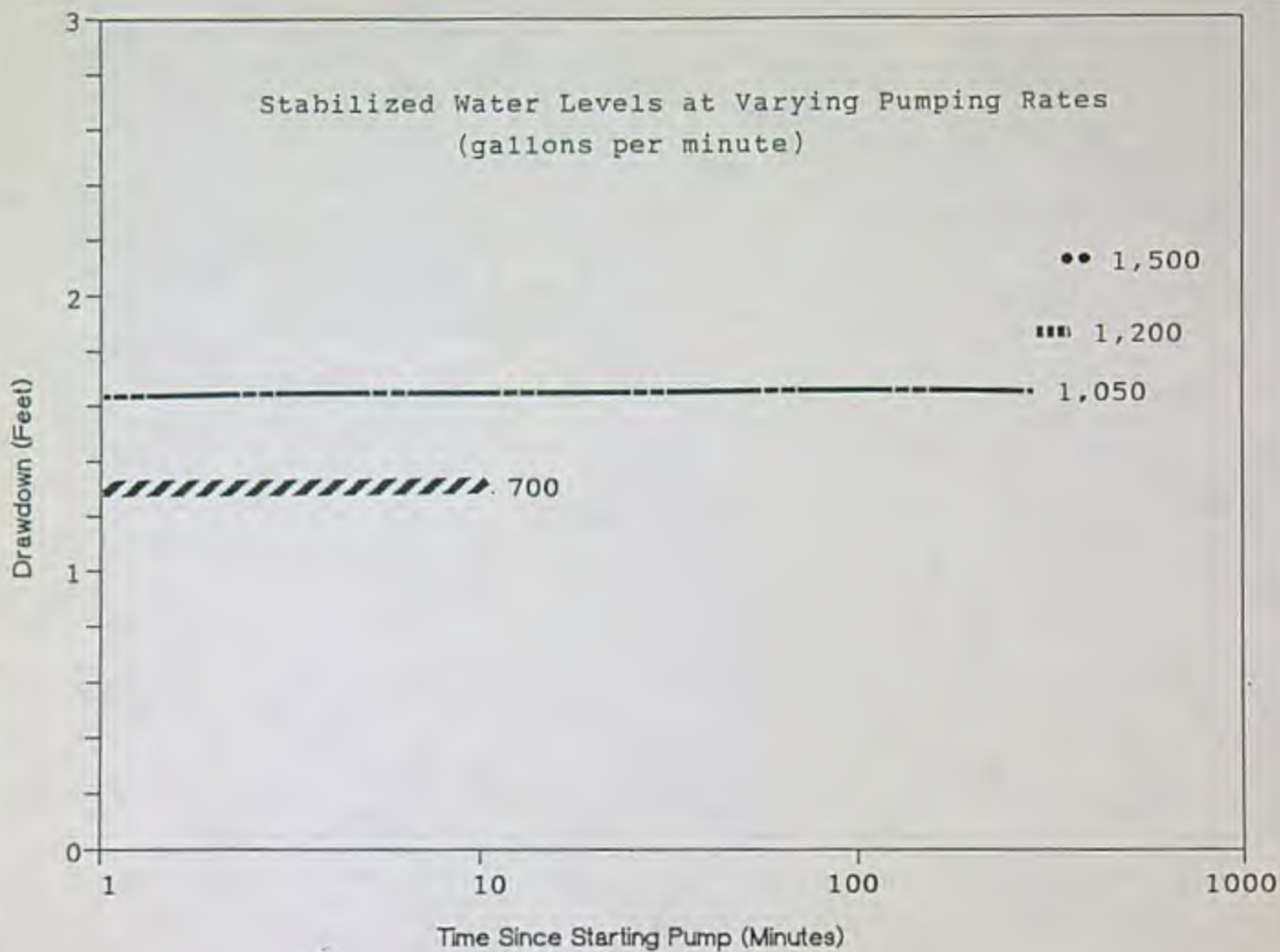
Eagle Crest Phase II
Deschutes County, Oregon

DATE

APR, 1992

PROJECT NO.

215 192



DATE APR, 1992	DAVID J. NEWTON ASSOC. INCORPORATED	PUMP TEST DATA	FIGURE
PROJECT NO. 215-192	CIVIL & GEOLOGICAL ENGINEERING 1201 S.W. 12TH AVE., SUITE 400 PORTLAND, ORE. 97205 • 228-7718	Eagle Crest Phase II Deschutes County, OR	4

APPENDIX A

DRILLERS' LOGS AND WATER SAMPLE CHEMICAL ANALYSIS

First copy of this report
to be filed with the

WATER RESOURCES DEPARTMENT

SALEM, OREGON 97310

within 30 days from the date
of well completion.

WATER WELL REPORT

STATE OF OREGON

(Please type or print)

(Do not write above this line)

State Well No. _____

State Permit No. _____

EC-2

OWNER:

Name NEIL CHASE
Address 1004 Cline Falls Rd. Star Rt.
Redmond, Oregon 97756

2) TYPE OF WORK (check):

New Well ☐ Deepening ☐ Reconditioning ☐ Abandon ☐

If abandonment, describe material and procedure in Item 12.

3) TYPE OF WELL:

Rotary ☒ Driven ☐
Cable ☐ Jetted ☐
Aug ☐ Bored ☐

(4) PROPOSED USE (check):

Domestic ☐ Industrial ☐ Municipal ☐
Irrigation ☒ Test Well ☐ Other ☐

5) CASING INSTALLED:

12 3/4" Diam. from 0 ft. to 25 ft. Gage 250
0" Diam. from 0 ft. to 330 ft. Gage 188
0" Diam. from 0 ft. to 0 ft. Gage 0

6) PERFORATIONS:

Perforated? ☐ Yes ☒ No

Type of perforator used Factory & torch

Size of perforations 3 X 1/8 in. by 6 X 1/8 in.
430 perforations from 250 ft. to 330 ft.
perforations from 0 ft. to 0 ft.
perforations from 0 ft. to 0 ft.

7) SCREENS:

Well screen installed? ☐ Yes ☒ No

Manufacturer's Name _____ Model No. _____
Diam. _____ Slot size _____ Set from _____ ft. to _____ ft.
Diam. _____ Slot size _____ Set from _____ ft. to _____ ft.

(8) WELL TESTS:

Drawdown is amount water level is
lowered below static level

as a pump test made? ☐ Yes ☐ No If yes, by whom?

Yield: _____ gal./min. with _____ ft. drawdown after _____ hrs.

Bailer test 200 gal./min. with 0 ft. drawdown after 4 hrs.

Artesian flow _____ g.p.m.

Temperature of water 53 Depth artesian flow encountered _____ ft.

(9) CONSTRUCTION:

Well seal—Material used Portland Cement

Well sealed from land surface to 25 ft.

Diameter of well bore to bottom of seal 16 in.

Diameter of well bore below seal 15 in.

Number of sacks of cement used in well seal 21 sacks

How was cement grout placed? _____

Drive shoe used? ☐ Yes ☒ No Plugs _____ Size: location _____ If

if strata contain unusable water? ☐ Yes ☒ No

Type of water? _____ depth of strata _____

Method of sealing strata off _____

Well gravel packed? ☐ Yes ☒ No Size of gravel: _____

(10) LOCATION OF WELL:

County Deschutes Driller's well number _____
NE 1/4 NE 1/4 Section 23 T. 15S R. 12E

Bearing and distance from section or subdivision corner

E 61° 42' 30" N 347.0
+ 12.300

(11) WATER LEVEL: Completed well:

Depth at which water was first found 307

Static level 307 ft. below land surface. Date 8-20-

Artesian pressure 230 lbs. per square inch. Date _____

(12) WELL LOG:

Diameter of well below casing 15

Depth drilled 330 ft. Depth of completed well 330

Formation: Describe color, texture, grain size and structure of material and show thickness and nature of each stratum and aquifer penetrated with at least one entry for each change of formation. Report each change position of Static Water Level and indicate principal water-bearing stratum.

MATERIAL	From	To	SW
Boulders/cemented gravel	0	10	
Congl. hard gray lava	10	37	
Hard brown lava	37	51	
Brown lava fractured	51	52	
Red cinder w/seams of red lava	52	53	
Lava brown fractured	53	54	
Firm yellow sandstone	54	57	
Hard blk lava	57	110	
Sandstone gray hard (cracked)	110	123	
Hard blk lava	123	155	
Sandstone soft yellow	155	157	
Hard blk lava	157	181	
Firm brown lava	181	212	
Clay, gravel, congl w/8	212	307	
Brown sandstone (firm)	307	330	

Work started 7-25- 1979 Completed 8-20- 1979

Date well drilling machine moved off of well 8-20- 1979

Drilling Machine Operator's Certification:

This well was constructed under my direct supervision. Materials used and information reported above are true to the best knowledge and belief.

(Signed) James F. McCor Date 8-20- 1979
(Drilling Machine Operator)

Drilling Machine Operator's License No. 1052

Water Well Contractor's Certification:

This well was drilled under my jurisdiction and this report is true to the best of my knowledge and belief.

Name LEWIS & CLARK DRILLING CO., INC.

(Person, firm or corporation) (Type or print)

Address P. O. Box 503 Redmond, Or. 97756

(Signed) James F. McCor (Water Well Contractor)

MAR 07 '82 08:19 WCH P. EEND

The original and first copy of this report
are to be filed with theWATER RESOURCES DEPARTMENT
SALEM, OREGON 97310
within 30 days from the date
of well completion.

WATER WELL REPORT

STATE OF OREGON

(Please type or print)

(Do not write above this line)

Eagle Crest Well No. 3-F
GOLF well - NOT USED

State Well No.

State Permit No.

EC-3

OWNER:

Name NEIL CHASE

Address CLATSOP FALLS Rd.
REDMOND, OREGON 97750

(2) TYPE OF WORK (check):

New Well ☒ Deepening ☐ Reconditioning ☐ Abandon ☐

If abandonment, describe material and procedure in item 12.

(3) TYPE OF WELL:

Rotary ☒ Driven ☐
Cable ☐ Jetted ☐
Dug ☐ Bored ☐

(4) PROPOSED USE (check):

Domestic ☒ Industrial ☐ Municipal ☐
Irrigation ☐ Test Well ☐ Other ☐

(5) CASING INSTALLED:

8" Diam. from 0-1 ft. to 19 ft. Gage 250
5" Diam. from 19 ft. to 303 ft. Gage
3" Diam. from 303 ft. to 303 ft. Gage

(6) PERFORATIONS:

Perforated? ☐ Yes ☒ No

Type of perforator used

Size of perforations in. by in.
perforations from 0 ft. to 19 ft.
perforations from 19 ft. to 303 ft.
perforations from 303 ft. to 303 ft.

(7) SCREENS:

Well screen installed? ☐ Yes ☒ No

Manufacturer's Name

Model No.

Diam. Slot size Set from ft. to ft.
Diam. Slot size Set from ft. to ft.

(8) WELL TESTS:

Drawdown's amount water level is
lowered below static levelWas a pump test made? ☐ Yes ☒ No If yes, by whom?

Yield: gal./min. with ft. drawdown after hrs.

AIRLIFT 50 GAL. MINUTE

Ballist test gal./min. with 0 ft. drawdown after 1 hrs.

Artesian flow g.p.m.

Temperature of water 52 Depth artesian flow encountered ft.

9) CONSTRUCTION:

Well seal—Material used

PORTLAND CEMENT

Well sealed from land surface to 19 ft.

Diameter of well bore to bottom of seal 12 in.

Diameter of well bore below seal 8 in.

Number of sacks of cement used in well seal 10 sacks

How was cement grout placed? pressure pumped

drive shoe used? ☐ Yes ☒ No Plugs Size location ft.strata contain unusable water? ☐ Yes ☒ No

depth of water? depth of strata

method of sealing strata off

Was well gravel packed? ☐ Yes ☒ No Size of gravel:

gravel placed from ft. to ft.

(10) LOCATION OF WELL: Front Well

County Clatsop Driller's well number

N.W. 1/4 Section 14 T. 15 R. 12 W.

Bearing and distance from section or subdivision corner

(11) WATER LEVEL: Completed well.

Depth at which water was first found 265

Static level 252 ft. below land surface Date 8-13-

Artesian pressure lbs. per square inch Date

(12) WELL LOG:

Diameter of well below casing 8"

Depth drilled 303 ft. Depth of completed well 303

Formation: Describe color, texture, grain size and structure of material and show thickness and nature of each stratum and aquifer penetrate with at least one entry for each change of formation. Report each change position of Static Water Level and indicate principal water-bearing strata:

MATERIAL	From	To	SWL
OVERBURDEN	0	4	
BOULDER CONGL.	4	13	
BROWN LAVA	13	36	
RED SANDSTONE	36	61	
BROWN SANDSTONE	61	155	
RED & BLACK LAVA	155	205	
BROWN LAVA	205	211	
LAVA GRAVELS	211	223	
COARSE BLACK SAND	223	265	256
W/B FINE RED & BLACK SAND	265	303	

Work started 8-11 19 80 Completed 8-14 19 80

Date well drilling machine moved off of well 8-14 19 80

Drilling Machine Operator's Certification:

This well was constructed under my direct supervision. Materials used and information reported above are true to my best knowledge and belief.

(Signed) [Signature] Date 8-14 19 80

(Drilling Machine Operator)

Drilling Machine Operator's License No. 1421

Water Well Contractor's Certification:

This well was drilled under my jurisdiction and this report is true to the best of my knowledge and belief.

Name LEWIS & CLARK DRILLING INC.

(Person, firm or corporation) (Type or print)

Address P.O. BOX 583 REDMOND, OREGON 97750

(Signed) [Signature] (Water Well Contractor)

Contractor's License No. 594 Date 8-15 19 80

STATE OF OREGON
WATER WELL REPORT
(as required by ORS 537.745)

EAGLE CREST Phase II -
EC II - 1

1

(START CARD) # 36697

(1) OWNER: Well Number: PW #1
Name Eagle Ridge Development Corporation
Address P.O. Box 1215
City Redmond State OR Zip 97756

(2) TYPE OF WORK:
☒ New Well ☐ Deepen ☐ Reconition ☐ Abandon

(3) DRILL METHOD
☒ Rotary Air ☐ Rotary Mud ☐ Cable
☐ Other

(4) PROPOSED USE:
☐ Domestic ☐ Community ☐ Industrial ☒ Irrigation
☐ Thermal ☐ Injection ☐ Other

(5) BORE HOLE CONSTRUCTION:
Special Construction required Yes ☐ No ☒ Depth of Completed Well 800 ft
Explosives used ☐ ☒ Type _____ Amount _____

HOLE SEAL
Diameter From To Material From To Amount
24 0 47 cement 0 47 80 sacks
17 47 800

How was seal placed Method ☐ A ☐ B ☒ C ☐ D ☐ E
☐ Other

Backfill placed from _____ ft to _____ ft Material _____
Gravel placed from _____ ft to _____ ft Size of gravel _____

(6) CASING/LINER:
Diameter From To Gauge Steel Plastic Welded Threaded
Casing 18 +1 47 .250 ☒ ☐ ☒ ☐
Liner 14 +2 800 .375 ☒ ☐ ☒ ☐

Final location of object 800'

(7) PERFORATIONS/SCREENS:
☒ Perforations Method Factory perforated
☐ Screens Type _____ Material _____

From	To	Slot size	Number	Diameter	Telephone size	Casing	Liner
510	790	1/8 X 3	7000	14"	---	☐	☒
						☐	☐
						☐	☐
						☐	☐
						☐	☐

(8) WELL TESTS: Minimum testing time is 1 hour
☐ Pump ☐ Bailor ☒ Air ☐ Flowing
Yield gal/min 800 (est.) Drawdown 750 Drill stem at 1 hr.
Time

Temperature of water 52° Depth Artesian Flow Found _____
Was a water analysis done? ☐ Yes By whom _____
Did any strata contain water not suitable for intended use? ☐ Too little
☐ Salty ☐ Murky ☐ Oily ☐ Colored ☐ Other _____
Depth of strata _____

(9) LOCATION OF WELL by legal description
County Deschutes Latitude _____ Longitude _____
Township 15 S Range 12 E
Section 15 SW SE
Tax lot 1500 Lot _____ Block _____ Sublot _____
Street Address of Well (or nearest address) N/A

(10) STATIC WATER LEVEL:
518 ft. below land surface Date _____
Artesian pressure --- lb. per square inch Date _____

(11) WATER BEARING ZONES:
Depth at which water was first found 540
From To Estimated Flow Rate
540 800 800

(12) WELL LOG: Ground elevation ---

Material	From	To
Sand & cobbles	1	4
Broken lava red and brown	4	4
Basalt gray hard	40	5
Lava cinders red	55	6
Lava brown	68	8
Basalt gray and brown hard	80	8
Basalt softer	85	9
Lava red & brown broken soft	93	1
Basalt gray hard	111	1
Basalt gray softer w/ red cinder	157	1
Lava red	162	1
Lava brown w/sandstone	185	2
Lava dark brown w/pumice	299	3
Andacite brown hard	330	3
Andacite gray	375	4
Andacite Gray & brown hard	400	4
Andacite gray softer	469	5
Andacite hard brown	502	5
Andacite light brown softer	524	5
Rock black and red	568	6
Andacite brown hard	600	6
Red cinder	608	6
Andacite brown hard	612	6

Date started 1/30/92 Completed 2/20/92

(unbonded) Water Well Constructor Certification:
I certify that the work I performed on the construction, abandonment of this well is in compliance with Oregon well standards. Materials used and information reported above are to knowledge and belief.

Signed [Signature] WWC Number 341
Date 2/4/92

(bonded) Water Well Constructor Certification:
I accept responsibility for the construction, alteration, or work performed on this well during the construction dates reported. This work performed during this time is in compliance with construction standards. This report is true to the best of my knowledge and belief.

Signed [Signature] WWC Number 341
Date 2/4/92

(START CARD) 1 36697

(9) LOCATION OF WELL by legal description:
County Deschutes Latitude _____ Longitude _____
Township 15 S Near S. Range 12 E
Section 15 _____ SW 1/4 SE 1/4
Tax lot 1500 Lot _____ Block _____ Subdiv _____
Street Address of Well for nearest address N/A

(10) STATIC WATER LEVEL:

_____ ft. below land surface. Date _____

Artesian pressure _____ lb. per square inch. Date _____

(11) WATER BEARING ZONES:

Depth at which water was first found _____

From _____	To _____	Estimated Flow _____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(12) WELL LOG: Ground elevation _____

Material	From
Andacite light gray w/pumice	620
Andacite brown fractured	643
Andacite brown hard	655
Andacite gray w/brown med.	670
Andacite gray hard	691
Andacite brown w/pumice interbed	710
Andacite brown & red fractured	733
Andacite brown very hard	740
Pumice white	761
Andacite gray and brown	776

Time started — 1/30/92 — Completed — 2/2

Date started 1/30/92 Completed 2/20/92

(unbonded) Water Well Constructor Certification:

I certify that the work I performed on the construction, abandonment of this well is in compliance with Oregon well standards. Materials used and information reported above are to the best of my knowledge and belief.

Signed Ben Kistner WWC Number _____
Date 3/4

(bonded) Water Well Constructor Certification:

I accept responsibility for the construction, alteration, or work performed on this wall during the construction dates reported. Work performed during this time is in compliance with construction standards. This report is true to the best of my belief.

Signed [Signature] Date 3/1

[illegible]

			1 hr.

Temperature of water _____ Depth Artesian Flow Found _____

Was a water analysis done? ☐ Yes By whom _____

Did any strata contain water not suitable for intended use? ☐ Yes little

☐ Salty ☐ Moist ☐ Astringent ☐ Colored ☐ Other _____

Depth of water _____

[illegible]

STATE OF OREGON
WATER WELL REPORT
(as required by ORS 837.765)

DO NOT WRITE ABOVE THIS LINE

PILOT HOLE #1-D
EAGLE CREST
PHASE 2
(START CARD) # 34267

(1) OWNER: Well Number: _____
Name Eagle Ridge Development
Address P.O. Box 1215
City Reardan State OR Zip 97756

(2) TYPE OF WORK:
☒ New Well ☐ Deepen ☐ Recondition ☐ Abandon

(3) DRILL METHOD:
☒ Rotary Air ☐ Rotary Mud ☐ Cable ☐ Other _____

(4) PROPOSED USE:
☒ Domestic ☐ Community ☐ Industrial ☐ Irrigation
☐ Thermal ☐ Injection ☐ Other _____

(5) BOREHOLE CONSTRUCTION:
Special Construction approval Yes ☐ No ☒ Depth of Completed Well 800 ft.
Explosives used ☐ Yes ☒ No ☐ Type _____ Amount _____

HOLE		SEAL		Amount	
Diameter	From To	Material	From To	sacks or pounds	
13	0 50	cement	18 50	60	
10	50 100	cement	0 18	15	
8	100 800	bentonite	90 100		

How was seal placed: Method ☐ A ☐ B ☒ C ☐ D ☐ E
☒ Other bentonite dry in to 18

Backfill placed from _____ ft. to _____ ft. Material _____
Gravel placed from _____ ft. to _____ ft. Size of gravel _____

Diameter		From	To	Gauge	Steel	Plastic	Welded	Threaded
Casing		8"	42	98	250	☒	☐	☒
Liner		6"	0	800		☐	☐	☐

Final location of case(s) 800

(7) PERFORATIONS/SCREENS:
☒ Perforations Method air pump
☐ Screens Type _____ Material _____

From	To	Slot size	Number	Diameter	Tele/pipe size	Casing	Liner
600	620	1X1/8	400	6"		☒	☒
700	800	1X1/8	2000	6"		☒	☒

(8) WELL TESTS: Minimum testing time is 1 hour

☐ Pump ☐ Boiler ☐ Air ☐ Flowing ☐ Artesian
Yield gal/min _____ Drawdown _____ Drill stem at _____ Time _____

Temperature of water 54 Depth Artesian Flow Found _____
Was a water analysis done? ☐ Yes By whom _____
Did any strata contain water not suitable for intended use? ☐ Too little
☐ Salty ☐ Muddy ☐ Odor ☐ Colored ☐ Other _____
Depth of strata _____

(9) LOCATION OF WELL by legal description:
County _____ Latitude _____ Longitude _____
Township 15S Nor S, Range 12E E or W _____
Section 28 15 SE 4 NE 4
Tax Lot _____ Lot _____ Block _____ Subdivision _____
Street Address of Well (or nearest address) _____

(10) STATIC WATER LEVEL: _____ ft. below land surface Date 10/11/91
Artesian pressure _____ lb. per square inch Date _____

(11) WATER BEARING ZONES: _____

From	To	Estimated Flow Rate
608	615	
720	735	

(12) WELL LOG: _____

Material	From	To
dirt	0	2
broken rock	2	12
sand black coarse dry	12	25
broken rock red & grey	25	36
Rock harder	36	42
sandstone soft brown	42	48
lava porous grey & brown	48	55
broken lava red & grey	55	83
lava harder red & grey	83	132
basalt grey hard	132	160
lava red med	160	185
lava red w/white pumice	185	203
multi colored lava brn/red/gr	203	310
broken lava red/brown	310	375
rock brn med	375	392
rock grey w/some pumice	392	400
rock grey and white	400	435
rock brn/grey/white	435	442
basalt grey hard	442	461
andacite grey/brn hard	461	608
cinders or pumice	608	615
quartzite/andacite vthered	615	720
brown andacite w/oat as red	720	735

Date started 9/18/91 Completed 10/11/91

(unbonded) Water Well Constructor Certification:
I certify that the work I performed on the construction, alteration, abandonment of this well is in compliance with Oregon well construction standards. Materials used and information reported above are true to my knowledge and belief.
Signed _____ WWC Number _____ Date 10/24/91

(bonded) Water Well Constructor Certification:
I accept responsibility for the construction, alteration, or abandonment work performed on this well during the construction dates reported above. Work performed during this time is in compliance with Oregon construction standards. This report is true to the best of my knowledge and belief.
Signed _____ WWC Number 7- Date 11/20/91

EAGLE RIVER TEST CENTER
LOCATED AT LAKE NEAR FAIRWAY

Mail: Post Office Box 1174
Bend, Oregon 97709
503-382-6432

 Century Testing
Laboratories, Inc.

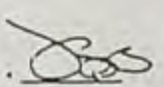
LABORATORY ANALYSIS

W & H PACIFIC
155 REVERE
BEND, OR 97701

LAB SAMPLE NO.: 8512
SAMPLE DESCRIPT.: WELL HEAD
MATRIX: WATER
DATE SUBMITTED: 10/31/91
DATE ANALYZED: 10/31-11/13/91
DISCARD DATE: 12/31/91
COLLECTED BY: B. WILLIAMS

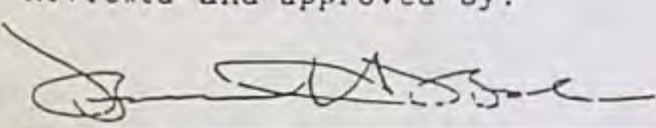
ANALYSIS METHOD NUMBER	CONSTITUENT	SAMPLE CONC. *	METHOD DETECTION LIMIT	UNITS	PERCENT RECOVERY**	P.D.S.
=====	=====	=====	=====	=====	=====	
EPA 7060	ARSENIC	0.0105	0.0015	mg/l	97%	605
EPA 310.1	BICARBONATE	74.0	0.5	mg/l	105%	
ICP 6010	CALCIUM	7.67	0.02	mg/l	103%	
ICP 6010	MAGNESIUM	7.30	0.025	mg/l	117%	
EPA 7430	LITHIUM	N.D.	0.02	mg/l	104%	
EPA 355.3	NITRATE NITROGEN	0.44	0.01	mg/l	105%	106
EPA 365.2	PHOSPHATE	0.154	0.008	mg/l	92%	
SM 425C	SILICA	28.0	0.32	mg/l	98%	
ICP 6010	SODIUM	12.55	0.2	mg/l	100%	150 (s)
EPA 375.4	SULFATE	3.0	0.25	mg/l	90%	250 (s)

*N.D. means "not detected."

**Percent Recovery values are within established control limits. 

CENTURY TESTING LABORATORIES, INC.

Reviewed and approved by:


Bruce E. Bale
Quality Assurance Manager

11/15/91

Excellent Quality

Tom

FYI - Well #1 E.R.

h

STATE OF OREGON
WATER WELL REPORT
(as required by ORS 537.765)

EAGLE CREST PHASE II

(START CARD) 34257

(1) OWNER:

Well Number: _____

Name Eagle Ridge DevelopmentAddress P.O. Box 1215City Redmond, OR

State _____

Zip 97756

(2) TYPE OF WORK:

☒ New Well ☐ Deepen ☐ Recondition ☐ Abandon

(3) DRILL METHOD

☒ Rotary Air ☐ Rotary Mud ☐ Cable
☐ Other _____

(4) PROPOSED USE:

☐ Domestic ☐ Community ☐ Industrial ☒ Irrigation
☐ Thermal ☐ Injection ☒ Other test hole

(5) BORE HOLE CONSTRUCTION:

 Special Construction approval Yes ☐ No ☒ Depth of Completed Well 500 ft.
 Explosives used Yes ☐ No ☒ Type _____ Amount _____

HOLE			SEAL			Amount sacks or pounds
Diameter	From	To	Material	From	To	
13	0	25	bentonite	0	25	59
8	25	500				

How was seal placed Method ☐ A ☐ B ☐ C ☐ D ☐ E☐ Other placed in dry annulus

Backfill placed from _____ ft. to _____ ft. Material _____

Gravel placed from _____ ft. to _____ ft. Size of gravel _____

(6) CASING/LINER:

	Diameter	From	To	Gauge	Steel	Plastic	Welded	Threaded
Casing	93	+1	39	.250	☒	☐	☒	☐
					☐	☐	☐	☐
					☐	☐	☐	☐
					☐	☐	☐	☐
Liner					☐	☐	☐	☐
					☐	☐	☐	☐

Final location of sheet(s) _____

(7) PERFORATIONS/SCREENS:

☐ Perforations Method _____
☐ Screens Type _____ Material _____

From	To	Slot size	Number	Diameter	Tele/pipe size	Casing	Liner
		W/A				☐	☐
						☐	☐
						☐	☐
						☐	☐
						☐	☐

(8) WELL TESTS: Minimum testing time is 1 hour

☐ Pump ☐ Bailer ☒ Air ☐ Flowing Artesian

 Yield gal/min 25 Drawdown _____ Drill stem at _____ Time 1 hr.

Temperature of water _____ Depth Artesian Flow Found _____

Was a water analysis done? ☐ Yes By whom _____Did any strata contain water not suitable for intended use? ☐ Too little
☐ Salty ☐ Murky ☐ Odor ☐ Colored ☐ Other _____

Depth of strata _____

(9) LOCATION OF WELL by legal description:

 County _____ Latitude _____ Longitude _____
 Township 15S Nor S. Range 12E E or W. W. 1
 Section 22 SW 1/4 SE 1/4
 Tax Lot _____ Lot _____ Block _____ Subdivision _____
 Street Address of Well (or nearest address) Cline Falls Hwy

(10) STATIC WATER LEVEL:

N/A ft. below land surface. hole cave in Date _____

Artesian pressure _____ lb. per square inch. Date _____

(11) WATER BEARING ZONES:

Depth at which water was first found 380'

From	To	Estimated Flow Rate	S'
380	390	25 gpm	?

(12) WELL LOG:

Ground elevation _____

Material	From	To	S'
dirt/rock	0	5	
broken basalt brown	5	16	
basalt weathered and porous	16	42	
basalt grey hard	42	58	
basalt weathered brown & porous	58	102	
pumice	102	106	
basalt grey weathered med	106	110	
basalt grey brown wthred med	110	124	
basalt weathered fractured very	124	150	
basalt less fractured	150	160	
weathered basalt very soft	160	164	
basalt brown hard	164	175	
basalt fractured w/lavender streaks	175	190	
" harder	190	214	
" soft weathered	214	217	
" hard conglomerant small	217	312	
conglomerant large	312	340	
conglomerate sandstone & pumice	340	390	
tuff stone brn	390	400	
broken basalt	400	407	
tuff brown hard	407	412	
tuff brown fractured	412	420	
tuff auger brown	420	444	
tuff w/ some pumice	444	500	

Date started _____ Completed 9/27/91 - 10/1/91

(unbonded) Water Well Constructor Certification:

I certify that the work I performed on the construction, alteration, abandonment of this well is in compliance with Oregon well construction standards. Materials used and information reported above are true to my knowledge and belief.

 Signed [Signature] WWC Number ES
 Date 10/24/91

(bonded) Water Well Constructor Certification:

I accept responsibility for the construction, alteration, or abandonment work performed on this well during the construction dates reported above. Work performed during this time is in compliance with Oregon construction standards. This report is true to the best of my knowledge and belief.

 Signed [Signature] WWC Number 72
 Date 10/24/91



Creative Solutions . . . Superior Service

Joseph B. Gonthier
11981 S.E. Melbrook Way
Clackamas, OR 97015
503/698-8603

October 5, 1992

Dale Van Valkenburg, Assistant Planner
Deschutes County Planning Division
Community Development Department
1130 NW Harriman
Bend, OR 97701

RE: Audit of Newton Hydrogeologic Study for Eagle Crest

Dear Dale:

Enclosed are three copies of the final report and a better copy of the resume you already have in your file. Please look the report over carefully when you receive it and let me know of any obvious problems. I presume that for the October 8th meeting you will attach a copy of the subect report to the (DNA) study for those persons requiring them. In the review report I have made a recommendation for some additional work for (DNA), however, it should not represent a significant problem for them.

Please call if we need to discuss any of the findings.

Sincerely

Joseph B. Gonthier
Joseph B. Gonthier, Hydrologist

HYDROLOGIST

JOSEPH B. GONTHIER
11981 S.E. Melbrook Way
Clackamas, OR 97015

503/698-8603

EXPERIENCE

GENERAL : Employed 27 years as a Hydrologist/Geologist with the U. S. Geological Survey, Water Resources Division. Performed studies of a variety of complex hydrogeologic systems. Responsibilities included, project planning and management, data collection and analysis, and report preparation and review. The last 17 years of this employment was in Oregon where invaluable experience and knowledge was gained about ground-water in all geographic areas of the State.

SPECIFIC: Detailed knowledge of the Bend-Redmond area of Deschutes County was obtained primarily in 1978 and 1979 as project chief of a cooperative ground-water study of that area between the U.S. Geological Survey and the Oregon Water Resources Department. Before the study was completed the study team was diverted at the request of the Oregon Water Resources Department to another area in southern Oregon that was deemed to be of greater priority. The general objectives of the Bend-Redmond study were to; describe the hydrogeologic system, determine the hydraulic properties of the aquifers and the availability and quality of ground-waters. The recession of the early 1980's ultimately led to the cancellation of the studies and they have never been revived due to changes in leadership and priorities in each of the agencies involved

PROFESSIONAL

REGISTRATION: Registered Professional Geologist; State of Oregon
Registration Number G643

EDUCATION: University of Connecticut; B. A. Geology, 1959
University of Massachusetts; M. A. Geology, 1964

REFERENCES: On request.

TECHNICAL REVIEW OF EAGLE CREST, PHASE II
HYDROGEOLOGIC STUDY

David J. Newton Associates, Inc.

Prepared for

Deschutes County
Community Planning Department

By

Joseph B. Gonthier, Hydrologist
Registered Professional Geologist
State of Oregon No G643

October 1992

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TECHNICAL REVIEW OF EAGLE CREST PHASE II

HYDROGEOLOGIC STUDY

INTRODUCTION

This report is a review of the technical portions of a study prepared for Eagle Crest Partners Limited (Redmond, Oregon) by David J. Newton Associates, Inc. (DNA) titled, Hydrogeologic Study, Eagle Crest, Phase II. Eagle Crest, Phase II is a planned destination resort development located about 4 miles west of Redmond, Oregon. The DNA report presents the results of a study of the groundwater resources at and near the resort and was prepared to comply with Deschutes County ordinances. The objectives of the study were to; (1) identify the aquifer source, (2) delineate the area to be impacted by pumping the proposed source and include an analysis supporting the delineation, (3) determine the adequacy of the water supply source, and (4) inventory a statistically valid number of wells located within the impact area delineated in (2) above. These objectives are taken from the Purpose and Scope section of the (DNA) report (p.2) and have been reordered and paraphrased here.

PURPOSE AND SCOPE

The objective of this report is to review and evaluate the technical aspects of the (DNA) study. The scope is limited to an audit of the geology and hydrogeological methodology and evaluation of the study findings and conclusions and verification of the references cited therein.

Readers of both reports should recognize that the theory of groundwater flow is based on well established scientific principles which because of the buried and hidden nature of this resource are often difficult to apply in the field. As a consequence there may be more than one reasonable conclusion attained from the same set of data.

DISCUSSION OF TECHNICAL REVIEW

SUMMARY OF CONCLUSIONS

In the opinion of the reviewer, (DNA) has adequately complied with each of the stated objectives of the hydrogeologic study with one exception. The study defined the source aquifer and makes reasonable inferences from the data about its' extent and possible boundary conditions. The study delineates the area of impact as a result of short-term pumping but fails to include an evaluation of the size of the impact area as a consequence of long-term pumping. To resolve this minor but important shortcoming the reviewer recommends that (DNA) prepare a simple paper or desk-top model evaluation of the supply well site. That evaluation should yield an estimate of the size of the area of impact that could be affected by long-term pumping.

Short of preparing a digital computer model study of the Eagle Crest, Phase II and surrounding region, (DNA) has included sufficient data and reference sources to show that the aquifer at the site is highly transmissive and is capable of yielding the estimated future demands and of transmitting that water to the supply well site. The referenced sources indicate that there are large quantities of groundwater circulating through the Bend-Redmond regions' hydrogeologic system. The (DNA) indirectly infers that the aquifer system at the site will deliver that water to the supply well. In the reviewers' opinion these are reasonable inferences about the hydraulic continuity of the hydrogeologic system. The (DNA) study has included all of the available well data for the area of impact defined by the short-term pumping but may need to include more well data if the area of impact is shown to be significantly enlarged by the evaluation of long-term pumping. The discussions below amplify upon these conclusions.

Objective (1): Identify aquifer source. Several implied tasks are included in this objective, they are to; determine the aquifers' depth, thickness, areal extent and boundary conditions. Boundary conditions here means whether the water in the aquifer is confined or under water-table conditions. To accomplish these tasks (DNA) drilled three exploratory wells at Eagle Crest, Phase II for geologic and hydrogeologic data, assembled drillers logs for Eagle Crest, Phase I and adjacent areas and obtained the most recent large-scale published geologic map available for the area (see figure 2.). It related the drilling information and well data to the geologic map in

the form of a schematic west-to-east hydrogeologic cross-section of the area, see figure 3 (DNA).

In the reviewers opinion the cross-section is a reasonable representation of the hydrogeologic system of the area based on the assembled data. The west-to-east orientation of the section is the most restrictive of the many possible choices because it intersects Cline Buttes which is thought to consist of low-permeability rocks and could be a barrier to groundwater flow. No data are available to verify this possibility, however. The cross-section also indicates that the Deschutes River is perched above the groundwater flow system along the line of the section.

Rock cuttings from well ECII-1 examined by (DNA) staff and discussed in (DNA) indicated the lower 500 hundred feet (the source aquifer) of the well consisted of ash-flow tuff to welded tuff with interbedded cinders and some pumice. The drillers terminology for these materials in the drillers report was andacite(sp). The (DNA) report includes these rocks in the Deschutes Formation (see figure 3). The total thickness of these rocks were not penetrated by any of the exploratory wells.

Groundwater level altitude data are shown on the cross-section at each well or test boring site and that data represents water levels reported by drillers at the time each well was drilled. Plotted water levels show considerable variation in altitude only a very small portion of which might be explained by the different measurement times. The data do suggest as the (DNA) study indicates a decrease in altitude of water levels with an increase in the depth of penetration of the flow system by a well. None of the three exploratory wells appear to have penetrated through perched groundwater bodies during the drilling.

The cross-section may also give a reader the impression that there is a gentle overall east-west slope in water levels and might indicate the presence of a flow-gradient in that direction. This impression may be accidental in that four wells on the east side of figure 3 are shallow by comparison to the two wells on the west.

Water level altitude data on figure 3 support study statement that hydrogeologic system in the Cline Buttes area is similar to the system found in the Redmond area to the east and described in a report by Maddox (1978) and referenced in the (DNA) report. These data may also weakly support a statement in the (DNA) study that suggests that Cline Buttes, a volcanic cone, could represent a local zone of relatively high vertical permeability.

The reviewer who has examined groundwater level data from over four hundred field located wells in the region believes that the (DNA) study and the Maddox study (1978) have correctly assessed the system which is indeed characterized by decreasing water level altitude with increased well depth on a region-wide basis. The practical consequence of this is that it is extremely difficult for a researcher to obtain sufficient field data to prepare accurate water level maps for local areas in particular.

The phenomena of decreasing water level altitude with increased well depth has more than two explanations. The explanation proposed by the (DNA) and the Maddox (1978) studies is that there probably is a highly transmissive, as yet undiscovered, aquifer underlying the region. This deep aquifer acts as a drain to the overlying flow system and results in the decreasing water level altitude with increased depth of penetration. The reviewer prefers an alternative but equally complex explanation that suggests that most of the Bend-Redmond region south of the Crooked River Gorge and the Deschutes River canyon near Lower Bridge is a groundwater recharge area. Both of the above explanations imply that flow in the system has two components, a horizontal and a vertical one and suggest that as a drop of water in the system flows across the region from south to north it flows horizontally but also gradually moves deeper in the system as it flows toward the discharge area. Generally, recharge areas are associated with topographically high regions such as the Paulina Mountains or the Cascades Mountains and discharge areas are associated with topographically low areas. A trip to a viewpoint at the Crooked River Gorge allows one to easily view both types of areas at a single location.

The preceding paragraphs serve to introduce a key element toward understanding how the hydrogeologic system in the region operates and to point out the complexities of the system and how there might be equally valid explanations for a given phenomena.

A summary of this objective indicates the (DNA) study thus far has; examined the pertinent background data, developed a preliminary conceptual model of the system, drilled three exploratory wells to obtain data and prepared a cross-section from the data to help fine-tune the preliminary model. The study has verified with certainty that source aquifer at the supply well site is between 260 and 280 feet thick and that it extends at least 35 feet laterally between wells PH-1 and ECII-1. Figure 3, the schematic cross-section of the system infers that the aquifer first defined in well PH-1 and extended to well ECII-1 probably extends a minimum of about 1,000 feet to the west where a possible barrier to flow, Cline Buttes rocks, could be present--and at least a few thousand feet to the east. The text also indicates that the aquifer probably is confined, the data in the report do not indicate that a thick confining unit is present or has been identified. The cross-section also indicates that the Deschutes River on the line of the section is perched above the groundwater flow

system at that location. These are believed to be reasonable inferences by the reviewer. No hydrogeologic evidence has been introduced to resolve whether Cline Buttes rocks are indeed low-permeability units.

Objective(2): Delineate the area to be impacted by pumping the proposed source. The (DNA) study used a direct, easily understood method to accomplish this objective. They pumped ECII-1, the supply well, and observed water-level drawdown in it and in PH-1, an observation well in same aquifer, located just 35 feet from the supply well. The supply well was pumped in steps at increasing rates for a total of eight hours on March 17, 1992. Water-level drawdown in the observation well did not exceed 0.1 of a foot at the end of the test. These facts confirm conclusions made in (DNA) study that the aquifer source is highly transmissive and that the area of impact is small. The reviewers' evaluation of the test, estimates that the actual total drawdown in the observation well could be too small by perhaps as much as one or two tenths of a foot, due to a possible partial penetration problem in the observation well. This difference is very small and probably is negligible beyond a distance of a few hundred feet and does not significantly affect the (DNA) conclusions. Because the test was of such a short duration it did not, however, adequately assess the effects of long-term pumping. To resolve this problem the reviewer recommends that (DNA) prepare a paper or desk top model evaluation to allow a conservative estimate of the size of the cone of depression (the area of impact) by simulating a more prolonged period of pumping, the length of the irrigation season for example.

The pump test is discussed in the (DNA) study chiefly on pages 10 and 11 and data from the pumping well are illustrated in figure 4. According to the text and the well drillers reports, ECII-1, the pumping well, and PH-1, the observation well, are each 800 feet deep. The well bore in ECII-1 is 17 inches in diameter from a depth of 47 feet to 800 feet and it contains a 14 inch diameter liner casing to a depth of 510 feet and 14 inch diameter factory perforated screen between 510 feet and 790 feet. It is finished with a 10 foot long steel tailpipe from 790 feet to the bottom. The water-bearing zone in the well, according to the drillers' report, extends between 540 and 800 feet. Upon completion of the well the static water level was reported to be 519.3 feet in depth. Well PH-1 has an 8 inch diameter well bore from 100 feet to 800 feet depth and contains a 6 inch diameter steel liner casing to a depth of 800 feet. The liner is perforated in two intervals, between 600 and 620 feet and between 700 and 800 feet depths. The static water level in the well was 519.6 feet in depth. A short test of the observation well was performed and the well yielded an average of 215 gpm with little drawdown (See comment in appendix).

Aquifer test results are generally judged to be most reliable when the pumping well and the observation well are both open in aquifer through the same interval. This allows water flow paths in

the aquifer between the wells to follow horizontal flow paths and not to be curved. Water is free to enter ECII-1 through the entire perforated interval between 510 and 790 foot depths whereas in well PH-1 it can enter the well through perforations between 600 and 620 feet and between 700 to 800 foot depths. This difference may result in a condition referred to as partial penetration in well hydraulics. In the reviewers opinion the effect is small but could represent as much as one or two tenths of a foot greater drawdown than actually observed in the well, that is a maximum of 0.3 feet total drawdown instead of the 0.1 feet that was actually measured in the well at the end of the test. The above estimate is based on the reviewers judgement of the maximum possible partial penetration correction effect in the observation well.

As indicated in the (DNA) report and confirmed in this review the efficiency of the pumping well improved as the pumping rate was increased. This fact indicates that the supply well was not yet fully developed and that the supply well in future tests will yield more water for each foot of drawdown. Both of the conditions described above represent minor flaws in the aquifer test data but do not materially detract from the use of that data.

Objective (3): Determine the adequacy of the water supply source. In the (DNA) study this topic is addressed under the heading groundwater quantity which is found on pages 6-8. The discussion references each of the studies pertinent to the area and which contain the available data on the subject. The (DNA) report uses a descriptive analysis of regional groundwater flow quantities but includes no illustrations to accompany the text and as a result the discussion is difficult to relate directly to the study area.

This is not a problem unique to the (DNA) study but is the problem of most hydrogeologic studies and is the reason for the development and use of digital computer models of hydrologic systems.

Referenced reports and the (DNA) study each indicate there are huge quantities of groundwater discharging to the Crooked River and to the Deschutes River generally north of the Deschutes County line. The recharge comes from a variety of sources distributed widely over the Bend-Redmond region. In the reviewers opinion, the most important information about groundwater recharge relative to the Eagle Crest, Phase II development is found in the report by Stearns (1930, p. 206) where that author indicates that the reach of the Deschutes River between Laidlaw (Tumalo) and Cline Falls loses between 40 and 340 cfs (cubic feet per second) to the groundwater system. This represents a huge loss of flow. The estimates were based on incomplete stream gaging records for the period 1910-1912. The losses could represent a major nearby source of aquifer recharge to the hydrologic system of the area. The supply well ECII-1 is about a mile from the river at

Cline Falls, the closest point. The well undoubtedly could benefit from that source of groundwater recharge as do numerous users already using wells adjacent to this reach of the Deschutes River. Because the river is generally perched above the groundwater system in the Cline Buttes area, pumping from the groundwater system there should not directly affect the flow of the river.

Objective (4): Inventory a statistically valid number of wells located within the impact area. Because the impact area as defined in (DNA) lies entirely within the boundaries of the Eagle Crest, Phase II development, the (DNA) has complied with this objective by including all of the available well data for the resort. However, the reviewer in the discussion of objective (2) above has recommended that some additional work be done to assess the effect of long-term pumping. The size of the area of impact could be enlarged as a consequence of that work and include sites outside of the resort boundaries. Some minor additional work outside the resort boundaries might be required therefore to fully comply with this objective.

The list of references includes only the references inadvertently omitted from the (DNA) list and one new reference introduced in the appendix.

REFERENCES

- Frink, J. W., 1968, Ground water resources of the Central Deschutes Basin. U. S. Bureau of Reclamation, Region 1, 22p.
- Sceva, J. E., 1960, A brief description of the ground water resources of the Deschutes River Basin, Oregon. Oregon State Engineer, 55 p.
- Sceva, J. W., 1968, Liquid waste disposal in the lava terrane of central Oregon, Federal Water Pollution Control Administration, Northwest Region, 2 vols.
- Walker, G. M., and MacLeod N. S., 1991, Geologic map of Oregon, U. S. Geological Survey, 2 sheets.
-

APPENDIX

This appendix is a series of comments on topics not generally included in the above text. As in the text the comments assume that the reader is familiar with the vocabulary of geology and hydrogeology. To locate the place in the (DNA) study to which the comment refers, assume that any text on a given page is a true paragraph, excluding the section headings.

<u>Page/Paragraph</u>	<u>Comment</u>
1/5	- Typographical error, the words west and east appear to be transposed.
1/6	Was the well abandoned because it was low-yielding or because it collapsed? See comment(9/5).
1/7	Two reports by Sceva, (1960,1968) are not included in list of references.
2/1	The word <u>will</u> is too strong a word here. See related comment (7/1) below.
2/2	Conclusion stated in sentence three may not be justified by available data. It may be that no other wells nearby have tapped this source thus far. See below and see also text discussion.
2/3	Transmissivity (T) is defined as hydraulic conductivity (k) times aquifer thickness (b), (T = kb). Therefore apparent transmissivity could increase as a consequence of the increased thickness of aquifer penetrated by these deep wells.
3/6	No <u>dikes</u> are mapped within the study area defined by figure 2 and the word should be dropped from the sentence. Geologically it implies, incorrectly, that dikes are the most important units in the Deschutes Formation.
3/7	Informational comment. The new <u>Geologic Map of Oregon</u> (1991) by Walker and MacLeod, only recently released and available to the public, no longer equates Cline Buttes and Forked Horn Buttes to the Clarno and John Day formations of north-central Oregon. The new designation equates them to the Deschutes Formation and younger units. This new

designation in effect reduces their geologic ages by almost 30 million years. This could also affect some of the interpretation made in the (DNA) study in a profound way.

5/2

Most well yield data available for the Clarno and John Day formations are for areas tens of miles north of Cline Buttes. Without data from the Cline Buttes area very little can be verified about the permeability of Cline Buttes rocks. The informational comment (3/7) above also opens up the possibility that the aquifer defined in the (DNA) study is actually volcanic debris from Cline Buttes, erupted early during Deschutes Formation time.

5/6

A careful review of the Maddox (1978) report (p. 7) will show that Maddox said that "... Zone "C" is confined, or artesian in a technical sense because the level of water in Zone "C" rises above the top of the flow zone." This statement by Maddox suggests, among other possibilities, that Maddox could not identify with certainty a thick impermeable confining unit in that area either.

7/1

Sentence quoted from Bureau of Reclamation (1991) report is exactly opposite of statement attributed to them bottom of page 1, and top of page 2 (DNA) study.

8/4

Typographical error. Thought should read through.

9/2

Line 5, factor (2). As noted in the review text Deschutes River may be perched above groundwater flow system over a considerable reach of the river above Cline Falls.

9/2

Line 6, factor (4). See informational comment above and also comment (5/2) above.

9/5

Sentence 3. According to the drillers report, the air test of the water-bearing zone between 380 and 390 feet, in well PH-2 yielded 25 gpm. Note also that the drillers report for PH-1 indicates a yield of 30 gpm in an air test of that well but during a follow up pump test it yielded an average of 215 gpm with little or no drawdown. It could be that water is lost to uncased unsaturated zone in a well during an air test and that the air tests tend to be unreliable indicators of the future yield of a well. Perhaps PH-2 collapsed before a reliable test could be run.

10/2

Last sentence. First part of sentence says no drawdown last part of sentence says water levels stabilized within 2 minutes. It's one or the other but not both.

11/3

Anomolous is perhaps too strong a word and probably should be changed at least until more "deep wells" in the area are drilled and tested. See comment (2/3) above concerning transmissivities.

11/3

Line 2, item (1). Well log data in (DNA) do not indicate presence of thick impermeable layer. See text discussion concerning water level altitude decrease with increasing depth of penetration located under objective (1).

11/3

Line 9, item (2). Could be possible. In the reviewers' opinion the deep aquifer could be volcanic debris related to eruption of Cline Buttes. See (5/2).

Figure 3.

There is an unlabeled geologic unit at the land surface near EC-2 and EC-3 and there were no drillers reports for #24bd and #24dd-15S/12E in my packet of review material, a possible oversight.



Creative Solutions . . . Superior Service

HYDROGEOLOGIC STUDY
EAGLE CREST PHASE II
SUPPLEMENTAL FINDINGS

PREPARED FOR:
EAGLE CREST PARTNERS, LTD.
P.O. BOX 1215
REDMOND, OREGON 97756



DAVID J. NEWTON ASSOCIATES, INC.

September 30, 1993



DAVID J. NEWTON ASSOCIATES

INCORPORATED

Civil and Geological Engineering Services

September 30, 1993

Mr. Bill Lyche
EAGLE CREST PARTNERS, LTD.
P.O. Box 1215
Redmond, Oregon 97756

Re: Eagle Crest II Supplemental Hydrogeologic Findings

Dear Mr. Lyche,

David J. Newton Associates (DNA) has completed a supplementary study of hydrogeology at the Eagle Crest II destination resort west of the City of Redmond, Deschutes County Oregon. This supplemental study includes a micro computer program analysis of long-term impacts to groundwater from pumping of irrigation well HR-1 and an analysis of potential impacts on surface water stream flows from pumping groundwater wells at Eagle Crest II.

Our study shows that it is unlikely that water level impacts would be discernable beyond a few tens of feet from HR-1. Also, groundwater withdrawals would have no impact to the surface water stream of the Deschutes River within ten miles downstream of the site.

It has been our pleasure to conduct this supplemental investigation for Eagle Crest II. If we can be of additional service or if you have any questions, please do not hesitate to call.

Sincerely,

DAVID J. NEWTON ASSOCIATES, INC.

David J. Newton, PE, CEG
Principal

- (1) addressee
- (2) Mr. Tom Walker, W & H Pacific
- (1) Mr. Richard Whitman, Ball, Janik & Novack
- (1) Mr. Steve Brown, Oregon Water Resources Department

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HYDROGEOLOGIC STUDY

EAGLE CREST PHASE II SUPPLEMENTAL FINDINGS

I. PURPOSE AND SCOPE

This report presents supplemental findings of a hydrogeologic study for the proposed expansion of the Eagle Crest destination resort, in Deschutes County, Oregon (Figure 1, "Geologic Map of the Redmond Area, Oregon). The proposed expansion is referred to as Eagle Crest II.

David J. Newton & Associates, Inc. prepared a study, entitled Hydrogeologic Study - Eagle Crest Phase II, in April 1992. Since completion of the study, Eagle Crest has proceeded with land use action and water right applications to support their proposed destination resort expansion. Numerous reviews have occurred and additional analysis completed for several issues.

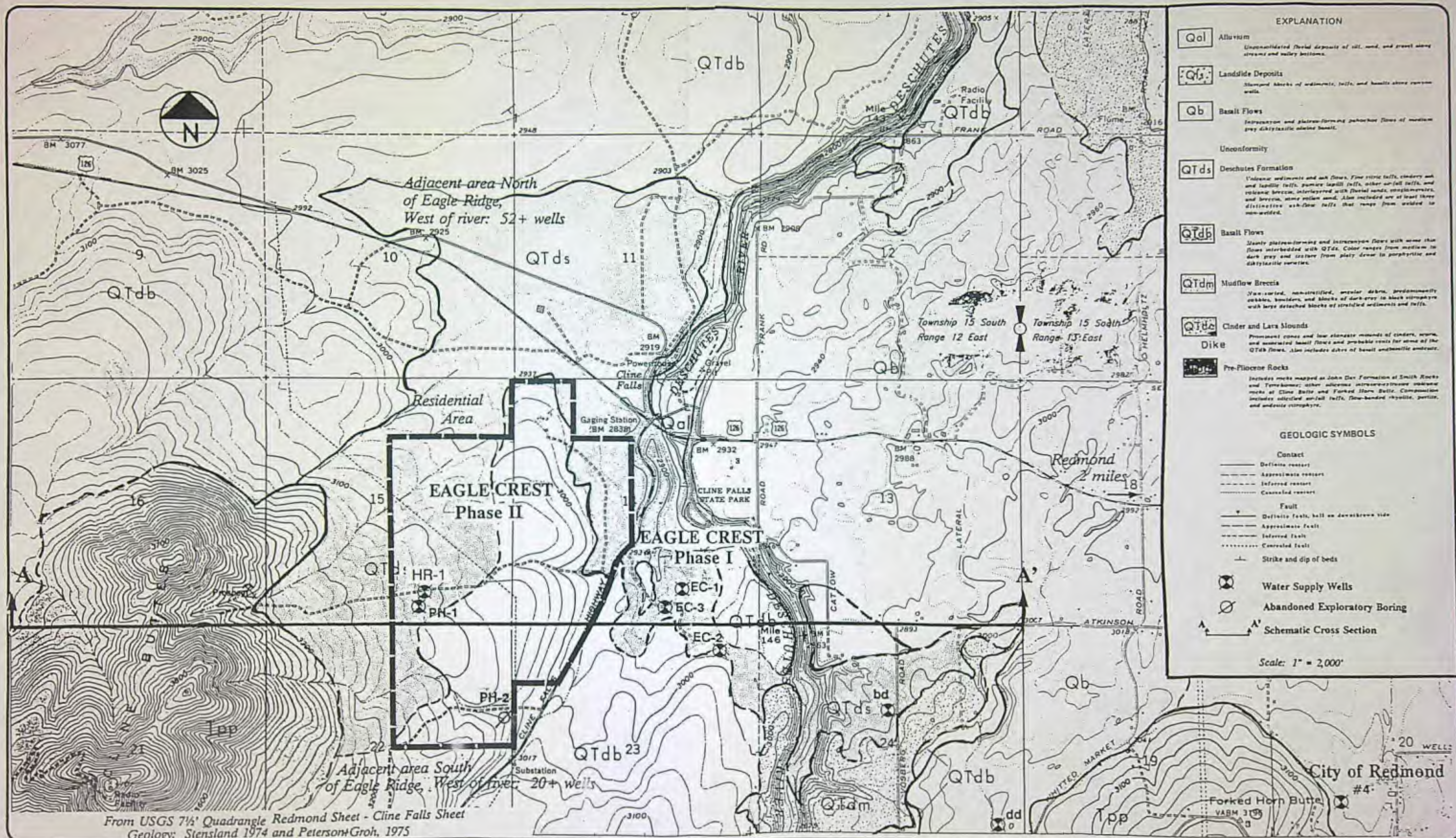
The April 1992 David J. Newton & Associates, Inc. study was utilized in recent land use action proceedings for Eagle Crest II. As a part of that land use action, Deschutes County retained Mr. Joseph B. Gonthier, hydrologist, to conduct an independent technical review of the Newton study. Mr. Gonthier's comments were generally favorable and expressed support and agreement. Mr. Gonthier did however, recommend a "simple paper or desk-top model evaluation" of the supply well site. He also indicated that based on this analysis, the size of the area affected by long-term pumping should be estimated. This supplemental report includes the analysis recommended by Mr. Gonthier.

Mr. Gonthier's review is entitled "Technical Review of Eagle Crest, Phase II Hydrogeologic Study-David J. Newton & Associates, Inc.", and was dated October 1992. Mr. Gonthier's work was completed for Mr. Dale VanValkenburg, Assistant Planner for the Deschutes County Planning Division in Bend.

This supplemental report is intended to be a part of the prior David J. Newton & Associates Inc. study, and the analysis, findings, and conclusions of the original report are not repeated.

In sum, this supplemental study includes:

- A micro computer program analysis of long-term impacts to groundwater from pumping of irrigation well HR-1 at Eagle Crest II, and
- An analysis of potential impacts on surface water stream flows, from pumping groundwater wells at Eagle Crest II.



DATE
3/27/92

PROJECT NO.
215 192



DAVID J. NEWTON ASSOCIATES
INCORPORATED
CIVIL & GEOLOGICAL ENGINEERING

GEOLOGIC MAP OF THE REDMOND AREA, OREGON

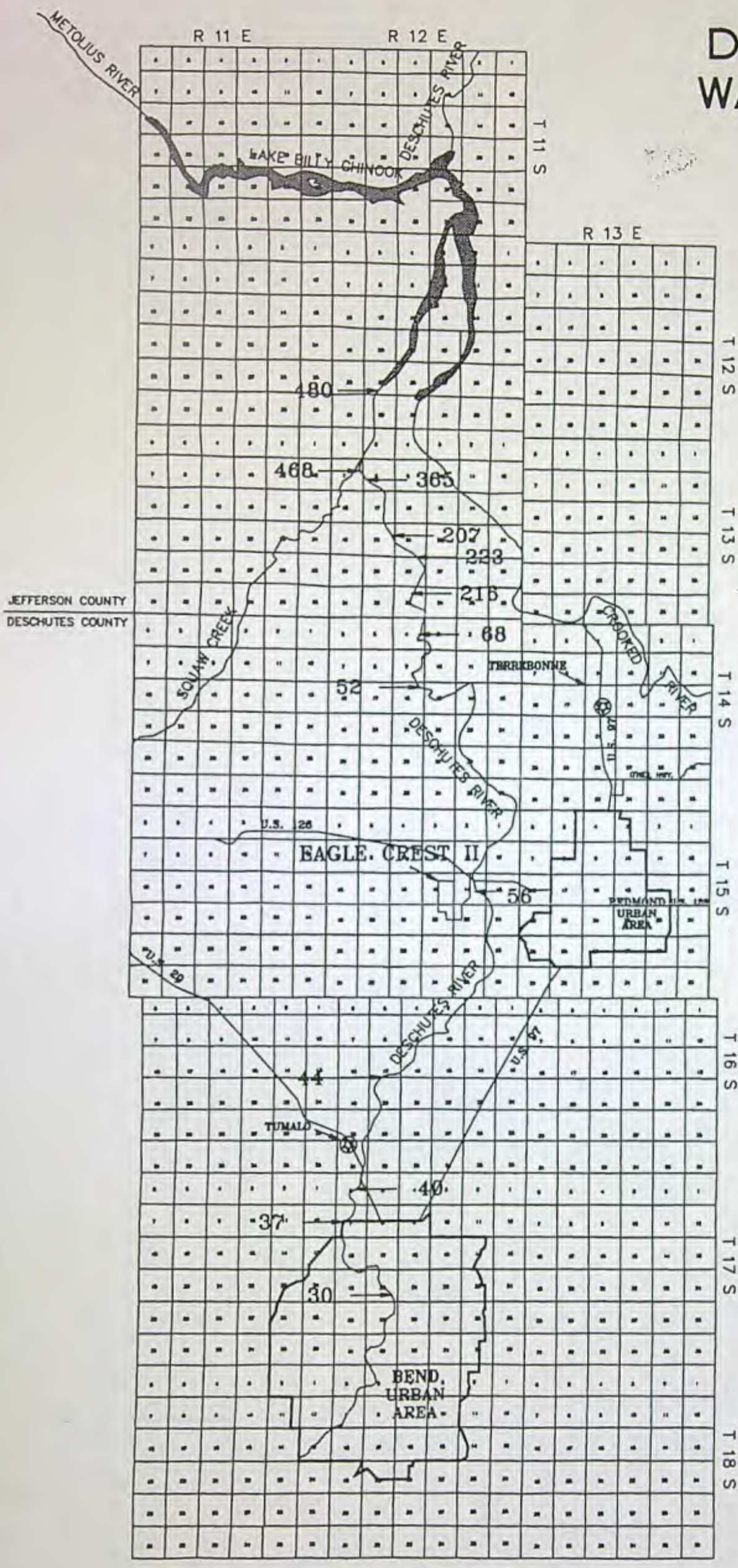
Eagle Crest Phase II - Deschutes County, Oregon

FIGURE

1

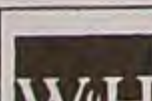
DESCHUTES RIVER WATER FLOW RATE EXHIBIT

8-20-1993



LEGEND:
480 — DISCHARGE IN CFS FOR
SELECTED POINTS
MAY 11-15 1992

 **DAVID J. NEWTON ASSOCIATES
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In addition, as requested by the Oregon Water Resources Department, Eagle Crest refiled its groundwater appropriation application in May of 1992. The application has been reviewed by the groundwater and permit sections of the Water Resources Department. A report of technical review was issued on April 19, 1993 and subsequently distributed for review and comment. Several objections were received, including references to the potential for surface water interference from long-term groundwater pumping even though the Oregon Water Resources Department (OWRD), groundwater section concluded there is no significant potential for surface water interference. Additional analysis of this concern was authorized by Eagle Crest and is included in this supplemental report.

II. CONCEPTUAL MODELING OF LONG TERM GROUNDWATER PUMPING

The objective of preparing and evaluating a conceptual model for this project is to generate a conservative estimate of the magnitude and extent of the cone of depression, or the area of pumping impact, by simulating a prolonged period of pumping. These type models are useful for planning purposes and provide an order of magnitude simulation of pumping impacts.

Wells have been constructed and tested at Eagle Crest II as described in the original report. A supply well was pumped in steps, at increasing rates, for a total of eight hours. Pumping water levels were monitored carefully in the pumped well, and the observation well 35 feet away. Water level draw down in the observation well did not exceed one tenth of one foot at the end of the eight hour test. Mr. Gonthier voiced agreement that adequate water supplies are available from the aquifer system, but did recommend further analysis of long-term pumping.

The conceptual model used here incorporates assumptions based on the earlier pumping test results and a range of typical published values for aquifer characteristics. The results have been compared to the actual outcome of the testing in order to determine the accuracy of the analysis. Some difficulty was encountered in comparing the conceptual model to the actual data. The modeling indicated that there should have been more drawdown in the adjacent observation well than was actually observed. This information indicates that the modeling efforts are conservative in their assumptions, ie. they indicate a greater impact on the observation well than actually occurred.

The conceptual model used is one that was written for designing pumping tests and was prepared by Walton (1987). It solves equations which project water level declines at five radial distances from the pumping well and at logarithmically spaced time intervals up to a defined limit. Several runs of the algorithm were made in order to allow the input of varying aquifer characteristics. Initial runs were used to simulate the observed results of the 8-hour pumping test on the production well, HR-1, with the smaller diameter well, PH-1, used as an observation well approximately 35-feet away. Results of that effort were then used to define aquifer characteristics for projecting pumping impacts over a longer period

of use. Actual drawdown during the testing was 1.67 feet in HR-1 and 0.1 feet in PH-1 after 8-hours pumping at an average flow rate of 1050 gpm. The computer simulation results for the testing are shown below. Simulation efforts were unable to closely mimic drawdown at the pumping well. This is likely due to well design/construction head losses which result in a greater drawdown than would occur in a perfectly efficient production well. The modeling efforts were therefore configured to simulate drawdown in PH-1 which would be less susceptible to these effects.

Simulation of the actual well testing and the projected drawdown during continuous long term pumping assumed a range of hydraulic conductivity of from 20,000 gpd/ft² to 60,000 gpd/ft², pumping rate of 1050 gpm and artesian aquifer storativity of 1E-3. Table 1, "Results of 8-Hour Aquifer Test Simulation" shows results of the computer simulation of the HR-1 well testing. Table 2, "Results of 30-Day Pumping Simulation" describes the anticipated drawdowns resulting from pumping of well HR-1 continuously at 1050 gpm for a period of 30-days. The original printouts of the computer program runs are included in Appendix A.

TABLE 1-RESULTS OF 8-HOUR AQUIFER TEST SIMULATION

Hydraulic Conductivity (gpd/ft ²)	Drawdown (ft) at HR-1	Drawdown (ft) at PH-1	Drawdown (ft) at 10,000 ft. Radius
20,000	0.46	0.29	0.04
30,000	0.31	0.20	0.03
60,000	0.16	0.11	0.02

TABLE 2-RESULTS OF 30-DAY PUMPING SIMULATION

Hydraulic Conductivity (gpd/ft ²)	Drawdown (ft) at HR-1	Drawdown (ft) at PH-1	Drawdown (ft) at 10,000 ft. Radius
20,000	0.69	0.52	0.27
30,000	0.53	0.41	0.24
60,000	0.36	0.30	0.22

The drawdown predicted for HR-1 does not account for friction losses resulting from well

design/construction. Actual drawdown at HR-1, based on the eight-hour testing and allowances for friction losses is anticipated to be larger than predicted, on the order of two to three feet. The modeling also assumes a uniform, flat initial piezometric surface or "groundwater table". Actually, a gradient exists that slopes northward. This gradient will tend to impart an elongation of pumping impacts in a down gradient direction and a contraction or reduction in extent of impacts in an east-west direction.

According to reports by W & H Pacific, (see letter in Appendix B), well HR-1 has been pumping daily for the entire 1993 pumping season to date. Recent water level monitoring by W. H. Pacific using an air line shows a water level of 519 feet in the observation well PH-1. This value is similar to that recorded at the end of the eight-hour HR-1 pumping test in 1992, and shows that actual long-term drawdowns due to HR-1 pumping are less than predicted by the 30-day modeling simulation. After a full season of pumping HR-1, no measurable difference in the PH-1 water level could be detected.

In summary, the modeling efforts predict a drawdown of approximately 0.30 to 0.52 feet at PH-1 and 0.22 to 0.27 feet of drawdown at a distance of 10,000 feet from the pumped well HR-1, after a period of 30-days. Field measurements, however, demonstrate actual drawdown at PH-1 unchanged after a full season of irrigation pumping. As a result, given that PH-1 is 35-feet from HR-1, it is unlikely that any drawdown could be detected at a radial distance of 10,000 feet from the pumping well and there is no potential for significant interference with other wells in the area.

III. POTENTIAL FOR SURFACE WATER INTERFERENCE FROM GROUNDWATER PUMPING

The potential for surface water interference from the pumping of groundwater wells is typically considered over the nearest reach of a nearby surface water stream. In this case, existing and proposed wells will be no closer than 2,000 feet from the Deschutes River. The Deschutes River is the only surface water stream in close proximity to Eagle Crest.

The potential for surface water interference in the adjacent reach of the river was analyzed in great detail in the original Newton study. The original study concluded, and Mr. Gonthier agreed, that pumping from the groundwater system will not directly affect the flow of the river, because the Deschutes River is perched above the groundwater system. Test pumping of the existing well also demonstrated a very small cone of depression or influence and again demonstrates that interference with the adjacent reach will not occur.

The Division 9 Administrative Rules of the Oregon Water Resources Department address the potential for surface water interference and establish criteria for evaluation of this potential. The groundwater section of the Water Resources Department found no potential for interference in their technical review of the Eagle Crest application. We agree with these conclusions, particularly under the criteria established in the Division 9 rules.

Some concerns have been raised by objectors to the technical report over the long-term potential for interference at more distant reaches of the Deschutes River. To evaluate these concerns, some review of the Deschutes River basin surface water and groundwater system is pertinent.

Generally, the upper reaches of the Deschutes River basin allow very efficient infiltration of precipitation. Significant quantities of snow melt and rain enter surface water and groundwater systems along the eastern edge of the Cascade Mountains. Both surface water and groundwater flows from south to north, toward the Columbia River. As discussed above, some reaches of the Deschutes River are perched above the groundwater table, as they are in the vicinity of Eagle Crest. Further north however, near Lake Billy Chinook in Jefferson County, the regional groundwater table intercepts the surface water system and significant groundwater discharge to the Deschutes River occurs. This discharge is evident in numerous springs and significant increases in surface water flows, beginning roughly six miles upstream of the lake. In our initial report we documented that the Eagle Crest wells draw from this regional aquifer.

The attached Deschutes River Water Flow Rate Exhibit map, Figure 2, documents Deschutes River flow rates, as measured at selected points by the Deschutes County Watermaster's office in May of 1992. The exhibit map clearly demonstrates the significant inflow that occurs in the short reach of the Deschutes River, immediately upstream from Lake Billy Chinook.

It is interesting to note that 1992 was the end of an extended drought period in Central Oregon. Flows in the Deschutes River, during the Watermaster's stream gauging work, were very low. Table 3, "Deschutes River Flows Below Bend", obtained from the Oregon Water Resources Department, documents Deschutes River flows, below Bend, Oregon, for the 1991/1992 water year. The Water Resources Department table demonstrates the flows measured in May of 1992 were taken during a minimum stream flow period for the Deschutes basin.

With this background, the potential for surface water/groundwater interference can be explored. To assist in this evaluation, we compiled a summary of pending in-stream water right applications for this stretch of the Deschutes River. The Oregon Fish & Wildlife Department filed an in-stream water right application for the Deschutes River, between the north canal dam in Bend and the Round Butte Reservoir. The application requests a minimum in-stream flow of 250 cubic feet per second for all months of the year. The Oregon Department of Fish & Wildlife also filed an in-stream water right application for that reach of the river between Pelton regulation dam and the mouth of the river, with minimum flows varying from 3,500 cubic feet per second to 4,500 cubic feet per second. These in-stream water right applications are summarized on Table 4, "Pending Deschutes River In-Stream Water Rights Applications".

Based upon the interaction between the regional groundwater aquifer and the Deschutes

TABLE 3-DESCHUTES RIVER FLOWS BELOW BEND

Oregon water resources

14070500 DESCHUTES RIVER below BEND, OREGON

LAT 44 04 59 LONG 121 18 24 S DA 1899.0 DATUM 3503.96 CO DESC

DAILY DISCHARGE IN CUBIC FEET PER SECOND WATER YEAR Oct. 1991 TO Sep. 1992

Day	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.
1	234	407	484	401	398	430	164	35	32	26	23	27
2	36	400	458	399	430	289	37	34	31	28	23	26
3	35	397	418	403	427	173	38	34	31	27	23	24
4	39	376	400	402	409	185	39	33	32	27	21	24
5	35	362	406	409	406	191	39	33	32	27	22	25
6	33	367	425	405	398	294	38	34	32	27	24	25
7	33	365	491	404	398	425	38	32	31	27	23	24
8	34	363	492	389	400	421	37	32	31	28	23	24
9	34	390	387	385	400	419	38	32	30	26	23	24
10	44	395	350	390	399	424	66	33	33	28	23	24
11	38	265	353	395	398	415	36	31	33	28	23	24
12	40	190	349	391	398	413	35	31	33	26	23	24
13	41	215	441	373	398	412	40	32	31	27	23	24
14	46	222	500	395	398	408	34	31	32	27	23	23
15	45	322	457	395	403	409	31	31	31	27	24	23
16	40	414	310	393	405	411	42	31	32	26	24	33
17	42	437	192	403	406	411	24	40	30	25	25	25
18	102	300	197	406	407	413	36	35	29	25	24	25
19	605	197	210	401	405	411	25	34	29	25	24	25
20	563	210	327	240	404	412	43	34	29	25	26	25
21	388	210	418	180	416	411	46	33	28	26	26	25
22	350	297	418	186	424	409	32	34	27	26	27	26
23	334	468	411	153	450	406	31	33	27	26	28	26
24	331	418	409	229	299	399	31	32	27	26	29	28
25	333	402	409	351	240	403	31	33	26	26	27	26
26	356	399	387	358	194	398	30	31	26	26	28	26
27	351	418	378	265	171	401	33	31	27	27	30	26
28	352	468	375	135	269	396	36	30	25	46	28	27
29	359	489	398	154	395	405	37	31	26	24	29	27
30	384	500	422	154	—	405	35	31	27	24	30	27
31	404	—	413	203	—	401	—	31	—	23	29	—
TOTAL	6061	10663	12085	10147	10945	11800	1222	1012	890	832	778	762
MEAN	196	355	390	327	377	381	40.70	32.60	29.70	26.80	25.10	25.40
MAX	605	500	500	409	450	430	164	40	33	46	30	33
MIN.	33	190	192	135	171	173	24	30	25	23	21	23
AC-FT	12020	21150	23970	20130	21710	23410	2420	2010	1770	1650	1540	1510

CAL YEAR 1991 TOTAL* 28,809 MEAN 313 MAX 605 MIN. 33 AC-FT 57,140
WTR YEAR 1992 TOTAL 67,197 MEAN 184 MAX 605 MIN. 21 AC-FT 133,300

* Incomplete Record /*/*/* PROVISIONAL

DAVID J. NEWTON ASSOCIATES, INC.

RIVFLOWS.XLS

TABLE 4-PENDING DESCHUTES RIVER IN-STREAM WATER RIGHTS APPLICATIONS

APPLICANT	APP. #	MINIMUM FLOWS IN C.F.S.											
		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
ODF&W	70695	250	250	250	250	250	250	250	250	250	250	250	250
ODF&W	71194	4500	4500	45-4000	4000	4000	4000	40-3500	3500	35-3800	3800	3800	38-4500

NOTE: AFFECTED REACH APP. # 70695 N. CANAL DAM IN BEND TO ROUND BUTTE RESERVOIR
AFFECTED REACH APP. # 71194 PELTON REREGULATION DAM TO THE MOUTH

* NOTE: COMPILED FROM DESCHUTES
COUNTY WATER MASTER FILES
BY W&H PACIFIC AUGUST 1993

River, described above, the regional groundwater system intersects the river near Lake Billy Chinook. The groundwater withdrawals requested by Eagle Crest II will have no impact to the Deschutes River above this intersection or groundwater discharge area, which is approximately ten miles downstream from Eagle Crest. Furthermore, the instream flows requested in the application of the Oregon Department of Fish & Wildlife are met in this reach of the river, even during the minimum flow period measured in May of 1992. As a result, we are confident that the proposed appropriation will not cause measurable interference with surface water flows on the Deschutes River.

IV. CONCLUSIONS

Results of a computer simulation of irrigation well pumping effects show that it is unlikely that water level impacts would be discernable beyond a few tens of feet from HR-1. This conclusion is substantiated by actual water level measurements made recently in the adjacent monitoring well PH-1 where depth to water is no different than it was in the spring of 1992 after a full season of pumping.

The groundwater and surface water systems of the Deschutes River basin, intersect near Lake Billy Chinook. Therefore, any groundwater withdrawals could have no impact to the surface water stream above this intersection or groundwater discharge area. This groundwater discharge area is approximately 10 miles down stream from Eagle Crest.

The OWRD established a 30-day pumping cycle as the basis for measurement of potential interference, in the Division 9 Rules. Clearly, no impacts occur to surface water from the pumping of well HR-1. The original conclusions of the OWRD Groundwater Section are correct, and no potential for interference does exist.

REFERENCES

David J. Newton Associates, April 1992, Hydrogeologic Study Eagle Crest Phase II, prepared for Eagle Crest Partners Limited, Redmond, Oregon (DNA Proj. No. 215-192)

Gonthier, Joseph B., 1992, "Technical Review of Eagle Crest Phase II Hydrogeologic Study", prepared for Deschutes County Planning Division, October 5, 1992

Walton, William C., 1987, Groundwater Pumping Tests, Lewis Publishers, Inc., 201 pgs., (and IBM compatible microcomputer programs contained on floppy disc)

APPENDIX A
COMPUTER PROGRAM PRINTOUTS

DATA BASE:

AQUIFER HORIZ. HYDR. COND. (GPD/SQ FT)= 20000.00
 ARTESIAN AQUIFER STORATIVITY (DIM)= 1.0000D-03
 WELL TABLE STORATIVITY (DIM)= 0.2000
 PERMEABLE WELL EFFECTIVE RADIUS (FT)= 1.000
 TOP OF AQUIFER DEPTH (FT)= 540.00
 BASE OF AQUIFER DEPTH (FT)= 800.00
INITIAL WATER LEVEL DEPTH (FT)= 519.00
 INFINITE AQUIFER SYSTEM

COMPUTATION RESULTS:

PRODUCTION WELL DISCHARGE RATE (GPM)= 1050.00

TIME-DRAWDOWN OR WATER LEVEL VALUES (FT)

TIME (MIN)	SELECTED DISTANCES (FT)					
	1.00	158.49	398.11	1000.00	2511.89	6309.57
0.13	519.27	519.04	519.01	519.00	519.00	519.00
0.21	519.28	519.05	519.01	519.00	519.00	519.00
0.33	519.29	519.06	519.02	519.00	519.00	519.00
0.52	519.30	519.07	519.03	519.00	519.00	519.00
0.82	519.31	519.08	519.04	519.01	519.00	519.00
1.30	519.33	519.09	519.05	519.02	519.00	519.00
2.06	519.34	519.10	519.06	519.02	519.00	519.00
3.27	519.35	519.11	519.07	519.03	519.00	519.00
5.18	519.36	519.12	519.08	519.04	519.01	519.00
8.21	519.37	519.13	519.09	519.05	519.02	519.00
13.01	519.38	519.14	519.10	519.06	519.02	519.00
20.62	519.39	519.15	519.11	519.07	519.03	519.00
32.67	519.40	519.17	519.12	519.08	519.04	519.01
51.78	519.41	519.18	519.13	519.09	519.05	519.02
82.07	519.42	519.19	519.14	519.10	519.06	519.02
130.08	519.43	519.20	519.15	519.11	519.07	519.03
206.16	519.44	519.21	519.17	519.12	519.08	519.04
326.74	519.45	519.22	519.18	519.13	519.09	519.05
480.00	519.46	519.23	519.19	519.14	519.10	519.06

TIME AFTER PUMPING STARTED (MIN)= 480.00 (8 hrs.)

DISTANCE-DRAWDOWN OR WATER LEVEL VALUES AT END OF PUMPING PERIOD

NO	RADIUS (FT)	DRAWDOWN OR WATER LEVEL (FT)
2	1.00	519.46
3	1.58	519.44
4	2.51	519.42
5	3.98	519.40
6	6.31	519.38
7	10.00	519.36
8	15.85	519.33
9	25.12	519.31
10	39.81	519.29
11	63.10	519.27
12	100.00	519.25
13	158.49	519.23

14	251.19	519.21
15	398.11	519.19
1	630.96	519.16
1	1000.00	519.14
1	1584.89	519.12
	2511.89	519.10
2	3981.07	519.08
21	6309.57	519.06
22	10000.00	519.04
2	15848.93	519.02
2	25118.87	519.01
25	39810.72	519.00

DATA BASE:

AQUIFER HORIZ. HYDR. COND. (GPD/SQ FT)= 30000.00
 ANISOTROPIC AQUIFER STORATIVITY (DIM)= 1.0000D-03
 WELL STORAGE STORATIVITY (DIM)= 0.2000
 PRODUCTION WELL EFFECTIVE RADIUS (FT)= 1.000
 TOP OF AQUIFER DEPTH (FT)= 540.00
 BASE OF AQUIFER DEPTH (FT)= 800.00
INITIAL WATER LEVEL DEPTH (FT)= 519.00
 INFINITE AQUIFER SYSTEM

COMPUTATION RESULTS:

PRODUCTION WELL DISCHARGE RATE (GPM)= 1050.00

TIME-DRAWDOWN OR WATER LEVEL VALUES (FT)

SELECTED DISTANCES (FT)

TIME (MIN)	1.00	158.49	398.11	1000.00	2511.89	6309.57
0.14	519.19	519.03	519.01	519.00	519.00	519.00
0.22	519.19	519.04	519.01	519.00	519.00	519.00
0.35	519.20	519.05	519.02	519.00	519.00	519.00
0.55	519.21	519.05	519.03	519.01	519.00	519.00
0.87	519.22	519.06	519.03	519.01	519.00	519.00
1.37	519.22	519.07	519.04	519.02	519.00	519.00
2.18	519.23	519.07	519.05	519.02	519.00	519.00
3.45	519.24	519.08	519.05	519.03	519.01	519.00
5.47	519.25	519.09	519.06	519.03	519.01	519.00
8.67	519.25	519.10	519.07	519.04	519.02	519.00
13.74	519.26	519.10	519.07	519.05	519.02	519.00
21.78	519.27	519.11	519.08	519.05	519.03	519.01
34.52	519.27	519.12	519.09	519.06	519.03	519.01
54.72	519.28	519.12	519.10	519.07	519.04	519.02
86.72	519.29	519.13	519.10	519.07	519.05	519.02
137.44	519.30	519.14	519.11	519.08	519.05	519.03
217.83	519.30	519.15	519.12	519.09	519.06	519.03
345.23	519.31	519.15	519.12	519.10	519.07	519.04
480.00	519.31	519.16	519.13	519.10	519.07	519.05

TIME AFTER PUMPING STARTED (MIN)= 480.00 (8 hrs.)

DISTANCE-DRAWDOWN OR WATER LEVEL VALUES AT END OF PUMPING PERIOD

NO	RADIUS (FT)	DRAWDOWN OR WATER LEVEL (FT)
2	1.00	519.31
3	1.58	519.30
4	2.51	519.29
5	3.98	519.27
6	6.31	519.26
7	10.00	519.24
8	15.85	519.23
9	25.12	519.22
10	39.81	519.20
11	63.10	519.19
12	100.00	519.17
13	158.49	519.16

14	251.19	519.14
15	398.11	519.13
1	630.96	519.12
1	1000.00	519.10
2	1584.89	519.09
2	2511.89	519.07
2	3981.07	519.06
21	6309.57	519.05
22	10000.00	519.03
2	15848.93	519.02
24	25118.87	519.01
25	39810.72	519.00

DATA BASE:

AQUIFER HORIZ. HYDR. COND. (GPD/SQ FT)= 60000.00
 ANISOTROPIC AQUIFER STORATIVITY (DIM)= 1.0000D-03
 UNIFORM TABLE STORATIVITY (DIM)= 0.2000
 PRODUCTION WELL EFFECTIVE RADIUS (FT)= 1.000
 TOP OF AQUIFER DEPTH (FT)= 540.00
 BASE OF AQUIFER DEPTH (FT)= 800.00
 INITIAL WATER LEVEL DEPTH (FT)= 519.00
 INFINITE AQUIFER SYSTEM

COMPUTATION RESULTS:

PRODUCTION WELL DISCHARGE RATE (GPM)= 1050.00

TIME-DRAWDOWN OR WATER LEVEL VALUES (FT)

SELECTED DISTANCES (FT)

TIME (MIN)	1.00	158.49	398.11	1000.00	2511.89	6309.57
0.11	519.10	519.02	519.01	519.00	519.00	519.00
0.17	519.10	519.02	519.01	519.00	519.00	519.00
0.27	519.10	519.03	519.01	519.00	519.00	519.00
0.43	519.11	519.03	519.02	519.01	519.00	519.00
0.69	519.11	519.03	519.02	519.01	519.00	519.00
1.09	519.12	519.04	519.02	519.01	519.00	519.00
1.73	519.12	519.04	519.03	519.01	519.00	519.00
2.74	519.12	519.04	519.03	519.02	519.01	519.00
4.34	519.13	519.05	519.03	519.02	519.01	519.00
6.87	519.13	519.05	519.04	519.02	519.01	519.00
10.89	519.13	519.06	519.04	519.03	519.01	519.00
17.26	519.14	519.06	519.04	519.03	519.02	519.01
27.36	519.14	519.06	519.05	519.03	519.02	519.01
43.36	519.14	519.07	519.05	519.04	519.02	519.01
68.72	519.15	519.07	519.06	519.04	519.03	519.01
108.91	519.15	519.07	519.06	519.04	519.03	519.02
172.62	519.15	519.08	519.06	519.05	519.03	519.02
273.58	519.16	519.08	519.07	519.05	519.04	519.02
433.59	519.16	519.08	519.07	519.06	519.04	519.03
480.00	519.16	519.08	519.07	519.06	519.04	519.03

TIME AFTER PUMPING STARTED (MIN)= 480.00 (8 hrs.)

DISTANCE-DRAWDOWN OR WATER LEVEL VALUES AT END OF PUMPING PERIOD

NO	RADIUS (FT)	DRAWDOWN OR WATER LEVEL (FT)
1	1.00	519.16
2	1.58	519.16
3	2.51	519.15
4	3.98	519.14
5	6.31	519.13
6	10.00	519.13
7	15.85	519.12
8	25.12	519.11
9	39.81	519.11
10	63.10	519.10
11	100.00	519.09

13	158.49	519.08
14	251.19	519.08
1	398.11	519.07
1	630.96	519.06
1	1000.00	519.06
1	1584.89	519.05
1	2511.89	519.04
20	3981.07	519.03
21	6309.57	519.03
2	10000.00	519.02
2	15848.93	519.01
24	25118.87	519.01
2	39810.72	519.00

DATA BASE:

AQUIFER HORIZ. HYDR. COND. (GPD/SQ FT)= 20000.00
ARTESIAN AQUIFER STORATIVITY (DIM)= 1.0000D-03
WELL TABLE STORATIVITY (DIM)= 0.2000
PRODUCT. WELL EFFECTIVE RADIUS (FT)= 1.000
TOP OF AQUIFER DEPTH (FT)= 540.00
BASE OF AQUIFER DEPTH (FT)= 800.00
INITIAL WATER LEVEL DEPTH (FT)= 519.00
II. INFINITE AQUIFER SYSTEM

COMPUTATION RESULTS:

PRODUCTION WELL DISCHARGE RATE (GPM)= 1050.00

TIME-DRAWDOWN OR WATER LEVEL VALUES (FT)

SELECTED DISTANCES (FT)						
TIME (MIN)	1.00	158.49	398.11	1000.00	2511.89	6309.57
0.13	519.27	519.04	519.01	519.00	519.00	519.00
0.21	519.28	519.05	519.01	519.00	519.00	519.00
0.33	519.29	519.06	519.02	519.00	519.00	519.00
0.52	519.30	519.07	519.03	519.00	519.00	519.00
0.82	519.31	519.08	519.04	519.01	519.00	519.00
1.30	519.33	519.09	519.05	519.02	519.00	519.00
2.06	519.34	519.10	519.06	519.02	519.00	519.00
3.27	519.35	519.11	519.07	519.03	519.00	519.00
5.18	519.36	519.12	519.08	519.04	519.01	519.00
8.21	519.37	519.13	519.09	519.05	519.02	519.00
13.01	519.38	519.14	519.10	519.06	519.02	519.00
20.62	519.39	519.15	519.11	519.07	519.03	519.00
32.67	519.40	519.17	519.12	519.08	519.04	519.01
51.78	519.41	519.18	519.13	519.09	519.05	519.02
82.07	519.42	519.19	519.14	519.10	519.06	519.02
130.08	519.43	519.20	519.15	519.11	519.07	519.03
206.16	519.44	519.21	519.17	519.12	519.08	519.04
326.74	519.45	519.22	519.18	519.13	519.09	519.05
517.85	519.46	519.23	519.19	519.14	519.10	519.06
820.73	519.47	519.24	519.20	519.15	519.11	519.07
1300.77	519.49	519.25	519.21	519.17	519.12	519.08
2061.58	519.50	519.26	519.22	519.18	519.13	519.09
3267.39	519.51	519.27	519.23	519.19	519.14	519.10
5178.46	519.52	519.28	519.24	519.20	519.16	519.11
8207.31	519.53	519.30	519.26	519.22	519.17	519.13
13007.71	519.56	519.32	519.28	519.24	519.19	519.15
20615.83	519.59	519.36	519.31	519.27	519.23	519.19
2673.89	519.65	519.41	519.37	519.33	519.28	519.24
3200.00	519.69	519.46	519.42	519.37	519.33	519.29

TIME AFTER PUMPING STARTED (MIN)=43200.00 (30 Days)

DISTANCE-DRAWDOWN OR WATER LEVEL VALUES AT END OF PUMPING PERIOD

NO	RADIUS (FT)	DRAWDOWN OR WATER LEVEL (FT)
2	1.00	519.69
3	1.58	519.67

4	2.51	519.65
5	3.98	519.63
6	6.31	519.61
7	10.00	519.59
	15.85	519.57
	25.12	519.54
	39.81	519.52
11	63.10	519.50
12	100.00	519.48
13	158.49	519.46
14	251.19	519.44
15	398.11	519.42
16	630.96	519.39
17	1000.00	519.37
18	1584.89	519.35
19	2511.89	519.33
20	3981.07	519.31
21	6309.57	519.29
22	10000.00	519.27
23	15848.93	519.25
24	25118.87	519.23
25	39810.72	519.21
26	63095.74	519.19
27	%100000.00	519.18

DATA BASE:

AQUIFER HORIZ. HYDR. COND. (GPD/SQ FT)= 30000.00
 ANISOTROPIC AQUIFER STORATIVITY (DIM)= 1.0000D-03
 UNIFORM TABLE STORATIVITY (DIM)= 0.2000
 PRODUCT. WELL EFFECTIVE RADIUS (FT)= 1.000
 TOP OF AQUIFER DEPTH (FT)= 540.00
 BASE OF AQUIFER DEPTH (FT)= 800.00
 INITIAL WATER LEVEL DEPTH (FT)= 519.00
 INFINITE AQUIFER SYSTEM

COMPUTATION RESULTS:

PRODUCTION WELL DISCHARGE RATE (GPM)= 1050.00

TIME-DRAWDOWN OR WATER LEVEL VALUES (FT)

TIME (MIN)	SELECTED DISTANCES (FT)					
	1.00	158.49	398.11	1000.00	2511.89	6309.57
0.14	519.19	519.03	519.01	519.00	519.00	519.00
0.22	519.19	519.04	519.01	519.00	519.00	519.00
0.35	519.20	519.05	519.02	519.00	519.00	519.00
0.55	519.21	519.05	519.03	519.01	519.00	519.00
0.87	519.22	519.06	519.03	519.01	519.00	519.00
1.37	519.22	519.07	519.04	519.02	519.00	519.00
2.18	519.23	519.07	519.05	519.02	519.00	519.00
3.45	519.24	519.08	519.05	519.03	519.01	519.00
5.47	519.25	519.09	519.06	519.03	519.01	519.00
8.67	519.25	519.10	519.07	519.04	519.02	519.00
13.74	519.26	519.10	519.07	519.05	519.02	519.00
21.78	519.27	519.11	519.08	519.05	519.03	519.01
34.52	519.27	519.12	519.09	519.06	519.03	519.01
54.72	519.28	519.12	519.10	519.07	519.04	519.02
86.72	519.29	519.13	519.10	519.07	519.05	519.02
137.44	519.30	519.14	519.11	519.08	519.05	519.03
217.83	519.30	519.15	519.12	519.09	519.06	519.03
345.23	519.31	519.15	519.12	519.10	519.07	519.04
547.15	519.32	519.16	519.13	519.10	519.07	519.05
867.18	519.32	519.17	519.14	519.11	519.08	519.05
1374.39	519.33	519.17	519.15	519.12	519.09	519.06
2178.26	519.34	519.18	519.15	519.12	519.10	519.07
3452.31	519.35	519.19	519.16	519.13	519.10	519.08
5471.54	519.36	519.20	519.17	519.14	519.11	519.09
8671.81	519.37	519.22	519.19	519.16	519.13	519.10
13743.89	519.39	519.24	519.21	519.18	519.15	519.12
21782.59	519.43	519.27	519.25	519.22	519.19	519.16
4523.09	519.49	519.33	519.30	519.27	519.25	519.22
3200.00	519.53	519.37	519.34	519.31	519.29	519.26

TIME AFTER PUMPING STARTED (MIN)=43200.00 (30-Days)

DISTANCE-DRAWDOWN OR WATER LEVEL VALUES AT END OF PUMPING PERIOD

WELL NO	RADIUS (FT)	DRAWDOWN OR WATER LEVEL (FT)
2	1.00	519.53
3	1.58	519.51

4	2.51	519.50
5	3.98	519.48
6	6.31	519.47
7	10.00	519.46
	15.85	519.44
	25.12	519.43
9	39.81	519.41
11	63.10	519.40
12	100.00	519.39
13	158.49	519.37
14	251.19	519.36
15	398.11	519.34
16	630.96	519.33
17	1000.00	519.31
18	1584.89	519.30
19	2511.89	519.29
20	3981.07	519.27
21	6309.57	519.26
22	10000.00	519.24
3	15848.93	519.23
4	25118.87	519.22
25	39810.72	519.20
26	63095.74	519.19
7	*100000.00	519.19

DATA BASE:

AQUIFER HORIZ. HYDR. COND. (GPD/SQ FT)= 60000.00
 ARABIAN AQUIFER STORATIVITY (DIM)= 1.0000D-03
 TABLE STORATIVITY (DIM)= 0.2000
 PRODUCT. WELL EFFECTIVE RADIUS (FT)= 1.000
 TOP OF AQUIFER DEPTH (FT)= 540.00
 BASE OF AQUIFER DEPTH (FT)= 800.00
 INITIAL WATER LEVEL DEPTH (FT)= 519.00
 INFINITE AQUIFER SYSTEM

COMPUTATION RESULTS:

PRODUCTION WELL DISCHARGE RATE (GPM)= 1050.00

WELL-DRAWDOWN OR WATER LEVEL VALUES (FT)

SELECTED DISTANCES (FT)

TIME (MIN)	1.00	158.49	398.11	1000.00	2511.89	6309.57
0.11	519.10	519.02	519.01	519.00	519.00	519.00
0.17	519.10	519.02	519.01	519.00	519.00	519.00
0.27	519.10	519.03	519.01	519.00	519.00	519.00
0.43	519.11	519.03	519.02	519.01	519.00	519.00
0.69	519.11	519.03	519.02	519.01	519.00	519.00
1.09	519.12	519.04	519.02	519.01	519.00	519.00
1.73	519.12	519.04	519.03	519.01	519.00	519.00
2.74	519.12	519.04	519.03	519.02	519.01	519.00
4.34	519.13	519.05	519.03	519.02	519.01	519.00
6.87	519.13	519.05	519.04	519.02	519.01	519.00
10.89	519.13	519.06	519.04	519.03	519.01	519.00
17.26	519.14	519.06	519.04	519.03	519.02	519.01
27.36	519.14	519.06	519.05	519.03	519.02	519.01
43.36	519.14	519.07	519.05	519.04	519.02	519.01
68.72	519.15	519.07	519.06	519.04	519.03	519.01
108.91	519.15	519.07	519.06	519.04	519.03	519.02
172.62	519.15	519.08	519.06	519.05	519.03	519.02
273.58	519.16	519.08	519.07	519.05	519.04	519.02
433.59	519.16	519.08	519.07	519.06	519.04	519.03
687.19	519.17	519.09	519.07	519.06	519.04	519.03
1089.13	519.17	519.09	519.08	519.06	519.05	519.03
1726.15	519.17	519.09	519.08	519.07	519.05	519.04
2735.77	519.18	519.10	519.09	519.07	519.06	519.04
4335.90	519.19	519.11	519.09	519.08	519.06	519.05
871.94	519.20	519.12	519.10	519.09	519.08	519.06
1891.30	519.22	519.14	519.12	519.11	519.09	519.08
17261.54	519.24	519.17	519.15	519.14	519.12	519.11
1357.70	519.29	519.21	519.20	519.18	519.17	519.15
200.00	519.36	519.28	519.27	519.25	519.24	519.23

TIME AFTER PUMPING STARTED (MIN)=43200.00 (30-Days)

DISTANCE-DRAWDOWN OR WATER LEVEL VALUES AT END OF PUMPING PERIOD

RADIUS (FT) DRAWDOWN OR WATER LEVEL (FT)

NO		
2	1.00	519.36
3	1.58	519.35

4	2.51	519.35
5	3.98	519.34
6	6.31	519.33
7	10.00	519.33
8	15.85	519.32
9	25.12	519.31
10	39.81	519.30
11	63.10	519.30
12	100.00	519.29
13	158.49	519.28
14	251.19	519.28
15	398.11	519.27
16	630.96	519.26
17	1000.00	519.25
18	1584.89	519.25
19	2511.89	519.24
20	3981.07	519.23
21	6309.57	519.23
22	10000.00	519.22
23	15848.93	519.21
24	25118.87	519.21
25	39810.72	519.20
26	63095.74	519.19
27	100000.00	519.19

APPENDIX B
LETTER FROM W & H PACIFIC

September 9, 1993

Mr. Scott Huele, CEG
David J. Newton & Associates
1202 S.W. 12th Avenue, Suite 400
Portland, Oregon 97205

Re: Eagle Crest II
Groundwater Appropriation Application
OWRD File No. G-12905
Pump Testing
526-0101

Dear Dave:

As requested, I have obtained additional water level measurements for the Eagle Crest II monitoring well.

The monitoring well, is located approximately 30 feet west of the pilot well and both are located in the southwest quarter of the southeast quarter of Section 15, Township 15 S, Range 12 E. The irrigation production well. The irrigation production well provides all golf course irrigation needs for the new 18-hole Eagle Ridge Golf Course. The large production well pump has been operated daily for the entire irrigation season.

A submersible pump, column, and electrical conductor have been installed in the monitoring well, however the pump has not been operated. Initial water level measurements in the monitoring well were completed with an electronic probe. The installation of a submersible pump however prevents use of an electronic probe. In gathering today's water level measurements we utilized the air tube, installed concurrent with the submersible pump and column. The air tube was installed to a depth of 567 feet, based upon a construction record from Jack Abbas at A&H Pump Co.

I visited the site today and measured the water level in the pilot well, while the production well was running. The pilot well has not been operated since testing. I utilized an Ametek, U.S. Gauge Division, water level gauge, with direct reading in feet. The gauge has a 4-1/2 inch diameter dial. With the length of the air tube set at 567 feet, I read 519 feet for the total depth of water, below the top of the casing.

I recognized that some error can be introduced in setting the length of air tube, in establishing the length of air tube, and in reading the pressure gauge. I therefore utilized a second gauge, of the same manufacturer, scale, and diameter to obtain a second reading. A bicycle pump was utilized for both air readings and the second gauge also read 519 feet.

This reading, on the pilot or monitoring well was under static conditions, while the production pump was running. This reading of 519 feet compares to an original electronic probe measurement of 518.65 feet. The 518.65 feet was obtained by Nancy Speaker, of your staff, on March 18, 1992.



Mr. David J. Newton
September 9, 1993
Page 2

I trust this information will be useful. Please never hesitate to contact me if you have questions or needs for additional information.

Very truly yours,
W&H PACIFIC, INC.

A handwritten signature in cursive script that reads 'Tom Walker'.

Thomas A. Walker, P.E.
Senior Associate

cc: Bill Lyche



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IN REPLY
REFER TO:

PN-233

United States Department of the Interior

BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGION
FEDERAL BUILDING & U.S. COURTHOUSE
BOX 043-550 WEST FORT STREET
BOISE, IDAHO 83724-0043



OCT 01 1991

RECEIVED
JAN 13 1992

Memorandum

To: Regional Planning Supervisor

From: Regional Engineer, Boise ID

Subject: Technical Assistance for Survey of Groundwater Resources,
Upper Deschutes River Basin Water Conservation Project Study,
Oregon; Your Memo Dated July 25, 1991 (Groundwater)

Enclosed for your use is a copy of the Technical Reconnaissance Report, Survey of Groundwater Resources, Upper Deschutes River Basin, Oregon. The report summarizes the results of a groundwater resources survey. The survey and report are in response to a memo dated July 25, 1991 requesting the assistance of Mr. Gary King to perform the survey.

If you have any questions, please call Mr. Gary King at FTS 554-1887.

Gary J. Spangelo

Enclosure

cc: Assistant Commissioner - Resources Management
Attention: D-5742 (w/encl)
PN-233 (w/encl)

TECHNICAL RECONNAISSANCE REPORT
SURVEY OF GROUNDWATER RESOURCES
UPPER DESCHUTES RIVER BASIN, OREGON

by
Gary King

INTRODUCTION

This report discusses the findings of a groundwater resources survey of central Oregon. The purpose of the survey was to determine the water use from the regional aquifer in the Upper Deschutes River Basin from about Bend to Madras Oregon and to document the present aquifer usage. The survey data will be used for the Upper Deschutes River Basin Water Conservation Project study to help determine the effect of water conservation on aquifer users. Past studies have indicated that little use is made of the regional aquifer, but during the initial part of the Conservation Project study evidence suggested that increasing aquifer usage was occurring.

Three days were spent in central Oregon (Bend-Madras area) collecting data for this report. Urban and private water users were interviewed and the groundwater behavior in the area was discussed with local, state and federal officials who are responsible for studying the groundwater resource. The survey included collecting and analyzing available data of the area. This report summarizes current groundwater use and projects future groundwater use where sufficient data is available to make the projections.

Guidance and assistance for this study was provided by Conservation Study Project team members Mr. Keith Campbell (D-5742) and Mr. Eric Glover (PN-706).

Initial contacts included telephone conversations with Mr. Dewane Clark, assistant Watermaster, Upper Deschutes, Bend, Oregon; Mr. Ed Bolke, United States Geological Survey (USGS), Portland, Oregon; Mr. Ralph Patt, Oregon Department of Water Resources (ODWR), Salem, Oregon; and Mr. Ray Wilson, Soil Conservation Service (SCS), Bend, Oregon. Subsequent personal contacts consisting entirely of verbal data resulted from visits with the City of Bend; City of Redmond; SCS, Bend, Madras and Prineville; Forest Service, Bend; Central Oregon Irrigation District (COID), Redmond; Deschutes County Agent, Redmond; Century West Engineering, Bend; and Avion Water Company, Bend.

Geology

The following discussion of the basic hydrogeology of the Upper Deschutes River Basin is paraphrased from Groundwater Resources of the Central Deschutes Basin, USBR, J. W. Frink, 1968.

The topography consists of relatively flat benchlands cut by steep sided river and stream valleys. The benchlands are mostly made of an undulating basalt surface blanketed with sediments. The sediments are mostly thin, coarse grained and highly permeable. Frink (1968) concluded that the geologic sequence is very complicated, and that there have been several periods of volcanism from several sources, some structural deformation, considerable faulting, and several periods of erosion.

The following discusses the geologic material found in the Upper Deschutes River Basin area. The Clarno Formation of Eocene age which is the oldest rock in the area and consists of volcanic agglomerates, mud flows, multicolored beds of ash and tuff and interbedded lava flows. The Clarno was generally subaerially deposited and rarely is fossiliferous. It was subjected to considerable erosion before deposition of the overlying John Day formation. The Clarno formation in outcrop is usually a muddy green-gray color. It weathers unevenly so that its surface topography is expressed as very irregularly shaped hills.

The John Day Formation of Oligocene age consists of partially water deposited volcanic ash and tuffs. This formation is generally finer grained than the Clarno Formation and contains no lava flows and is frequently fossiliferous. It is often tan or buff colored in the lower portion, light green in its mid-section and red in the upper portion. The John Day weathers easily and forms smooth rounded hills. It was deposited in basins upon an erosional surface of the Clarno and other formations. The John Day formation forms many of the buttes east of the agricultural areas and occurs west of the Deschutes River along the Deschutes-Jefferson County line. It presumably lies at some unknown depth beneath most of the remaining area.

The Columbia River Basalt of Miocene age consist of basalt flows. The formation is not more than 300 feet thick in this area and crop outs only in the Deschutes River canyon northeast of Madras, west of the river in the same area and north of O'Neil and Smith Rock. One or two flows are found in the Prineville area where the thickness is not more than 50 feet. The Columbia River Basalt lies conformably on the John Day Formation.

The Deschutes Formation of Pliocene-Pleistocene age consists of unconsolidated crossbedded fluviatile silt, sand and gravels, deposits of torrential volcanic mud flows, pumice and pumiceous tuff which was partially water deposited. All of these are interbedded with one or two flows of olivine basalt.

The Quaternary Basalts of Recent to perhaps late Pleistocene age consist of basalt flows which crop out more extensively than any single formation in

the area. These basalts cover much of the surface of Madras and Bend quadrangles.

The Youngest Basalts consisting of basalt flows some of which are only a few thousand years old. These basalts occur mostly east of Redmond and Bend.

The Recent Pumice Avalanche Deposits are partially water laid but the upper layers were subaerially deposited. These deposits are found along Tumalo Creek and along the walls of the Deschutes River.

The Fluviolacustrine Deposits consisting of mostly clay and silt alternating with thin beds of sand and fine gravel. These deposits are found in the valley of the Crooked River and Ochoco Creek.

Recent Diatomite consists of lake deposited diatomite and pumice deposits up to 50 feet thick.

Generally the Clarno, John Day, Columbia River Basalt and Deschutes Formations are found below land surface and are covered by the younger formations which are found at the land surface.

Groundwater

The following summarizes the groundwater potential and characteristics of the geologic material found in the Upper Deschutes River Basin area. The Clarno Formation has little groundwater potential. The John Day Formation is essentially impermeable and the top of the formation is considered to form the base of the usable aquifer. The Columbia River Basalt is the most important, prolific and deepest aquifer in the area. Much of the groundwater discharging into the rivers comes from the Columbia River Basalt formation. The Deschutes Formation has a highly variable groundwater potential. Significant supplies are found in the sand, gravel and porous basalts and insignificant supplies are found in individual basalt flows, welded tuffs and fine grained sediment. Because of its highly variable nature, numerous perched water bodies are found within the Deschutes Formation. The Quaternary basalts are generally more permeable and more extensive than the Columbia River Basalts but are above the water table and may contain only shallow, discontinuous perched water bodies of limited size. Fluviolacustrine Deposits contain moderate quantities of groundwater which can be found within the sand and gravel lenses of these deposits.

AQUIFER

General

Depth to water ranges from about 700 feet near Bend to from 150 to 300 feet near Redmond. The water table gradient is toward the north with an elevation dropping from about 3100 feet near Bend to about 1700 feet near Madras.

Several areas have a perched water table with the depth to water ranging from 50 to 100 feet above the main aquifer. One such area is located about

mid-way between Bend and Redmond. This perched water table is reported to have a shallow water table found between 200 and 400 feet below ground surface, whereas the regional water table in this area is found between about 500 to 600 feet below ground surface (Lindbeck, Century West Engineering, personal communication, 1991). Some domestic wells are located in this shallow aquifer. Normally water is diverted into the canals during the winter to recharge livestock ponds, but for a period during the winter of 1990-91 the usual practice was not followed and, as a result, some wells went dry. This shows that the water levels in these shallow aquifers are directly related to conveyance losses in the canals. Therefore, water conservation practices would probably affect these shallow aquifer users.

Another perched aquifer area is reported to exist in the Alfalfa area (Patt, personal communication, 1991). There are probably other perched aquifers located throughout the area but their exact locations were not determined during the present investigation.

Recharge

There are large amounts of recharge from precipitation, and irrigation, canal, reservoir, stream and lake losses. The Watermaster's Office estimates that generally the stream losses for the Deschutes River range from 7 to 18 percent and the canal conveyance losses range from 30 to 50 percent (Clark, personal communication, 1991). The canal losses mostly occur as they pass over the basalt and porous sediments. Frink (1968) reported that an estimated 1,122,000 acre-feet of groundwater passes under the area each year. Of this an estimated 450,000 to 575,000 acre-feet is lost from reservoirs, lakes, streams and rivers. The balance of the recharge is from irrigation losses and precipitation on the area.

About 700,000 acre feet of river water is diverted for irrigation each year (Frink, 1968; Mr. Clark, 1991). Of the 700,000 acre-feet diverted for irrigation an estimated 30-50 percent or 210,000 to 350,000 acre-feet is aquifer recharge from conveyance losses. Of the remaining 350,000 to 490,000 acre-feet, an undetermined amount of the applied irrigation water would also contribute to aquifer recharge.

Discharge

The aquifer discharges significant amounts of groundwater through springs in the canyons of the Crooked and Deschutes Rivers. A groundwater trough is found to coincide with the Deschutes and Crooked Rivers (Frink, 1968). The groundwater recharge flows toward the center of the trough and then along the trough toward the north where it discharges from the springs into the rivers. These springs are mostly located near the confluence of the two rivers and discharge an estimated 1,122,000 acre feet per year (Frink, 1968).

Pumpage

The SCS stated that little well irrigation pumping occurs in the area because of adequate surface supplies and the great depths to the water table

which make pumping impractical. The types of crops (hay and pasture) that can be grown in the Bend area also discourages pumping. Areas to the north of Redmond have a longer growing season which permit the growth of high-value crops, but again adequate surface supplies and great depths to water discourage pumping. The SCS estimates that between from 1000 and 3000 acres are irrigated from wells. Therefore, with an application rate of from 2 to 3 acre-feet per acre an estimated 5000 to 10,000 acre-feet per year is pumped for irrigation.

A considerable amount of pumping occurs for municipal use. The city of Bend currently pumps about 7,000 acre feet per year and expects to increase that to 8,200 acre feet per year in a few months. One water company, Avion Water Company, located near Bend currently pumps about 4,750 acre feet of municipal water per year. Avion Water Company (Kerns, personal communication, 1991) reports no groundwater effect from pumping.

Of the about 10 golf courses in the Bend area, one irrigates with pumped groundwater. The SCS reported that this golf course pumps an estimated 1,000,000 gallons per day. Therefore, an estimated 150 day irrigation season each year would result in about 460 acre-feet being pumped.

The Forest service presently pumps about 165 acre feet per year for its nursery located at Bend.

CONCLUSIONS

Groundwater pumpage within the area includes an estimated 5,000 to 10,000 acre-feet for irrigation and 13,000 acre-feet for municipal. The current total pumpage probably does not exceed 30,000 to 40,000 acre-feet per year. With an estimated 1,122,000 acre-feet passing through the aquifer each year, current use of an estimated 30,000 to 40,000 acre feet per year has little effect on the groundwater flow. The SCS stated that the amount of irrigated land in the Bend-Madras area has not changed since the 1960's. Because of pumping costs, great depths to water and the low value crops generally grown in the area, irrigation pumping is unlikely to experience much growth in the future.

Because of the large groundwater volume contained in and passing through the regional aquifer, and due to the limited groundwater usage from this aquifer, water conservation will probably not cause any noticeable effect on the regional aquifer. Conservation may have some effect on local perched water bodies, especially those perched aquifers located within or down-gradient of the irrigation districts and canals where water conservation is proposed to be implemented on a large scale.

Before construction of a water conservation project is begun, the perched aquifer between Bend and Redmond and any other perched aquifers that would be affected by the project must be located and delineated. After these areas are located, the wells within each area must be inventoried to determine which wells pump from the perched aquifers and may be affected by the project. The first step in locating the perched aquifers would be to collect all available drillers well logs for the area of interest. The well

data can then be plotted on maps and cross sections developed for defining the perched aquifer areas. The final step will entail a field investigation to check well water levels and refine the field map.

The initiation of water conservation must be carefully studied. The effect on current groundwater users would be minimal but the losses to the down river users may be more significant. The water conservation proposal includes several methods, two of which include reducing conveyance losses and improving on-farm efficiencies. Reducing conveyance losses will greatly decrease the estimated 210,000 to 350,000 acre-feet of aquifer recharge. The SCS and COID estimates that about 50 percent of the irrigators use flood irrigation. Improving the on-farm irrigation efficiencies by switching from flood to sprinkler irrigation will also save an undetermined amount of water. The volume of diverted water that can be saved by water conservation to remain in the river will include that saved by reducing conveyance losses and by improving on-farm efficiencies. But this amount would be lost to the aquifer where it is stored and released through the springs that help maintain the flows in the rivers throughout the year.

Future Trends

During discussions with SCS at Bend, Mr. Wilson, District Conservationist, stated that the current political trend within Deschutes County is toward urban growth as opposed to agricultural growth. Therefore, any changes in groundwater usage will be toward more municipal pumping. Because of the large unused groundwater resource, it is unlikely that increased growth and the associated additional groundwater usage will have any significant effect on the regional aquifer.



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W&H Pacific155 N.E. Revere
Bend, OR 97701(503) 388-4255
Fax (503) 388-4229• Planning
• Engineering• Surveying
• Landscape Design• Environmental
Services**To:** A. Reed Marbut, Administrator**Date:** 3-4-94

Water Rights and Adjudications Division

Project Number:

5626-01-05

Oregon Water Resources Department

Project Name: Eagle Crest II

3850 Portland Road, NE

Regarding: Groundwater Application G-12905

Salem, OR 97310

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Richard Whitman

William D. Lyche

Copies	Description
ONE	Application Exhibits Notebook

Comments

Signed:

Thomas A. Walker, P.E., C.W.R.E.

RECEIVED**W&H Pacific**

MAR - 1 1994

155 N.E. Revere
Bend, OR 97701(503) 388-4255
Fax (503) 388-4229• Planning
• Engineering• Surveying
• Landscape Design• Environmental
ServicesWATER RESOURCES DEPT.
SALEM, OREGON

To: Mr. A. Reed Marbut, Administrator

Date: 2-28-94

Water Rights and Adjudications Division

Project Number:

526-01-05

Oregon Water Resources Department

Project Name: Eagle Crest Application G-12905

3850 Portland Road NE

Regarding: Land Use Decision

Salem, OR 97310

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Copies	Description
ONE	Eagle Crest II Conceptual Master Plan Decision
ONE	November 1, 1993 David J. Newton Correspondence

Comments

Reed,

As requested, I have enclosed a copy of the Deschutes County Hearings Officer Decision for Eagle Crest. The document includes an index, compiled by Eagle Crest, for each term and subject matter. For example, all pages are noted where the discussion topic "groundwater" is found. The Eagle Crest index and the decision conditions, relating to groundwater are flagged. The enclosed Newton correspondence is referenced in one approval condition. Please review the enclosures and never hesitate to contact me if I can be of further assistance.

Signed:

Thomas A. Walker, P.E., C.W.R.E.



DAVID J. NEWTON ASSOCIATES

INCORPORATED

Civil and Geological Engineering Services

November 1, 1993

Mr. Bill Lyche
EAGLE CREST PARTNERS, LTD.
P.O. Box 1215
Redmond, OR 97756

Re: Response to Eagle Crest Phase II Groundwater Issues Testimony

Dear Mr. Lyche:

In accordance with a request from Mr. Tom Walker of W & H Pacific, we have prepared the following response to the testimony presented by others at the Eagle Crest public hearings. Although the testimony included several groundwater resources related issues, many if not most of them have already been addressed in our previous investigation reports. We do feel, however, that it might be useful to review some items that might not be well understood by the public and other interested persons.

DNA's methods of investigation and analysis has been conducted using the current standards of practice for this type of hydrogeologic study. Not only was the project specific work completed to current professional standards, but it has been supported by an intimate knowledge of local and regional hydrogeology that we have obtained by working in the area for many years. This additional knowledge has been garnered during extensive analysis of groundwater flow systems for the City of Bend in 1979 and 1980. That work was the most comprehensive groundwater study in the Bend/Redmond region at the time and has not been equalled since. Our studies of the area during 1979, 1980, 1991, 1992 and most recently this year have failed to reveal any data that would indicate that Eagle Crest Phase II has an inadequate supply of groundwater.

We are not alone in reaching this conclusion. Studies conducted by the Bureau of Reclamation reached similar conclusions for the region. Furthermore, our reports for Eagle Crest have undergone close scrutiny during two technical reviews conducted by or on behalf of Deschutes County and the State of Oregon. The County retained Joseph Gonthier, a retired US Geological Survey Hydrologist/Geologist, to perform an audit of our April 1992 report. Mr. Gonthier, who has extensive professional experience in the Bend/Redmond area, agreed with our findings regarding the adequacy of groundwater to serve Eagle Crest Phase II. In addition, hydrogeologists at the Oregon Water Resources Department also conducted a technical review of our studies and agreed with our findings. In the case of the Gonthier review, we completed additional computer analysis as suggested, and our conclusions did not change.

One more issue that should be understood is that specific requirements have been imposed on the project by the Oregon Water Resources Department. These conditions, 15 in all, force Eagle Crest to, among other things, conduct continuous monitoring, measure and report water levels, use water without waste and initiate conservation measures. The report is also obligated by threshold water level standards that force a cessation of pumping if excessive declines occur.

We are hopeful that the foregoing will be useful. If you have any further questions, please do not hesitate to call.

Sincerely,

DAVID J. NEWTON ASSOCIATES, INC.

David J. Newton *by Sff*

David J. Newton, P.E., C.E.G.
President

- (1) addressee
- (2) Mr. Tom Walker, W & H Pacific (overnight mail)

DECISION OF DESCHUTES COUNTY HEARINGS OFFICER
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DECISION OF DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBERS: CU-93-94, V-93-28

HEARING DATES: October 14, 1993 and October 21, 1993

RECORD CLOSED: November 3, 1993

APPLICANT: Eagle Crest Partners, Ltd.
Post Office Box 1215
Redmond, Oregon 97756

PROPERTY OWNER: Eagle Crest Partners, Ltd.

REQUEST: Applicant is requesting approval of a Conditional Use for a Destination Resort Conceptual Master Plan (CMP) that would allow a 746 acre expansion of the existing Eagle Crest Destination Resort and a Variance to setback standards for certain proposed roadways along the perimeter of the resort.

STAFF REVIEWER: Dale Van Valkenburg, Associate Planner

I. APPLICABLE STANDARDS AND CRITERIA

Title 18 of the Deschutes County Code, the County Zoning Ordinance:

- Chapter 18.16, Exclusive Farm Use - EFU-SC Zone.
- Chapter 18.32, Multiple Use Agriculture - MUA-10 Zone.
- Chapter 18.84, Landscape Management - LM Zone.
- Chapter 18.113, Destination Resorts - DR Zone.
- Chapter 18.128, Conditional Uses.
- Chapter 18.132, Variances.

Title 22, the Deschutes County Land Use Procedures Ordinance.

PL-20, The Deschutes County Year 2000 Comprehensive Plan, Goals and Policies pertaining to the siting of Destination Resorts.

II. SCOPE OF REVIEW

This matter is reviewed by the Hearings Officer to determine whether the conditional use and variance applications filed by Eagle Crest meet the requirements of County and, where applicable, state subdivision and land use law. The Hearings Officer does not have authority to change or waive the requirements of the County's land use ordinances, except when the criteria for obtaining a variance have been established by the Applicant. The Applicant has the responsibility for proving that each and every applicable requirement of law has been or will be met by the proposed destination resort and that all conditions for obtaining a variance to County standards have been met. If this burden has not been met, the applications must be denied. Conversely, the Hearings Officer must approve the applications if all relevant criteria are met.

The Hearings Officer's decision is limited, by law, to the facts presented to the Hearings Officer and that are included in the record of this matter. These facts include written documents, oral testimony and matters observed by the Hearings Officer when visiting the Eagle Crest resort and Eagle Ridge golf course. The findings in this decision determine which facts presented are the basis for decision of the application and includes conclusions about whether the Applicant has satisfied the conditions for approval of the submitted applications.

III. SUMMARY OF DECISION

The Hearings Officer has approved Eagle Crest's application for conceptual master plan approval for a destination resort expansion. That application included the entire Eagle Crest Resort property, however, in order to meet the criteria of the County's destination resort ordinance. As a result, many of the provisions of this decision apply to the existing Eagle Crest resort and to the proposed expansion areas. The conceptual master plan was granted subject to compliance with a number of conditions, intended to assure that the requirements of the County's destination resort ordinance are met by the Applicant.

CONCEPTUAL MASTER PLAN:

SEWAGE DISPOSAL - The Applicant is required by the destination resort ordinance to develop a sewage disposal plan that makes a "beneficial use" of wastewater, if practicable. The waste treatment option preferred by the Applicant, septic tanks and a septic tank collection system, does not make any beneficial use of the wastewater. The Applicant has convinced the Hearings Officer that the Applicant's septic system plan is the only feasible plan for the resort at this time. This conclusion is based upon the fact that the sewage treatment demand for the resort is relatively low and subject to wide variations in volume.

The Hearings Officer has, however, required that the Applicant plan for a future central sewage treatment system, to reserve land for a treatment plant on Eagle Crest property

and to assure that such a system will be built when needed. The details of this plan will be formulated prior to final master plan approval. The Hearings Officer imposed this requirement because the septic tank disposal system will not be able to serve all lots in the resort. Additionally, information provided by the Applicant's wastewater treatment expert indicates that, as the resort community grows, it will become feasible to operate a central treatment facility, due to an increase in the volume of sewage, as back up facilities may be constructed and used only during periods of high demand. The construction of a central treatment system will enable the Applicant to provide service for all proposed uses and lots and will assure beneficial use of wastewater, when such use becomes feasible.

The Hearings Officer has also left open the possibility that the Applicant may obtain sewage treatment service from the City of Redmond through a connection to the Redmond sewage disposal system, in lieu of providing an on-site treatment plant. This option may not, however, be exercised until the County's Comprehensive Plan is amended to authorize the connection and until the Applicant has obtained a binding commitment by the City of Redmond to accept the resort's effluent and to make a beneficial use of the treatment plant effluent, as required by the County's destination resort ordinance.

GROUND WATER AVAILABILITY - The Applicant has demonstrated that an adequate water supply is available to provide water for the resort from a regional aquifer and surface water source, and not from a perched water table. Although water supplies are not infinite, it appears there is adequate water for the proposed resort development and to serve the surrounding area at its current level of development. The Applicant already has water rights for the irrigation of all resort golf courses and for domestic uses in Phase I. The Applicant has applied to the State Water Resources Board for a water permit for domestic uses in the Phase II area. That board will decide whether to issue water rights to Eagle Crest for domestic uses in Phase II. Approval of this application is conditioned upon approval of the Applicant's pending water rights application by the Oregon Water Resources Department.

TRANSPORTATION - The Applicant concedes that a grade-separated traffic interchange is required at the intersection of Highway 126 and the Cline Falls Highway and that a traffic light is needed at the intersection of Highway 20 and Cline Falls Highway. The Applicant has been required to cause these improvements to be made or assured, subject to obtaining land use approval for the interchange, before final master plan approval is granted. The amount of financial participation by the State of Oregon in these projects, if any, is subject to the State's discretion.

INTERNAL TRANSPORTATION - The minimum pavement width for private roads within the resort, pursuant to Table "A" of Title 17 (as amended by Ord. No. 93-012) is 28 feet. Also, Cline Falls Highway must be improved to at least 28 feet in width, along

the Eagle Crest property frontage on that road, with left turn lanes and right turn deceleration lanes at both entrances (existing and proposed).

BICYCLE & PEDESTRIAN - The Deschutes County Bicycle Advisory Committee has raised several concerns with the proposed bicycle facilities within and adjacent to the resort. The Committee has also offered several suggestions for improving the safety and usability of the proposed facilities. The Applicant will be required to incorporate these suggestions into the resort design as a condition of receiving final master plan approval.

GOLF COURSE SETBACKS - The Applicant has been required to meet destination resort setback standards for the Eagle Ridge golf courses in Phase II that has not yet been constructed. The existing Eagle Ridge golf course does not meet the 50 foot setback requirement of the destination resort ordinance. The applicant may, however, have a right to retain the golf course in its present location if it is determined by the County Planning Director, prior to final master plan approval, that the course is a valid nonconforming use. If the course is not determined to be a valid nonconforming use, the Applicant may either comply with the setback, in a number of different ways, or may seek permission to maintain the course in its present location. These actions must be accomplished prior to final master plan approval.

OPEN SPACE - The Applicant's Open Space Area map needs to be revised so that it accurately reflects areas that qualify as Open Space under the destination resort ordinance. Floodplains, most developed areas (except golf courses) and required landscaped areas must be excluded from Open Space areas. The Applicant's master plan may need to be revised to provide more open space than shown on the CMP.

EMERGENCY SERVICE PROVISION - The entire resort area must be annexed into the Redmond Rural Fire Protection District, prior to Final Master Plan approval. The Applicant must also assure that there will be adequate police service facilities at the resort by developing a police services plan prior to FMP approval.

WILDLIFE DAMAGE MITIGATION - The Hearing Officer has required the Applicant to mitigate wildlife damage caused by the resort development, as required by the destination resort ordinance. The Applicant will be required to do this by taking actions specified in this decision and by paying money, if necessary, to a wildlife trust fund. The fund will be used to mitigate damages that are not adequately mitigated by implementation of the mitigation actions listed in this decision. The amount of this contribution will be determined prior to final master plan approval.

ECONOMIC ANALYSIS - The economic analysis of the impact of resort development provided by the Applicant's economic expert failed to assess the economic cost of all items listed in the County's destination resort ordinance. The Applicant will be required to

assess these indirect costs, prior to FMP approval. The Applicant will then be required to revise the assessment of benefit in the submitted analysis to reflect these indirect costs. If the analysis establishes that the resort will not have a substantial economic benefit, the Applicant will be given an opportunity to revise its resort plan to achieve that benefit.

VARIANCE

BIKE PATH/ROAD VARIANCE - The Applicant request permission to build roads and bicycle paths in setback areas, on the edge of the resort property. The Applicant failed, however, to meet the stringent requirements included in the County's land use ordinance for variances of this type. The requested variances were either not needed in order to accommodate road and bike ways or were necessitated by the actions of the Applicant in moving the location of the golf course closer to the resort boundaries than approved by the County in 1990.

IV. FINDINGS OF FACT¹

The Hearings Officer makes the following findings of fact regarding land use applications CU-93-94 and V-93-28:

1. **SUBJECT PROPERTY:** The subject property consists of three adjacent areas:
 - A. The first area is the existing Eagle Crest destination resort, referred to in the application material, and in this Decision, as "Eagle Crest Phase I". This area contains 508 acres and is located on the east side of Cline Falls Highway, adjacent to the Deschutes River. Eagle Crest Phase I consists of numerous tax accounts. These accounts are shown on Staff Exhibit #1.
 - B. The second area is the proposed primary expansion area for Eagle Crest Resort, referred to as Eagle Crest Phase II. This property is located at 68397 Cline Falls Highway, Redmond, and is further identified as tax lots numbered 15-12-00-1506, 15-12-00-4600, 15-12-23B-1500, 15-12-23B-1400, 15-12-22-101 and 15-22-102. This area is located west of the Cline Falls Highway on the east slope of Cline Buttes and contains 710 acres. It is currently developed

¹Many of the findings made by Associate Planner Dale Van Valkenburg in his comprehensive and well-written Staff Report regarding the Eagle Crest application have been adopted by the Hearings Officer in this report as findings of the Hearings Officer. The Hearings Officer wishes to thank Mr. Van Valkenburg for the valuable assistance he has provided in developing and analyzing the voluminous record required for a destination resort conceptual master plan application.

with the 18-hole Eagle Ridge Golf Course approved under County conditional use and site plan file Nos. CU-90-189 and SP-90-115.

- C. The third area consists of 36 acres adjacent to Eagle Crest Phase I, referred to in the application material as "Canyon River Territories" (or "CRT Expansion"). The CRT Expansion area is adjacent to Condor Drive at the southwest corner of Phase I, and is comprised of the following tax lots: 15-12-23B-900; 15-12-23D-200; 15-12-23D-100; 15-12-23D-400; and 15-12-23D-300.

FINDING: The Applicant sought, in its Supplemental Burden of Proof Statement, to enlarge the size of the CRT Expansion Area to include Tax Lots 15-12-23B-1501 and 15-12-23B-1300 (See Exhibit 69). These areas were not included in the Applicant's CMP application. They may not, therefore, be added to the resort by the Hearings Officer, at this time. The Applicant has not provided any information about the impacts that will be caused by these additions on the entire resort proposal. No notice was provided to affected parties of the inclusion of these areas in the resort application, so it is not legally possible to include these properties in this approval.

2. **ZONING:** The Eagle Crest resort and proposed expansion areas include several different zoning designations. Eagle Crest Phase I is zoned primarily MUA-10, Multiple Use Agriculture, with areas of EFU-SC, Exclusive Farm Use - Sisters/Cloverdale Subzone. All of the residential and commercial development within Phase I is located on areas zoned MUA-10. The EFU zoning is found on areas utilized as open space, golf courses, and playing fields. There is also a Landscape Management Combining Zone along those portions of the property within 1/4 mile of the Deschutes River and within 1/4 mile of Highway 126.

Eagle Crest Phase II is zoned entirely EFU-SC, with that portion of the property located within 1/4 mile of Highway 126 also within the LM Combining Zone.

The Canyon River Territories area is zoned primarily Rural Residential - 10 Acre Minimum. Some Canyon River Territories lots are zoned EFU-TRB.

All three phases of Eagle Crest are within the Destination Resort (DR) Combining Zone.

3. **PROPOSAL:** The Applicant, Eagle Crest Partners, Ltd., has applied for a Conceptual Master Plan and Conditional Use Permit for a Destination Resort to allow a 746 acre expansion of Eagle Crest destination resort. The original application materials reversed the acreage for Phase I and Phase II, crediting Phase I with 710 acres and Phase II with only 508 acres. As a result of this error, the Notice of Public Hearing mailed to surrounding property owners referred to a 544 acre expansion of the resort instead of the actual expansion size of 746 acres. Notice of this error was provided to affected parties,

in the County Planning Division staff report regarding this application. The report was mailed to affected parties.

In actuality, the Applicant proposes to use the existing 508 acre Eagle Crest Phase I as a basis for expanding into two new areas. Eagle Crest Phase II will contain 710 acres and is located to the west of Phase I, across Cline Falls Highway. Canyon River Territories is adjacent to Phase I, on the east side of Cline Falls Highway and contains 36 acres. The total size of the proposed resort will be 1,254.34 acres.

The Applicant is seeking approval for an additional 497 single-family homesites (41 in the CRT Expansion and up to 456 in Phase II) over those already authorized in Eagle Crest Phase I, plus 162 multi-family units (1/5 share condominiums) and 120 timeshare townhouses and 226 hotel room facilities for a total of 891 new units and a total of 1410 total units in both phases, according to Exhibit 37. Narrative in the Applicant's burden of proof statement and a chart on Exhibit 2 indicate that the Applicant may not construct all 456 homes, but may elect to build multiple family units in their place. There appear to be inconsistencies between the burden of proof statement, Exhibit 2 and Exhibit 37 regarding the number of units allowed. The Hearings Officer, therefore, finds that the numbers shown in this Decision shall control over all other written documents submitted by Applicant regarding the number and type of units that are allowed by this approval. This number and type of units allowed by this approval is discussed in greater detail below.

Phase II is proposed to be constructed in a series of phases, as depicted on a map labelled "Eagle Crest II Preliminary Master Plan" [Exhibit 2]. Proposed project amenities will include tennis courts, swimming pools, recreation centers, two 18-hole golf courses (previously approved under CU-90-189 and SP-90-115), soccer and football fields, and significant areas of open space.

The CRT Expansion will be included as a part of Eagle Crest Phase I and is proposed to be built in two phases. No project amenities are to be located in the CRT Expansion other than open space areas.

The Applicant has submitted the following Exhibits in support of this application:

1. Eagle Crest Phase I and Phase II Preliminary Master Plan Map
2. Eagle Crest II Preliminary Master Plan Map
3. Eagle Crest II - Phase I Tentative Plan Map
4. Canyon River Territories Tentative Plan Map
5. Map of Office Expansion Area

6. April 1992 Wildlife Assessment by Beak Consultants, Incorporated with recommendations for mitigation of damage to wildlife habitat
7. Hydrogeologic Study by David J. Newton Associates, Inc. for Eagle Crest Phase II, April 1992
8. Letter dated March 11, 1992 regarding erosion control from Thomas A. Walker, P.E., Senior Associate for W&H Pacific to William D. Lyche of Eagle Crest Partners Ltd.
9. Traffic Impact Analysis by Kittelson & Associates, Inc. for proposed Eagle Crest Resort Expansion, dated April 1992
10. June 12, 1992 Letter from Kittelson & Associates to Bill Lyche of Eagle Crest Partners, Ltd. regarding impacts of adding 41 units to Phase I (CRT Expansion)
11. Letter from Daniel A. Seeman of Kittelson and Associates, Inc. to Mark DeVoney, ODOT Transportation Planner, regarding possible grade separated interchange agreement
12. Vacation Resort Owner Documents
13. Estate Homesite Owner Documents
14. Eagle Crest Estate Homesite Association - Architectural Review Committee Policies and Guidelines, February 1992
15. Eagle Crest Open Space Management Plan
16. Eagle Crest statement regarding public use of Eagle Crest facilities
17. Domestic Water Supply System Master Plan by W&H Pacific
18. Letter from W&H Pacific re Water Impact of CRT Expansion
19. October 1992 technical review of Eagle Crest, Phase II hydrogeologic study by Joseph B. Gonthier, Hydrologist and Registered Professional Geologist for Deschutes County Community Development Department.
20. October 16, 1992 letter from David J. Newton Associates, Inc. responding to concerns regarding groundwater raised by WaterWatch of Oregon.

21. April 19, 1993 letter from Oregon Water Resources Department (File G-12905) stating that the Eagle Ridge Development Corporation application for a water use permit for three wells to provide domestic water for 900 families and lawn irrigation satisfies OWRD technical review requirements. Letter states that the application was being subjected to a public interest review. Permit would authorize use of up to 3 CFS or 1330 gallons per minute. Proposed permit conditions would require beneficial use of all water, without waste, no later than October 1, 1996.
22. Letter from Central Electric Cooperative stating willingness and ability to serve Eagle Crest Phase II
23. Letter from U.S. West Communications regarding ability to serve Eagle Crest Phase II
24. Letter from Falcon Cable T.V. stating ability to serve Eagle Crest Phase II
25. Employee Safety Manual
26. Sewage Disposal Plan by W&H Pacific for Eagle Crest Phase II
27. Letter re Impact on Existing Sewage Collection System of CRT Expansion
28. Letter from Thomas A. Walker, Senior Associate, W&H Pacific re Domestic Water and Sanitary Sewage, with attachment of OAR 340-55-005 through -030
29. Wildfire Prevention and Evacuation Plan for Eagle Crest Phase II
30. Report by Janet Hardwick, Housing Available for Employees in Bend and Redmond
31. Analysis of Projected Economic and Fiscal Impacts of Eagle Crest II by Hobson & Associates
32. Rental Agency Agreement
33. Cost of Facilities to Date
34. Improvement Costs for Recreational Amenities Phase 1 & 2
35. Narrative of Existing Structures; Proposed Uses - Eagle Crest, Phase II

36. Open Space Calculations (two documents submitted at different times)(51.89% open space for entire resort per September 1993 calculations, 53.33% per October 1993 calculations)
37. Overnight Accommodations v. Total Units Calculations (original and revised, the original is on Holmes, Hurley letterhead)
38. Eagle Crest II - Roadway Setback Map
39. Letter from Eagle Crest CEO and President Jerol E. Andres re financing stating that Eagle Crest Partners, Ltd. had spent \$3.2 million dollars on Eagle Crest Phase II development and nearly \$700,000 in expenses in seeking approvals required for resort expansion.
40. Partial Transcript of October 8, 1992 Hearing regarding withdrawn applications for destination resort approval and variances (through Applicant's presentation, no testimony from opponents' or rebuttal testimony)
41. Letters of Support from Robert C. Riggs, Mayor of Redmond and Elton Gregory, Superintendent of Redmond School District 2J
42. United States Department of Interior, Bureau of Reclamation Memorandum dated October 1 1991 enclosing Technical Reconnaissance Report, Survey of Groundwater Resources, Upper Deschutes River Basin, Oregon by Gary King
43. Hydrogeologic Study, Eagle Crest Phase II, Supplemental Findings by David J. Newton Associates, Inc. dated September 30, 1993
44. October 11, 1993 letter from David J. Newton, P.E., C.G. to Bill Lyche stating that Eagle Crest wells obtain water from the regional groundwater aquifer, not from perched water tables.
45. October 14, 1993 letter from Daniel A. Seeman of Kittelson & Associates, Inc. regarding the traffic impact of Eagle Crest Phase II traffic on the intersections of U.S. Highway 20 and Cline Falls Highway and U.S. Highway 20 and 7th Street in Tumalo.
46. October 13, 1993 letter from Janet Hardwick, Director of Personnel for Eagle Crest to George Read, Planning Director stating that Eagle Crest did not invest in the Stoneybrook Apartments in Redmond, as stated in her February 21, 1992 letter.

47. Order No. 92-110 of the Board of County Commissioners of Deschutes County annexing Eagle Crest Phase II into Rural Fire Protection District No. 1.
48. Memorandum from Kurt Giesler, COIC, to Sharon R. Smith dated October 11, 1993 regarding the 1984 value of Eagle Crest resort improvements.
49. Flood Insurance Rate Map for Deschutes County
50. Open Space Map prepared by W&H Pacific, dated 10-8-93
51. November 2, 1993 letter from Kittelson and Associates to William Lyche regarding outstanding traffic issues regarding Eagle Crest impacts to public road systems²
52. Schematic Sewage Disposal Plan for Typical Single Family Septic Tank and Drainfield, November 1, 1993 by W&H Pacific
53. March 24, 1987 letter from Thomas A. Walker, P.E. to Karen Lyche of Eagle Crest Partners with water pollution control facilities permit for the Eagle Crest Resort Phase I
54. September 16, 1992 letter from Thomas A. Walker, P.E. to James L. VanDomelen, P.E. of the Water Quality Division of the Oregon Department of Environmental Quality and application for a Water Pollutant Control Facilities Permit.
55. June 4, 1992 Letter from Oregon Department of Environmental Quality (DEQ) to Eagle Crest Partners Ltd. acknowledging receipt of WPCF Permit Renewal Application.
56. June 7, 1990 Letter from DEQ stating that Eagle Crest Partners then possessed a current Water Pollution Control Facilities Permit (No. 100104) for its wastewater treatment system located in Eagle Crest Phase I and stating that system was operating properly when inspected on October 17, 1989 by DEQ.

²The applicant submitted a large scale map of the proposed new interchange of Cline Falls Road and U.S. Highway 126 as Exhibit 51 during the hearing of this matter. The applicant subsequently submitted this document and identified it as Exhibit 51. The Hearings Officer, therefore, renumbered the interchange map Exhibit 70.

57. August 10, 1992 letter from James L. Van Domelen, P.E. to Thomas A. Walker, P.E. regarding establishment of a sewerage system master plan for Phase II of Eagle Crest.
58. March 5, 1993 from Thomas A. Walker to Judy K. Johndohl of DEQ regarding water pollution control facilities permit application for Eagle Crest II sewerage system.
- 58A. Land Use Compatibility Statement submitted to DEQ regarding water pollution control facilities permit application for Eagle Crest II sewerage system.
59. Certificate of Limited Partnership for CBU Ltd., an Oregon Limited Partnership listing Eagle Crest G.P., Inc., an Oregon corporation, as only general partner.
60. October 8, 1992 letter from Judy K. Johndohl, DEQ, to Cline Butte Utility Company stating that water pollution control facilities permit was received by DEQ and assigned application number 997015 and requesting additional information.
61. June 3, 1991 letter from DEQ to Canyon River Territories residents regarding ground water, Deschutes River water and pesticide and lawn fertilizer concerns.
62. November 3, 1993 letter to the Hearings Officer from William D. Lyche, Director of Development for Eagle Crest, stating that Eagle Crest provides security, safety and emergency service through a staff of 11 full-time employees.
63. November 2, 1993 letter to the Hearings Officer from John Thronson, Director of Golf Maintenance of Eagle Crest, regarding water conservation measures employed by Eagle Crest on its golf courses.
64. Memorandum from Thomas W. Cook, Associate Professor of Horticulture for Oregon State University entitled "Are Golf Courses Polluting the Environment?" discussing golf courses in the Portland, Oregon area.
65. Summary of Results of Employee Questionnaire by Janet Hardwick, Personnel Department of Eagle Crest and Listing of Job Titles at Eagle Crest Resort as of June 15, 1993
66. November 1, 1993 letter to Hearings Officer regarding Eagle Crest Water Rights from Thomas A. Walker, P.E.

67. November 1, 1993 letter from David J. Newton, P.E., C.E.G., regarding Eagle Crest Phase II Groundwater Issues
68. October 20, 1993 Memorandum prepared by Hobson & Associates in response to testimony and documents submitted by Marjorie S. Turner and Clyde Everton criticizing Hobson & Associates' economic analysis of economic impacts.
69. Current Tax Map Designation of Eagle Crest Phases I and II, including CRT area and surrounding properties.
70. Interchange Map

The Applicant has also submitted the following documents prepared by Sharon R. Smith and Robert S. Lovlien, of Attorneys for Applicant (Holmes, Hurley, Bryant, Lovlien & Lynch), in support of this Application: Burden of Proof Statement, Response to Staff Report, Supplemental Burden of Proof Statement Addressing Questions Raised by Hearings Officer dated November 3, 1993, and Proposed Conditions of Approval.

All of the documents submitted by the Applicant have been marked and placed in three white notebooks.

The Applicant has also submitted the following documents that were not included in their submitted exhibits. The Hearings Officer has placed these items in the white notebooks provided by the Applicant and has numbered these documents as follows:

71. 10/20/93 letter from Thomas Walker of W&H Pacific about the proposed Highway 126 overpass.
72. 10/20/93 letter from William D. Lyche to Linda Burwell stating that there will be no access between Eagle Crest and Cline Butte Oasis. Mr. Lyche proposed using mounds and landscape vegetation near Ms. Burwell's property to minimize the impact of the proposed golf course on Ms. Burwell's property.
73. 10/21/93 letter from William D. Lyche to Dale Van Valkenburg stating that Eagle Crest did not run its water pump on the Deschutes River after Bob Main required that the pump be shut down. The main line is broken, so pumping is not possible.
74. 10/11/93 letter from J. Ned Dempsey, P.E., President of Century Testing Laboratories. Mr. Dempsey states that the coliform test obtain by Ms. Sands does not be used to analyze Deschutes River water and to indicate the presence of human pollution. The reasons are that: (1) coliforms are a group of bacteria that

are prevalent in the environment that are used as an indicator but are not any proof of contamination; and (2) coliform tests are used for drinking water and have no value by themselves; and (3) fecal coliforms are organisms living in the intestines of warm blooded animals (deer, cows, beavers, etc.) and their presence in the river do not necessarily indicate pollution by humans; and (4) it is normal to have fecal coliforms and total coliforms in any surface water.

FINDING: This information, provided by Mr. Dempsey, is the only evidence in the record regarding the meaning of the results of the river water testing commissioned by Sandra Sands. The Hearings Officer, therefore, accepts Mr. Dempsey's conclusion that a higher fecal coliform count downriver from the resort than upriver, does not necessarily indicate contamination of the Deschutes River by Eagle Crest septic drainfields.

75. 10/21/93 written testimony of William D. Lyche. Mr. Lyche states that Eagle Crest has met its burden of proof with numerous professional reports and extensive documentation.

76. 9/13/93 Meeting Notes prepared by Thomas A. Walker, P.E.

In addition to the Conditional Use application, the Applicant is requesting approval of a variance to the road setbacks contained within Section 18.113.060(G)(b)(1)(iv) of Title 18. This section requires an exterior setback of 100 feet for roads within destination resorts. The Applicant is seeking a variance for three sections of roads within Eagle Crest Phase II that the Applicant wishes to build within the setback. These road sections lie at the north edge of the project adjacent to the Cline Falls Oasis Subdivision and behind the number 13 green and the number 17 tee of the existing Eagle Ridge Golf Course, in Eagle Crest Phase II. The second section lies at the 13th tee adjacent to land managed by the Bureau of Land Management at the northwest corner of the project. The third section of road lies behind the number 3 green on the southwest corner of the project. The Applicant has submitted a detailed map representing the areas of the requested setback variance [Exhibit 38].

The Applicant has also submitted tentative plan maps for Area 1 of Phase II and the CRT. The Applicant has not, however, submitted a burden of proof statement addressing the criteria for such approval. The Hearings Officer, therefore, finds that the tentative plan map is intended as an illustration in support of the conditional use application for CMP approval, not as a separate application. The Planning Division and Hearings Officer have processed this application with this basic assumption in mind. The Applicant will be required to plat all phases of Phase II and CRT and to obtain tentative plat approval from the County Planning Division, after FMP approval. All lot lines shown on the CMP maps shall be removed from the FMP maps as those boundaries will be determined in the

plating process, not in the CMP or FMP process. Additionally, the Applicant has failed to clearly indicate the property boundary for Phase I on the CMP map. That boundary shall be accurately shown on the FMP map and shall be consistent with the area included in the CMP application. No additional property may be included.

4. **NATURAL CHARACTERISTICS OF THE SITE:** The project expansion site is located in a transitional region between the ponderosa pine forests along the eastern slope of the Cascade Mountains and the nonforested high desert country of Eastern Oregon. There are no wetlands, riparian areas or significant natural features or rock outcroppings within the expansion areas. Such areas are found in Phase I, along the Deschutes River. The dominant habitat throughout the expansion area is juniper woodland, except for the areas recently disturbed due to the development of the Eagle Ridge golf course [Exhibit 6].

A description of the site's specific geology is set forth in the Hydrogeologic Study prepared by David J. Newton Associates, Inc. [Exhibit 7]. This study finds that the site of Phase II rests on the eastern flank of Cline Buttes, on the eastern edge of the High Cascades region, and adjacent to the Volcanic Plateaus of Central and Eastern Oregon. The site is underlain by a varied assortment of volcanic dikes and ash flows, ash flow tuffs, cinder cones, and volcanically derived sediments. Overlying this assortment are intracanyon and plateau-forming basalt flows and other recent surface deposits including alluvium and slopewash. According to topographic maps of the Phase II site, the slopes are relatively gentle, generally less than ten percent, with primary aspects being east and northeast. The existing Eagle Crest Phase I development is bounded on the east by the Deschutes River. Resort development is perched atop the Deschutes River canyon and a flat and rolling area between the river and the eastern flank of Cline Buttes.

5. **EXISTING USES/STRUCTURES:** Eagle Crest Phase I contains numerous structures and uses, including a hotel, restaurant, conference facilities, timeshare units, single-family residences, a sports complex, outdoor pools, tennis courts, a golf course, playing fields, an equestrian center, and others. The locations for these developments are shown on Exhibit 1, and are described in Exhibit 36.

The site of the proposed Phase II development was approved for development as two 18 hole golf courses under County Planning file Nos. CU-90-189 and SP-90-115 in November of 1990. Construction of the first 18 holes on the western portion of the Phase II site is completed. In addition to the golf course approval, the Applicant has also received previous approval for a golf course maintenance building (SP-92-39), two pump house buildings (SP-92-54), and a temporary golf pro shop (SP-93-15).

6. **AFFECTED AGENCIES:** Deschutes County has received the following comments from governmental and private entities and agencies affected by this land use action:

A. Deschutes County Property Address Coordinator:

The address of record is 68937 Cline Falls Road.

B. Watermaster, District 11:

They need to keep in close contact with our office so that the water right record is updated as development occurs.

August 6, 1993 letter from Bob Main, Manager of South Central Region, District 11 to Bill Lyche of Eagle Ridge Development Corp.:

"Although you have applied to Oregon Water Resources Department for a change in point of diversion, since the change has not been approved you are not authorized to divert water from the Deschutes River at this point. Although the diversion point was not being used at the time of our visit, it had been used in the recent past. . . . Any diversion from this point without authorization is a violation of ORS 540.710, which could result in criminal or civil penalties."

C. Deschutes County Bicycle Advisory Committee:

The Bicycle Advisory Committee submitted a four page letter in response to the nearly identical proposal submitted by Eagle Crest in 1992. The Committee's observations are still applicable to this proposal, and are summarized in the following comments:

Exterior Roads

1. Cline Falls Highway and Highway 126 are road that are often used by cyclists for recreational and training rides. Highway 126 is a part of the Trans-America Route and is also a State bicycle route. Although the total number of cyclists on any given day may be relatively small, the area receives steady bicycle traffic and should not be diminished as a cycling resource.
2. While the Cline Falls Highway and Highway 126 intersection is not currently a cycling problem area, any redesign of the intersection should keep in mind that bicyclists use it regularly.
3. As traffic increases on Cline Falls Highway, a sufficient shoulder for bicyclists will be necessary. The shoulder should meet the minimum rural arterial standards contained in the Deschutes County Bicycle Master Plan.

Interior Roads

4. It appears that the most popular destination for cyclists within the resort will be the commercial core in the center of the development. To promote cycling and walking as a viable way to travel around the resort, the trail system should access this area clearly, efficiently, and safely.
5. The system of two multi-use paths must be much more extensive to actually encourage the use of the paths over roads. In addition, the paths will not work well in residential areas with numerous driveway crossings. The Committee recommends that the bicycle transportation system include both separated paths and shared use of the roads, which would require 4' wide shoulders on the main roads and no on-street parking. In addition, the plan provides numerous opportunities to connect cul-de-sacs with paths, which would encourage the use of bicycles over cars.
6. All two-way bike paths should be separated from roadways by landscaping or berms.
7. To reduce the speed of cars on the streets, the Committee recommends 10' wide travel lanes with clearly marked bicycle lanes. Where the separated bike path crosses a roadway, "bicycle crossing" signs, a change of paving texture, stripes, or a gradual speed bump would also alert cars to the need to reduce speed.
8. The Traffic Impact Analysis assumes that bicycle and pedestrian movements between the two Eagle Crest developments are not expected to be significant. The B.A.C. disagrees with this assumption, and recommends that bicycle cross-traffic be planned for at the intersection of the resort access and Cline Falls Highway.
9. The present configuration of the Cline Falls Highway crossing as shown on the plan is inadequate and dangerous. A two-way bike path on one side of the crossing has led to serious accidents in other places. Bicyclists and pedestrians should be routed off of the two-way path and onto the appropriate side of the road (in the same direction as cars) to cross Cline Falls Highway.

D. Oregon Department of Transportation, Highway Division, Region 4:

October 21, 1993 letter from Mark DeVoney, Region Planner for ODOT stated:

1. The existing Cline Falls Road and Highway 126 interchange does not have a left turn lane for westbound to southbound turns. This lane is warranted at this time. It is very expensive to provide such a turn lane as such an improvement would require ODOT to widen the Highway 126 bridge across the Deschutes River to accommodate the lane. A cost share with Eagle Crest is a way to address this existing need. Eagle Crest will pay the percentage that their traffic bears to all traffic in the intersection. Eagle Crest will pay 100% of planning and design costs and 100% of construction costs outside of State right of way. The public share is estimated at \$240,000.
2. Highway 20 and Cline Falls Road. If the traffic analysis of this intersection is accurate and Eagle Crest contributes only a small percentage to total traffic, it is ODOT's position that Eagle Crest should not be responsible for the cost of improvements to these intersections. According to the Applicant, the Cline Falls Road and Highway 20 intersection meets traffic signal warrants. ODOT would need to verify this finding prior to installing a signal. An interchange at this location does not appear feasible due to disruption of this small community.

E. Oregon Department of Fish & Wildlife:

June 24, 1993 letter from Stephen L. Lewis, Regional Supervisor of ODFW to Larry Nunn, Oregon Water Resources Department stating support for Eagle Crest's water transfer application as it will greatly increase the summer flow (20%) of the Deschutes River below Bend, an area of low flows.

October 13, 1993 letter from Ted Wise stated that:

1. The subject property is not located within a wildlife combining zone.
2. Many wildlife species inhabit the area of the proposed development.
3. The conclusion of Beak Consultants that "the significance of the habitat in the project area for wildlife is reduced due to regional abundance of this habitat type (Juniper)" is a "gross over simplification of the situation." Mr. Wise states that large, mature juniper stands provide habitat for birds, small mammals, big game, predators and sensitive, threatened and endangered species. These trees provide thermal cover and food during winter months.
4. The area is important as habitat for deer.

5. Alteration of 1254 acres of habitat has a significant impact on wildlife.
6. Raptor use, including golden eagles, of habitats in the project area is common. These birds nest in cliff faces of the Deschutes River canyon and other suitable sites in the general area. The birds use the subject property for foraging.
7. The County staff report comment that Eagle Crest's irrigation and domestic usage will be 4,140 gallon per minute is comparable to 1/3 the flow in the Deschutes River below North Canal diversion during spring and summer months. This must be a peak usage number but that the resort should use millions of gallons of water each day. Is there a connection between the Eagle Crest aquifer and the springs that feed into the Deschutes River down river and how Eagle Crest usage will affect these springs.
8. ODFW questions the wisdom of committing to a development requiring so much water when the results of a middle Deschutes basin water study are expected in a couple of years.
9. ODFW is concerned about the water quality of the Deschutes River and the impact of fertilizers and herbicides used to manage the resorts golf courses. Recommended that the Applicant be required to monitor water quality and to make adjustments if water quality is degraded.
10. Land Use Planning Goal 8 requires full mitigation of impacts on fish and wildlife resources.
11. Some or all of the following should be required as mitigation measures:
 - A. Eagle Crest should contribute funding for the middle Deschutes groundwater study.
 - B. Require annual contributions to a habitat trust fund based on Eagle Crest revenues.
 - C. Develop an animal control policy to prevent harassment of wildlife.
 - D. Create a wildlife education program.
 - E. Develop riparian habitat along portions of any new lakes.

- F. Purchase COID land in the northeast corner of the project area for the County or BLM.
- G. Do not use poisonous baits to kill golf course rodents.
- H. Work with ODFW and BLM to improve habitats on adjacent public lands.
- I. Any large expanses of fence built should be done to specifications which allow the passage of deer.
- J. Stated that ODFW will not be responsible for wildlife damage within the development.

November 1, 1993 letter from Ted Wise, Habitat Protection Biologist, with introduction to a National Geographic article regarding groundwater scarcity and contamination:

1. The Deschutes County Comprehensive Plan prohibits the siting of destination resorts in especially sensitive big game habitat areas. Even though the proposed development is not in especially sensitive big game habitat, it is still big game habitat. Mule deer frequent the area. Development will cause a loss of habitat.
2. While juniper habitats may be widespread, examples of ecologically balanced juniper-sage-bunchgrass communities containing "mature" older trees are extremely rare. The value of such stands is extremely rare.
3. The Deschutes County Comprehensive plan protects sensitive bird nesting sites. There are such sites for Golden Eagles upriver from the present development. The lands these birds hunt includes the land proposed for development. Having an adequate forage base is imperative to their survival and nesting success. The loss of nearly two square miles of foraging habitat must be considered in the mitigation assessment. Erecting raptor perches is little consolation for such loss.
4. The County Plan states that: "The county shall conduct a study of the legal, economic and environmental consequences of the use of irrigation water for non-agricultural uses. I am unaware of the status of this study. ODFW would like to have this addressed in the findings and decision for this project.

FINDING: Deschutes County is participating in a regional groundwater study with other governmental entities. Results from the study are expected in 1995.

5. The Comprehensive Plan directs the County to seek funding for a county-wide hydrologic study. The reasons for this direction are: "Water in adequate quality and quantity is important to all communities, but in a semi-arid region such as where Deschutes County is located it is of particular importance. Drought is a recurring natural phenomenon which has done much to direct the county growth and to determine its economic bases. Unfortunately, inadequate information exists on water supplies and on water quality."
6. While Oregon Department of Water Resources is responsible for approving the ground water right application, Deschutes County can delay a decision this matter until the comprehensive groundwater study is complete. If the findings of the study indicate an abundance of water and no adverse impacts from pumping of the amounts of water proposed, then a sound decision can be made to move forward.
7. Maintaining the fish populations and their habitats in the Deschutes River for the recreational enjoyment of present and future Oregonians is the responsibility of ODFW. The springs which flow into the Deschutes north of Redmond are very important for the health of the river. Decisions which may unknowingly affect the river flow regimes are definitely of concern to us. Factors that affect water quality are also of major concern to ODFW. As in previously submitted comments, we urge no decision be made that will degrade the water quality. Sewage and stormwater disposal should be in accordance with standards that assure this will not be the case.
8. Policies in the Comprehensive Plan emphasize efforts directed at improving flows in the river. The county should approve no project that is contrary to this policy.
9. Central Oregon Irrigation District makes contributions to a fish and wildlife habitat trust fund on an annual basis to mitigate impacts of its hydro-power diversion. There are currently several hundred thousand dollars in the account. The impact of lost habitat will be felt throughout the life of the development, so mitigation funds should be paid for some years into the future.
10. The Applicant should promote water conservation when facilities are constructed and when occupied through the use of low flow toilets and shower heads and other such measures.

F. Deschutes County Environmental Health Division:

Obtain a current report from DEQ regarding the operation and future potential for the presently WPCF permitted system. Consider using the treated effluent as a supplement to irrigation water (4% is 4%). Perhaps treated effluent would require less odor remedy.

G. The Bureau of Land Management:

The BLM provided the following comments in response to a nearly identical proposal by Eagle Crest in 1992. The BLM has not responded as of this writing to the current proposal.

1. We concur with the mitigation option which affects public lands presented on page 9 of the Wildlife Assessment report, and encourage the implementation of these measures.
2. Mitigation projects proposed on public lands should be planned jointly with BLM staff specialists.
3. BLM supports the proposal to restore lands damaged by off road vehicle use.
4. Rerouting the approach of the Cline Falls Highway with Highway 126 may require a right of way from BLM if realignment affects adjacent public lands.
5. Deschutes County may wish to consider reptiles, amphibians and other species which would utilize the pond areas further. More assessment related to golden eagles which utilize the surrounding habitat for foraging and nesting along the Deschutes River corridor would also be useful.

A document entitled Environmental Assessment prepared by the BLM was submitted to the Hearings Officer, regarding the environmental impact of Eagle Crest's request to construct a water pipeline and 150' by 150', 300,000 gallon (initially 100,000 gallons) concrete water reservoir on BLM land on the east slope of Cline Butte, to provide proper water pressure for domestic uses and adequate flows of water for fire fighting in Eagle Crest Phase II. The document states:

1. Oregon Health Division regulations require a permanent maintenance road around the structure and fencing to prevent vandalism. The Applicant proposes a six foot high chain link fence with wood slats.

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1. Oregon Health Division regulations require a permanent maintenance road around the structure and fencing to prevent vandalism. The Applicant proposes a six foot high chain link fence with wood slats.

2. The project would not adversely impact any critical environmental element.
3. No cultural or archeological resources were found by a required archeological survey in the area of the proposed reservoir and in the proposed right of way for transmission mains.
4. No sensitive, threatened or endangered plants were found.
5. Cumulative impacts from the proposed project should be minimal.
6. Residual impacts would result from the physical presence of the surface portion of the reservoir facility and the periodic maintenance inspections to the site.

H. Deschutes County Department of Public Works:

The destination resort proposed is fine from an external traffic standpoint provided that the following conditions are met:

1. The turn lanes are placed on the Cline Falls Highway for vehicles making left turns into both Eagle Crest I and Eagle Crest II.
2. Deceleration and acceleration lanes are placed on the Cline Falls Highway at the entrance to Eagle Crest I and II when and if traffic warrants are met for those improvements.
3. The improvements are made at Highway 126 and the Cline Falls Highway as addressed in the Kittelson letter to Bill Lyche dated June 12, 1992 and the Kittelson letter to Mark DeVoney dated September 17, 1992. In addition, the grade separated interchange shown in the drawing furnished by Kittelson is a worthwhile project at a future time as traffic needs require it. Gary Judd and I (Dick Johnson) would add that Eagle Road should probably be brought into the design of any future interchange on Highway 126 and the Cline Falls Highway.

From an internal transportation perspective, the following comments are made about Eagle Crest I and II:

1. Many of the units take access directly from the internal system of collector streets rather than from cul-de-sacs or short loop streets. (Contrast this with Sunriver or Black Butte Ranch.)

2. The proposed second access to the Cline Falls Highway from Eagle Crest II comes in at a point where the sight distance may not be that good. Has this been checked in the field?
3. The bicycle/pedestrian path system is fairly limited. This means bicyclists and pedestrians will be sharing the road with cars. No big deal for the bicyclists, but not acceptable for pedestrians.
4. The local roads need to be wide enough, 26 to 28 feet, to accommodate two way traffic and bicyclists and keep vehicles off the edge of the roads and from breaking up the edge of the pavement.
5. The overall density is low, but pedestrians need to be accommodated on their own separate path system or share a path system with bicyclists. Maybe a bike path on one side of the roads with other paths connecting neighborhoods etc.
6. Higher density, smaller lots, would encourage more walking/biking and would reduce the lineal feet of road per dwelling unit thereby reducing road costs per unit.

At some point, a shuttle bus system could serve Eagle Crest from Redmond, Bend or even the Redmond Airport. A logical terminal/depot area could be set up in both Eagle Crest I and II at a central point. This could reduce external trips to and from this destination resort from nearby cities.

I. Oregon Health Division:

The domestic water system will require plan review through the Health Division Drinking Water Program.

J. Deschutes Reclamation & Irrigation Co., dba Swalley Water:

The master plan for Eagle Crest and our water rights maps coincide. We see no sign of improvements planning to be built on land with Swalley water rights. Therefore, we have no comments or objections concerning this master plan.

October 15, 1993 letter to the Hearings Officer from C.C. Brown, Ph.D., Office Manager for Swalley Water:

A number of years ago, Swalley Water, the WRD Regional Watermaster and ODFW discussed the problem of low river water flows in the Deschutes River between the Swalley irrigation diversion dam north of Bend to the area where big

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springs add water to the river just below Eagle Crest. It was decided that it would be beneficial to the river to transfer the point of diversion of irrigation water that is currently diverted by Swalley at the north end of Bend to a point further downstream. This plan would, however, be more costly due to water pumping costs. Swalley contacted Eagle Crest about the possibility of selling Swalley surface water rights to Eagle Crest to replace Eagle Crest ground water rights. There was an existing pump facility in place, which meant water could be diverted as soon as the state approved the change of transfer point. There was an earlier right of withdrawal at the Eagle Crest location, but for a different right.

At present there is a normal summer flow of approximately 30 cfs below Bend. The Eagle Crest transfer adds another approximately 5.7 cfs to this total, nearly a 20% increase. When the additional flow reaches Eagle Crest, some 18 miles downstream, Eagle Crest will withdraw only 57% of the added water. The remaining 43% continues on downstream below Eagle Crest. This transfer was arranged with the cooperation and support of Swalley Water, the Regional Watermaster, ODF&W and the Deschutes Basin Resource Committee.

K. Oregon Parks and Recreation Department

October 15, 1993 letter from Jack Wiles, Northcentral Region Manager:

The proposed interchange of Highway 126 and Cline Falls Highway will influence traffic to Cline Falls State Park and will be within the scenic waterway corridor. All Notifications of Intent and necessary approval should be obtained prior to any design or construction of the highway interchange.

OPRD received no scenic waterway notification prior to construction of water intake and pumphouse directly across the Deschutes River from Cline Falls State Park. The project must have Notification of Intent for activity on a Scenic Waterway, with notification of Oregon State Parks and Recreation Department as adjacent landowners on behalf of Cline Falls State Park. Proposed County visit to pumphouse to determine if it should be relocated or mitigated.

FINDING: The water intake and pumphouse is not a structure that is needed to assure the resort's water supply or to qualify for resort approval. The Applicant must, however, obtain County site plan and landscape management zone approval for the structure (DCZO Chapter 18.84), unless the Applicant establishes that the structure is exempt from those requirements. The structure should be shown on the CMP map, in the location approved by the Planning Division. The Applicant may also need to obtain scenic waterway approval from the State of Oregon.

L. Deschutes County Planning Division, Historical Resources

Michael Hall of the Planning Division provided copies of two confidential resource documents that describe archeological sites on Eagle Crest property and on surrounding properties. These documents are portions of a document entitled "A Cultural Resource Survey of the Deschutes River from Bend to the Deschutes/Jefferson County Line" that was prepared in January of 1986 by Sara A. Scott for Deschutes County. The Eagle Crest Phase I property contains two identified sites and there are a number of sites on surrounding property. No sites were identified on Eagle Crest Phase II or on the CRT expansion area of Phase I.

FINDING: The archeological sites identified in Phase I are located outside of the developed areas in Phase I and are not adversely affected by this CMP approval.

M. Oregon Water Resources Department

September 14, 1992 letter from Martha Pagel, Director to the Deschutes, Jefferson and Crook County Boards of Commissioners dated September 14, 1992:

"The Commission's approval of a request to use groundwater is predicated on . . . statutory mandates. Historically, when use of the state's groundwater resource was, in relative terms, small, the risk of depleting aquifers through permit issuance was correspondingly low. With Oregon growing at twice the national rate, the surface supplies largely fully subscribed during much of the year, reliance on groundwater is increasing. Now, the risk of depletion from permit issuance is far greater. Unfortunately, our understanding of this extremely complex physical system is not keeping pace with the demands being place on it. It is getting harder and harder to assure new uses will not impair the groundwater resource."

"A good illustration of these difficulties is the Commission's recent experience with applications for groundwater use for destination resorts in central Oregon. To the extent these developments represent demands not unlike that of small cities, the potential impacts on the groundwater resource can be great. In addition, impacts on nearby established users of the resource, as well as on surrounding creeks and springs can also be significant. . . . With ever-increasing requests and without more data, however, at some point a reasonable doubt is reached whether increased groundwater use is sustainable. We are very near, if not at, that point in many areas of the state, including parts of central Oregon."

"The groundwater information base will never be perfect. However, in many areas it must improve substantially before the Commission can both issue additional permits and meet its obligation to protect the groundwater resource. Through its statewide Groundwater Assessment Program, the Water Resources Department is attempting to establish the extent and capacity of the state's aquifers."

"We want to convey to you as clearly as we can that it is no longer safe to assume that obtaining a groundwater use permit is a formality. Without better information, it is possible that permit denials will be more common than permit approvals. Such actions on our part could, of course, have major impacts on local government actions as you seek to implement your comprehensive land use plans. Accordingly, I hope we can build a strong state/local partnership to address our mutual research and planning needs. Some initial ideas on how counties might participate in the process include supporting funding for or cooperating in comprehensive groundwater investigations, requiring additional groundwater analysis and information for certain land use decisions, or phasing development projects contingent upon results from groundwater monitoring."

FINDING: The federal, state and local governments are currently participating in a groundwater study of water in the Middle Deschutes basin. **Note:** After the close of the record in this matter, the State indicated that it did not have the resources to meet its financial commitment to fund a portion of the cost of the study. Whether the State will ultimately honor its commitment, whether other entities will finance the study or the study will be discontinued is unknown at this time. This fact has not been considered in this review, however, as it is not in the record upon which the Hearings Officer must make her decision.

N. **Deschutes County Building Division, Redmond Fire Department, and U.S. West Communications** responded with no comments.

7. **LOT OF RECORD:** Deschutes County previously determined that the subject property is a legal lot-of-record in land use matters #LR-90-177 and #LL-90-108.
8. **HISTORY:** The subject applications for a conditional use permit and variance are similar to the applications submitted under file Nos. CU-92-105 and V-92-21 in the Spring of 1992 by the Applicants. These two applications, which were accompanied by Tentative Plat file No. TP-92-775, were for a 710 acre expansion of Eagle Crest Resort and a variance to setback requirements for the same stretches of road covered in the subject variance request. The only substantive difference between the two sets of applications is the inclusion of the 36 acre Canyon River Territories Expansion area on the east side of Cline Falls Highway south of and contiguous to Eagle Crest I. This area was not included in the earlier applications.

Due to defects in the County's Destination Resort Combining Zone Map which were identified by the Land Use Board of Appeals and the State Court of Appeals, the previous applications were found to be invalid and no decision was reached. Now that the defects in the County's Destination Resort Map have been corrected, the Applicant has requested that the earlier applications be withdrawn and voided. The Applicant then filed the applications that are the subject of this land use action.

9. **COMMENTS BY OTHER PARTIES:** A large number of documents were received from persons, other than affected agencies, who were parties to the above-referenced land use actions. The testimony and exhibits submitted by this group is summarized below:

A. **Nancy Hall** submitted a memorandum, Exhibit 201, that made the following points:

1. Eagle Crest has the burden of proof and persuasion in the land use action.
2. Ground and surface water is held in trust for the people of Oregon.
3. It is the goal of the State of Oregon to prevent contamination of groundwater while conserving and restoring the resource.
4. "Once Eagle Crest Phase II is in place, natural drainages will be inundated with runoff from constant irrigation of the additional proposed golf course, lawns, gardens and grounds." Ms. Hall believes that this may cause a "downward moving saturation front" that could contaminate the principle aquifers. Newton's study assumes that the natural drainage will remain dry.
5. The Newton report finds that the chance of contamination is very low, not that contamination will be prevented or will not occur, as required by the County code and state law.

FINDING: Ms. Hall has not cited specific provisions of law to support this argument. The Department of Environmental Quality (DEQ) is charged with the responsibility for adopting and enforcing environmental regulations. Any system that will be used in Eagle Crest Phase II will need to obtain DEQ approval. In order to obtain such approval, the Applicant will need to establish that the system will meet all DEQ regulations and protect the environment to the extent provided in DEQ's rules.

6. Hydrologist Joseph Gonthier found, in his review of the Newton study, that "data may weakly support a statement in the study that suggests that Cline Buttes, a volcanic cone, could represent a local zone of Frelatively high

vertical permeability." Mr. Gonthier then stated that no hydrogeologic evidence has been introduced to resolve whether Cline Buttes rocks are indeed low-permeability units. Gonthier also stated that it is extremely difficult to obtain sufficient field data to prepare accurate water level maps for the area.

7. Gonthier stated that the test he considered did not adequately assess the effects of long term pumping. Gonthier also recommended that additional work be done to assess the effect of long term pumping and should include sites outside of the resort boundaries.

FINDING: Mr. Gonthier stated that a "desk top" or "paper model" could be used to assess the impact of long-term pumping on the well tested by Mr. Newton. These additional studies were conducted by Mr. Newton, as suggested by Mr. Gonthier, to assess the impact of long term pumping. That study determined that the results of long-term pumping were negligible (Exhibit 43).

8. DCZO 18.113.050 requires analysis supporting delineation of the impact area. All of the studies address only the proposed expansion and not adjacent areas.

FINDING: The Newton study adequately determined the impact area of the Phase II wells. The study did not, however, address the impact of Phase I wells. This information is required by the destination resort ordinance as the existing resort must comply with all standards of the ordinance, if existing resort facilities are used by the Applicant to qualify for destination resort approval of the expansion area, as has been done in this application. The Applicant will be required to remedy this deficiency prior to FMP approval.

9. DCZO 18.113.050 require that the application include areas of potential instability and water areas. The Cline Falls area is on a known active fault and the Deschutes River from Tumalo to Lake Billy Chinook is a State Scenic Waterway. All improvements within 1/4 mile of a Scenic Waterway must be approved by Oregon State Parks.
10. Goal 5 requires that the County inventory and assess groundwater resources and watershed and state protected river, however, County staff states that there are no Goal 5 considerations.

FINDING: Deschutes County has inventoried and assessed groundwater resources. No groundwater resources in the area of Eagle Crest were placed on the County's Goal 5 inventory.

11. ORS 536.310 (5) states that competitive exploitation of water resources for single purpose uses is to be discouraged when other feasible uses are in the general public interest.

Ms. Hall also submitted a copy of ARLU-DECO's June 29, 1993 testimony, Exhibit 202, on water that was presented to the State of Oregon's Water Resources Department regarding Eagle Crest's water rights permit application. It appears that this document was originally prepared for prior County action on Eagle Crest Phase II and was altered for use in the Water Resource Department proceeding. This testimony includes many of the points raised in Ms. Hall's memorandum.

- B. **Andy Tillman**, member of the Deschutes County Planning Commission, submitted a written document, Exhibit 203, entitled "Likely Effect of Eagle Crest II on Traffic in the Tumalo Area - Cline Falls Road (Cook Avenue)/Highway 20. The document states that:

1. The total number of units allowed at build-out (1410) will be an increase of 3.5 times the current level of 403 dwelling units. At the County average of 2.645 occupants per household, the 1007 new units will house 2,663 new people at the Eagle Crest Resort.
2. The average number of vehicle trips per household in Deschutes County is six to ten. This means that there will be between 6,042 and 10,070 trips per day to and from Eagle Crest above the level which already exists. Additionally, Eagle Crest requires a large staff of employees, some of whom travel through Tumalo to reach the resort. There are currently 250 full and part-time employees at Eagle Crest. Using the growth factor of 3.5 times the current development, it is reasonable to expect that there will be an additional staff of 875 people, not 200 as stated by the Applicant.
3. The Applicant's estimate that 25% of vehicle trips generated by Eagle Crest will pass through Tumalo. Mr. Tillman believes that this number will be higher due to the fact that he believes that many people will be drawn to Bend for shopping and eating. If the 25% number is accepted, the Applicant will add 2,517 trips a day to "downtown" Tumalo. This number will be greater if you add a realistic percentage of the 1,750 trips generated by 875 additional staff members or if you increase the percentage of trips to a higher, more realistic, level. The intersection of 5th and Cook Avenue is already dangerously congested.
4. According to Title 18 of the DCZO, a destination resort must not alter the character of the surrounding area or existing farm uses. The addition of a

cloverleaf on Highway 126 to handle resort traffic will cause an irrevocable change in the character and land use patterns of surrounding areas.

5. Cline Butte is a dominant geographic landmark. 850 new dwellings should not be placed on this landmark.
6. "Grey" water should be used to irrigate the Eagle Crest golf courses. A community sewer system should be required of a city of 4,854 people.
7. Mr. Tillman was told by an Eagle Crest salesperson that Eagle Crest Phase II would be a separate facility from the existing development. The Application should, therefore, be treated as a new resort, not as an expansion of an existing facility. This would require the construction of resort amenities at a cost in two million dollars in 1984 dollars. Some guarantee must be made that this is an expansion, not a separate resort.

- C. **Marion Millard**, 3201 SW 73rd, Redmond, Oregon 97756 submitted a written objection, dated October 14, 1993, to the fact that notice was not published in The Bulletin 10 days before the October 14, 1993 hearing. The objection and its attachments are marked Exhibit 204. Ms. Millard also submitted a letter (Exhibit 205) dated October 21, 1993 requesting that the record be kept open for seven days for the submission of additional written testimony.

FINDING: The County failed to publish notice ten days prior to the October 14, 1993 hearing. Notice was published on October 10, 1993 in The Bulletin, a newspaper of general circulation in Deschutes County. That date is ten days prior to the October 21, 1993 hearing that was specially set to assure that 10 days prior notice was provided. All October 14, 1993 testimony was available to all who attended the October 21, 1993 hearing so that they would have adequate opportunity to respond to that testimony. Additionally, almost all of the people who testified on October 21, 1993 attended the October 14, 1993 hearing. Ms. Millard's request that the record be kept open was granted. The record remained open until November 3, 1993.

On November 3, 1993, **Marion Millard**, submitted a letter in opposition to the applications that is marked Exhibit 262. In that letter, Ms. Millard makes the following points:

1. There are no MUA-10 lots in Canyon River Territories. 1 CRT lot is zoned U, 5 are zoned R/R and the others are zoned RR 10 according to information gathered from the Deschutes County Assessor's Office.

FINDING: Lots in Canyon River Territories are zoned, primarily, RR 10. Some lots are zoned EFU-TRB subzone.

2. I oppose placing roads, paths and other paved areas in the setback areas.
3. Routing traffic through ECII to Highway 126 will make Cline Falls Oasis subdivision uninhabitable.
4. 10' wide travel lanes and 25 mph speeds will be unacceptable to the residents on Highway 126 who work in Bend and commute via Cline Falls Highway.
5. The access for the resort on Cline Falls Highway already presents a traffic problem with golf carts, bicycles and cars crossing from Eagle Crest Phase I to Phase II. Rerouting the road between Fairways 14 and 15 will cause heavy traffic to compete with golf balls. Who will pay for damages to vehicles and motorists caused by stray golf balls?

FINDING: The Hearings Officer has required that all holes of the Eagle Ridge golf course that are close to Cline Falls Highway and its future proposed location, be located at least fifty feet from the highway. The Hearings Officer has also required that, before FMP approval is granted, that the Applicant prevent stray golf balls from entering roadways, bike lanes and pedestrian ways.

6. Traffic impacts at Tumalo, where Cline Falls Road intersects Highway 20, could be a problem since Deschutes County has abandoned the major portion of the Tumalo streets, if not all of them.

FINDING: A review of Deschutes County road vacation ordinances indicates that Deschutes County has not removed County road status from any of the roads impacted by the Eagle Crest Resort.

7. Phase I does not meet the required 2 to 1 overnight to other dwelling ratio. There are only 293 overnight accommodations out of 560 units. Eagle Crest Phase II needs 400 overnight units to meet the 2/3 ratio. At build out, ECR I and II should contain 773 2/3 overnight units, not 543.

FINDING: Ms. Millard has reversed the ratio. The Applicant is allowed to build two individually owned residential units for each unit of visitor oriented overnight lodging according to DCZO 18.113.060(D)(b). The Applicant's proposed resort development meets that standard.

8. Title 18 states that commercial areas should be only for guests of the resort. The method of operation and advertising that has been followed in the past has not been applied. Advertising signs in downtown Redmond and the newspapers do not abide by these standards of guests only. They should be required to gate both ECR I and II and allow only resort paying guests on the property except for the golf courses and the gate person should collect and issue greens fee tickets.
9. The Hearings Officer should find that CU90-189 and SP90-115 have expired and that the second golf course needs a new conditional use permit.

FINDING: The Applicant will be required to obtain a new conditional use permit for the second Eagle Ridge golf course, unless it can establish that all conditions of that conditional use permit were met prior to December 12, 1991.

10. The Applicant should assure that the minimum investment requirements and financial backing requirements of DCZO 18.113.070(C) are met through surety bonding. The costs of all permits, engineering and physical improvement costs should be covered by surety bonding. Mr. Lyche and Mr. Chase's "track record" warrants this requirement.

FINDING: The Applicant has established that it has met the minimum investment requirements of DCZO 113.070(C). The Applicant will be required to bond or assure improvements that are necessary for resort development, as required by DCZO 18.113.110.

11. Eagle Crest should participate in a limited partnership with the Central Oregon Regional Housing Authority if ECR gets tax credits as per their letter which is in the file. This simply means that the public taxpayers cover their investment be it local money or federal money.
12. Page 29 of the staff report states that the proposed resort expansion areas do not appear to have ever been employed in any type of resource production. This is incorrect, as the subject property was BLM land that was rented for grazing and cattle.
13. There are a number of farm and commercial animal production properties within the 3 mile area of Eagle Crest, including Operation Santa Claus on Highway 126, Coons Hollow Ranch (horses and cattle), cattle operation on the other side of Highway 126, a sheep operation to the east of Cline Falls Park. Between Highway 126 and Eagle Road there are llamas and several large farms. Sunny Butte dairy is on **Cline Falls Road** within three miles of Eagle Crest Resort. Between Cline Falls Road and Barr Road there is an Arabian horse farm. There are llamas and other exotic animals on Barr Road.

14. ECR Phase II will not be built out before the Year 2000 because if allowed they will just add more acres. The grade separated interchange on Highway 126 is a bad idea because it will cause more traffic problems than it cures when it circles the golf course Fairway 14 and 15.
15. Excessive speeds may be attained on Cline Falls Road going down hill from the area of the proposed cloverleaf. The interchange cloverleaf will need to be far enough west that it will not be visible from the river. I think that this should be in place before anything is granted. I am opposed to the realignment and abandonment of a portion of Cline Falls Road because most of the people who are being impacted by this overpass have not heard of it nor seen a map. I am asking that a public hearing be held to consider this project. Many of the persons who use this road daily have no knowledge of this project.

FINDING: Whether there will be a cloverleaf style, grade separated interchange in the location proposed by the Applicant will need to be determined in a separate land use proceeding, prior to FMP review. If this particular design is not approved, a different solution to the interchange traffic problem must be designed and approved prior to FMP review.

16. The Applicant should be required to dedicate park land rather than pay an in-lieu of park land fee. They should dedicate land in Canyon River Territory as park land and make a buffer zone along the south edge of ECR I as Charlie Brown promised the residents when he was soliciting signatures for the second amendment to the CC & Rs.

FINDING: The Eagle Crest CRT expansion includes a buffer area of open space between the residential lots in the CRT expansion and other Canyon River Territories lots.

- D. **Betty Marquardt**, PO Box 1138, Sisters, Oregon submitted a number of documents. They include:

1. Exhibit 206 which includes an October 21, 1993 request to keep the record open for an additional 7 days, Comments on the Overpass Concept, a March 29, 1992 article by Rick Attig entitled "Highways May Need a Dozen Interchanges," a document that discusses commercial use allowed in destination resorts and commenting on road widths, a document entitled

"Re: Non-allowed use in Destination Resorts," a document entitled "Conceptual Water Plan" and a summary of exhibits introduced by Ms. Marquardt that summarizes the exhibits she submitted on poster boards and which she labelled Exhibits A1, A2 #1 and #2 and A3.

FINDING: Ms. Marquardt's request to keep the record open was granted by the Hearings Officer.

2. Exhibit 207 which includes excerpts of the Middle Deschutes/Lower Crooked River Wild and Scenic River Management Plan. This exhibit makes it clear that new structures and improvements must be set back a minimum of 100 feet from the ordinary high water line of the river. OAR 736-40-030 (1) prohibits persons from making "any improvement or change in land use of related adjacent land without first giving written notification to the Transportation Commission.
3. Ms. Marquardt's Exhibits A1, A2 #1, A2 #2 and A3 which include:
 - A1: Bulletin articles entitled "Farmers Hit Hard by Drought" dated 10/27/91, "Farmers Facing Dry Grim Season" dated 4/7/92, "Alley Owner, Watering Ban All Wet."
 - A2 #1: Photographs of an auction held in the Sunrise Room of Eagle Crest Phase I
 - A2 #2: Information regarding a Jazz Festival held on September 18 through 20, 1992
 - A3: Bulletin article of 12/29/91 entitled "Will Redmond Highway look like this in 1995?"
4. Exhibit 208 which is a letter dated October 14, 1993 stating that the published notice, which was enclosed with the letter, was not adequate and that she would wait until the October 21, 1993 hearing to testify.
5. Exhibit 263, November 3, 1993 documents that have been identified by Ms. Marquardt as follows:
 - 1/a Statement that hearing is legally flawed. This document states that the hearing was legally flawed because a public hearing regarding the overpass was not held. The document also states that the Hearings Officer cannot make a decision because certain County and State offices (DEQ) have not provided adequate

information and the State of Oregon has not completed its groundwater study.

FINDING: Approval of the CMP does not authorize construction of the overpass in the location shown on the plan. The applicant will be required to obtain such approval prior to FMP approval. The Hearings Officer is required to make a decision of the information presented into the record. The fact that some agencies have not commented on this important land use action is regrettable, but the Applicant is entitled to a decision on the merits of its applications, at this time. It is particularly disturbing that the Department of Environmental Quality did not comment on this application as they are ultimately responsible for the enforcement of environmental quality laws, regulate of wastewater disposal systems and have expertise that would have been useful in reviewing this matter.

- 1/b 10/26/93 Bulletin article entitled "Job Market has Ups and Downs." This article states that the unemployment rate in Deschutes County rose between August 1993 and September 1993 from 7.3% to 8.1%. This rise was attributed, by Mike Mahan, regional economist for the State Employment Division to a seasonal drop in tourism in the County.
- 1/c "Statement concerning previous exhibits entered into the Record." Ms. Marquardt said that Dale Van Valkenburg advised her that the County overlooks 1 to 3 day events at Eagle Crest. Ms. Marquardt believes that resort facilities should be made larger to accommodate this activity, if allowed, and that the County's ordinance should be adjusted to reflect actual uses.

FINDING: The Hearings Officer has addressed this issue in the Required Findings section of this decision.

- 1/d "Re: Addendum to the Staff Report Goal 5 Resources and Negative Impacts of Destination Resorts." Ms. Marquardt comments that Policy 5 of the Comprehensive Plan on pp. 37 & 38 was written in 1982 when Sunriver and Black Butte were considered "top-line." Ms. Marquardt says that the same is not true of Eagle Crest. Eagle Crest has a number of "temporary" buildings in Phase I that have never been replaced. These buildings should be replaced as a condition of approval of Phase 2. Now, in 1993, "destination resorts do have negative financial impacts on the citizens of Deschutes County." Ms. Marquardt says that if Sunriver

becomes a city that the County will lose much of its room tax revenue that funds County operations. Funds will need to come from other sources unless the County cuts its budget. Ms. Marquardt notes that the County spent money on legal fees when the Inn of the Seventh Mountain was involved in bankruptcy proceedings. Ms. Marquardt says that there are disputes over water usage and rights in Black Butte and the winter dumping of treated sewage water into Indian Ford Creek.

Ms. Marquardt says that Eagle Crest has had the following financial and other impacts: (1) taxes have risen on residences adjacent to Eagle Crest; (2) state and federal funds will be used to build roads and the overpass needed because of Eagle Crest project; (3) homes of the elderly will be condemned for the overpass; (4) Eagle Crest could become a city and take room tax dollars from County coffers; (5) low paying jobs, no adequate, affordable housing for employees and the expense of commuting for employees; (6) traffic through the Tumalo rural service center will increase and will adversely impact the area with air pollution, traffic congestion and road damage; (7) Redmond will become a traffic corridor for Eagle Crest traffic and the resort will draw Redmond area residents to the resort's commercial attractions and facilities at the expense of Redmond businesses.

- 1/e "Re: Employee housing in vicinity of Eagle Crest, be located in the Canyon River Territory Subdivision." Ms. Marquardt believes that employees of Eagle Crest could be housed in the Canyon River Territories expansion area. This area is bound by covenants that prevent lots in CRT from being less than 5 acres in size. The lots have not gone through the partitioning process. Employee housing in CRT would reduce employee traffic and would allow employees to use bicycles to travel to work. Local government is required by ISTEA to plan transportation systems that will reduce air pollution.
- 1/f "Covenants of Canyon River Territory." CRT lots must be at least five acres in size. No temporary residential structures are allowed in CRT beyond six months. Commercial raising and keeping of animals is prohibited. Buildings must be set back 20 feet from front and rear lot lines and 10 feet from side lot lines. Easements for utilities are reserved over the exterior 20 feet of each lot.

l/g "Copy of letter to Phillip Paterno, BLM office." In this letter Ms. marquardt objects to siting of the proposed Eagle Crest reservoir on BLM land.

- E. October 11, 1993 Letter from **Terry Hatfield** to Tom Hall, Regional Consultant for DEQ with response letter from Mr. Hall (Exhibit 209). The letter written by Mr. Hatfield requested information regarding Eagle Crest's sewage disposal system. Mr. Hall responded by saying that copies of inspection reports dated 9/18/92 and 7/6/93 from W&H Pacific accurately summarizes problems that have occurred with Eagle Crest's sewage disposal system. Mr. Hall also stated that no complaints regarding the system have been received by DEQ since May of 1991 when residents of Canyon River Territories complained about the system.

November 1, 1993 letter from **Terry Hatfield** to Hearings Officer (Exhibit 250) which is a written statement of his testimony at the October 14, 1993 hearing. In this letter, Mr. Hatfield states:

1. I have lived in Canyon River Territories since 1980 and believe that Eagle Crest is a good neighbor. Their presence has created a wildlife refuge. The animal population has grown since Eagle Crest Phase I was built.
2. One person testified that approximately 7,000 automobiles would travel Cline Falls Road at any given time. If this were true, traffic would be backed up for 48 miles.

FINDING: The testimony presented about volumes of vehicles was stated in terms of days or during peak hours, which is a measure of traffic in a one hour period, not at any one time.

3. We need neighbors like Eagle Crest who will provide jobs, promote tourism to offset the failing timber industry and to clean up "a virtual garbage dump" known as Cline Butte and turn it into a beautiful place to work, live and play.
- F. October 11, 1993 letter (Exhibit 210) from **MaryPat Meekins**, 66350 Cline Falls Road, Bend, Oregon (P.O. Box 493, Redmond, Oregon 97756), stating "WE live here; WE'VE made our HOMES here; WE'RE raising our FAMILIES HERE; Eagle Crest has been enough of an impact already. PLEASE consider US before you change forever our 'little piece of heaven.'" The letter stated that many vehicles speed past Ms. Meekins home on Cline Fall Road and that she does not want to see another 900 dwellings in her neighborhood. Ms. Meekins says that

vehicles seem to be driving faster than in the past (60 to over 80 mph). Ms. Meekins is concerned about road maintenance on Cline Falls Road. A young girl was killed while riding a horse on Cline Falls Road a number of years ago. Ms. Meekins also raised questions about the adequacy of the water supply and contamination that might result from fertilizers on Eagle Crest lawns and gardens. Ms. Meekins states that Cline Butte is visible from many places in Central Oregon and inferred that it should not be covered with lights and houses.

- G. October 14, 1993 written testimony of **Clyde Everton**, 1283 NW Trenton Avenue, Bend, Oregon 97701 (Exhibit 211) recommending denial of the Eagle Crest Resort Master Plan for the following reasons:
1. The 2/21/92 letter from Janet Hardwick, Director of Personnel for Eagle Crest states that the majority of the 200 new employees needed for Phase II will be employed at the \$5 to \$7 an hour range and will commute from Redmond (5 miles), Bend (15 miles) and Sisters (15 miles). The Deschutes County work force is already top heavy with wage earners in the \$5 to \$7 an hour category. At the time the letter was written approximately 80 to 90 per cent of the jobs offered through the local state employment office were in the minimum wage category.
 2. Deschutes County needs family wage jobs. A single parent with two dependents need an hourly income of at least \$9 to \$12 an hour to meet basic housing, food, utilities, automobile, clothing, child care and medical and dental needs. The needs of families on welfare are met so a wage above the \$5 to \$7 hour range is needed to convince a single welfare parent to find a job.
 3. Persons earning \$5 to \$7 an hour at Eagle Crest will need public assistance to meet their basic needs and will become a part of the "working poor" placing a drain on taxpayers and social service agencies.
 4. There is a lack of affordable housing for future Eagle Crest employees. This problem will be made worse by the construction of the Bend Parkway which will remove about 82 residences from Bend, most which provide low-income housing.
 5. The list of people waiting for housing through the County's Housing Authority has grown from 1000 to 1300 names in the past year.
- H. Letter dated September 22, 1992 to the Hearings Officer of Deschutes County from **Gladys I. Biglor**, 62139 Cody Road, Bend, Oregon 97701 (Exhibit 212) regarding the wildlife assessment prepared by Beak Consultants, Inc. with a

3/31/93 The Bulletin article entitled "Winter Meant Death to Deer." Ms. Biglor states:

1. The Applicant does not meet the requirements of Goal 8.

FINDING: Goal 8 is not applicable to review of this application for approval of a conceptual master plan for a destination resort. Goal 8 was considered by the Board of County Commissioners at the time that they adopted the destination resort ordinance and mapped destination resort sites.

2. The survey that is the basis for the Beak report was conducted in mid-March of 1992, well before the time of year when Peck's milk-vetch, a federal candidate for listing as a threatened plant and an Oregon threatened plant, could have been observed. The plant's vegetative growing season begins in April. The plant flowers in May through June 15, bears fruit in late June and enters the late vegetative period in July and August. The County is required to assure that the Applicant will maintain identified natural features, such as threatened or endangered species per page 11 of Ord. No. 92-001.

FINDING: Ord. No. 92-001 made amendments to the County's Comprehensive Plan to allow the siting of destination resorts in EFU zones. The language referenced by Ms. Biglor refers to the steps that must be taken in the Goal 8 resort site designation process. That process is now completed and the subject property has been found to be appropriate for resort development.

3. The Beak report states that a joint project should be developed with BLM on adjacent public lands to reduce potential adverse impacts on deer. BLM has not been contacted by the Applicant.
4. The Beak report recommends that more trails be developed in an area that is supposed to be used to mitigate wildlife disruption from the resort but also notes that trails and roads adversely affect deer.
5. Seventy percent of the site will be permanently lost or altered with construction of Phase II. This would leave 180 of 600 acres for wildlife.
6. Beak Consultants expects an increase in species diversity due to the artificial habitat. There will, instead, be a shift in wildlife types. Deer habitat will become chipmunk and ground squirrel habitat.

7. When wildlife interferes with resort usage, the resort owners interfere with the wildlife. Eagle Crest has set off firecrackers on the golf course to discourage geese from using the area as their feces were degrading the golfers' experience.
 8. Wildlife mitigation measures should be mandatory to be enforceable and successful.
- I. Written testimony of **Howard Paine**, 15845 W. Meadow Lane, Sisters, in opposition to the Eagle Crest expansion, with a 10/19/93 article from the Oregonian entitled "Hermiston, Port Seek to Get Needed Water by Tapping Columbia," and a summary of a paper prepared by Ron Harvey of the US Geological Survey, Water Resources Division entitled "Considerations for Modeling Transport of Bacteria in Contaminated Aquifers." Mr. Paine states:
1. The majority of employees at destination resorts are paid \$5 to \$6 per hour. If you eliminate the pay of executives, management and sales staff, the average pay of the remaining employees would fall below the poverty level. These poorly paid employees must rely on food stamps, subsidized housing and other public assistance.
 2. Low pay and high housing costs in the area have left many persons hungry and in need of assistance.
 3. This expansion will add 891 homes and rental unit to the resort, creating a small city. I was astonished to read that the developer plans to use on-site sewage septic systems. The effluent will eventually contaminate local wells, leach into ponds and, perhaps, the Deschutes River.
 4. The County's Comprehensive Plan, Environmental Quality Policy 5 requires the County to consider the impact on water resources while considering the public need for the proposed development.

FINDING: The provisions of the County's destination resort and development ordinances were adopted in compliance with Statewide land use planning goals. The County is not required, at this time, to revisit Goal 5 issues.

5. The Water Resources Chapter of the Comprehensive Plan, Policy 10 states that any project that endangers the purity of local ground water shall be vigorously discouraged.

FINDING: This Comprehensive Plan policy is a general policy that is implemented through the County's destination resort, development ordinances and State of Oregon environmental regulations.

6. The destination resort ordinance requires that water use must not reduce the availability of water in the water impact area. How can Eagle Crest water 3 golf course, serve 1340 housing units, fill swimming pools, serve a restaurant and a multitude of other water uses at the resort, totaling 5.9 million gallons a day without having an impact on ground water?
7. Hermiston's deep basalt aquifers are going dry after two decades of intensive use. This will occur here in Central Oregon due to Eagle Crest's water use.

FINDING: The hydrogeologic studies and recorded information about the aquifer in this region indicate that there is currently an abundant supply of water in the aquifer. No concrete evidence has been submitted to establish that the regional aquifer from which Eagle Crest obtains its water will run dry, given current usage of the resource. The volume of use contemplated by Eagle Crest alone is not sufficient to deplete the aquifer. This does not, however, mean that this aquifer will never become depleted from the many current and future users who do and will tap into the regional aquifer.

8. The Applicant should pay the full cost of all traffic improvements required by Eagle Crest according to DCZO 18.113.070 (G). The State should not pay 60% of the cost of the proposed interchange for Highway 126 and Cline Falls Road.
 9. The Applicant should be required to provide low cost, on-site housing for employees who are paid at a rate below the poverty level, to build a sewage treatment plant and use wastewater to irrigate the golf courses and pay all road improvement costs, without cost sharing.
- J. Written testimony of **Sandra Sands**, with exhibits (Exhibit 214). Ms. Sands states:
1. The BLM land swap with Eagle Crest should not have been completed without notice to the public.

FINDING: This issue is not relevant to decision of this application.

2. During a drought, Eagle Crest obtained approval for two new golf courses while Ms. Sands was watering her garden with dish water.

FINDING: This Comprehensive Plan policy is a general policy that is implemented through the County's destination resort, development ordinances and State of Oregon environmental regulations.

6. The destination resort ordinance requires that water use must not reduce the availability of water in the water impact area. How can Eagle Crest water 3 golf course, serve 1340 housing units, fill swimming pools, serve a restaurant and a multitude of other water uses at the resort, totaling 5.9 million gallons a day without having an impact on ground water?
7. Hermiston's deep basalt aquifers are going dry after two decades of intensive use. This will occur here in Central Oregon due to Eagle Crest's water use.

FINDING: The hydrogeologic studies and recorded information about the aquifer in this region indicate that there is currently an abundant supply of water in the aquifer. No concrete evidence has been submitted to establish that the regional aquifer from which Eagle Crest obtains its water will run dry, given current usage of the resource. The volume of use contemplated by Eagle Crest alone is not sufficient to deplete the aquifer. This does not, however, mean that this aquifer will never become depleted from the many current and future users who do and will tap into the regional aquifer.

8. The Applicant should pay the full cost of all traffic improvements required by Eagle Crest according to DCZO 18.113.070 (G). The State should not pay 60% of the cost of the proposed interchange for Highway 126 and Cline Falls Road.
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- J. Written testimony of **Sandra Sands**, with exhibits (Exhibit 214). Ms. Sands states:
1. The BLM land swap with Eagle Crest should not have been completed without notice to the public.

FINDING: This issue is not relevant to decision of this application.

2. During a drought, Eagle Crest obtained approval for two new golf courses while Ms. Sands was watering her garden with dish water.

3. Ms. Sands learned that Eagle Crest plans to site homes on 1/2 acre lots with irrigation on each lot, around the new golf courses.
4. Ms. Sands is concerned about the potential for ground and surface water contamination from 500 septic tanks upslope from Canyon River Territories and the Deschutes River. Cline Buttes is sloping and the soils are sandy and porous. Constant irrigation of two golf courses and 500 irrigated lawns will turn the porous soil into a porous sponge, drawing septic and chemicals into the ground water.
5. State protective agencies have refused to monitor the resort, leaving monitoring to the resort. Cross-connection problems and a lack of inspections was turned over to W & H Pacific rather than being investigated by the Health Department.
6. Photos labelled Exhibit C show grease disposal contaminants oozing downslope toward the river from the Eagle Crest restaurant. The local health department was unaware of the problem.
7. Ms. Sands hired a consultant to take river water samples above and below river from the resort. The fecal coliform count is 7 MPN prior to the resort and 26 MPN directly below the golf course, almost 4 times as high. This should be monitored by DEQ.
8. The leach field at Eagle Crest is brown, not lushly green and it smells.

FINDING: The grass above the community drainfield is brown. This area is clearly identifiable from Cline Butte by the change in color from other resort grass areas.

9. Why must resort homeowners purchase water pressurizing systems?
10. Why did Eagle Crest install a pipe in the river and a 100 horsepower pumping station to withdraw river water without authorization? The Applicant should have addressed whether this pump and the proposed overpass/interchange will comply with the Scenic Waterways Act in its Burden of Proof statement.
11. Resolution of issues should not be deferred until Final Master Plan Review by the Planning Director.
12. A public hearing must be held regarding the proposed 30' concrete overpass and interchange. Tax dollars will fund 60% of the cost, solely to benefit Eagle Crest.

13. Eagle Crest will add 200 more persons to a waiting list of 1300 low-income persons waiting for housing in Central Oregon. Deschutes County has one of the highest costs of living in the nation. Destination resorts drive up the cost of living.
14. Eagle Crest will ultimately include 1,254+ acres. It will include 240 townhouses, 218 multi-family units, 656 permanent homes with 1/2 acre irrigation each, two 150 unit hotels, restaurants, conference centers, office complex, gas station, shopping mall, post office, convenience store and three golf courses irrigated by ground water. At 2 persons per unit there will be a population of 3,000 persons on Cline Buttes, excluding golfers and visitors to resort amenities (and employees).
15. Ground water is a Goal 5 resource. Eagle Crest will use 4,140 gallons of ground water per minute or 6,000,000 gallons per day. Eagle Crest has not proven that there is an adequate supply of water to meet the needs of the resort. Expansion of the resort should await the results of the comprehensive ground water study that is now being conducted.

The exhibits submitted by Ms. Sands, and attached to her written testimony (Exhibit 214), are:

- A. Petition to Watermaster Robert Main (Deschutes County), DEQ and the Deschutes County Board of Commissioners from 40 Canyon River Territories residents stating concerns about Eagle Crest septic tanks, fertilizers, pesticides and chemicals and excessive water use by Eagle Crest and requesting water monitoring of ground and river water by DEQ.
- B. Two Activity Reports of the Oregon Health Division regarding cross connection hazards at Eagle Crest.
- C. Eight photographs of areas around the Eagle Crest restaurant.
- D. Water test results of Deschutes River water taken from the river on 10/15/92.
- E-1. August 6, 1993 letter from Bob Main, Manager of South Central Region Watermaster's Office to Bill Lyche, Eagle Ridge Development Corp. regarding illegal diversion of river water.
- E-2. October 1, 1993 letter to Bob Main from Sandra Sands raising a number of questions regarding water rights.

Ms. Sands also submitted the following documents into the record:

1. Portions of the Deschutes County Comprehensive Plan (Exhibit 251) regarding water resources and archeological resources.
2. August 13, 1993 The Bulletin article by Scott Maben entitled "Groundwater to be Studied" (Exhibit 252). The article states that there has never been a systematic look at the groundwater hydrology of the area and that a study was begun in May 1993 to study this resource. The first phase of the project should be completed in approximately three years.
3. July 2, 1992 The Bulletin article entitled "Resorts: We've Got Enough" (Exhibit 253). This article cites the results of a major survey of County residents that showed that 80 percent of County residents believe that there are too many or enough destination resorts in Deschutes County.
4. August 5, 1992 article from The Spokesman dated August 5, 1992 (Exhibit 254) that states that Bend's cost of living is about 6 percent above the national average.
5. November 25, 1990 article from The Bulletin entitled "Resort Courses Ignite Debate" (Exhibit 254). The article states that County Planner Jim Raisanen said that allowing golf courses in what is now proposed as Phase II of Eagle Crest could open the door for homesites. Once golf courses are established, the developers can argue that the property is no longer suitable for farm uses.
6. June 29, 1993 letter from Jen Twining to Martha Pagel, Director of Oregon Water Resources Department submitting testimony to the Department regarding Eagle Ridge Development Corp.'s Water Permit Request No. G-12905, stating reasons why the permit application should be denied. These objections were that the report supporting the application did not meet the requirements of law for permit issuance as it lacked evaluations of required matters; that the County's Goal 8 ordinances are not acknowledged; the Department should not issue a water right until it receives County land use approval; the proposed use is not in the public interest; the application was processed out of order; the Water Resources Commission should review the application; the proposed use violates land use regulations and the Comprehensive Plan; the use is not compatible with environmental concerns and natural resources in the Deschutes basin.

FINDING: The County's destination resort ordinance and mapping of the Eagle Crest for resort development has been acknowledged by LCDC as being in compliance with statewide planning goals.

7. A document entitled "Questions and Objections to Staff Report and Burden of Proof" prepared by **Sandra Sands**, dated November 3, 1993, which is in a manilla file folder marked Exhibit 260. Numerous documents are included in the folder and are identified by Ms. Sands as follows:

- A. 9/21/91 Letter from Environmental Health Division of Deschutes County to the Deschutes County Planning Commission regarding the destination resort ordinance. This document suggested including language in the destination resort ordinance that would exclude drainfields and sewage lagoons, except under certain circumstances, from being considered beneficial uses of wastewater. The letter also states that the Deschutes County Planning Commission has a concern regarding the lack of a basin-wide groundwater study. The letter also indicated that resort Applicant should be required to develop an erosion control plan for all disturbed land, as required by ORS Chapter 468.
- B. National Geographic Article on Water. This article was submitted because it discusses contamination caused by runoff and supports Ms. Sand's request that runoff water be utilized for beneficial use.

FINDING: The Applicant will be required to provide greater detail about the specifications of the proposed sewer system prior to FMP approval. That document shall include plans for stormwater collection and disposal.

- C. Pages 138 and 139 from the Deschutes County Comprehensive Plan. These pages were submitted to establish that the County recognizes the fact that drought is a recurring natural phenomenon in this area.
- D. Groundwater Study Article. This article was submitted to support Ms. Sand's argument that development of Eagle Crest should await completion of the groundwater study.

FINDING: The Hearings Officer does not have the legal authority to impose a moratorium on development, which is what has been requested by Ms. Sands and various other opponents. The imposition of a moratorium

on development is an action that must be imposed by a governing body. The ability of governments to impose moratoriums are strictly limited by state law. No moratorium on destination resorts or Cline Buttes area development has been imposed by Deschutes County.

F. List of Dairies and other farms in Bend-Redmond Area.

FINDING: This document states that cows from the Everett and Eva Thornburg ranch graze on 160 acres of rangeland that border Phase II. The document does not, however, specifically identify the landowner or parcel. The Hearings Officer did not observe any cows grazing on any lands adjacent to Phase II property. None of the other operations are contiguous to Eagle Crest. The addresses given indicate that all operations are located a significant distance from the Eagle Crest Resort. No evidence was submitted to indicate how any of the listed dairies would be impacted by Eagle Crest operations.

- G. Bulletin Article - 10/17/93. This article documents the fact that Eagle Crest pumped water from the Deschutes River without first obtaining a state permit to authorize the withdrawal. The photograph that accompanies the story shows that pump equipment/structures and pipeline have been built on the banks of the Deschutes River.
- H. Correspondence from Sandra Sands to Bob Main, Watermaster about Eagle Crest's withdrawal of water from the Deschutes River, without a permit.
- I. Swalley River Water Transfer Application.
- J. Health Department Reports discussing possible cross-connection problems in the Eagle Crest irrigation water system.
- K. Memorandum dated April 30, 1991 from Sandra Sands to the County Commission regarding wildlife and plant resources on Phase II land.
- L. Letter to C. Calica, Confederated Tribes of the Warm Springs from Sandra Sands regarding potential wildlife, plant and cultural resources on Eagle Crest property.
- M. Opposition Testimony, October 1992

M-1 Ray Curry Testimony. This document also contains other testimony but it appears that Ms. Sands has submitted the document for consideration of the Ray Curry testimony, only. Mr. Curry was employed with the Soil and Water Conservation District for Deschutes County in October of 1992. Mr. Curry stated that he conferred with DEQ about the use of septic systems at Eagle Crest and was told that DEQ allows such systems only because the County allows their use. Mr. Curry stated concerns about contamination of groundwater from the Eagle Crest septic systems.

M-2 Sandra Sands Testimony. This testimony contains the concerns expressed by Ms. Sands in other documents and testimony.

- N. Letter from Amy Patton, DEQ, 1/6/92 to Virgil Harper. Ms. Patton states that DEQ's groundwater section has not conducted research on the impacts of golf courses on groundwater quality in Oregon. Ms. Patton also states that DEQ may have concerns about the proposed mechanism for sewage treatment and disposal for a resort community. Ms. Patton also said that "DEQ requires a permit for discharge of treated sewage to either a surface water body or to the subsurface. In the permit application process the applicant is required to provide sufficient information to demonstrate that the wastewater discharge will not create a significant adverse impact to either groundwater or surface water."
- O. This is the same document as Exhibit A. of Exhibit 260.
- P. Letter from Eagle Crest Agent, Charles C. Brown, offering one year's free cable service and hookup in return for the release of the covenants and restrictions of Canyon River Territories for properties acquired by Eagle Crest.
- Q. Letter from Martha Pagel, Director of Water Resources Department dated September 14, 1992. This letter has been submitted into the record by many parties.
- R. 1991 New Wells and Irrigation Permits for Central Electric Cooperative, Inc. This document shows that CEC added 65 irrigation pumps and 31 wells to its electric service system in 1991.

- R-1. National Geographic Article on Water that points out that wells that once had an abundant supply of water are now going dry.
- S. Letter from Bill Blosser to L. Stickel, Chair of Water Resources Commission regarding Parrot Mountain lawsuits because land use permits were issued when a water source was not assured.
- T. Eagle Crest as Plaintiff

T-1, T-2 & T-3 Correspondence pertaining to Canyon River Territories Building and Use Restrictions

- 8. A document submitted by **Sandra Sands** on November 3, 1993 entitled "Overview of Oregon's Statewide Planning Goals" (Exhibit 261). This document contains the following exhibits:
 - 1. Testimony prepared by Gladys Biglor, Wildlife Biologist, dated October 22, 1992.
 - 2. Bend Municipal Golf Course Study prepared for BLM. This document states that the golf course would use up to 1,000,000 gallons of water per day and stated that Peck's milkvetch is normally found west of the Deschutes River.
 - 3. Bureau of Reclamation - Department of the Interior report regarding groundwater. This document is generally consistent with statements made in the Newton and Gonthier groundwater studies.
 - 4. Oregon water law - This is the ARLU-DECO testimony on water that was apparently presented to the State Water Resources Department in June of 1993. This document has been discussed elsewhere in this decision.
 - 5. Letter to Anne Squier, Sr. Advisor, Natural Resources from Sandra Sands expressing concerns about Eagle Crest's expansion plans.
 - 6. Letter to Martha Pagel, Dir. Water Resources Dept. requesting protection of ground and surface waters "in accordance with Goal 5 mandates." Ms. Sands requested an inventory of groundwater resources prior to authorization of additional water use by Eagle Crest.

7. ARLU DeCo Water Testimony presented during Goal 8 Mapping Process.
8. Letter from Brent Lake, DLCD, stating that surface and groundwater are Goal 5 resources, with the following attachments:
 - 8-B. Public Opinion Poll Summary in The Bulletin
 - 8-C. Agricultural Lands Article re resort mapping
 - 8-D. Farm Survey results indicate that some farmers blame golf courses and reports for using up valuable water that should go to irrigation uses
 - 8-E. 11/25/90 Bulletin article
9. Water Conservation editorial from The Bulletin dated May 7, 1993 stating that Deschutes County would probably maintain its drought status and that this would allow special water-use permits and other provisions to ration water, a prudent idea that would allow underground springs to recharge.
10. Golf Course Water Statistics Article. This article states that a well-maintained golf course in Hawaii or California uses 1.5 million gallons of water every day. Additionally, golf courses are generally built near waterways which means that pesticides and fertilizers from the course drain into the water, often harming local vegetation and marine life.
11. WaterWatch Testimony, 10/2/92, stating that water is scarce and that much of the water in the Deschutes comes from underground springs.
12. *Canyon River Territories* Petition
13. Testimony prepared by Dr. M. Turner re Economics.
14. Memo from C. Morrow re: Groundwater
15. 10/22/92 Sands Testimony
16. Testimony presented re: HB 2932 - Destination Resorts by Sandra Sands
17. Testimony presented to LCDC on 12/13/91 by Sandra Sands

18. ARLU DeCo Testimony 11/10/91
 19. Testimony presented to Senate Committee on Agriculture and Natural Resources
 20. Testimony presented to Senate Committee on Agriculture and Natural Resources
 21. BLM Grazing Allotments and Maps
 22. Oregon Natural Resources Council proposal
 23. Marge Turner testimony dated 10/8/92
 24. Bulletin article dated 6/27/91 regarding adoption of destination resort ordinance for EFU lands
 25. Cost of Living Article 8/5/92 The Spokesman
- K. Memorandum dated October 21, 1993 from **Linda Burwell**, 150 NW 83rd, Redmond, Oregon (Tax Lot 1400)(Exhibit 215). Ms. Burwell cites two concerns:
1. Utility companies need continued access to existing power poles and lines that border the south end of Cline Fall Oasis subdivision and the northern end of the Eagle Crest II property, on what used to be BLM land. Utility easements on Oasis subdivision lots do not match the location of power lines. Eagle Crest has requested to have no setbacks along the property boundary. Such development will preclude utility company access.
 2. Wayward balls will trespass onto Ms. Burwell's property is the golf course is sited on her property line with Eagle Crest Phase II, as proposed by Eagle Crest. Ms. Burwell will also lose the privacy of her back yard is the golf course is sited on her property line. Bill Lyche has offered to create mound with trees and other vegetation to block her property but she would also like to have the "normal 50 foot setback" honored.
- L. October 14, 1993 letter from **Louie Pitt**, Governmental Affairs and Planning Director for the Warm Springs Confederated Tribes (Exhibit 216). Mr. Pitt states that the Tribes have rights that extend off the reservation, reserved by the Treaty of 1855. Eagle Crest's development project must "protect materials

of particular cultural significance to the Confederated Tribes." Tribal Code 490.500.

FINDING: Mr. Pitt did not state whether there are any areas of particular cultural significance to the Confederated Tribes on Eagle Crest property. Two cultural sites identified by Deschutes County do exist in Phase I, but have not been disturbed by Phase I development.

M. October 14, 1993 Statement prepared by **William Boyer**, Chairman of The Alliance for Responsible Land Use: Deschutes County, 17575 Jordan Road, Sisters, Oregon 97759 (Exhibit 217). Mr. Boyer states:

1. The Applicant is unable to prove what long-term effects the "mini-city" will have on future water supplies with respect to quantity and quality. Information regarding quantity is currently being obtained by USGS and Eagle Crest expansion should await the results of that study.
2. Ground water should not be used for irrigating golf courses.
3. The use of the integrated septic tank system proposed is a potential threat to underground water. A treatment plant would solve the problem and effluent from the plant could be used to irrigate one of the golf courses.
4. There is no public need for more golf courses and destination resorts in a county glutted with such facilities.
5. Eagle Crest will alter the character of the surrounding area by creating a mini-city with traffic, congestion, increased wildlife road kill and commercial areas. This is prohibited by the County's destination resort ordinance. Once developed, there will be pressure for the area to become a city.
6. A \$600,000 public subsidy of the Highway 126 and Cline Falls Road interchange is intolerable.
7. There is no indication that conservation of energy is to be built into the development.

N. September 29, 1993 letter from **A. H. McCloskey**, 1/5 Share Owner in residence at Eagle Crest (Exhibit 218). Mr. McCloskey states that there is a "very apparent problem with the present sewage/septic process now being utilized with the existing volumes. Any additions would surely create a severe overload and cause unsanitary environmental impact on the area. I would hope that the county would

make sure than an adequate, appropriate sewage system would be designed and installed prior to a full permit being issued."

- O. Report from **Marjorie S. Turner, PhD.**, Professor Emeritus, Department of Economics, San Diego State University, P.O. Box 8005, Sister, Oregon 97759 (Exhibit 219). Dr. Turner analyzed the Hobson & Associates report submitted by the Applicant and made comments that are discussed in the Required Findings section of this decision under the DCZO 18.113.070 (C)(c) heading.
- P. October 14, 1993 letter from **Virgil L. Harper**, Route 1, Box 332, Terrebonne, Oregon 97760 (Exhibit 220) that states:
 - 1. Will Eagle Crest meet the County's requirement that sewage be put to beneficial use if it pumps its effluent to Redmond's treatment plant?
 - 2. If sewage is pumped to Redmond, a sewage line will need to cross the Deschutes River. I assume this couldn't happen as this portion of the river is a scenic waterway. If it is run along or under the highway, will the local taxpayers incur a greater tax burden? As Redmond's sewage system is "maxed out," will local taxpayers be required to pay for improvements to Redmond's system to process Eagle Crest effluent?
 - 3. What happens if there is a drought and there is not enough water to serve residents? Is the County legally responsible as it has allowed development to take place when they have seen and been made aware of warning signals, such as reduced well levels on existing wells? The County is responsible for protecting the water supply of its current citizens for future needs.
 - 4. Why will it take the State Water Resources geologists 3 years to complete a study to determine if there are ample water supplies and it takes only days for the hired experts to determine there is adequate water?
 - 5. Who owns the water in the aquifer that Eagle Crest wants to tap into?
 - 6. Farming practices and destination resorts are not compatible. Adjoining BLM land is leased to a cattle owner for grazing. Cattle can't read No Trespassing signs and they often go through fences. Mr. Harper infers that the cattle owner will be sued by Eagle Crest for trespass, as Eagle Crest has sued the Sands family because they allegedly rode a horse on an Eagle Crest golf course.

Q. October 22, 1993 letter from **Maret Pajutee**, PO Box 801, Sisters, Oregon 97759 (Exhibit 221), with exhibits, stating:

1. Public need should be a major factor in the consideration of developmental request that could negatively influence public water resources. It is disturbing that Deschutes County processes land use applications without adequate water supply information. The Eagle Crest application should not be approved without the complete results of the County hydrology study.
2. Eagle Crest should be required to reuse waste water. Septic tanks have the potential of polluting groundwater. Watering golf course with ground water is an irresponsible waste of natural resources.
3. There can be little doubt that the expansion of Eagle Crest will affect the northerly moving aquifer, reduce discharge of the aquifer to the Deschutes and ultimately add to the cumulative adverse effects to the Columbia River.

FINDING: The Hearings Officer finds that the expansion of Eagle Crest will reduce discharge of the regional aquifer into the Deschutes River and will ultimately add to the cumulative adverse effect to the Columbia River. This fact will be considered in determining appropriate mitigation measures for fish and wildlife damages caused by the resort.

4. The Deschutes River displays moderate to severe non-point pollution which adversely affect fish and aquatic life. The County must consider cumulative effects of allowing more water use, more toxic golf course chemicals and more untreated human sewage waste next to the river.

Ms. Pajutee's exhibits are:

- A. 10/17/91 Water Resources Department Interoffice Memo from Donn Miller to Steve Brown. This document is discussed below.
- B. 10/22/92 letter to Jen Twinning, Executive Director of ARLU-DeCo from Tom Throop, Deschutes County Commissioner.
- C. 9/14/92 letter from Martha Pagel, Director of the Oregon Water Resources Department, referenced and discussed above.

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- C. 9/14/92 letter from Martha Pagel, Director of the Oregon Water Resources Department, referenced and discussed above.

- D. 1988 Oregon Statewide Assessment of Nonpoint Sources of Water Pollution by Water Quality Division of Oregon Department of Environmental Quality.
- R. Document entitled "Summary of **Water Watch** Objections to Eagle Crest Permit" presented by William Boyer (Exhibit 222):
1. The groundwater resource of the Deschutes Basin is poorly understood and not as closely regulated as surface water.
 2. The Applicant's technical water report is defective.
 3. The proposed use of water will deplete flows and adversely affect water quality and instream uses in the Deschutes River.
 4. The summary then contains a number of arguments directed to the Water Resources Board.

October 21, 1993 letter from **WaterWatch of Oregon** (Exhibit 223), with exhibits, stating that Deschutes County should not approve the Eagle Crest expansion until the ground water study of the Deschutes basin is completed as ground water resources in the Deschutes basin are poorly understood. WaterWatch points out that individual domestic and small industrial uses are exempt from regulation, allowing these uses to place a growing demand upon the area's ground water resources. WaterWatch points to the experience of Yamhill County, where the Parrot Mountain area was developed with County approval, in the face of evidence that groundwater supplies were inadequate. Portions of the area were withdrawn from further groundwater appropriations by the State and takings claims resulted. There is now pressure to build a municipal water system to serve area residents, contrary to land use planning policies. WaterWatch enclosed its June 30, 1993 letter of objections to the Applicant's technical water report that was submitted to the Oregon Water Resources Department and a February 29, 1992 letter from William Blosser to Lorna Stickel, Chair of the Water Resources Commission regarding the Parrot Mountain ground water situation.

- S. Written Statement of **Carrie Carmella** (Exhibit 224), 152 S. Canyon Drive, Redmond, Oregon 97756. Ms. Carmella opposes the Eagle Crest expansion and states:
1. Eagle Crest will be a mini-city located outside of the Redmond Urban Area Growth Boundary that will impact the Redmond Urban Area. The Redmond Urban Area Comprehensive Plan should be considered relevant

to the Eagle Crest application because of the immediate effects a mini city will have on local resources because it is outside of the UGB. Ms. Carmella cites a number of policies from that Comprehensive Plan.

FINDING: The Redmond Urban Area Plan and implementing ordinances do not apply to land uses that occur outside of the Redmond urban growth boundary. This destination resort application is subject to review for compliance with Deschutes County land use ordinances and Comprehensive Plan, not the Redmond urban area plan and land use ordinances.

2. The groundwater study should be completed before these applications are approved. The water rights of farmers and existing users must be protected and water should not be squandered for golf course irrigation.
3. Redmond's sewage treatment plant is at or near capacity. If Eagle Crest connects to the system, Ms. Carmella and Redmond sewer users would be required to pay for the cost of expanding the sewage system.
4. Urban sprawl causes higher public service and facilities costs that are borne by taxpayers.
5. Improvements need to be made to the intersection of US Highways 97 and 126 in Redmond before an interchange for Cline Falls Road and Highway 126 is constructed with public funds to benefit Eagle Crest.
6. Development of Cline Buttes will harm the natural beauty of this natural feature.

T. Numerous documents submitted by **Sandra Sands**, described as follows:

1. May 3, 1993 letter from Ms. Sands to Representatives Bob Repine and Ray Baum regarding HB 2932 re destination resorts (Exhibit 225). Ms. Sands stated that Eagle Crest has no public services, depends on a septic system and ground water and uses 1.5 million gallons per day to irrigate each of golf courses. Neighboring wells have dropped five to ten feet but Water Resources will not act until well levels have dropped 25 feet. Ms. Sands also expressed concern of public funding for the proposed Highway 126 overpass, fecal coliform contamination, impacts to wildlife and the large increase in activity in the area of the resort from the expansion.
2. Ms. Sand's 1992 testimony to Deschutes County Hearings Officer Denis Frisbee. The main points raised were:

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2. Ms. Sand's 1992 testimony to Deschutes County Hearings Officer Denise Frisbee. The main points raised were:

- a. Eagle Crest has not assured development of recreational and key facilities by surety bonding, as required by County ordinance.
 - b. Cumulative negative impacts to EFU lands in the area of Eagle Crest due to depletion of ground water, septic disposal, traffic impacts, changes to rural quality of life and the impact of creating a new city in the rural EFU land of Deschutes County. This violates the purpose of the EFU zone to protect agricultural lands for farm use.
 - c. The destination resort expansion will occur on land that was formerly productive EFU farm land. Now that the land is irrigated it resembles lush high value farm land.
 - d. The proposed Highway 126 overpass will expend public dollars for a facility that is needed only because of the existence of the Eagle Crest resort. This facility will adversely impact the character of the surrounding area.
3. Memorandum from Ms. Sands to the Deschutes County Hearings Officer dated 10/22/22 (sic) (Exhibit 227) stating:
- a. The County has not finished mapping destination resorts as required by Goal 8 and the County's destination resort ordinance. The County has failed to minimize adverse impacts on surrounding lands and to require financial assurances.
 - b. The County has not assessed the recreational needs of the citizens of the state and its visitors. This assessment is needed to assure compliance with the purpose of Goal 8. Recreation planning must be coordinated with private enterprise and be implemented in such quantity, quality and location as consistent with the availability of natural resources.

FINDING: Deschutes County has held hearings and made voluminous findings documenting compliance with Goal 8 for the destination resort mapping process. The subject property was properly designated for destination resort zoning, according to that process. If the County failed to properly assess needs in that process, the appropriate time and place to have raised that objection would have been in an appeal to the Land Use Board of Appeals, after that decision had been made by the Deschutes County Commission. Foland v. Jackson County, 311 Or 167, 807 P2d 801 (1991).

- c. Ms. Sands believes that approval of Eagle Crest's expansion will violate Goal 5 because the County has not inventoried the quality and quantity of Goal 5 resources, especially ground water supply.
- 4. ARLU - DeCo Exhibits identified by ARLU-DeCo as exhibits numbered:
 - A. 10/17/91 Water Resources Department Interoffice Memo from Donn Miller to Steve Brown (Exhibit 228) regarding changes requested to Eagle Crest's application for a water rights permit for three wells on Cline Buttes and an appropriation of 9.12 cfs. Eagle Crest sought approval to locate the wells closer to the Deschutes River as there was insufficient water in the Deschutes Formation aquifer in the locations selected. The local groundwater is in motion to the north, discharging to the river beginning in the area of Tetherow Bridge so the relocation of the wells will be of little consequence to the river. Relocation of the wells will result in the diversion of water from the intended source aquifer and the hydraulic nature of the aquifer will allow for very high specific capacities which would prevent interference with neighboring wells. The Eagle Crest applications were erroneously approved without self-reporting and resource management conditions.
 - B. 4/26/91 Water Resources Department Interoffice Memo from Donn Miller to File (Exhibit 229) regarding review of Eagle Crest's application for a water rights permit for three wells on Cline Buttes and an appropriation of 9.12 cfs. Mr. Miller states that the Deschutes River loses water between Bend and Cline Falls due to porous lava. Little or no water is lost or added between Cline Falls and Tetherow Bridge. Below Tetherow Bridge, 4 miles from Eagle Crest, the river gains much flow from the regional aquifer. The head in the nearby Eagle Crest well is about 150' below the nearby stream level so the project should not have a significant surface water interference. The wells are not hydraulically connected to the Deschutes River, as defined by state rules. Little is known about the long-term water level response in the aquifer. A more detailed examination is needed. In grander terms, this development will almost certainly impact the flows of the Deschutes River downstream. The impact will be minute since it can not be greater than the diverted quantities. The influence will be delayed due to the slow nature of groundwater movement. The impact will

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probably not be measurable but can be inferred through conceptualization of the setting.

- C. Portion of Eagle Ridge Development Corporation application for water rights (Exhibit 230) and three wells, received on 2/26/91, for the proposed use of year round irrigation, including golf courses and domestic use for 500 dwelling including irrigation of up to .5 acres per dwelling.
- D. January 28, 1993 Letter from Beverly Clarno, Majority Whip of Oregon House of Representatives to Martha Pagel, Director of Water Resource Department with enclosure of a January 26, 1993 letter from Jerol E. Andres of Eagle Crest. (Exhibit 231) Mr. Andres sought Ms. Clarno's assistance in obtaining water rights approval for water rights for the resort's proposed expansion. Ms. Clarno referred the request to Martha Pagel for response.
- E. 7/6/92 Memorandum from Steve Brown to Fred Lissner directing Mr. Lissner to expedite review of Application G-12905 filed with Water Resources Department (Exhibit 232).
- F. 2/9/93 Letter to Steve Brown of Oregon Water Resources Department from William Lyche and Thomas Walker (Exhibit 233) thanking him for his assistance with the pending groundwater appropriation application. This letter requests that Mr. Brown change the application from quasi-municipal uses to domestic water use for approximately 900 dwelling units, including irrigation of lawns and gardens, not to exceed .5 acre per unit.
- G. June 1992 Public Opinion Survey on Rural Land Issues prepared for the Deschutes County Board of Commissioners by Western Attitudes of Lake Oswego, Oregon (Exhibit 234).
- H. Testimony of ARLU-DECO on Water Issues in Goal 8 Mapping (Exhibit 235) previously presented to Deschutes County Board of Commissioners and Oregon Water Resources Department.
- I. Eagle Crest Phase II Testimony by ARLU-DECO on Water (Exhibit 236) that was apparently submitted to the State Water Resources Department regarding State issuance of proposed water permit G-12905 on 6/29/93, including 9/14/92 Martha Pagel letter. Both documents were discussed, above.

- J. Article entitled "Habitat Degradation May Push Grouse to Extinction" from The Bend View, April 15, 1993 (Exhibit 237)
- L. Letter dated May 31, 1993 from Maret Pajutee to Richard Benner, Director DLCD; Doug White, Reviewer for DLCD; and George Read, Deschutes County Planning Director (Exhibit 238) regarding periodic review by DLCD and claiming that Deschutes County has failed to adequately protect riparian zones by narrowly defining riparian zones.
- M. Letter dated January 3, 1993 from Maret Pajutee, Biologist, to Michael Rupp of DLCD (Exhibit 239) regarding Deschutes County's Wildlife Plan and Ordinances raising concerns about the County's protection of riparian habitat and zones. Ms. Pajutee enclosed an article entitled "Public Asks for Greater Wildlife Protection" from The Nugget of June 3, 1992, an article entitled "Opportunities and Constraints for Development and Conservation: Teller County/Woodland Park Growth Management Plan," a May 26, 1992 letter from Ms. Pajutee to the Deschutes County Board of Commissioners and Planning Department regarding riparian areas, April 22, 1992 letter to Deschutes County Planning Commission and Department regarding wildlife habitats, and article entitled "Wildlife Habitats in Managed Forests" by Jack Ward Thomas and excerpts from the Deschutes County River Study.

Unlabelled Bend Bulletin articles entitled "Alarms Sound on Fish" dated March 9, 1993 (Exhibit 240) and "Winter Meant Death to Deer" (Exhibit 241) dated March 31, 1993 were submitted into the record. A copy of pages from the 1988 Oregon Statewide Assessment of Nonpoint Sources of Water Pollution prepared by the Water Quality Division of DEQ (Exhibit 242) was also submitted.

- S. October 28, 1993 letter from **Clyde Everton** (Exhibit 243) making the following points:
 - 1. At the October 14, 1993 hearing an Eagle Crest representative (Mr. Andres) testified that Eagle Crest relies upon the Deschutes County Sheriff's Office for police protection and general security. Mr. Everton questioned the ability of that office to handle the increased workload that an Eagle Crest expansion would cause. The Sheriff is asking for a levy. If that levy fails, how can the Sheriff adequately police the Eagle Crest expansion? Further information is needed on the Eagle Crest security staff.

2. Is the proposed septic system safe? Is it adequate? What effect will it have on the Deschutes River? The smell of sewage at Eagle Crest's Phase I golf course is strong. This is a definite indication that the system has not functioned properly in the past. Has the problem been solved?
 3. Evidence has been submitted to demonstrate that the fecal count in the Deschutes River is considerably higher than above Eagle Crest. At what count is this a critical problem? Shouldn't there be an unbiased review of the system?
 4. Land use approval of Eagle Crest's expansion should await completion of the USGS ground water study.
 5. Does the rural fire district in which Eagle Crest is located perform up to ISO and FPA standards?
 6. Eagle Crest's assertion that the average salary of Eagle Crest employees is \$27,500 is misleading. The median salary and breakdown of wages of employees is needed to adequately assess the economic impact of Eagle Crest upon Deschutes County.
- T. October 25, 1993 letter from **James L. Goodell** (Exhibit 244), with attachment. Mr. Goodell says:

1. Eagle Crest should not be given BLM land tax free.

FINDING: Under the tax laws of the State of Oregon, the Eagle Crest Phase II property will be subject to ad valorem taxation, as is any other privately owned property, as it is now owned by a private party, not by BLM.

2. Eagle Crest should pay for the Highway 126 overpass.
3. Consider SB 1010 which was passed and the results of the water test that showed an increase in fecal coliform counts in the Deschutes River just below Eagle Crest.
4. Eagle Crest may not be able to use river water as the pumping system may not be allowed in a scenic riverway.
5. Eagle Crest Phases I and II are uphill from residential areas and the Deschutes River. With heavy use of fertilizers and pesticides on the golf courses and lawns, what happens to the runoff? These chemicals

are harmful to deer and rodents that eat plants. Golden eagles in turn eat contaminated rodents. You must remember House Bill 2538.

6. More studies of habitat for Golden Eagles in the Deschutes River corridor should be conducted.
7. Eagle Crest should put up a \$100 million bond because they have gone bankrupt before.

FINDING: This statement, that Eagle Crest declared bankruptcy, was not supported with any documentation. Documentation of such a fact is fairly easy to obtain. Additionally, the record of prior approvals indicate that a person who had granted an option to purchase land for the resort was a debtor in a bankruptcy matter. It may be that Mr. Goodell believes that this person's bankruptcy was an Eagle Crest bankruptcy, which it was not. For these reasons, the Hearings Officer finds that there is no credible evidence that Eagle Crest ever declared bankruptcy.

- U. Letter from **Dorothy C. Schoonmaker** (Exhibit 245) dated November 3, 1994 (sic). Ms. Schoonmaker states that an increase from 563 to 1,413 units on desert land, with no positive proof of sufficient water and with a septic disposal system is not in the public interest.
- V. Letter from **Kathleen Plain**, 5944 NW Zamia, Redmond, Oregon 97756 (Exhibit 246). Ms. Plain lived in Eagle Crest from May 1, 1990 to September 29, 1991. She opposes resort expansion because:
 1. There was a lack of water pressure at the resort, making it impossible to wash or shower.
 2. The smell of sewage was extreme in the area of the leach lines.
 3. Very few of the residential lots have been built on. When they are, the demand on the water and sewer systems will be much greater.
 4. The new development will demand large amounts of ground water. This may have an adverse affect on neighbor's wells.
 5. Having numerous septic tanks and leach lines on the hill, without a treatment plant, presents a potential pollution problem.
 6. The public will bear the greatest cost on Highway 126.
 7. Deschutes County doesn't need more low-paying jobs.

8. The resort will use huge amounts of fertilizers for its golf courses and homes.
 9. Numerous Eagle Crest homes are for sale and property values have dropped.
- W. October 22, 1992 letter from **Joanne VanMeter**, 67670 SW 75th Street, Redmond, Oregon 97756 (Exhibit 247). Ms. VanMeter recommends denial of the Eagle Crest applications for the following reasons:
1. The applications "fail to provide Burden of Proof as required in 18.113.070 (N) and (P).
 2. Ms. VanMeter lives approximately 1/4 of a mile from Eagle Crest Phase I. Ms VanMeter complained about the following forms of pollution from Eagle Crest: noise pollution of heavy construction equipment; light pollution in Phase II area, light pollution from Phase I; dust pollution for "dust bowl" effect created by construction activities and high winds; visual pollution of her view of Cline Buttes with numerous structures.
- X. Opposition Statement from **Frances Everton** (Exhibit 248). Ms. Everton questioned how staff and the Hearings Officer can form an educated opinion about whether to allow development with septic tanks for a resort located on the banks of a river, without information from DEQ or the Deschutes County Environmental Health Division. Ms. Everton also inferred that Deschutes County should have hired its own economic consultant and should have addressed the issue of the working poor. Ms. Everton included an October 28, 1993 editorial from The Bulletin which she says "directly pertains to the responsibility of the County." The editorial chastises the County's Community Development Department for falling behind on restaurant health inspections.
- Y. October 29, 1993 letter from **Howard Paine** (Exhibit 249).
1. The water conservation plan submitted by Eagle Crest will be ineffective because the majority of users will be overnight guests. There will be no financial incentive for the guests to conserve water. Taking waste water from each unit and home to water the *golf course* is the only effective way to conserve water.
 2. Eagle Crest cannot meet the requirements in 18.113.070(D). The displacement of wildlife, especially deer from loss of habitat and encroachment of human activity cannot be mitigated. 75 deer cannot be displaced or replaced by some other species, such as chipmunks.

3. The high usage of herbicides, pesticides and commercial fertilizer combined with the fecal coliform and household chemicals that are being released into the ground will impact the fish in the Deschutes River.
 4. The Eagle Crest resort will significantly increase the cost of farm or forest practices on surrounding lands by increasing land and housing costs in the vicinity of the resort.
- Z. Letter dated October 29, 1993 from C. R. Lindsay, 7107 SW Wickiup Avenue, Redmond, Oregon 97756 (Exhibit 256). Mr. Lindsay states that he lives on property that adjoins Eagle Crest, Canyon River Territories and BLM land. Mr. Lindsay favors approval of the applications for the following reasons
1. New Eagle Crest residences, at the rate of 100 per year, would be only 1/36th of the residences being built in Bend and Redmond so that they will have a minimal impact on the area's water supply.
 2. Traffic problems may be due to immigrants to Central Oregon, rather than by Eagle Crest traffic.
 3. The Deschutes County Assessor advised Mr. Lindsay, many years ago, that the proximity of Eagle Crest would not raise Mr. Lindsay's property tax bill. Eagle Crest keeps my taxes low because they pay the lion's share of taxes.
 4. In future years, Central Oregon will be thankful for tourism jobs.
 5. The offensive drainfield is in Canyon River Territories, not in Eagle Crest.
 6. The bald eagles were still nesting here four years after Eagle Crest started building. The balds and the golden eagles left when the rabbit population was drastically reduced, supposedly as a result of Canyon River Territory new residents who chose to shoot rabbits and raccoons instead of fencing their gardens. Likewise, the deer population dwindled when these residents cut through BLM fences to affect more convenient access to the land for their horseback riding and cross-country vehicle use, although the land was leased to a cattleman.
- AA. October 21, 1993 letter from **Joe Hannan**, City Manager of Redmond (Exhibit 257) expressed support for the development.

- BB. October 22, 1993 letter from **Bob Eberhard**, 729 North Canyon Drive, Redmond, Oregon 97756 stating support of Eagle Crest's expansion request because destination resorts are allowed uses; Eagle Crest is an excellent corporate citizen and has built a first class resort; Eagle Crest is a substantial employer in the Redmond area; only 1/2 of 1% of the County is developed with destination resorts; this application is supported by the City of Redmond, the Redmond Chamber of Commerce and the business community at large.
- CC. October 21, 1993 letter from **Paul Barnes** of Central Oregon Mortgage, Inc. (Exhibit 259) supports the Eagle Crest expansion. Mr. Barnes states that Eagle Crest has been a major economic force in the County and has been a good neighbor. The expansion will enhance Deschutes County and the State of Oregon.
- DD. October 27, 1993 letter, with attachments, from **C.T. Thomas** (Exhibit 264). Mr. Thomas states that "exploitation of Public Lands by a private enterprise for profit gain should not be allowed as in the case of Cline Butte Utilities (Eagle Crest). The documents submitted include:
1. Notice of Environmental Impact, Cline Butte Reservoir, in the 8/18/93 edition of The Spokesman.
 2. Environmental Assessment by BLM regarding proposed Cline Butte Reservoir dated 8/5/93.
 3. Letter from C.T. Thomas to Phil Paterno dated 8/28/93 objecting to approval of use of BLM land for Cline Butte Utilities' reservoir.
 4. Letter from James Kenna to C. Thomas dated September 22, 1993. Mr. Kenna stated that the reservoir is intended to provide a reliable source of potable water for fire protection purposes at the Eagle Crest resort. A gravity system is more reliable in the event of a fire than is a system that is reliant upon pumps which require electricity. Eagle Crest installed electric and telephone conduits under Cline Falls Highway, not water lines. The Eagle Crest water lines will be located near an existing utility line and access roads. The reservoir will be partially buried and screened by surrounding vegetation.
 5. Letter from C. T. Thomas to James G. Kenna dated 9/30/93. Mr. Thomas states that Eagle Crest intends to use the reservoir for domestic and irrigation purposes and to increase water pressure in their water system. Public land should not be used to irrigate golf courses and to store water for domestic use in Eagle Crest. Mr. Thomas asked Mr. Kenna to review photos of the pipes that were placed under Cline Falls Highway which he

claims are obviously water pipes, not conduit for electric and telephone lines.

6. Eagle Crest Phase II Domestic Water Supply System Master Plan, March 1992.
7. Letter from Tom Blust, Deschutes County Engineer to C.T. Thomas dated October 20, 1993 stating that all utility crossing work on Cline Falls Highway was performed according to the permit and complied with County codes.
8. Letter to George Kolb from Steven R. Hannas (W&H Pacific) dated 10/14/93 stating that a bank of conduits were placed under Cline Falls Highway for future power, telephone, cable television and "to allow for possible future needs such as irrigation, natural gas, domestic water, drainage, or sewage collection system crossings. These conduit banks consisted of four 4-inch PVC conduits, one 6-inch PVC conduit and one 8-inch PVC conduit. These conduits can be used as sleeves or piping to allow future utilities to be placed under the roadway, without disrupting the new street improvements. In addition to the conduit banks, a single 10-inch PVC line (C-900 PVC pipe) was installed across Cline Falls Highway. This line was placed for future needs and could connect the existing Eagle Crest I domestic system to the proposed Eagle Crest II addition. This domestic water connection would connect and strengthen both phases of Eagle Crest domestic and fire protection water systems and improve reliability."

EE. October 29, 1993 letter from Oregon Trout (Exhibit 265). Oregon Trout states that the Deschutes River, north of Bend, maintains a population of brown, native rainbows and rare bull trout. Oregon Trout believes that Eagle Crest Phase II could easily damage the fishery by its use of ground water, surface water pumping from the Deschutes River and septic systems. The group believes that ground water hydrology is complicated but that the withdrawal of several millions of gallons of water a day could affect spring flow rates and hydraulic pressure miles away. The Eagle Crest section of the Deschutes gains most of its irrigation season flow from spring water flowing into the river between Bend and Lake Billy Chinook. Ultimately, flow levels affect anadromous fish in the Columbia River. The Draft Recovery Plan for endangered Columbia River salmon calls for a moratorium on further water withdrawals from the Columbia River basin. The group is also concerned about the possible impact of irrigation effluent on river fish. Oregon Trout

states: "It is our opinion that a development of this size could never mitigate its impact on this fishery and should not be built."

V. REQUIRED FINDINGS

The Hearings Officer has recited the provisions of law that govern approval of the conceptual master plan of Eagle Crest and the requested variance and has followed each provision of law with findings relating to that section. The Hearings Officer makes the following findings:

18.113.020 - APPLICABILITY

- A.** The provisions of this chapter shall apply to proposals for the development of destination resorts, as defined in this title, in areas designated DR by the County zoning maps. The provisions of this chapter shall not apply to any development proposal in an area designated DR other than a destination resort.
- B.** When these provisions are applicable, they shall supersede all other provisions of the underlying zone. Other provisions of the zoning ordinance, made applicable by specific map designations such as the SMIA, AH, CH, FP or LM, or otherwise applicable under the terms of the zoning ordinance text shall remain in full force and effect, unless otherwise specified herein.

FINDING: The subject proposal is for the development of a destination resort as defined by this ordinance. Thus the provisions of Chapters 18.16 (EFU Zones) and 18.32 (MUA-10 Zone) are not applicable to this application. The provisions of Chapter 18.84 (Landscape Management) will be applicable to each structure which is constructed within the LM Combining Zone.

18.113.025 - APPLICATION TO EXISTING RESORTS

Expansion proposals of existing developments approved as destination resorts shall meet the following criteria:

- A.** Meet all criteria of this chapter without consideration of any existing development;
or
- B.** Meet all criteria of this chapter for the entire development (including the existing approved destination resort development and the proposed expansion area), except

that as to the area covered by the existing destination resort, compliance with setbacks and lot sizes shall not be required.

If the Applicant chooses to support its proposal with any part of the existing development, Applicant shall demonstrate that the proposed expansion will be situated and managed in a manner that will be integral to the remainder of the resort.

FINDING: The Applicant has chosen to pursue option B. Thus, this application will be considered to be an expansion of an existing resort, and all criteria, other than lot sizes and building setbacks, must be met for all areas of the development.

The Applicant is proposing two areas of expansion to the existing resort, hereafter identified as Eagle Crest Phase I (Phase I). These include the 710 acre area to the west of Cline Falls Highway identified as Eagle Crest Phase II (Phase II), and the 36 acre area contiguous to Phase I on the east side of Cline Falls Highway identified as the Canyon River Territories (CRT) Expansion Area. The CRT Expansion Area is considered by the Applicant to be a part of Phase I, as it is directly contiguous to Phase I and ties directly into existing developed areas within Phase I.

Phases I and II are adjacent to one another, but are separated by the Cline Falls Highway. This configuration results in 544 acres within Phase I (including the CRT Expansion) on the east side of the Highway, and 710 acres of new resort area on the west side. Eagle Crest Partners, Ltd. is responsible for resort operation and the ownership of resort facilities will be transferred to the Cline Butte Utility Company. Lots within Phase I are owned by many different persons and entities. A significant part of the property boundaries for each phase adjoin Cline Falls Road. Almost all of the Cline Falls Road frontage of each phase adjoins the frontage of the other phase. For this reason, the Hearings Officer finds that the expansion area can be managed and operated in a manner which is integral to the remainder of the resort and such management has been made a condition of approval of the Master Plan. This condition will require the Applicant to assure owners and visitors to either phase of the Eagle Crest Resort complete access to all areas open to use by owners and visitors in the other phase.

18.113.030 - USES IN DESTINATION RESORTS

18.113.030 Uses in Destination Resorts.

The following uses are allowed, provided they are part of and are intended to serve persons at the destination resort pursuant to this section and are approved in a final master plan:

- A. Visitor-oriented accommodations designed to provide for the needs of visitors to the resort:
- a. Overnight lodging, including lodges, hotels, motels, bed and breakfast facilities, time share units and similar transient lodging facilities;
 - b. Convention and conference facilities and meeting rooms;
 - c. Retreat centers;
 - d. Restaurants, lounges and similar eating and drinking establishments; and
 - e. Other similar visitor-oriented accommodations consistent with purposes of this chapter and Goal 8.

FINDING: The proposed Master Plan for Phases I and II includes overnight lodging, convention and conference facilities in its hotel and a restaurant and lounge (Phase I). Area 11 of Phase II also includes what is called a "business development center." The Applicant has not explained what types of activities would be conducted in this center. If the Applicant wishes to build a facility for a corporate retreat center, this is an allowed use. The Applicant also obtained approval to build a temporary conference center in 1992. That center was not shown on the CMP. If it has not been constructed, the permit for that use has lapsed. No activities that might qualify as "similar visitor-oriented accommodations" were mentioned by Applicant, therefore, none are authorized by this approval.

- B. Developed recreational facilities designed to provide for the needs of visitors and residents of the resort;
- a. Golf courses and clubhouses;
 - b. Indoor and outdoor swimming pools;
 - c. Indoor and outdoor tennis courts;
 - d. Physical fitness facilities;
 - e. Equestrian facilities;
 - f. Wildlife observation shelters;
 - g. Walkways, bike paths, jogging paths, equestrian trails;
 - h. Other similar recreational facilities consistent with the purposes of this chapter and Goal 8.

FINDING: Equestrian facilities, physical fitness facilities, a golf course, swimming pools, tennis courts, walkways and bike paths exist in Phase I of Eagle Crest. The Applicant has established one of two proposed golf courses in Phase II. The Applicant proposes to build bicycle paths and a second golf course in Phase II. The Applicant has also proposed a "combined development area" (Area 11) that the Applicant says could include, but not be limited to, "hotel, sports facilities, conference center, business development center, pool, tennis courts, golf course related

facilities and residential development." The Applicant does not list other uses that might be conducted in this area. The Applicant shall accurately identify uses for this area in further detail as a condition of FMP approval.

C. Residential accommodations;

- a. Single-family dwellings;
- b. Duplexes, triplexes, fourplexes and multi-family dwellings;
- c. Condominiums;
- d. Townhouses;
- e. Living quarters for employees;
- f. Time share projects.

FINDING: The proposed resort will include single-family dwellings, multi-family dwellings, condominiums and time share projects. No living quarters have been provided for employees.

D. Commercial services and specialty shops designed to provide for the visitors to the resort:

- a. Specialty shops including, but not limited to delis, clothing stores, book stores, gift shops and specialty food shops;
- b. Barber shops and beauty salons;
- c. Automobile service stations limited to fuel sales, incidental parts sales and minor repairs;
- d. Craft and art studios and galleries;
- e. Real estate offices;
- f. Convenience stores;
- g. Other similar commercial services which provide for the needs of resort visitors and are consistent with the purposes of this chapter and Goal

FINDING: There are currently a number of existing commercial uses located within Phase I. These include a gift shop, convenience store, pro shop and resort real estate sales office. The Applicant also sells golf items and refreshments in its Phase II golf clubhouse. The Applicant has not listed all commercial services and shops that currently exist in the development but the Hearings Officer has visited the subject property and finds that all of the current commercial service and specialty shops that presently exist in Phase I and Phase II function as an integral part of the resort and provide services for visitors to the resort. The Applicant will be required to designate all currently existing commercial uses on the final master plan so that it is clear what commercial activities have been allowed by this approval.

The Applicant also plans to include commercial uses in the center of Phase II and in an area designated as "future commercial area." It is not known what types of uses might be sited in these locations. It is also unknown what type of traffic and utility service demands these commercial uses might generate, as the type of use is not identified. For instance, if the Applicant were to include a car wash, in conjunction with a service station as a "similar commercial service" the car wash would generate a significant demand for water and sewer services. The amount of traffic generated by commercial uses varies depending on the type of use selected. A service station or post office would place a greater traffic demand upon the area in which it is located than would a pro shop that is operated in conjunction with a golf course. The impacts of these uses upon the volume of resort traffic was not considered in the Applicant's traffic study. This is apparent when reviewing the traffic expert's descriptions of Phase I and proposed Phase II on pages 3 and 19 of the Kittelson & Associates, Inc. Traffic Impact Analysis document, Exhibit 9. The impact was not estimated in the sewer study. Page 5 of the sewerage master plan, Exhibit 26, lists commercial uses but does not list an estimated sewage contribution for these facilities. As discussed above, estimation of the impact of these uses is difficult to make without knowing what types of uses will be sited in the commercial areas. This information should be obtained and new estimates should be made.

The Applicant has previously obtained land use approval for commercial development in Phase I. Some of that development has not yet occurred, especially in the area that is shown on the Applicant's proposed master plan as "future commercial area." In CU-88-97, the Applicant obtained approval to add the commercial area to the resort master plan. Hearings Officer Greg Hendrix required the Applicant to submit a modified master plan that would include proposals for retail shops. No such plan was found by this hearings officer. The Applicant then amended the Master Plan in 1990. The 1990 plan also did not specify the commercial uses intended for this area. Since that time, the Applicant has obtained site plan approval for development of a temporary day care facility (CU-92-55) and a post office and convenience store (CU-92-21). The Applicant has gone forward with plans for the day care facility but has not constructed the post office and convenience store. The conditional use permit for the post office and convenience store appear to have expired.

- E. Uses permitted in open space areas generally include only those uses that, except as specified herein, do not alter the existing or natural landscape of the proposed open space areas. No improvements, development or other alteration of the natural or existing landscape shall be allowed in open space areas, except as necessary for development of golf course fairways and greens, hiking and bike trails, lakes and ponds and primitive picnic facilities including park benches and picnic tables. Where farming activities would be consistent with identified pre-existing open space uses, irrigation equipment and associated pumping facilities shall be allowed.

FINDING: The Applicant has included developed areas in the area designated as open space on its open space map, Exhibit 50. The designation of developed golf course areas is proper, according to this ordinance provision. The designation of the softball field, a tennis court and soccer field as open space is not. It also appears that the Applicant may have included areas around the stables that are used for parking and other stable related uses in the open space calculations. The Applicant will be required to revise its open space map to comply with the provisions of this section for all designated and accepted open space areas in Phase I and II of the resort.

F. Facilities necessary for public safety and utility service within the destination resort.

FINDING: Sewer and water utility service facilities are included within the resort boundaries, including pumps, wells and a drainfield. 1988 Master Plan approval for Phase I included a reserve area for future sewage plant construction. That area was removed from the plan and platted for housing units in 1990. Power lines and utility service lines also cross and serve the property. The Applicant should designate the location of all utility lines and easements that burden the property, including those granted by BLM and shall provide proof to the Planning Director, prior to FMP approval, that all development proposed in those areas is allowed by the terms of the easements granted.

G. Other similar uses permitted in the underlying zone consistent with the purposes of this section.

The Applicant has not applied for approval of any such uses. None are authorized by this approval.

H. Accessory Uses in Destination Resorts:

- a. The following accessory uses shall be permitted provided they are ancillary to the destination resort and consistent with the purposes of this chapter and Goal 8:

1. Transportation-related facilities excluding airports;
2. Emergency medical facilities;
3. Storage structures and areas;
4. Kennels as a service for resort visitors only;
5. Recycling and garbage collection facilities;
6. Other similar accessory uses consistent with the purposes of this chapter and Goal 8.

FINDING: The resort includes storage facilities and garbage collection areas that are ancillary to resort uses. The resort also includes roads and bike paths that may be considered transportation-

related facilities. There are no emergency medical facilities or kennels within the resort and no such uses are proposed.

The Applicant has sited a day care center in its existing resort on property zoned MUA-10. The Applicant plans to move this center to the north, according to the 1992 conditional use application, to a piece of property zoned EFU. The Hearings Officer finds that this is a use that is a similar accessory use, provided that the center is limited to children of employees and guests of the resort.

FINDING: The Applicant may develop the resort for specifically listed uses only, other than similar uses approved in this decision. Any new uses that are desired as "similar" uses must be reviewed by Deschutes County Planning Division, according to ordinances then in effect. The Applicant has obtained numerous land use approvals for Eagle Crest development of Phase I. All previously approved master plans regarding resort development will be replaced at such time as the FMP for the resort is filed, except for the provisions of those approvals that established setback and lot sizes. The Applicant will, however, continue to be bound by the conditions of approval in any and all other land use actions relating to the resort property.

The Applicant has proposed a "business development center" as a possible use in Area 11, Phase II. This use may or may not qualify as an allowed use, depending upon what type of facilities are contemplated for the center. If the center is designed as a retreat for business conferences it would be permitted. If the center is intended to include professional offices for various businesses and to provide services for area businesses, such as a computer laboratory, teleconferencing facility, or classrooms, it would not be allowed in a resort setting. The Applicant has not provided any details about the nature of this proposed use. Approval of this application is not intended to authorize the construction of a business development center unless it provides only uses otherwise expressly allowed by the destination resort ordinance. No determination whether other possible business center uses might be allowed under the "similar use" sections listed above is possible at this time, as the Applicant has not defined the use.

18.113.040 - APPLICATION SUBMISSION

The authorization of a permit for a destination resort shall consist of three steps.

- A. **Conceptual Master Plan and Conditional Use Permit for Destination Resort.** A conceptual master plan (CMP) shall be submitted which addresses all requirements established in this section. The CMP application shall be processed as if it were a conditional use permit under Chapter 22 of the Deschutes County Code, shall be subject to Sections 18.128.010, 18.128.020 and 18.128.030 of the Deschutes County Code and shall be reviewed for compliance with the standards and criteria set forth in this chapter.

FINDING: DCZO 18.113.040 establishes a three step approval process for the authorization of a destination resort. These steps are: 1) Conceptual Master Plan (CMP); 2) Final Master Plan (FMP); and 3) Site Plan or Subdivision Review. The Applicant has applied for a Conditional Use Permit for Destination Resort Conceptual Master Plan. The purpose of this application is for the Applicant to demonstrate that all requirements of the DR Zone are currently met, or will be met through the imposition of conditions of approval. The provisions of DCZO Chapter 18.128, listed above, authorize the Hearings Officer to impose various conditions of approval and to require the posting of a performance bond to assure developments, as approved.

Once conceptual master plan development is approved, the Applicant must prepare and submit a Final Master Plan, which incorporates all requirements of the County approval for the CMP. The Final Master Plan will be reviewed by the Planning Director to determine if it complies with the approved CMP. The Planning Director has the authority to approve, deny, or return the FMP to the Applicant for additional information. If review of the FMP by the Planning Director involves discretion, it will be treated as a land use permit and will be processed in accordance with Title 22 of the County Code.

After the first two steps have been completed, each element or phase of development must receive additional approval through Site Plan Review (Chapter 18.124 and in some cases, Chapter 18.84 of Title 18) or Tentative Plat approval (Title 17). In addition to findings satisfying site plan or subdivision criteria, findings shall be made that the specific development proposal complies with the standards and criteria of this chapter and the FMP.

18.113.050 - REQUIREMENTS FOR CONDITIONAL USE AND CONCEPTUAL MASTER PLAN APPLICATIONS

FINDING: This section contains requirements for conceptual master plan applications. The application submitted by the Applicant substantially complies with all requirements of this section, with the exception of the items listed below. Modifications have been required to some of the documents, such as the open space map, to assure compliance with destination resort ordinance standards.

2. (B)(s) - An economic impact and feasibility analysis of the proposed development prepared by a qualified professional economist or financial analyst shall be provided which includes:
 1. An analysis which addresses the economic viability of the proposed development.

FINDING: The Applicant has provided an economic impact analysis (Exhibit 31) and a letter from the CEO regarding financing (Exhibit 39), but no independent feasibility

analysis or evidence of assurances that funding for the proposal has been secured. These documents do not, however, contain an analysis of the economic viability of the proposed development. Such an analysis would consider the income that could be anticipated from the resort operations and compare that income to project expenses. The Applicant will be required to supply this information, prior to FMP approval. The analysis should be prepared by an independent, qualified financial expert.

18.113.060 - STANDARDS FOR DESTINATION RESORTS

The following standards govern consideration of destination resorts:

A. The destination resort shall, in the first phase, provide for and include as part of the CMP the following minimum requirements:

a. At least 150 separate rentable units for visitor-oriented lodging.

FINDING: The Applicant has met this requirement as there are currently at least 194 units for visitor-oriented lodging in Eagle Crest Phase I. In making this finding, the Hearings Officer has determined that the resort's 74 hotel units and 120 time share townhouses qualify as visitor-oriented lodging. The Hearings Officer also finds that the Applicant's 1/5 share time share units qualify as visitor-oriented lodging, unless all 1/5 shares of a 1/5 share unit are owned by one or the same multiple owners. Visitor oriented accommodations are defined by DCZO 18.104.030 to include "overnight lodging." Overnight lodging is defined by DCZO 18.104.030 as "all permanent, separately rentable accommodations that are not available for residential use, including hotel and motel rooms, cabins and time share units." Time share units are defined by DCZO 18.104.030 to include a dwelling unit that is divided into periods of time that are transferred to separate owners or tenants for periods of time less than a full year in any given year, for a period of more than three years. Most Eagle Crest 1/5 share units and time share units meet the time share definition as they are both available for portions of a year to different owners or tenants and the right of use for each extends beyond three years. The only 1/5 share units that would not qualify as visitor-oriented lodging would be 1/5 share units in which all 1/5 shares were owned by a single owner or co-tenants. The Applicant has not provided information indicating whether all of the shares of any 1/5 share multi-family units are owned by a single owners or co-tenants, so the Hearings Officer is unable to conclude whether all 53 such units qualify as visitor-oriented lodging.

b. Visitor-oriented eating establishments for at least 100 persons and meeting rooms which provide eating (sic) for at least 100 persons.

FINDING: The Lodge at Eagle Crest and the Inn at Eagle Crest are capable of accommodating over 100 persons in each category of eating establishments and meeting rooms.

- c. The aggregate cost of developing the overnight lodging facilities and the eating establishments and meeting rooms required in subsections (1) and (2) shall be at least two (2) million dollars (in 1984 dollars).

FINDING: The aggregate cost of developing overnight lodging facilities and eating establishments at Eagle Crest has exceeded two million dollars in 1984 dollars. This conclusion is supported by the Applicant's Burden of Proof Statement (page 20) and Exhibit 33, Cost of Facilities to Date. The Applicant has also provided information to show that the figures supplied in these exhibits exceed two million dollars in 1984 dollars (Exhibit 48) as inflation between 1984 and 1993 raised the cost of improvements by 39%. Therefore, an expenditure of \$3,000,000, or more, in 1993 dollars would clearly meet this requirement.

- d. At least two (2) million dollars (in 1984 dollars) shall be spent on developed recreational facilities.

FINDING: At least two million dollars in 1984 dollars have been spent on developed recreational facilities, such as golf courses, riding stables, pools, tennis courts and ball fields. Exhibit 34 provides the approximate improvement cost for recreational amenities within Eagle Crest Phase I and Phase II. The total improvement costs for recreational amenities in Phase I and II is approximately \$7,000,000. This figure was determined to be at least \$5,852,053 in 1984 expenditures, according to Exhibit 48. The Hearings Officer accepts this information in support of this finding.

- e. The facilities and accommodations required by this section must be physically provided or financially assured pursuant to Section 18.113.110 of this chapter prior to closure of sales, rental or lease of any residential dwellings or lots.

FINDING: The facilities and accommodations required by this section, as outlined in Exhibit 34, are already in existence. Their existence has been verified by site visits by Planning staff and the Hearings Officer. They are, therefore, "physically provided" as required by this section and no financial assurance that they will be provided by the Applicant is needed.

- B. All destination resorts shall have a minimum of 160 contiguous acres of land. Acreage split by public roads or rivers or streams shall count toward the acreage limit, provided that the CMP demonstrates that the isolated acreage will be operated or managed in a manner that will be integral to the remainder of the resort.

FINDING: As indicated on the submitted plans and page 20 of the Burden of Proof Statement, the total proposed destination resort area in Phase I (including CRT Expansion) and Phase II is 1,254.34 acres. The total acreage will be split by Cline Falls Highway, with 544.06 acres in Phase I and CRT Expansion on the east side of the road, and 710.08 acres in Phase II on the west side. Both phases, independently, meet the 160 contiguous acres of land requirement.

- C. All destination resorts shall have direct access onto a state or county arterial or collector roadway, as designated by the Comprehensive Plan.

FINDING: Both Phase I and Phase II have direct access onto Cline Falls Highway, a designated collector roadway on the Transportation Element of the Deschutes County Comprehensive Plan. Cline Falls Highway feeds directly into State Highway 126 (an arterial) just north of the project site.

- D. A destination resort shall, cumulatively and for each phase, meet the following minimum requirements:

- a. The resort shall have a minimum of 50% of the total acreage of the development dedicated to permanent open space, excluding yards, streets and parking areas. Portions of individual residential lots and landscape area requirements for developed recreational facilities, visitor-oriented accommodations or multi-family or commercial uses established by Section 18.124.070 shall not be considered open space;

FINDING: According to the Applicant's Burden of Proof Statement, page 21, the total resort area, with the addition of Phase II and CRT Expansion Area will be 1,254.34 acres, with approximately 650.87 acres of open space (51.89%). The open space acreage was purportedly calculated in accordance with Section 18.113.060(D)(1), as shown on Exhibit 36. The open space percentage was revised, by the Applicant, to 53% when open space areas were mapped on Exhibit 50, at the request of County Associate Planner Dale Van Valkenburg. The Hearings Officer has reviewed the open space map and has determined that the map includes areas that do not meet the various definitions of open space contained in the County's development ordinances. This is not surprising, as the County's destination resort ordinance contains a number of provisions that exclude property that meets the general definition of open space contained in DCZO 18.04.030. The Hearings Officer finds that the following exclusions of specific areas from destination resort open space calculations are required by DCZO 18.113.060(H), 18.113.030 (E) and this section: (1) space that is developed with uses that alter the existing or natural landscape, except as necessary for development of golf course fairways and greens, hiking and bike trails, lakes and ponds and primitive picnic facilities including park benches and picnic tables, DCZO 18.113.030 (E); and (2) flood plain areas, DCZO 18.113.060(H)(c); and (3) land that is

planned for other uses, portions of individual lots and landscaped areas required to obtain site plan approval, DCZO 18.113.060(D)(a). In applying these exclusions, all tennis courts, flood plain area along the Deschutes River, wells, the portion of Lot 33 on Condor Drive that is shaded purple (.29 acre), ball fields (soccer and baseball), the area of the resort that the Applicant will be required to designate as reserve area for a future sewer treatment facility and any other land that is not in either its natural state or the state in which it existed prior to resort development must be excluded from the open space map.

Without an Open Space Area map that properly excludes all areas that were erroneously included as open space, the Hearings Officer cannot verify that the 50% open space requirement is met. A revised open space map must be submitted at the time of Final Master Plan review and it must include at least 50% open space. The Applicant shall also furnish proof that all open space area has been permanently reserved for open space, prior to FMP approval.

- b. Individually-owned residential units shall not exceed two such units for each unit of visitor-oriented overnight lodging. Individually-owned units shall be considered visitor-oriented lodging if they are available for overnight rental use by the general public for at least 45 weeks per calendar year through one or more central reservation and check-in service(s).**

FINDING: Revised Exhibit 37 indicates that there are a total of 247 overnight lodging units within Eagle Crest Phase I. These include 74 hotel room units, 120 timeshare townhouses and 53 1/5 share condominiums. The Applicant proposes to add an additional 20 timeshare townhouses, 18 multifamily 1/5 share condominiums and 76 hotel rooms to Phase I. All such units meet the definition of visitor oriented accommodations, as defined by DCZO 18.104.030, provided that they are not owned by a single owner or group of cotenants. It is believed that few, if any, timeshare units are owned by a single owner but this fact must be verified prior to FMP approval and prior to the platting of each phase of Phase II to assure that the proper ratios is met. If all timeshares qualify as overnight accommodations, the number of overnight accommodations in Phase I is 351.

Revised Exhibit 37 also indicates the number of units in Phase I that do not fit the definition of visitor-oriented overnight lodging. These units are the 138 single family homes that currently exist in Phase I. With the future build-out and the CRT Expansion, the Applicant plans to add 61 single family dwelling lots. This will raise the total number of such units in Phase I to 199. Thus, the proposed ratio of accommodations within Eagle Crest Phase I is 361 overnight to 199 residential units. Phase I, as currently developed and as proposed, therefore, can and will meet the required 1 to 2 overnight to residential unit ratio, unless the number of timeshare units that are owned by a single owner or cotenants is extremely and unusually large. The Hearings Officer believes that this number

is certain to be very small. Due to this fact, the Applicant will be able to prove complete compliance with the above-listed requirement prior to FMP approval and such proof will be included as a condition of approval of the CMP.

According to revised Exhibit 37, Eagle Crest Phase II will include 394 visitor-oriented overnight lodging units in the following categories: 100 timeshare townhouses, 144 multi-family 1/5 share condominiums (this number may increase if single family units are decreased), and 150 hotel rooms. The Applicant also proposes as many as 456 single-family homes in Phase II. If all timeshares are owned by different owners, this plan will result in a ratio of 394 visitor-oriented overnight lodging units to 456 residential units. This ratio meets the required 1 to 2 ratio for overnight lodging to residential units, without consideration of Phase I units. It appears that the Applicant will be able to plat each proposed phase, as planned, and maintain the required ratio, provided that the proposed 250 overnight accommodations are built during the platting of phases. The Applicant will be required to provide proof of compliance with this required ratio at the time that each phase is platted.

- E. Phasing.** A destination resort authorized pursuant to this section may be developed in phases. If a proposed resort is to be developed in phases, each phase shall be as described in the CMP. Each individual phase shall meet the following requirements:

- a. Each phase, together with previously completed phases, if any, shall be capable of operating in a manner consistent with the intent and purpose of this chapter and Goal 8.

FINDING: The existing Phase I of Eagle Crest already operates as a destination resort in a manner consistent with the standards and guidelines provided by Goal 8. Thus, the primary consideration for each proposed development phase in Eagle Crest Phase II is whether proper housing ratios, densities and open space acreages are being maintained. This is discussed further, below.

- b. The first phase and each subsequent phase of the destination resort shall cumulatively meet the minimum requirements of this section and Section 18.113.070.

FINDING: The CMP for Phase II has identified eleven different areas that are proposed to be developed in phases, labelled as Areas 1 through 11. For each of these areas, the Applicant has proposed a potential buildout rate of various types of housing units, identified on the plan as either single-family or multi-family. These numbers are provided on the CMP, Exhibit 2, as follows:

Area 1, 38.5 acres, 66 single-family units (SF), 111 multi-family (MF)
Area 2, 13 acres, 39 SF, 46 MF

Area 3, 16.16 ac., 34 SF, 43 MF
Area 4, 12.86 ac., 39 SF, 43 MF
Area 5, 24.88 acres, 52 SF, 64 MF
Area 6, 18.84 acres, 35 SF, 44 MF
Area 7, 5.47 acres, 11 SF, 14 MF
Area 8, 17.38 acres, 27 SF, 37 MF
Area 9, 49.05 acres, 75 SF, 91 MF
Area 10, 29.25 acres, 66 SF, 74 MF
Area 11 12.2 acres, 12 SF, 33 MF

The Applicant lists the maximum single family units in Eagle Crest, Phase II as 456. The maximum number of multi-family units that could be allowed in Eagle Crest Phase II is shown as 600, assuming that no lots are developed for single family units. The total number of multi-family and single-family units that could be built in Phase II, if a mixture of single-family and multi-family will be some number between 456 and 600.

The Hearings Officer finds that the Applicant intends the multi-family units to be 1/5 share timeshare multi-family units. The Hearings Officer has drawn this conclusion from the fact that Exhibit 37 lists 144 1/5 share units in Phase II and 144 is the difference between the 456 single family and 600 total multi-family and single-family units proposed on Exhibit 2. The Applicant has requested flexibility to increase the number of 1/5 share condominium units, depending upon market conditions, as it plats each phase of Phase II. This is permissible, as long as the Applicant reduces the number of single family lots allowed by a corresponding amount. This shall be accomplished in the same phase of development. This will assure that the total units in each phase will not exceed the number shown in each phase under the "Multi-family" heading. This requirement is necessary to contain the total number of units allowed in Phase II to the 850 proposed by the Applicant in this land use action. As can be seen on Exhibit 2, tallying the numbers under the multi-family column and adding them to the 250 overnight visitor facilities equals the 850 units requested by the Applicant for Phase II. Compliance with the upper limit of 850 units is essential, as the Applicant has used that number in its traffic, water and sewer studies. Those studies would be virtually worthless if the number of units was allowed to climb much above 850. Additionally, the land use notice provided regarding this application would be faulty as the scope of the project would have been significantly understated. For instance, if the single-family and multi-family unit numbers were additive, the Applicant could construct a total of 1306 units in Phase II, an increase of 456 units.

The Applicant has included a tentative plan for lots in Area 1 of Phase II with the CMP map. That plan does not comply with the total numbers listed by the Applicant for Area 1 of Phase II. That plan shows 66 single family units, 66 multi-family units and no overnight visitor facilities for a total of 132 units. The chart on Exhibit 2 shows that the Applicant is requesting a total of 111 units (multi-family and single-family). When this areas is

tentatively platted, it must be revised to comply with the limits shown on the Exhibit II chart, as interpreted by the Hearings Officer. The maximum number of multi-family units is 45. In order to build 66 such units in this phase, the Applicant would need to reduce the number of single family lots in this area to 45 single-family lots.

The Applicant has proposed to construct 250 overnight visitor facilities in Phase II. The Applicant has not stated when these units will be constructed, relative to the construction of various phases of Phase II of Eagle Crest. These 250 overnight visitor facilities consist of 100 townhouse timeshare units and 150 hotel rooms. These units must be constructed, if and when the ratio of visitor-oriented overnight accommodations to other accommodations falls below the 1 to 2 minimum ratio. Monitoring of this ratio has been included as a condition of approval. In determining whether the 1 to 2 ratio is met, the 1/5 share multi-family timeshares and other timeshare may be counted as overnight accommodations if at least one share is owned by an owner or owners other than the owner or owners of other shares. The Hearing's Officer finds that each phase of development can be developed in a manner consistent with Goal 8 and which will cumulatively meet the minimum requirements of this section and Section 18.113.070, if these conditions are honored. Compliance with this condition can be monitored by Planning Staff as each phase of development is submitted for tentative plat review.

- c. **Each phase may include two or more distinct noncontiguous areas within the destination resort.**

FINDING: It appears that each proposed phase of development includes only areas that are or will be contiguous.

- F. **Destination resorts shall not exceed a density of 1-1/2 dwelling units per acre, including residential dwelling units and excluding visitor-oriented overnight lodging.**

FINDING: Eagle Crest Phase I and Phase II, including the CRT Expansion area, consists of a total of 1254.34 acres. At one and one half dwelling units per acre, Eagle Crest could be allowed up to 1,881 residential units, excluding the overnight units. Eagle Crest is proposing a total of 1,410 residential units including overnight accommodations. Thus, the proposed overall density for Eagle Crest is well within allowable densities. If Eagle Crest were to build up to the maximum allowed density of 1,881 residential units, 941 visitor-oriented overnight lodging facilities would have to be provided to meet required ratios.

G. Dimension Standards:

- a. The minimum lot area, width, lot coverage, frontage and yard requirements and building heights otherwise applying to structures in underlying zones and the provisions of Chapter 18.116 relating to solar access shall not apply within a destination resort. These standards shall be determined by the Planning Director or Hearings Body at the time of the CMP. In determining these standards, the Planning Director or Hearings Body shall find that the minimum (sic) specified in the CMP are adequate to satisfy the intent of the Comprehensive Plan relating to solar access, fire protection, vehicle access, visual management within landscape management corridors and to protect resources identified by LCDC Goal 5 which are identified in the Comprehensive Plan. At a minimum a 100-foot setback shall be maintained from all streams and rivers. Rimrock setbacks shall be as provided in this title. No lot for single-family residence shall exceed an overall project average of 22,000 square feet in size.

FINDING: The setback standards for the existing Eagle Crest resort are those setbacks established in prior land use approvals and those provided under other portions of the county zoning ordinance, according to DCZO 18.113.025 (B). This includes river and rimrock standards that are currently stated in other portions of the zoning ordinance. The existing resort must continue to comply with these standards as it contains rimrock and riverfront property.

The setback standards for the expansion areas are determined by the above-cited section. There are no rivers or rimrocks within or adjacent to the proposed expansion areas (CRT and Phase II). River and rimrock setbacks are, therefore, not applicable to the expansion areas.

Goal 5 resources inventoried in the Comprehensive Plan, in the area of the destination resort, include scenic corridors associated with both the Deschutes River and Highway 126. A portion of Eagle Crest Phase I is located within 1/4 mile of the Deschutes River, and is thus within a designated Landscape Management Combining Zone. A portion of both phases of Eagle Crest are located within 1/4 mile of Highway 126, and are also within a Landscape Management Zone. All new development within the LM zone is subject to site plan review to assure compatibility with the standards and criteria established for the Landscape Management Zone.

To the west of Eagle Crest Phase II is a Surface Mining (SM) Zone, an active cinder pit which the Applicant proposes to utilize as a resource for building interior roads within Eagle Crest Phase II. Mineral and aggregate resources are a protected Goal 5 resource. The County has developed zoning restrictions intended to protect inventoried Surface Mines from encroaching noise and dust sensitive land uses. This protection is

implemented through Chapter 18.56 of Title 18, the Surface Mining Impact Area (SMIA) Combining Zone. This zone extends outward 1/2 mile from the exterior boundaries of all SM Zones. No portion of Eagle Crest Phase II lies within 1/2 mile of the nearby SM Zone. Thus, the provisions of the SMIA Combining Zone contained in Chapter 18.56 are not applicable to this proposal, and Goal 5 is satisfied in this respect.

There are no Goal 5 wildlife resources in the Phase II and CRT expansion areas which are identified in the Comprehensive Plan that must be considered in establishing setbacks and building standards. Phase II and CRT expansion areas do not affect any of the following inventoried Goal 5 resources: open space areas, energy sources, significant natural areas, water and wetland areas, wilderness areas, historic sites, cultural areas or Oregon recreational trails.

The Applicant has requested (page 24 of the Burden of Proof Statement) that all single-family dwelling lots be held to the standard solar setbacks contained in Title 18 for a 14 foot solar fence subject to final design review. The Hearings Officer finds, however, that all single-family residential lots should be held to the standard 8 foot solar fence south-wall protection requirement of the County's solar setback ordinance. Exceptions to allow a 14 foot solar fence south roof-protection standard could be reviewed and approved by the Planning Division, on a case by case basis, as individual property owners develop their lots.

The Applicant proposes (also on page 24 of the Burden of Proof statement) that multi-family units, commercial structures, and other resort facilities should be exempted from solar setback standards except for where their shadow would impact a single-family residential lot within or adjacent to the resort. The Hearings Officer finds that a 14 foot solar fence standard should apply when shadows cast by multi-family, commercial structures or other resort facilities affect residential structures of any type. If the shadow of a structure affects a commercial or nonresidential resort structure, no solar setback will be required.

The Applicant have not proposed any other yard and building height standards for this development. The opponents of this application have not suggested any such standards. The Hearings Officer, therefore, looked to the County's zoning ordinance for guidance in determining what such restrictions are appropriate for the proposed destination resort expansions. The Hearings Officer believes that the development allowed in a destination resort is similar to the development allowed in a planned community and that it is appropriate to apply planned community standards to Eagle Crest Phase II and CRT development.

The following standards apply to Eagle Crest Phase II and CRT development:

Single Family Residential Lots. All provisions of DCZO Chapter 18.108, Planned Communities, regarding minimum lot area, width, lot coverage, frontage and yard requirements and building heights, that apply to RS District lots in a planned community, shall apply to all single family residential lots in Phase II and to all CRT lots.

Multi-Family and Condominiums. All provisions of DCZO Chapter 18.108, Planned Communities, regarding minimum lot area, width, lot coverage, frontage and yard requirements and building heights, that apply to RM District lots in a planned community, shall apply to all multi-family and condominium lots in Eagle Crest Phase II.

Commercial and Resort Amenities. Any Phase II lot designated and developed for commercial development or for resort services or recreational activities shall be subject to the provisions of DCZO Chapter 18.108 that apply to lots located in the C District of a planned community.

Building Height. The provisions of DCZO 18.120.040 regarding exceptions to and exemptions from building height restrictions shall apply to Eagle Crest Phase II buildings.

Definitions. The definitions that shall apply to measurement of building height, average lot width and yards are those contained in the definitions section of Title 18.

Off-Street Parking and Loading. Off-street parking and loading space shall be as provided in Section 18.116.160. Single family residences shall have a minimum of two off-street parking spaces. Multiple family units shall have a minimum of one off-street parking space per dwelling unit.

Maximum Average Lot Size. No lot for a single-family residence shall exceed an overall project average of 22,000 square feet in size.

References to DCZO. All references to DCZO standards shall apply to the DCZO ordinance in place at the time of development application, unless such standards have been repealed and not replaced by a new section. In such event, the reference shall be to the ordinance as it was written at the time it was repealed. In the event that sections have been renumbered, the newly numbered section may be utilized, in place of the section number cited by the Hearings Officer.

b. Exterior setbacks.

1. Except as otherwise specified herein, all development (including structures, site-obscuring fences of over three feet in height and changes to the natural topography of the land) shall be set back from exterior property lines as follows:
 - i. 350 feet for commercial development including all associated parking areas;
 - ii. 250 feet for multi-family development and visitor-oriented accommodations (except for single-family residences) including all associated parking areas;
 - iii. 150 feet for above-grade development other than that listed in subsections (i) and (ii);
 - iv. 100 feet for roads;
 - v. 50 feet for golf courses; and,
 - vi. 50 feet for jogging trails and bike paths where they abut private developed lots and no setback for where they abut public roads and public lands.
2. Notwithstanding subsection (1)(iii), above-grade development other than that listed in subsection (1)(i) and (ii) shall be set back 250 feet in circumstances where state highways coincide with exterior property lines.
3. The setbacks of this section shall not apply to entry roadways and signs.

FINDING: The submitted CMP indicates several stretches of roadway, some bike and pedestrian trails, and several golf course areas which do not meet the setbacks required by this section. Concurrently with the submittal of this CMP, the Applicant has applied for a setback variance for four sections of roadway and bike paths. The variance approval standards of Chapter 18.132 will be addressed in detail below. The Hearings Officer has denied the requested variances and the Applicant will, therefore, be required to revise the submitted CMP so that all bike paths and road sections meet the requirements of this section.

The Applicant has not indicated any proposed building sites on the CMP for Eagle Crest Phase II which would violate required building setbacks from exterior lot lines. There are,

however, two proposed single-family residential lots within the CRT Expansion area (shown on Exhibit 4) which, if built upon, would result in a violation of the 150 foot minimum required setback for above-grade development. Lot 46 of "Area XV" in the Canyon River Territories is situated so that it abuts an exterior property line of the resort property. This lot is only 126 feet wide, so there would be no buildable area on the lot outside of the 150 foot minimum setback. In addition, Lot 45 directly south of Lot 46 also lies partially within the 150 foot minimum setback, thus eliminating a substantial portion of this lot from residential development. Exhibit 4 must be amended so that no portion of a residential lot is situated within the 150 foot setback from any exterior resort property boundary. This amendment could be made at the time of tentative plat submittal for the platting of this area.

Existing Eagle Ridge Golf Course

A number of sections of the existing Eagle Ridge golf course (Phase II) are built within the setback area designated for golf courses and some adjoin the resort's boundaries. The Applicant did not seek a variance to allow the existing golf course to be located within the setback area and has taken the position that because the golf course exists, it may continue to exist in its present location. This is, basically, an argument that the area of the golf course that encroaches on the 50 foot setback area is a nonconforming use.

A second Eagle Ridge golf course is planned for Phase II. Sections of that course are shown on the CMP in locations that encroach upon the 50 foot setback area. The golf courses for Phase II were approved by Conditional Use permit #CU-90-189 in 1990. At that time, no setback requirements existed for destination resort golf courses or for golf courses in Deschutes County land use ordinances. A general requirement for buffering and setbacks for all resorts did, however, exist in 1990 in ORS 197.460 and Goal 8. These laws require counties to insure resort compatibility with adjacent land uses by establishing and maintaining natural buffers between the resort and adjacent land uses, including, where appropriate fences, berms, landscaped areas and other similar types of buffers and setbacks of structures and other improvements from adjacent land uses.³ All persons are deemed to know the law. The Applicant had

³ ORS 197.460 states that "A county shall insure that a destination resort is compatible with the site and adjacent land uses through the following measures: (2) Improvements and activities shall be located and designed to avoid or minimize adverse effects of the resort on uses on surrounding lands, particularly effects on intensive farming operations in the area. At a minimum, measures to accomplish this shall include: (a) Establishment and maintenance of buffers between the resort and adjacent land uses, including natural vegetation and where appropriate, fences, berms, landscaped areas and other similar types of buffers. (b) Setbacks of structures and other improvements from adjacent uses."

special reason to be aware of these laws as the Applicant was and is in the destination resort business.

In 1990, when golf course approval was obtained, the Applicant was planning to seek approval of future golf course residential development. The golf course map submitted with the 1990 conditional use application was labelled "Proposed Conceptual Development of Eagle Ridge, a Residential Golf Course Community" (Exhibit 101) and was designed to leave large areas between the greens and fairways that were suitable for residential development. The burden of proof document for that application (Exhibit 102) stated that "no dwellings will be constructed upon the subject property **at this time**." [pp. 4 & 5]. As Eagle Crest representative Bill Lyche stated, in a Bulletin article entitled "Resort Courses Ignite Debate" (Exhibit 254): "[I]t would be foolish not to plan for homesites sometime in the future." It is also clear that the golf course area and future residential community were intended to be operated in conjunction with the Eagle Crest resort. This fact is stated on page 2 of the burden of proof statement submitted in support of the 1990 application (Exhibit 102).

The Applicant has constructed the westerly 18 hole golf course approved in the 1990 conditional use permit. Construction of that course was underway in March of 1992, when the Applicant filed a letter enclosing what was called a preliminary master plan for Eagle Ridge. This preliminary plan included a 40 acre tract of land in the northeast corner of the lot, that had not been included in the 1990 site plan application. The "master plan" also moved portions of some of the golf course holes closer to the property boundaries. The Applicant has not constructed the easterly 18 hole golf course.

DCZO 18.113.020 (B), requires an applicant for destination resort approval to "meet all criteria of this chapter for the entire development (including the existing approved destination resort development and the proposed expansion area), except that as to the area covered by the existing destination resort, compliance with setbacks and lot sizes shall not be required." This section grants a reprieve from the setback standards for existing developments within the destination resort but does not include a similar exception for previously constructed facilities on property that is a part of the expansion area. County Planning Division staff believed that the constructed golf course would not be subject to the setback standards of the destination resort ordinance and from the provisions of DCZO 18.113.020 (B). The Hearings Officer believes that this conclusion was based upon staff's opinion that the encroachment was a nonconforming use that was entitled to be continued under DCZO 18.120.010 and ORS 215.130. The Hearings Officer finds that the applicant may be entitled to retain the existing golf course, if it can establish that it is a valid, lawfully created nonconforming use. The Applicant will also need to establish that the addition of homes around the golf course will not be an alteration of the nonconforming use or that, if it is an alteration, that such alteration will

have no greater adverse impact on the neighborhood. Gibson v. Deschutes County, 17 Or LUBA 692 (1990). As these nonconforming use issues were not directly addressed in the CMP application and the Hearings Officer is unable to make a conclusive determination of this issue on the facts presented, the Hearings Officer has required that this issue be resolved by the Planning Director, prior to FMP approval.

County staff raised concerns about whether the Applicant was entitled to rely upon rights granted in the 1990 conditional use approval as it was not clear that all conditions of that approval were met by the Applicant. The golf course must have been lawfully established, under the laws in effect at the time it was constructed, in order for it to achieve nonconforming use status. Staff was concerned about Condition of Approval #8 which states: "All conditions of preliminary approval shall be completed prior to final approval and the final mylar signed within one (1) year from the date the decision is mailed or the preliminary approval shall be void." Conditional use approval to build the two Eagle Ridge golf course was granted, and mailed, on December 12, 1990, subject to a number of conditions of preliminary approval that were to have been fulfilled no later than December 11, 1991. As stated in Condition #8, failure to fulfill any condition of approval by that date rendered the preliminary approval void.

A review of the Planning Division file for CU-90-189/SP-90-115 indicates that the Applicant may have failed to finalize its approval of the Eagle Ridge golf courses within the required one year period. This may be the case as a letter written to Deschutes County Planning Director George Read by Thomas A. Walker on behalf of Eagle Crest Resort was dated March 6, 1992 (Exhibit 103) and states that "[i]t is important to note this site plan submittal [that is included with this letter] is intended to meet the Item No. 1 Approval Condition designated in the findings and decisions document for file CU-90-189/SP-90-115." If a copy of the required document was not filed before December 12, 1991, the conditional use permit would have become void.⁴ Additionally, it appears that the Applicant may not have complied with some of the other conditions of approval. The letter from the Bureau of Land Management required by Condition #7 was not found in the Planning Division file. Written verification from the Deschutes County Watermaster, as required by Condition #8, that all water rights were resolved was, also, not found. Additionally, information regarding drainage of golf course ponds does not appear to have been submitted as required by Condition #6 and it does not appear that the requirements of BLM, including a request to map all easements granted by BLM prior to the sale of the

⁴ This site plan application included plans and an application for site plan review of a maintenance building. Deschutes County reviewed and approved the maintenance facility plans without discussion of the status of the 1990 decision or the effect of filing the final site plan required by the 1990 approval. The Hearings Officer notes, however, that the County Planning staff has no authority to reactivate an approval after it has become void.

subject property, were addressed as required by Condition # 2. As at least one, if not a number, of the conditions of approval of the 1990 conditional use approval were not met prior to December 11, 1991, the conditional permit is now void. These issues will need to be addressed and resolved in order for the Applicant to establish that the golf course is a nonconforming use that may continue as it is currently shown on the CMP.⁵

If the Applicant does not prove that the golf course location within the destination resort setback area is a nonconforming use or if the Applicant does not wish to seek a nonconforming use determination from the Planning Division, the Applicant might elect to comply with the setback standard or obtain a variance to the standard in any of the following ways: (1) The Applicant may purchase additional property along the areas of the golf course that encroach upon the setback and add them to the destination resort property; or (2) The Applicant may seek and obtain a variance for the location of the first golf course;⁶ or (3) The Applicant might also elect to exclude the already constructed golf course area from the destination resort. This would be possible, under the destination resort ordinance, as the applicant does not need either of the two Phase II golf courses to qualify its project as a destination resort. Adequate recreational facilities exist in Phase I to meet all destination resort ordinance standards;⁷ or (4) The Applicant might elect to move those portions of the existing golf course that encroach upon the 50 foot setback area; or (5) The applicant might seek some type of legislative amendment to the destination resort ordinance to allow this condition to exist. The Hearings Officer understands that other destination resort developers have a similar problem and it is

⁵The Oregon Supreme Court stated that the following factors must be considered in order to determine whether a nonconforming use exists in any given case: (1) the ratio of prior expenditures to the total cost of the project, (2) the good faith of the landowner in making the prior expenditures, (3) whether the expenditures have any relationship to the completed project or could apply to various other uses of the land, and (4) the nature of the project, its location and ultimate cost. No one factor is predominant. Polk County v. Martin, 292 Or 69, 636 P2d 952 (1981).

⁶It is unknown whether the applicant could qualify for a variance for those golf course holes that were modified by the applicant after the setback standards were adopted or for any portion of the course as it appears that final course design was not approved until after adoption of the setback requirements by the County on February 7, 1992.

⁷The Applicant may be required to partition the golf course from the destination resort property in order to achieve this result and would be bound to develop the course property for EFU zone allowed uses only.

possible that this problem could be solved with a "legislative fix."⁸ The Hearings Officer has, therefore, conditioned approval of this application upon revision of the CMP to comply with the setback standard, approval of a variance to those setbacks, a legislative amendment or upon establishment that the currently constructed golf course is a valid nonconforming use and, when developed to include golf course homesites, will comply with the standards of DCZO 18.120.010.

Proposed Eagle Ridge Golf Course

The Applicant claims that it has a "vested right" to complete construction of the second 18 holes of the Eagle Ridge golf course because the County approved the construction of that course in 1990 (CU-90-189 and SP-90-115) and no setbacks were required for EFU zone golf courses at that time. This theory is an extension of the nonconforming use theory. The vested rights legal theory allows landowners to complete the construction of uses, under certain circumstances, that were approved prior to the adoption of a law that prohibits that use. Schmaltz v. City of Hood River, 22 Or LUBA 115 (1991). In the Eagle Crest situation, golf courses are allowed uses in destination resorts but must meet setback standards that do not apply to golf courses in EFU zones. The destination resort setbacks apply if, and only if, the Applicant chooses to redevelop the golf as a destination resort. The EFU zoning of the Phase II property allows the Applicant to continue to operate the golf course as approved in 1990. No vested rights legal cases that involved this type of a fact situation were submitted to the Hearings Officer by the Applicant. All cases cited by the Applicant involved a complete prohibition of a use, rather than a restriction upon the location of the use. Additionally, in all cases the landowner did not elect to apply for a special land use that required special restrictions. The Hearings Officer finds that the burden imposed by a requirement to move the proposed location of an unconstructed golf course a distance of no more than fifty feet, places a significantly smaller burden upon an Applicant than would a prohibition of the golf course use.

Oregon law regarding vested rights allows a landowner to complete construction or implementation of a use that was allowed or approved prior to adoption of a land use ordinance that prohibited the use, if a consideration of the following factors weighs in favor of the property owner: (1) good faith expenditures by the property owner to lawfully develop the property in a given manner; (2) the amount of notice of any proposed rezoning; (3) the amount of reliance on prior zoning classification in purchasing the property and expenditures of dollars; (4) the extent that expenditures relate more to the nonconforming use than to the conforming use; (5) the extent the nonconformity of the proposed use as compared to uses allowed in the subsequent ordinance; (6) whether

⁸ It is unknown whether such a legislative change would meet the requirements of Goal 8 or ORS 197.435 and whether such a change could be applied to this application, if adopted between the time that the applicant obtains CMP and FMP approval.

money has been spent to take the use beyond being a mere contemplated use and has committed the property to the actual use which would in fact have been made but for the new law; (7) the ratio of expenditure vs. total cost of the proposed use. Once improvements are constructed they are treated as nonconforming uses, subject to the limitations applicable to such uses. Clackamas County v. Holmes, 265 Or 193, 508 P2d 190 (1973).

The Hearings Officer does not believe that the Applicant has established a vested right to complete the second, currently unconstructed golf course in the location proposed in 1990 or in the location shown on the 1993 CMP application. The Hearings Officer has arrived at this conclusion because the Applicant has failed to prove that all factors necessary to create a vested right exist. Additionally, there is a significant question whether the 1990 conditional use approval is still valid. If that approval is no longer valid, the applicant has no right to continue to rely upon it. Funds spent to construct a course would not have been spent to lawfully develop the property, if the conditional use permit is void, as required by Factor #1 for establishing a vested right. Factor #2 does not assist the Applicant's claim of a vested right as the EFU zoning of the Applicant's property still applies to the property. The proposed golf course may, if approval has not expired, be constructed in the location approved in 1990 under the current zoning. The only reason that the approved location is a problem is that the Applicant has chosen to apply for approval to develop the property as a destination resort and that special use requires special setbacks.

The Applicant established that it spent money to develop the Eagle Ridge golf courses in reliance upon the 1990 approval. The Applicant has not established that any of these funds were spent prior to the time that the Applicant knew or should have known of the County's proposed setback standards for destination resort golf courses. The Applicant claims that its expenditures of money to oversize its parking lot, to build a golf course irrigation system and to design the golf course entitle it to build the second course in the location approved in 1990. The Applicant failed, however, to demonstrate that these expenditures were directly related to the placement of the greens, holes and fairways of its golf course in the fifty foot setback area. It does not appear, to the Hearings Officer that these expenditures have anything to do with the location of the golf course holes in the setback area. Golf course construction is still feasible, so all of these facilities can and will be used to the same extent planned in 1990. The Applicant has, therefore, failed to establish that the expenditures made in reliance upon the 1990 approval are primarily directed to nonconforming rather than conforming development (Factor #4). The case of Union Oil Co. v. Board of County Commissioners of Clackamas County, 81 Or App 1, 6, 724 P2d 341 (1986) supports the Hearings Officer's conclusion as it requires that expenditures used to justify a vested rights claim be substantially and directly related to the nonconforming use. For Eagle Crest, the nonconforming use is limited to the portion of the golf course that encroaches on the fifty foot setback. This view is also consistent with the holding of a similar case. In that case a PUD approval was granted for two parcels,

expenses were incurred that would benefit the entire project and but no substantial construction had occurred on one of the parcels, prior to the change in regulations. The Court held that the developer did not have a vested right to develop the second parcel, as planned. Milcrest Corp. v. Clackamas County, 59 Or App 177, 650 P2d 963 (1982).

The Applicant has claimed that the golf course must be located in the setback area due to topographical features that have been incorporated in the design of the course. The Applicant has not, however, submitted facts to show that this is true for this particular golf course. A view of the area where the courses are proposed in the area of Cline Falls Oasis, by the Hearings Officer, revealed no remarkable geographical features that would prevent movement of the proposed golf course location a distance of fifty feet. In fact, the Applicant moved the location of many of the golf course holes between the time it submitted its 1990 plan and when it submitted this CMP. The Applicant did not submit facts to demonstrate that it is physically impossible to build the course outside of the setback areas, that movement would cost the Applicant money or render the irrigation system planned inoperable.

The Applicant spent money to design the second golf course and will, presumably, need to spend money to revise the course design. It is, however, unknown what that cost will be. Oregon vested rights law requires the Hearings Officer to quantify expenditures directly related to the nonconforming use and the anticipated cost of the entire project, in order to determine the impact of Factor #7, the "ratio of expenditures" test. DLCD v. Curry County, 19 Or LUBA 237 (1990). The Hearings Officer must determine that each cost incurred was incurred before the Applicant should have been aware of the more onerous restrictions. As the final plan for the golf course was not filed until February or March of 1992, it is possible that many of the expenses that the Applicant has cited as establishing a vested right were made after the Applicant had received notice that setbacks were being considered by the County for destination resort golf courses and after adoption of those standards. For the above reasons, there is insufficient information in the record to quantify costs and to apply the ratio of expenditures test.

There is ample room on the Phase II property to move all portions of the second golf course outside of the 50 foot setback area so that the imposition of the setback requirement will not prevent the construction of the second Eagle Ridge golf course. Movement of Holes #12 and #13 is especially important because these holes currently border private residential property in Cline Falls Oasis. The addition of a buffer area in this area will minimize the chance that stray golf balls will trespass onto private residential property and, possibly, cause damage to neighbors' property.

The Applicant has also failed to prove that it has spent money to take the use, placement of the course within the setbacks, beyond being a mere contemplated use or that the Applicant has committed the property to the actual use which would in fact have been

made but for the new law (Factor #6). No portion of the new course is constructed. No evidence was introduced to establish that any initial construction activity has occurred on this course and specifically, in the location that is prohibited by the destination resort ordinance.

The Applicant has claimed that it relied on the prior EFU zoning classification in purchasing the property and expending money to develop the Eagle Ridge golf courses (Factor #3). That Applicant claims that it assumed that it could place golf course greens on the boundaries of the lot and, thereby, maximize the number of building lots in the destination resort. The Hearings Officer finds that this reliance was not warranted because the EFU zoning prohibited both destination resort and residential golf course development when the Applicant purchased the Phase II property. At the time of purchase, the Applicant was speculating that it would be able to obtain future land use approval for homesites. The Applicant had no vested right to count on such an eventuality. Additionally, the Applicant stated in 1990 that it purchased the property knowing that it might not be able to obtain land use approval for homesites and that the golf course operation was a stand alone project (Exhibit 254). Under these circumstances, the Hearings Officer may not consider the cost of purchasing the property in weighing the cost of imposing the current restrictions on the Applicant's second golf course. Union Oil, 81 Or App at 6 - 7.

Based upon a weighing of all of the above-listed factors, the Hearings Officer finds that the applicant has not obtained a vested right to construct the second Eagle Ridge golf course in the fifty foot setback areas required for destination resort golf courses.

Course Locations Approved in 1990

The Hearings Officer reviewed the Applicant's 1990 Eagle Ridge golf course master plan to determine what type of vested right might have been obtained by the Applicant in that approval. This issue is discussed here to aid the County Commission in the event that this matter is appealed by any party and the Commission does not concur with the Hearings Officer's findings regarding vested rights law and finds that the 1990 approval is still a valid approval from which a vested right. This review is also made to assist the Planning Director in his review of the Applicant's claim of a nonconforming right to the current placement of the developed Eagle Ridge golf course.

The 1990 plan filed by the Applicant in the 1990 conditional use application to construct the Eagle Ridge golf courses is dated 1/6/90.⁹ The plan shows a golf course layout that is

⁹ A subsequent preliminary master plan for the golf course was submitted in 1992, after adoption of the County's destination resort ordinance, as discussed above. The Applicant has not claimed to have obtained a vested right to proceed with construction in the locations shown

on that plan and would have obtained none, as that master plan was filed after the County had adopted its destination resort ordinance, with setbacks, on February 7, 1992 and with

slightly, but significantly, different than that contained in the proposed CMP for Phase II of Eagle Crest and on the 1992 Preliminary Master Plan of the courses that was filed on February 27, 1992. The 1992 Plan and CMP for Phase II appear to show the golf course holes in the same locations. In the 1990 plan, the golf courses were set back further from the Applicant's property boundaries than shown on the CMP map and the 1992 Master Plan. The following is a summary of differences in golf course locations between the plans and their relevance to setback issues:

Existing Course.

Hole #3 In the 1990 plan, all portions of Hole #3¹⁰ of the existing Phase II golf course were located outside of the 50 foot setback area. In fact, measurement of the map indicates that the hole was set back approximately 178 feet from the resort property boundary. As a result, the Applicant did not obtain a vested right to site Hole #3 in the 50 foot setback area in 1990. In the CMP, a portion of Hole #3 is located close to the 50 foot setback line. If any portion of the hole encroaches into the setback, no vested right exists to authorize that encroachment.

Hole #5 In the 1990 plan, Hole #5 was located close to or adjoining BLM property, within the 50 foot setback area. This hole appears to be in roughly the same location shown on the CMP.

Hole #6 The closest portion of Hole #6, on the 1990 plan, is approximately 75 feet from the property line, outside of the 50 foot setback area. In the CMP, Hole #6 was moved into the 50 foot setback area. A portion of the hole now adjoins the property line. As a result, the Applicant did not obtain a vested right to build this hole in the setback area in the 1990 approval.

Hole #12 Hole #12 was and is located within the 50 foot setback area on the CMP and on the 1990 approved plan.

Hole #13 Hole #13 appears to be completely outside of the 50 foot setback area on the

the subject property mapped for destination resort development. The doctrine of vested rights does not extend to protect those who had adequate notice of proposed zoning changes but who then proceed, in the face of that knowledge to proceed with subsequently prohibited development. All expenditures must be made in good faith with an intention to lawfully develop the property. Clackamas County v. Holmes, 265 Or 193, 508 P2d 190 (1973).

¹⁰ All references to golf course holes are meant to include the entire green, fairway and golf hole, unless the context requires otherwise.

1990 plan (approximately 218 feet at its closest point) but the CMP shows Hole #13 adjoining the 50 foot setback line on the western end of the hole and being located approximately 175 feet from the northern property line on the north end of the hole. No other holes on the existing Phase II golf course are built within the 50 foot setback area.

Proposed Course.

The layout for second Phase II golf course shown on the CMP is different than the layout that was approved for that course in the 1990 approval. The Applicant has modified the golf course design to accommodate the relocation of Cline Falls Road and construction of a grade separated interchange on Highway 126. For instance, Hole #15 is oriented in a north-south direction on the CMP, rather than in the east-west direction shown on the 1990 plan. It appears that this was done to allow more room for development between the holes in what has been designated Area 11 of Phase II.

Holes #12 & #13 Holes #12 and #13 are both affected by the 50 foot setback standard of the destination resort ordinance. In both the 1990 and CMP plans, these holes are located within the 50 foot setback area.

Holes #4 & #15 Hole #4 is located within 50 feet of Cline Falls Road. Hole #4 is located in approximately the same location shown on the 1990 plan. Hole #15 is located within 50 feet of the proposed new location of Cline Falls Highway and is in a completely different location than shown on the 1990 plan. The County Planning Division treats road rights-of-way as exterior boundaries.¹¹ As a result, these holes should be setback at least 50 feet from the existing Cline Falls Highway and 50 feet from the area where the future Cline Falls Highway will be located.

- H. Floodplain requirements.** The floodplain zone (FP) requirements of Chapter 18.96 shall apply to all developed portions of a destination resort in a FP zone in addition to any applicable criteria of this chapter. Except for floodplain areas which have been granted an exception to LCDC goals 3 and 4, floodplain zones shall not be considered part of a destination resort when determining compliance with the following standards:

¹¹ The Hearings Officer believes that the exterior boundary requirement could be read either as interpreted by the Planning Division and by the Hearings Officer or to apply to the boundary that surrounds the entire area. The later interpretation is strongest when the fee ownership of the land under the road is retained by adjoining property owners. If such were the case in this instance (there is no evidence to indicate one way or the other), the argument could be made that the boundaries of all of the lots purchased by the applicant touch and form one large boundary and that the intervening right-of-way does not form a property boundary.

- a. 160-acre minimum site;
- b. density of development;
- c. open space requirements.

A Conservation Easement as described in this title shall be conveyed to the County for all areas within a floodplain which are part of a destination resort.

FINDING: There are no floodplain areas within Eagle Crest Phase II or the CRT Expansion. A few small portions of Phase I, along the banks of the Deschutes River fall within the 100-Year Flood Plain, and are zoned FP. The areas of the resort property that are within the flood plain should be shown on the Applicant's flood plain map and excluded from the Applicant's open space calculations. No development is proposed within the floodplain.

The Applicant has already conveyed to the County a Conservation Easement along the Deschutes River, as described in Section 18.116.220 of Title 18. This conveyance includes provisions for public access within the ten foot wide strip of land adjoining the subject property. The Applicant will be required to convey a conservation easement for any portion of the property that is located within the 100 year flood plain, but that is not included in the land covered by the current conservation easement, as a condition of approval.

- I. **The Landscape Management Combining Zone (LM) requirements of Chapter 18.84 shall apply to destination resorts where applicable.**

FINDING: The applicability of the LM zone has been discussed previously. All new development within 1/4 mile of the Deschutes River and/or Highway 126 shall be subject to individual Landscape Management site plan review.

- J. **Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland shall be a separate conditional use subject to all pertinent requirements of this title.**

FINDING: The only wetland areas within the entire project area, as designated on the Oregon Division of State Lands Wetlands Maps, are either within the Deschutes River Canyon, or are intermittent excavated drainage ditches along Cline Falls Highway. No development is proposed for either of these designated wetland areas. The Applicant has, however, built a pump along the Deschutes River. If this activity involved fill and removal within the bed and banks of the river, the Applicant must obtain a separate conditional use permit for that use.

- K. **Time share units not included in the overnight lodging calculations shall be subject**

to approval under the conditional use criteria set forth in Chapter 18.128. Time share units identified as part of the destination resort's overnight lodging units shall not be subject to the time share conditional use criteria of Chapter 18.128.

FINDING: The Applicant states on page 31 of the Burden of Proof Statement that all proposed timeshare units will be available for overnight lodging pursuant to the ordinance definition of "overnight lodging". Any time share units which are not now identified as part of Eagle Crest's overnight lodging units shall be subject to individual conditional use approval pursuant to Chapter 18.128 of Title 18.

18.113.070 - APPROVAL CRITERIA

In order to approve a destination resort, the Planning Director or Hearings Body shall find from substantial evidence in the record that:

- A. The subject proposal is a destination resort as defined in Section 18.040.030 of this title.

FINDING: The reference in this section to Section 18.040.030 appear to be a typographical error as there is no such section. DCZO Section 18.04.030 contains the County's definition of a destination resort. The Hearings Officer finds that such definition is the one that is referenced by this section of the destination resort ordinance.

18.04.030, Definitions. Destination Resort. A self-contained development providing visitor-oriented accommodations and developed recreational facilities in a setting with high natural amenities. To qualify as a major destination resort under Goal 8, a proposed development must meet the following standards:

FINDING: Eagle Crest will be required to be developed as a self-contained development as a condition of approval of this CMP application. Eagle Crest Phase I currently provides visitor-oriented accommodations and developed recreational facilities in an setting of high natural amenities, on a beautiful area on the edge of the Deschutes River canyon. Phase II will be located on Cline Buttes, a local landmark. The Applicant will be required to provide access for visitors and owners in Phase II to Phase I and the Deschutes River in order to assure that Phase II will be functionally located in an area of high natural amenities.

- A. The resort is located on a site of 160 or more acres.

FINDING: Each phase of Eagle Crest contains 160 or more acres.

- B. At least 50 percent of the site is dedicated to permanent open space, excluding yards, street and parking areas.

FINDING: The Applicant will be required to revise the open space calculations shown on the Applicant's Open Space Map, Exhibit 50, and to comply with this standard as a condition of approval of FMP approval.

- C. At least two million dollars (\$2,000,000)(in 1984 dollars) is spent in the first phase 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. Developed recreational facilities and key facilities intended to serve the entire development and visitor-oriented accommodations must be physically provided or be guaranteed through surety bonding or substantially 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.

FINDING: The Applicant has established that it has spent at least two million dollars in 1984 dollars on improvements for on-site developed recreational facilities and for visitor-oriented accommodations (see discussion, above). These facilities include pools, tennis courts, ball fields, stables and golf courses. More than a third of this amount was spent on developed recreational facilities. As the financial investment requirement is met, there is no need to assure development of these facilities with surety bonding or equivalent financial assurances, prior to FMP approval. The Hearings Officer has, however, required the Applicant to provide recreational facilities and other key facilities intended to serve a particular phase prior to sales in that phase or to guarantee phase related facilities through surety bonding. As the exact nature of most of the recreational and key visitor-oriented facilities in Phase II is unspecified, it is not possible for the Hearings Officer to determine which of these facilities, other than the second Phase II golf course, is a facility designed to serve a particular phase. The entire second golf course must be completed or bonded prior to the sale of lots in any phase that adjoins or is included in the portion of Phase II that includes portions of the second Phase II golf course. This condition will be excused if the Applicant removes the second course from the FMP to meet other conditions of approval of this decision. The Applicant will also be required to specify the nature of all recreational and visitor-oriented accommodations in Phase II prior to FMP approval and to construct or bond those facilities prior to sales in phases of Phase II that are served by the facilities.

- D. Visitor-oriented accommodations are provided, including meeting rooms, restaurants with seating for 100 persons, and 150 separate rentable units for

overnight lodgings. Accommodations available for residential use will not exceed two such units for each unit of overnight lodging.

FINDING: The Applicant has demonstrated that it has provided the restaurant and meeting room space required by this section. The Applicant has also provided over 150 separate rentable units of overnight lodgings. The Applicant currently meets the 1 to 2 ratio of overnight lodgings v. residential units and will be able to meet this ratio as the various phases of the resort are platted. Compliance with the 1 to 2 ratio is a condition of approval of this CMP.

E. Commercial uses limited to those types and levels necessary to meet the needs of visitors to the development. Industrial uses are not permitted.

FINDING: All commercial uses will be limited to those types and levels necessary to meet the needs of visitors to the development. The Hearings Officer interprets this condition as requiring that commercial uses must serve overnight resort visitors and not draw visitors who will visit the resort for periods of time that do not include an overnight stay at the resort. Some incidental daily visitors will inevitably visit the resort, but commercial activities must be primarily designed to provide services desired by overnight resort visitors.

Betty Marquardt and other opponents of this land use action introduced un rebutted evidence that the Applicant or others associated with the Eagle Crest destination resort currently advertise commercial events in The Bulletin and other public forums. These events include a three day long Dixieland Jazz Festival, auctions, and an estate seminar. Although not in the record, the Hearings Officer is also aware that the Applicant is currently conducting a holiday light show, called StarFest, at the resort and is inviting the public to tour the grounds of the resort and view Christmas lights for a fee of \$5.00 per carload. This event is advertised on U.S. Highway 97 between Bend and Redmond on a large billboard, The Bulletin and on local radio stations. This display lasts for a couple of months. The event is plainly designed to draw the general public to the resort and not to serve the needs of overnight visitors to the resort. These events, and those of a similar nature, all violate this restriction of the destination resort ordinance and will need to be discontinued on all parts of the Eagle Crest resort, as a condition of this and future land use approvals. All future land use applications for commercial activities in either phase of the Eagle Crest resort shall be limited to those types and levels of commercial activities necessary to meet the needs of overnight visitors or residents of the resort.

B. All standards established by Section 18.113.060 of this chapter are or will be met.

FINDING: The standards established by Section 18.113.060 have been addressed at length above. The Hearings Officer finds that all standards established by this section have been met, or can be met, by the Applicant as conditions of approval of this decision, to be

verified at the time of Final Master Plan review or, in some instances, when each phase of the future development is platted.

C. The economic analysis demonstrates that:

- a. The necessary financial resources are available for the Applicant to undertake the development consistent with the minimum investment requirements established by this chapter.

FINDING: The Applicant has satisfied this requirement by developing facilities that meet the minimum investment requirements of this chapter, as discussed above.

- b. Appropriate assurance has been submitted by lending institutions or other financial entities that the developer has or can reasonably obtain adequate financial support for the proposal once approved.

FINDING: To address this criterion, the Applicant has provided a letter (Exhibit 39) from the President and CEO of Eagle Crest Partners, Jerol Andres, attesting to the financial strength of the project developer and the limited need for outside financing. Mr. Andres states that Eagle Crest Partners, Ltd. has already invested \$3.2 million of its own funds into the proposed expansion project (including golf course construction). Mr. Andres further states that Eagle Crest Partners, Ltd. has as some of its partners one of the largest privately held companies in Oregon and one of the largest contractors in Central Oregon, and that the partnership has sufficient banking relationships to secure financing for the project if financing is deemed necessary. As evidence of the financial strength of the partnership, Mr. Andres points to the fact that Eagle Crest Partners \$93.5 million investment in Eagle Crest I with only limited outside financing. The Applicant has not, however, provided assurances from lending institutions or other financial institutions that demonstrates that the developer has or can reasonably obtain financial support for development of the resort expansions, once the expansion is approved. The Hearings Officer believes that the Applicant should have no difficulty in obtaining this assurance based upon the resort's prior ability to construct significant resort facilities. The Hearings Officer, therefore, finds that this information may and must be required to provided to the reviewer of the FMP, who shall determine whether the assurances are adequate.

- c. The destination resort will provide a substantial financial contribution which positively benefits the local economy throughout the life of the entire project, considering changes in employment, demands for new or increased levels of public service, housing for employees and the effects of loss of resource land.

CONCLUSION: The Applicant submitted an economic analysis prepared by Hobson & Associates. This economic analysis accounts for direct and indirect financial benefits but

does not account for indirect costs, such as those listed in this requirement (changes in employment, demands for new or increased levels of public service, housing for employees and the effects of loss of resource land). Hobson & Associates addresses some of these indirect costs in its rebuttal to the statements of Clyde Everton and Dr. Marjorie Turner, but the cost or benefit of these factors is not estimated. The Hobson analysis also makes benefit projections for a ten year period, rather than for the life of the project. The lack of projection is likely to be insignificant as the tenth year of the Applicant's projection show the economic impact of the resort at build out, after all construction activity has ceased. The Hearings Officer believes that it is reasonable to use this information to project the economic impact beyond that time, as well as such things may ever be forecast.

The Hearings Officer finds, however, that an analysis of the impact of changes in employment, demands for new or increased levels of public service, housing for employees and the effects of the loss of resource land and other indirect costs is plainly required by this section. A gathering and assessment of this information is needed before it can be concluded that the destination resort will provide a substantial financial contribution which will positively benefit the local economy throughout the life of the entire project. The Hearings Officer has, therefore, conditioned approval of this application and approval of the FMP for Eagle Crest Phase II and CRT on the completion of an independent economic analysis and subject to a finding by the analyst that this ordinance criterion has been satisfied. If the analyst so finds, Eagle Crest will be allowed to obtain FMP approval without taking any actions to offset the costs incurred by the County, school district and community at large. If the analyst finds that Eagle Crest will not make a positive contribution, the analyst shall enumerate various ways in which Eagle Crest may correct this problem and shall estimate the economic impact of that action. For instance, the analyst may find that Eagle Crest generates an unmet demand for affordable housing. The analyst might then find that the demand may be met by requiring Eagle Crest to provide rent subsidies for low paid or low-income employees, to provide housing for employees on or off-site that is limited to a percentage of employee income or by providing annual contributions to the local housing authority. Eagle Crest shall then select, from the list of options presented, actions that have the effect of reaching the goal of this section. Those actions will then be included in the conditions of approval of the FMP or may be required to be completed prior to FMP approval, at the option of the Planning Director. The independent economic analyst shall be selected by and shall report directly to the Planning Director. The costs of this study shall be borne by Eagle Crest and their payment assured prior to commencement of the study.

The following findings relate to the economic information provided to the Hearings Officer from economic experts, with consideration of the economic impact information provided by all parties. These findings support the above-listed conclusion:

The Hobson & Associates Report

In Exhibit 31, the Applicant provides projected economic and fiscal benefits of the proposed resort expansion. On pages 1 and 2 of this report, prepared by Hobson & Associates, the "Key Conclusions" are summarized as follows:

- * "The construction of the resort/residential complex is expected to generate over 1,000 full-time equivalent jobs at its peak, contributing over \$115.0 million to the regional payroll over a ten year period. When stabilized, ongoing operation of the resort and related tourist expenditures are expected to generate payroll contributions of over \$15.1 million annually, in both direct and indirect employment.
- * "In the first ten years, the total regional payroll contribution generated from the construction and operation of the resort is estimated at over \$196.0 million (stated in 1992 dollars and including indirect employment caused by resort construction and operation).
- * "The construction and operation of Eagle Crest II will place a minimal burden on Deschutes County, the County School District, or other service providers. Similarly, the population in the residential portion of the development will not "demand" county or school district services commensurate with the revenue generated. Significant sources of revenues generated by the resort and residences are property taxes, fees, licenses, and service charges."

FINDING: The construction and operation of Eagle Crest II will increase the demand for public services from the local school district and Deschutes County government. The resort relies upon the Deschutes County Sheriff's Office for law enforcement services and the demand for those services will increase as the resort grows. The resort is located many miles from Bend, the central office of the Sheriff's Office. The Hobson Report estimated that the cost to Deschutes County of resort development will be \$316,400 per year. School district expenses were not estimated. Hobson claims that costs will be minimal. The Hearings Officer is unable to concur with this assertion as the numerous single-family residential homesites that are planned for the resort may attract a significant number of year round residents. A number of golf course resort communities are currently marketing homes for year round residential use. A large number of people reside in the Sunriver and Black Butte destination resorts year round. Revenues for operation of the County and school district will not rise in relation to the growth of Eagle Crest as tax levies for local taxing districts are fixed at a flat dollar amount and allowed a maximum increase of 6% from that amount each year. In areas of rapid growth, such as Central Oregon, the amount of tax revenue for government services do not keep pace with the increase in growth and inflation. As a result, the districts will not see any **new** money to fund their services and to offset the increased costs generated by new development. The only way that tax levies may be increased is by a vote of the people.

The construction of Eagle Crest will allow school districts and local governments as it will allow those entities to collect a greater percentage of, or all of, their levies, if the levies of those districts exceed the Measure 5 tax limitation amounts because construction of Eagle Crest II will add assessed valuation to the County's tax rolls. This impact will not, however, assist the Redmond school district as the State of Oregon is mandated by Measure 5 to pay the school district for all tax revenues lost due to Measure 5's limitation.

The only benefit to the local school district from this increase in tax collections will be that it will reduce the amount of money that the State of Oregon is required to raise to fund primary and secondary education. This reduction may benefit the district by allowing the State to provide more money in basic school support to all Oregon schools. Assuming that all of the savings achieved by Eagle Crest's impact on the district were returned to Oregon school district and was shared on a pro-rata basis, Redmond's share of the savings would be minuscule.

The increase in assessed valuation within the County achieved by the construction of Eagle Crest Phase II and CRT will inure to the benefit of County property tax payers. The amount that those taxpayers are required to pay in real property taxes will be reduced as the tax levies for the affected taxing districts will be spread over a broader base of property. This impact will make it less costly for all homeowners to live in Central Oregon. This tax savings may also benefit renters, as the tax costs of landlords will be reduced. This impact may even induce more senior citizens to retire in the area.

Eagle Crest II will generate significant room tax receipts for Deschutes County. This revenue is not, however, guaranteed over the life of the project, as Eagle Crest may seek to incorporate as a city in order to garner all of the room tax dollars. Residents of Sunriver are currently proposing to do just that, in an effort to use room tax dollars to finance activities formerly financed by the Sunriver Homeowner's Association. Such services include as security services, fire, ambulance, road maintenance and other such expenses. If that were to happen in Eagle Crest, the positive contribution of room tax dollars to County-wide residents would be eliminated.

- * "Reconciliation of anticipated costs and revenues associated with Eagle Crest II yields a net positive fiscal impact of roughly \$20.0 million for Deschutes County service providers and school districts over the next ten years (stated in 1992 dollars). Since this surplus includes only revenues from property and room taxes and does not account for potential revenue from fees and other charges it is inherently conservative."

FINDING: This reconciliation is meaningless and misleading because Eagle Crest's Phase II construction will not generate additional revenue for service providers and school districts, unless taxpayers vote to increase the tax levy of affected districts due to the lessening of the tax burden on those taxpayers. Instead, it will provide tax relief for those who reside in the taxing districts which cover the subject property.

The Marjorie Turner Report

A report from Marjorie S. Turner, PhD., Professor Emeritus, Department of Economics, San Diego State University, P.O. Box 8005, Sisters, Oregon 97759 (Exhibit 219) was entered into the record. Dr. Turner analyzed the Hobson & Associates report submitted by the Applicant and made the following comments:

1. The expansion of Eagle Crest has many economic and fiscal booby-traps.
 - a. The initial expansion will create a boomtown effect which will bring in high paid construction personnel who will impact the living arrangements, schools and social services of the County.
 - b. Prices will rise due to the boomtown effect.
2. Hobson's conclusion that there will be a net positive fiscal impact is based on false premises and a failure to account for all costs.

FINDING: Hobson's study fails to account for all costs associated with resort development. The study accounts only for direct costs and makes no effort to account for indirect costs. The study does, however, account for direct and indirect economic benefits (see exhibits attached to the Hobson report). This results in an unbalanced and inaccurate view of the economic impact of the resort on the local economy.

3. Hobson ignores the impact of the resort on small businesses. These businesses create the most new jobs for the U.S. economy. Pay for small manufacturing company workers is higher than for resort workers. Such jobs would be reasonable jobs for workers displaced by the shrinkage of the wood products industry in the Pacific Northwest. Small businesses should not be priced out of the area by increasing real estate prices.

FINDING: Rising real estate costs may price some small businesses out of doing business in Central Oregon. It has not been established, however, whether and to what extent resort development increases the cost of housing in a resort community.

4. Hobson does not admit that upscale tourist development in the boomtown phases impacts prices and services, competing with the development of small business in Deschutes County.
5. Nearly everything that serves the upscale tourist is imported into the area, rather than being produced in Central Oregon.
6. The expanding retirement community in Central Oregon is an economic mainstay and is very price-sensitive.

7. Hobson is aware that this development will increase prices as it recognizes that absentee owners will buy property in Eagle Crest for its investment potential.

FINDING: It has not been established that the purchase of property within a destination resort for investment purposes or the expected increase in land values within a destination resort causes the value of Central Oregon homes and properties to increase. It appears logical to the Hearings Officer that the destination resort market is a very different market than is the general residential housing market. It seems unlikely to the Hearings Officer that a person who wishes to purchase resort property, with its rights to utilize resort amenities, would find properties outside of the resort comparable to resort property. The Hearings Officer also notes that those who invest in the early stages of any development project often do so in hopes that the project will succeed and that prices will increase over the course of the project's development. These investors, naturally, bear a greater risk of losing money, as well, if the project is not as well-received or is not developed as promised or expected.

8. Eagle Crest employees will demand public services.
9. There is no evidence to support Hobson's assertion that destination resorts are impervious to recessions.

FINDING: The Hearings Officer agrees that destination resorts are not impervious to recessions. Hobson & Associates concede this point in their rebuttal statement (Exhibit 68) but state that destination resorts fare better than other sectors of the economy during a recession. This makes sense as destination resorts attract wealthy people as visitors and owners and such people usually fare better in a recession than those with fewer financial resources.

10. Hobson claims that 2800 annual full-time equivalent jobs will be created related to construction activities associated with Eagle Crest. This is improbable as there are currently only 2180 construction and mining workers in the County at this time.
11. After the construction phase, jobs for approximately 250 full and part-time employees will remain for workers who will earn \$5 to \$7 per hour. If the figures cited by Hobson are correct, this will create a boomtown effect.
12. Hobson uses multipliers that are too high for Central Oregon.
13. Hobson does not account for all costs, including the costs of easements and variances applied for; increase in traffic and related highway improvements; the loss of wildlife; the exclusionary nature of a gated community; the establishment of

a new city; the unwillingness of the Applicant to provide employee housing except through investment credits; pressure on water resources; the impact of sprawl and density increases; tradeoffs with manufacturing development; and tradeoffs with increased retirement settlement in the area.

FINDING: The Hobson report does not account for such costs. Many of the items listed by Dr. Turner are extremely difficult to quantify in monetary terms. The Applicant is, however, required to account for many of these indirect impacts. The destination resort ordinance requires a determination of economic benefit "considering changes in employment, demands for new or increased levels of public service, housing for employees and the effects of loss of resource land."

14. The Hobson report does not meet the requirements of DCZO 18.113.050 B-19-(a)(b) as it looks at a ten year period rather than the life of the project.

FINDING: The Hobson report does not contain information about the impacts of the destination resort beyond the ten year construction period. It does, however, show the estimated financial cost in the tenth year, after construction is projected to have been completed. This number provides information which is some evidence that the resort will provide a substantial financial contribution to the local economy over the life of the entire project.

The Hobson & Associates Rebuttal

Hobson & Associates responded to Dr. Turner's paper with the following comments (Exhibit 68):

- * Deschutes County currently has a highly developed construction sector, supported to a large extent by construction in the area's destination resorts. Construction labor needs attributable to the proposed project are expected to be met by the resident work force. Since an influx of "high paying" construction personnel from outside of the area is unlikely, discussions of the boomtown effect are not relevant.

FINDING: The Hearings Officer finds that there is a large resident workforce of construction workers who will be available to construct the resort facilities for Phase II and the residences in Phase II and CRT expansion area of Phase I. The Pacific Gas pipeline project and numerous highway projects have been completed recently. Workers from these projects may find employment at Eagle Crest during the construction phase. Other local builders have been employed building the numerous new homes, businesses and multi-family residences built in Central Oregon each year. The large amount of construction already occurring in the County dwarfs the construction contemplated by Eagle Crest. Eagle Crest development is likely to be

phased in over a period of many years. It is unlikely that Eagle Crest construction will create a boomtown effect.

- * Ms. Turner's claim that the growth of small businesses in Central Oregon will be hurt by the development of tourism is unfounded and unsubstantiated. We believe that the impressive growth of both tourism and manufacturing in Deschutes County over the last decade supports our conclusion.

FINDING: The Hearings Officer finds that Ms. Turner's claim that the growth of small businesses will be hurt by the growth of tourism is unsubstantiated by data showing what has happened to small businesses as the existing destination resorts have developed.

- * The bulk of small business jobs in Central Oregon have occurred in the service and retail sectors, as opposed to manufacturing.

FINDING: The Hearings Officer accepts this statement as a finding of the Hearings Officer.

- * Tourism, destination resorts and retirement housing have all grown rapidly in Deschutes County over the last two decades.

FINDING: The Hearings Officer believes that no economic correlation has been established between the growth of Central Oregon as a retirement housing community and as a destination resort area. The Hearings Officer finds that it is generally true that resort communities have a higher cost of living than areas that are not resort communities but it has not been proven that the somewhat higher prices found in this resort community has discouraged senior citizens from retiring here. The cost of living in Bend is only about six percent higher than the national average, according to the American Chamber of Commerce Researchers Association. Portland, Oregon is 9% above the national average and New York City is 119% above the national average. The primary reason for Bend's higher cost of living is that the cost of housing is 132.9 percent of the cost of housing nationwide. This increased cost may be due to the fact that resort community homes are much more expensive than other types of homes (Exhibit 261, # 25).

- * The theory that almost everything which serves the "upscale tourist" is imported from elsewhere is highly questionable and unsubstantiated.

FINDING: A large percentage of the products purchased by all sectors of the population of Central Oregon is imported from elsewhere. Gasoline, most food, clothing, cars, airplanes, furniture and other household items are most often manufactured outside of the region and imported. The Hearings Officer does not believe that upscale tourists will purchase a higher percentage of goods manufactured outside of the region. In fact,

tourists are certainly more likely, in any given day in the area, to consume food prepared by Central Oregon chefs at Central Oregon restaurants, than are area residents.

- * Resort jobs projected to pay between \$5.00 and \$7.50 per hour will not offer sufficient pay to attract mass relocations and will, likely, be filled by local residents who are currently unemployed or under-employed.

FINDING: The Hearings Officer finds that wages between \$5.00 and \$7.50 per hour, especially for work in part-time positions, will not be sufficient to support a family of four at a lifestyle above the poverty level. This is a particular problem due to the growing portion of American families that are single parent families. Single wage earner families, in which the wage earner is employed in a \$5.00 to \$7.50 per hour job will qualify for public assistance and will place an economic burden upon the social welfare system. The Applicant has not done anything to correct this problem, that is endemic to the tourism industry. The Hearings Officer notes, however, that this is a nationwide problem. High paying manufacturing jobs are being phased out and are being replaced with lower paying service industry jobs. The Hearings Officer does not believe that wages for service workers will rise until such time as there is a shortage of workers to fill those positions. At this time, there is no shortage of persons who are willing to work for such wages.

The Hearings Officer also finds that not all workers employed by Eagle Crest will be the sole wage earner for their families. A number of workers may come from two income families or may be students who need seasonal or part-time employment to assist them in getting through college or high school.

- * Our report indicated 2800 FTE jobs relating to construction of the project, with each FTE representing one full year of work. Hobson believes that the one year peak in employment will be approximately 595 FTEs.

FINDING: This statement accurately reflects the numbers shown in the Hobson report (Exhibit 31). Hobson states, and the Hearings Officer concurs, that the area's construction industry workers (2,149 in March to 2,678 in August of 1991) should be able to meet the demand for work generated by resort development. Eventually, it is likely that there will be no more destination resort development in the County and these workers will need to find work in other areas. Construction work, by its very nature, is dependent upon growth to supply jobs. Eventually, projects are "built out" and workers must move to other areas for work.

- * Hobson & Associates states that the expansion of Eagle Crest is "absolutely essential to maintain the existing base of family wage construction industry jobs, much less to facilitate growth in new family wage employment opportunities."

FINDING: Hobson & Associates have not substantiated this claim. The Hearing Officer finds that it is unlikely that the construction of the Eagle Crest expansion area is "absolutely essential" to the local construction industry. The Hearings Officer finds that it is as likely that these workers will find work in other area wide construction projects. It is also likely that the lack of homesites and resort facilities in the Eagle Crest expansion area will accelerate building activity in the existing Eagle Crest development, development within existing golf course communities/resorts such as Broken Top, Awbrey Glen and Pine Meadows Estates and lead to the expansion of other destination resorts or siting of new resorts in other areas of the county. The Hearings Officer believes that there is a finite market for destination resort accommodations and for homes built in destination resorts and that the creation of new lots in Eagle Crest will not, necessarily, result in a rise in destination resort property purchases in Central Oregon.

Housing Survey

FINDING: The Applicant has submitted a survey of housing availability for employees, identified as Exhibit 30. This survey indicates that there are currently 250 full and part time employees at Eagle Crest Phase I, and that 200 additional employees are projected over the next 5 years. The majority of these employees commute from Redmond, Bend, and Sisters as there is limited housing available in the immediate vicinity. An in-house survey of employees indicated that 42% of respondents were renters seeking other housing alternatives, and that 74% indicated a preference to live in Redmond. Exhibit 30 indicates that there is a shortage of available affordable housing in the Redmond area. Eagle Crest had indicated that it intended to participate in a limited partnership with the Central Oregon Regional Housing Authority to assist in providing a 50 unit apartment complex for low to moderate income families in Redmond, but that project has been funded by a different entity.

Exhibit 30 does not address the possibility of providing on-site employee housing or transportation between Redmond and Eagle Crest. One Eagle Crest representative typified on-site employee housing as "a disaster." The Hearings Officer finds, however, that a more positive economic, as well as environmental, impact could be realized if on-site employee housing were provided.

County staff suggested that the resort would have a more positive economic impact on the region if an employee shuttle were developed between Redmond and Eagle Crest. Such a shuttle could transport resort guests to and from the Redmond Airport. The Applicant has, however, submitted information to show that few if any of its existing employees would use such a shuttle. Those employees who indicated that they would use the shuttle, travel to and from the resort at different times of day. This is due to the fact that the Applicant schedules employees to work shifts that start and end at various different times.

The Hearings Officer reluctantly concludes that it is, therefore, unlikely that the provision of a shuttle service would be of any real benefit to anyone.

Resource Land

FINDING: The proposed resort expansion areas do not appear to have ever been employed in any type of resource production, other than cattle grazing, a low-income producing agricultural activity (in Phase II). The proposed Phase II resort expansion area is currently developed as a golf course. In the land use action that approved the golf course development, it was determined that the parcel proposed for development was unproductive agricultural land. Most of the area that is included in Phase II was included in the golf course application. A parcel in the northeast corner of Phase II was added since golf course approval. This parcel is bisected by Highway 126 and has soil types and characteristics that are similar to those of the remainder of Phase II. As such, there will be no significant effect from removal of this parcel from availability for resource use.

Governmental Findings Regarding Economic Benefit

FINDING: The Oregon Legislature found, in 1987, that there is a growing need to provide destination resort accommodations to attract visitors and encourage them to stay in Oregon for longer periods of time. The Legislature also determined that the establishment of destination resorts will provide jobs and contribute to the state's economic development. ORS 197.440.

FINDING: The County's election to adopt a destination resort ordinance in 1992 to allow the siting of such resorts in agricultural and forest zones is evidence that Deschutes County believes that destination resorts are generally beneficial to the citizens of the county.

- d. The natural amenities of the site considered together with the identified developed recreation facilities to be provided with the resort will constitute a primary attraction to visitors, based on the economic feasibility analysis.

FINDING: It is apparent that Eagle Crest Phase I constitutes a primary attraction for visitors with its nearly ideal climate, proximity to the Deschutes River, natural aesthetics, and developed recreational facilities. Eagle Crest Phase II, which will share the same attributes as Phase I, will also constitute a primary attraction to visitors.

- D. Any negative impact on fish and wildlife resources will be completely mitigated so that there is no net loss or net degradation of the resource.

Resource Identification

FINDING: This criterion must be met for the entire destination resort due to the fact that the Applicant has chosen to use recreational and resort facilities in Phase I to meet the investment standards of the destination resort ordinance. The Beak Consultants, Inc. study, Exhibit 6, reviewed only the Phase II expansion area and made recommendations to mitigate fish and wildlife resources impacted by the Phase II development only. No study was made of the Phase I or CRT expansion area. In order to assure that this condition is met, the Applicant shall cause a study of the impact of Phase I, as constructed at this time and at build out, on fish and wildlife resources, prior to FMP approval. If any negative impact is found, the Applicant shall completely mitigate the loss.

Wildlife Mitigation Measures

Beak Consultants and ODF&W suggested wildlife mitigation measures. Those measures are described below.

Beak Consultants Incorporated

Beak Consultants studied the Phase II property and concluded that "a varied package of on-site and off-site measures will likely be required to meet the no net loss or degradation goal." Beak Consultant's identified 17 wildlife mitigation options which could be utilized to offset negative impacts on wildlife associated with the proposed development. These options are:

1. Topsoil should be carefully removed from the proposed residential sites, stockpiled and respread on final graded sites to provide an appropriate seedbed for revegetation. Where topsoil has been removed by past grading, a soil amendment such as compost or imported topsoil should be added. Excessive soil compaction by machinery should be avoided during seedbed preparation.
2. Topsoil stockpiles should be promptly seeded and mulched, or covered with polyethylene to prevent erosion.
3. Disturbed areas should be reseeded with a diverse grass/forb seed mixture compatible with existing soil types that will germinate quickly to minimize erosion potential and provide wildlife forage and cover. Native and naturalized species should be emphasized to the greatest extent possible.
4. Where possible the 150 to 250 foot buffer required around the perimeter of the project site should be retained in a natural, undisturbed condition to provide habitat for wildlife.

5. Seeding should begin immediately after final grading or temporary disturbance if seedbed preparation is completed during the spring through fall, irrigation may be required to successfully establish ground cover. An appropriate nitrogen fertilizer should be applied per suppliers recommendations. Mulch should be applied on areas of greater than 2:1 slope, and on sites which cannot be seeded during the growing season to protect these sites until the next seeding period.
6. Project landscaping should be designed to enhance and provide habitat for wildlife. Maintain as much of the existing habitat as practicable between residences, including the understory of sagebrush and grasses. Plant and develop shrub and tree patches within open space around residences to provide habitat structure and diversity important to many species of wildlife. Incorporate native and naturalized species with ornamental landscaping to provide a diversity of plant species attractive to native wildlife.
7. Develop an animal control policy consistent with the Deschutes County Comprehensive Plan to minimize harassment of wildlife, particularly that of deer by dogs. Property owners should be required to keep dogs within maintained fenced areas or utilize other suitable measures to prevent dogs from straying off their property. When off premises, owners should be required to maintain dogs either on leash or under verbal control.
8. Create an educational program encouraging residents to remain on developed trails to minimize undesired trail proliferation and associated habitat impact (i.e., trampling, soil compaction). Stress resident coexistence with wildlife. Foster a look, enjoy, but respect and do not disturb attitude towards wildlife.
9. Regulate traffic speeds through posted speed limits not to exceed 20 mph.
10. Erect and maintain bird boxes on wooden fence posts and tree trunks within open space areas to provide nesting sites for secondary cavity nesting species. Placement and dimensions of boxes should correspond to the likelihood of attracting appropriate species for the habitat present.
11. Erect 2 to 3 nesting platforms for Canada geese on Eagle Lake.
12. Increase the buffer of unmaintained shoreline on the north side of Eagle Lake to provide additional cover and habitat for wildlife. This part of the shoreline does not enter into play on the golf course.
13. Develop riparian habitat along portions of the shorelines of new lakes where they do not hinder golf play. Plant shrub patches, seed with native grasses, and leave unmaintained to provide cover and wildlife habitat.

14. Erect periodic raptor perch posts on existing transmission line poles which are of older designs and represent an electrocution hazard to raptors.
15. Construct new electrical distribution lines for the development underground to eliminate avian electrocution hazards.
16. Purchase the COID land in the northeast corner of the project area, west of Cline Falls Highway and south of Highway 126. Remove the existing portion of Cline Falls Highway and reroute the entrance farther west on Highway 126. Reclaim the old road and rehabilitate the extensive dirt bike trails through tilling and reseeding. Leave the area undeveloped except for defined trails, and set aside as a natural area to serve as a wildlife corridor to the Deschutes River.
17. Develop a joint project with the BLM on adjacent public lands to reduce potential adverse impacts on deer and improve the overall quality of wildlife habitat in the area. Potential activities include wildlife water developments, clearing and seeding of small patches of land, juniper thinning, snag creation, down log creation, brush pile creation and raptor perch posts.

Oregon Department of Fish & Wildlife

The Oregon Department of Fish & Wildlife submitted comments regarding the Beak Consultants study and recommended that Eagle Crest undertake the following wildlife mitigation measures comments:

18. The Applicant should be required to monitor water quality and to make adjustments to its use of fertilizers and herbicides if water quality is affected by fertilizers and/or herbicides used by the resort and its occupants.
19. Eagle Crest should contribute funding for the middle Deschutes groundwater study.
20. Eagle Crest should make annual contributions to a habitat trust fund based on Eagle Crest revenues. Central Oregon Irrigation District makes contributions to a fish and wildlife habitat trust fund on an annual basis to mitigate impacts of its hydro-power diversion. There are currently several hundred thousand dollars in the account. The impact of lost habitat will be felt throughout the life of the development, so mitigation funds should be paid for some years into the future.
21. Develop an animal control policy to prevent harassment of wildlife.
22. Create a wildlife education program.

23. Develop riparian habitat along portions of any new lakes.
24. Purchase COID land in the northeast corner of the project area for the County or BLM.
25. Do not use poisonous baits to kill golf course rodents.
26. Work with ODFW and BLM to improve habitats on adjacent public lands.
27. Any large expanses of fence built should be done to specifications which allow for the passage of deer.
28. Juniper habitats may be widespread, examples of ecologically balanced juniper-sage-bunchgrass communities containing "mature" older trees are extremely rare. The Hearings Officer interprets this comment as an indication that ODF&W that as many of these stands of trees should be protected when the subject property is developed. These areas should be identified and included as undeveloped open space areas on the FMP.
29. The Deschutes County Comprehensive plan protects sensitive bird nesting sites. There are such sites for Golden Eagles upriver from the present development. The lands these birds hunt includes the land proposed for development. Having an adequate forage base is imperative to their survival and nesting success. The loss of nearly two square miles of foraging habitat must be considered in the mitigation assessment.
30. Sewage and stormwater disposal systems should be designed and built to prevent contamination of the Deschutes River and the aquifer below the resort.
31. The Applicant should promote water conservation when facilities are constructed and when occupied through the use of low flow toilets and shower heads and other such measures.

Bureau of Land Management

BLM has not submitted any comments on the current application. BLM did, however, comment on the 1992 CMP application. In 1992, BLM suggested that waste water might be utilized to create artificial wetlands as a possible mitigation option for reptiles, amphibians, and other species which could utilize a wetland area. The Applicant makes several arguments against the use of waste water treatment facility to handle Eagle Crest effluent. Without such a facility, effluent could not be used to create wetlands. These arguments will be discussed, below.

The Eagle Crest Position

At the hearing of this matter on October 21, 1993, the Hearings Officer asked the Applicant whether it was willing to perform certain suggested mitigation measures that were recommended by the Applicant's consultant and by ODF&W. As a result, the Applicant's attorneys, Robert Lovlien and Sharon Smith, filed a written response to that question that is summarized as follows:

- * The Applicant does not want to make a financial contribution to the regional groundwater study, but is willing to donate the Newton & Associates Ground Water Study and background materials to the Middle Deschutes Ground Water Study.

FINDING: The Newton study and many background documents are already a matter of public record and may be obtained by the Middle Deschutes Ground Water Study group from Deschutes County. Additionally, a donation of such documents would do little to mitigate fish and wildlife resource damage caused by the resort, as the study group will have little or no power to affect resort operations, once FMP approval is granted..

- * The Applicant does not believe that the Hearings Officer has authority to require it to contribute to a wildlife habitat trust fund. The Applicants' attorneys claim that to require contributions to a trust fund would supersede the wildlife overlay zones adopted by the County.

FINDING: The Applicant does not argue that its resort has no impact upon wildlife resources. Impacts to such resources are documented in the record of this application. The destination resort ordinance specifically requires mitigation of wildlife impacts, in order to meet the requirements of Goal 8. The Hearings Officer is granted authority by DCZO 18.113.075 to impose conditions calculated to insure that the standards of the destination resort ordinance are met by the Applicant, in this case that all adverse impacts on fish and wildlife resources caused by the resort are mitigated. The fact that the County provides some protection for wildlife resources in wildlife overlay zones, does not mean that it intended its adoption of an overlay area to relieve destination resort developers from the expressly stated obligation to mitigate resort impacts on fish and wildlife. The Hearings Officer finds that the payment of funds to rehabilitate or preserve wildlife habitat will effectively mitigate the harm to habitat caused by the construction and operation of this destination resort on what was once farm and grazing land that provided habitat for wildlife. The Hearings Officer also finds that she has authority to impose such a requirement as a condition of approval of this application.

- * The Applicant does not want to purchase COID land that adjoins the destination resort for the purposes of rehabilitating that land. This mitigation measure was

recommended by the Applicant's expert, Beak Consultants in order to provide for a wildlife corridor to the Deschutes River. The Applicant states that COID is currently negotiating a land trade involving this parcel. The Applicant states that it is, however, willing to reclaim and rehabilitate the area of the existing Cline Falls and Highway 126 intersection, once a new intersection has been constructed.

FINDING: The Hearings Officer finds that she may have sufficient authority to require the Applicant to rehabilitate surrounding lands as a condition of approval, but is hesitant to do so. It may be that the current and new owners of the property will not wish to sell the property to the Applicants. It may be that the specific property is of greater utility for other purposes. If the Applicant were, however, to voluntarily undertake these activities, its obligation to mitigate the resort's impact on fish and wildlife resources would be reduced. This would result in a reduction in the amount of the payment that the Applicant would be required to make to the fish and wildlife damage mitigation trust fund.

- * The Applicant's attorneys claim that the Hearings Officer does not have the authority to mandate financial contributions to the groundwater study.

FINDING: The Hearings Officer may require participation by Eagle Crest in the groundwater study, under this criterion, if it is necessary to know more about groundwater in order to assess Eagle Crest's impact on fish in the Deschutes River or upon wildlife. The Hearings Officer does not believe that such a study is necessary for this purpose, if it is assumed that all water used by Eagle Crest is water that would otherwise reach the Deschutes River in determining the impact of the Eagle Crest water use on fish and wildlife resources. The water studies submitted into the record establish that the Applicant's water use from the regional aquifer for Phase II does not affect water flows in the Deschutes River until six miles upriver from Lake Billy Chinook. This is due to the fact that the water table of well water is located below the bed of the Deschutes River in the area of the Eagle Crest resort. Between the point six miles upriver from Lake Billy Chinook and the banks of that lake, huge amounts of water flow into the river which are believed, by hydrogeologists, to be coming from the regional aquifer tapped by Eagle Crest for domestic and irrigation purposes.

If Eagle Crest wishes to challenge the assumptions listed above, it may participate in the regional groundwater study, in an effort to obtain more exact information on the amount of water that is lost from the Deschutes River, due to Eagle Crest water use. Once that information is obtained, it may be utilized to determine what impact Eagle Crest has on fish and wildlife in the Deschutes basin. This may reduce the resort's obligation to mitigate such damages.

David Newton stated that there was adequate water during a drought year to maintain ODF&W requested instream water rights and that much greater quantities of water are present in the Deschutes River below the point where water from the aquifer tapped by Eagle Crest enters the Deschutes River. While this may be the case, there has been no evidence introduced to establish that the lowering of flows by the amount requested by Eagle Crest will have no impact on fish and wildlife resources. If there is some impact, that impact must be mitigated under the strict standard adopted by the County.

- * The Applicants' attorneys recommend that the Applicant undertake ODF&W mitigation measures listed as C, D, E, G, H, I, J by the Hearings Officer under her discussion of the 10/12/93 letter from Ted Wise of ODF&W, above, and items numbered 10, 11, 12, 13, 14, 15, 17 and 16, with modification to apply requirements to right of way that may be abandoned, if and when a new interchange for Highway 126 and Cline Falls Road is built.

FINDING: The Applicant has not established that undertaking these recommended actions would meet the ordinance criterion of completely mitigating any negative impact on fish and wildlife resources so that there is no net loss or net degradation of the resource. The Applicant has not included Mitigation Items #1 - 9 that were recommended by the Applicant's expert, in its recommended mitigation actions. The Applicant has not explained the reason that these items were not included. Some of these items would have required the Applicant to maintain larger buffer areas around resort activities and to provide for more natural landscaping than planned by the Applicant. The Applicant has also eviscerated the #16 recommendation for rehabilitation by seeking to transfer it from a parcel that has frontage on the Deschutes River, a water source for wildlife, to the right of way area that may be abandoned if and when a grade separated interchange is constructed on Highway 126.

In order to assure that the destination resort ordinance requirement of complete mitigation is met by the Applicant, the Hearings Officer has included the conditions as conditions of approval of this application:

1. The FMP shall not be approved until such time as the Applicant has either completely mitigated all resort impacts, as outlined below, or has assured that such impacts will be mitigated after FMP approval by the imposition of enforceable conditions of approval, inclusion of wildlife protection obligations in covenants and restrictions that shall burden all expansion area properties (CRT & Phase II), adoption of wildlife regulations by the resort's owners' association and by the execution of development agreements, where appropriate. The Applicant shall prepare and file a comprehensive wildlife mitigation master plan that explains how each mitigation measure will be or has been assured, prior to FMP approval. This

explanation must be supported by documentation of consent by all landowners whose property will be used to meet the mitigation measures.

2. The following mitigation measures shall be performed or adequately assured, as discussed above: (a) Measures 4, 6, 7, 9, 10 through 15, 17, 18, 21 through 23, 25 through 31¹²; (b) the Applicant shall outline all areas that will be reserved in a natural state, as recommended in Measures 4 and 6, on the FMP, and shall assure that no lawns are allowed in these areas through covenants and restrictions that will bind purchasers of property that is located in these areas. The Applicant will not be required to maintain golf course holes, greens and fairways located in the 150 and 250 foot setback areas in a natural state; (c) establish and implement an erosion control plan for all disturbed land, as required by ORS Chapter 468; (d) the Planning Director, with the assistance of ODF&W, shall assess the extent of the fish and wildlife impact (assuming that the most intensive development allowed by this approval will be undertaken by the Applicant) that is not met or certain to be met by the imposition of the mitigation requirements and shall develop a plan to mitigate the remaining impact through measures such as the purchase and rehabilitation of lands for fish and wildlife activities or for the protection of resources needed to assure fish and wildlife survival. The cost of undertaking these measures shall then be estimated and the Applicant shall be required to pay for the cost of undertaking these measures by making payments to an ODF&W trust fund that must be expended solely for mitigation activities. Payment for the impact of Phase I, excluding the CRT property, shall be made prior to FMP approval. Payment for impacts caused by CRT expansion area shall be paid prior to platting of that area for building lots. Payment of the costs of mitigating the Phase II impacts shall be apportioned between the phases of the development in a manner that reasonably relates to the impact of each phase, and paid as a condition of plat approval for each phase. (d) the Applicant shall reimburse the County and ODF&W for the cost of determining the amount of the wildlife mitigation assessment; and (e) the Applicant shall be required to work with COID, BLM and the County if and when the new interchange (Highway 126 & Cline Falls Road) is built, to reclaim the areas adjacent to the existing Cline Falls Highway and Highway 126 adjacent to the property owned by COID (T15, R12, Sec. 14AO, Tax Lot 900). The Applicant shall remove the existing portion of the Cline Falls Highway that is abandoned and rehabilitate the road and dirt bike trails by tilling and seeding the property. The Applicant will be required to leave the area undeveloped, except for defined trails, to allow the area to act, in conjunction with

¹²The mitigation measure numbers are those numbers assigned to the measures by the Hearings Officer under this discussion of DCZO 18.113.070 (D).

the COID property, as a wildlife corridor to the Deschutes River (assuming that the COID property remains undeveloped)..

- E. Important natural features, including but not limited to, significant wetlands, riparian habitat and landscape management corridors will be maintained. Riparian vegetation within 100 feet of streams, rivers and significant wetlands will be maintained. Alterations to important natural features, including placement of structures, is allowed so long as the overall values of the feature are maintained.

FINDING: There are no wetlands or riparian habitats within project boundaries. There are no significant natural features in Phase II. There are wetlands and riparian areas along the Deschutes River. No new development has been proposed for this area and the only development near this area is a river trail. The Applicant will be required to inventory and protect these areas in Phase I, as a condition of FMP approval. Landscape Management corridors will be maintained through individual site plan review for the various phases of development. This condition may require the Applicant to move the newly constructed irrigation water pump that is located on the banks of the Deschutes River.

- F. The development will not force a significant change in accepted farm or forest practices or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

FINDING: The Applicant has identified uses on surrounding properties on pages 12 through 16 of the Burden of Proof Statement. According to this information, none of the surrounding lands, other than BLM land, are devoted to farm or forest uses. The BLM land has been used for cattle grazing in the past and is zoned for farm uses. The BLM land is not currently used for cattle grazing and it is unknown whether BLM will allow grazing in the future.

According to information provided to the County by the OSU Extension Service, activities and impacts generally associated with this type of agricultural use are as follows:

Livestock: Cow/calf grazing operations have potential year round impacts such as dust, manure odor, flies, cattle noises, livestock escape and property damage. Possible vehicular interference with farm equipment can occur on local roads.

The impact of a resort development upon cattle grazing is usually minimal, if the animals are appropriately fenced out of resort property. The Applicant will be required to assure that resort and adjoining cattle grazing areas are separated by fencing that does not hinder the ability of deer to cross the area, unless BLM indicates in writing, to the County, that

they do not want to have fencing installed to separate the uses. Additionally, HB 3661 which was adopted by the 1993 Legislature, provides protection for farm activities from nuisance complaints by adjoining landowners. The Hearings Officer finds, that the HB 3661 "right to farm" provisions and appropriate fencing of livestock will prevent the resort from forcing a significant change in accepted farm or forest practices or from significantly increasing the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

- G. a. Destination resort developments that significantly affect a transportation facility shall assure that the development is consistent with the identified function, capacity and level of service of the facility. This shall be accomplished by either:
1. Limiting the development to be consistent with the planned function, capacity and level of service of the transportation facility;
 2. providing transportation facilities adequate to support the proposed development consistent with OAR Chapter 660, Division 12; or
 3. altering land use densities, design requirements or using other methods to reduce demand for automobile travel and to meet travel needs through other modes.

A destination resort significantly affects a transportation facility if it would result in levels of travel or access that are inconsistent with the functional classification of a facility or would reduce the level of service of the facility below the minimum acceptable level identified in the relevant transportation system plan.

FINDING: The Applicant has submitted a Traffic Impact Analysis for the expansion of Eagle Crest Phase II prepared by Kittelson & Associates (Exhibit 9). A supplemental letter was submitted by Kittelson & Associates which addresses impacts associated with the CRT Expansion in Phase I (Exhibit 10). The Applicant also submitted a Kittelson report regarding the impact of the resort on U.S. Highway 20 in the Tumalo area (Exhibit 45).

The study methodology used in the Kittelson reports includes four steps. The first step is to assess the existing traffic conditions in terms of the capacity and safety of the system. Second, the characteristics of the project traffic are determined. Third, future conditions are assessed by projecting "background" traffic without the proposed development, and then adding in the projected traffic generated by the proposed development. Fourth, strategies are recommended to mitigate any deficiencies identified in the system. The application of these four steps to the Eagle Crest project

have been summarized on pages 8 through 10 of the Applicant's Burden of Proof Statement and are detailed within Exhibit 9.

The Hearings Officer has a number of concerns about the Kittelson & Associates reports and believes that the reports understate the traffic that will be generated by the resort. The reports based their traffic estimates on golf course, hotel and residential uses. They did not make estimates for traffic that will be drawn to the commercial uses in the resort. For instance, the Canyon Club restaurant draws customers from outside of the resort. The same is true of the resort's stables. Additionally, the resort sponsors conferences (in 1992 they obtained approval for a temporary conference center) and it is unclear whether the Kittelson report considered this use. Kittelson also failed to account for trips generated by employees who commute to work at the resort. The Kittelson report also failed to include all proposed Phase I residential and hotel units in its calculations. The report lists 74 hotel units, when authorization for 150 units was sought by the Applicant. Additionally, the report states that 365 residential homes are planned for Phase I when the Applicant actually plans 410 units that fit in this category. The report also estimates that there will be three trips per day per residential home. This number appears to be very low, given the fact that the traffic expert believes that hotel visitors will make 6 trips a day. Also, the County Public Works Department estimates standard residential homes generate 6 to 10 trips per day. It is likely that a number of the resort's single family homes will be purchased for use as a primary residence and that those homes will generate traffic similar to that generated by other homes in the County.

The report identified two critical intersections within the study area: Highway 126 and Cline Falls Highway and the main resort entrance's intersection with Cline Falls Highway. The report found that both intersections currently function at acceptable levels of service, however, it was found that these intersections would not function at acceptable levels of service as traffic from the proposed Eagle Crest expansion is added to the system.

The October 14, 1993 supplemental report prepared by Kittelson & Associates, regarding Tumalo area traffic identified two intersections that are impacted by resort traffic. These intersections are Seventh Street and Highway 20 and Cline Falls Highway and Highway 20. The level of service for the 7th Street intersection is currently at level D. The level of service at this intersection will fall to Level F once Eagle Crest Phase II traffic is added to the intersection. Level of service for the Highway 20 intersection is currently F. These findings confirm the information provided by Deschutes County Planning Commissioner Andy Tillman, that the Tumalo intersections that are used by resort traffic are currently overwhelmed by traffic. The Kittelson report concludes that the Highway 20 intersection now meets warrants for a traffic light, assuming that the evening peak traffic is ten percent of all traffic in the intersection. Kittelson found that, with a traffic light and Phase II

traffic, the Highway 20 and Cline Falls Highway intersection would operate at LOS B.

- b. Where the option of providing transportation facilities is chosen, the Applicant shall be required to improve impacted roads 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.

FINDING: Since the report found that the existing transportation facilities would fail, due to resort traffic, without improvements, the Applicant has proposed several improvements to impacted facilities to mitigate the identified deficiencies. The Applicant indicates on page 9 of the Burden of Proof Statement that an agreement with the Oregon Department of Transportation has been reached regarding mitigation measures which includes a grade-separated interchange at Cline Falls Highway and Highway 126. A copy of this agreement, including a conceptual design, has been included as Exhibit 11. According to this letter, the interchange would be completed by October of 1995 if development of Eagle Crest Phase II proceeds as projected, with Eagle Crest responsible for 40% of the costs and ODOT picking up the other 60%.

Opponents of the resort expansion application have argued that ODOT should not spend public funds to construct the new grade separated interchange. The Hearings Officer cannot control ODOT decisions regarding its funding of projects. If ODOT wishes to finance 60% of the cost of this project at the time that the Applicant needs to construct the facility to meet CMP and FMP conditions of approval, that is their choice to make. The Hearings Officer finds, however, that she must impose the entire obligation for making to the Highway 126 and Cline Falls Highway road improvements upon the Applicant due to the provision of this section that states that the Applicant must be required to improve impacted roads to the full standards of the affected authority as a condition of approval, if they elect to improve roadways rather than to scale back their project to prevent overburdening the public roadways.

The Deschutes County Public Works Department road improvement standards require that the Applicant provide a left-turn refuge and right-turn deceleration lanes at the intersection of all driveway entrances and Cline Falls Highway. This left-turn refuge has already been constructed at the main entrance to Eagle Crest Phase II as a condition of approval for the golf course. To further mitigate traffic congestion at this main entrance, a second entrance onto Cline Falls Highway further to the north is proposed to be constructed when Eagle Crest Phase II reaches 70% build-out. This entrance would also be constructed with left-turn refuges and right-turn deceleration lanes. In addition, Cline Falls Highway must be improved to at least 28 foot overall

paved width along the entire property frontage, including an additional 4 feet for shoulder bikeways on either side of the automobile travel lanes.

The Kittelson Report concluded that the installation of a traffic light at the intersection would remedy most of the Tumalo area traffic problem. Naturally, a great deal more traffic will travel through this rural service center but it will be better managed if a traffic light is installed. Although the Seventh Street and Highway 20 intersection would rate an F LOS, the report believed that the light at Highway 20 and Cline Falls Highway would provide a reasonable alternative to this intersection for drivers. The traffic expert also found that the F LOS would only be experienced by minor street movements. The Kittelson Report concluded that the impact of Eagle Crest Phase II traffic would have a minor impact on the Highway 20 and Cline Falls Highway intersection and that Eagle Crest should not be required to install the traffic signal recommended. The Hearings Officer finds, however, that the Eagle Crest Resort will have a significant impact on this intersection. First, the Kittelson Report fails to include Phase I Eagle Crest traffic in its assessment of impact. This omission results in a number that is only approximately 60 percent of Kittelson estimated Eagle Crest traffic, based upon the percentage of total resort population that will be sited in each phase. Second, the Kittelson report appears to understate the number of trips generated per day by the resort's residential units, especially as it has estimated these trips at one half the rate generated by the hotel. Many of the residential units in the traffic study are timeshare and condominium units that function much like hotel accommodations. Additionally, a fair number of the single family residences may be purchased by year round residents whose vehicle use should be closer to the 6 to 10 trip a day range expected for County single-family residences, rather than the three per day estimated by Kittelson. Third, the Kittelson report includes no estimates for traffic generated by commercial areas. Fourth, the Kittelson report states that Phase II traffic will constitute 6.3% of the traffic at Highway 20 and Cline Falls Highway. This number increases to approximately 10.5% when Phase I traffic is added to the traffic estimates. Additionally, there is a large volume of through traffic on Highway 20. Kittelson and Associates states that 20% of the cross traffic in the intersection is generated by Phase II. This number increase to approximately 32% when Phase I is included in the estimate. The Hearings Officer believes that it is cross traffic, not through traffic that generates a need for a turn signal in this intersection. As a result, it is clear that Eagle Crest traffic will significantly impact this intersection.

The approval of this CMP will also place a significant burden on Cline Falls Road and raise a need to improve that roadway. The Applicant will be required to pay funds to assist the County in improving that roadway in order to mitigate the impact of resort traffic on that road. The amount of this contribution will need to be calculated prior to FMP approval.

To ensure that all traffic impacts from the proposal are adequately mitigated, approval of this CMP should be contingent upon the following conditions of approval:

- * Applicant shall improve the Highway 126/Cline Falls Highway intersection so that it meets the full standards of the Oregon Department of Transportation. Eagle Crest is responsible for obtaining all required permits and approvals, including land use and Scenic Waterway (if applicable) approvals for construction of the interchange improvements prior to FMP approval. If the design and location of the proposed interchange is not approved by all permitting agencies, a different solution to the interchange traffic problem must be designed and approved prior to FMP review. Eagle Crest shall financially guarantee completion of the project through surety bonding or substantial financial assurances approved by the County, prior to the closure of sales of individual lots or units in Phase II or CRT, as required by DCZO 18.113.110. The project shall be completed no later than when the impacts created by the resort development require the improvement. This date shall be determined by the Planning Director, prior to FMP approval. As the traffic study submitted by the Applicant did not include all resort generated traffic, the impact of commercial, sales office, employee and vendor traffic will need to be estimated and used to determine when the improvements will be needed.
- * Applicant shall cause a traffic light to be installed at the intersection of Highway 20 and Cline Falls Highway prior to FMP approval. If ODOT refuses to allow installation of this traffic light, the Planning Director shall determine, by consultation with ODOT, the level of improvements that ODOT believes are warranted and shall require those improvements prior to FMP approval.
- * The Final Master Plan for the proposed CMP shall include the proposed interchange design and the realignment of Cline Falls Highway, if approved. If the interchange is not approved, the Applicant shall scale back the size of the Phase II expansion, as required by DCZO 18.113.070(G)(1) or limit its impact on road systems as required by DCZO 18.113.070(G)(3).
- * The Applicant shall make all interim improvements recommended by the traffic study (i.e. - signs, flashing beacon, shoulder widening) to the Highway 126 and Cline Falls Highway intersection, prior to FMP approval.
- * If a Comprehensive Plan amendment is needed to approve an interchange connection, the amendment should be adopted prior to, or concurrent with, Final Master Plan approval.
- * The Applicant is responsible for all permit, engineering and improvement costs. The Applicant also, must place money in a trust account with the County for the improvement of Cline Falls Highway. Money shall be paid on a per lot sales basis, at a rate to be determined by the Planning Director prior

to FMP approval, payment of which shall be included as a condition of Final Master Plan approval.

- * Deschutes County shall revise the figures projected in the Kittelson studies to reflect all resort generated traffic and to correct the omissions cited by the Hearings Officer, prior to FMP approval. The Applicant shall reimburse the County for the cost of obtaining such an update.
- c. **Access within the project shall be adequate to serve the project in a safe and efficient manner for each phase of the project.**

FINDING: The Traffic Impact Analysis addresses internal site circulation on page 36, and recommends the following development standards be met to ensure acceptable safety and operational standards:

- * All roadways within both Eagle Crest developments be constructed to private street standards (Section 17.48.180 of Title 17 - 20' width).
- * All minor street approaches intersecting with the principal roadways in both Eagle Crest I and II should be stop sign controlled.
- * Since the design of the roadway system will allow for excessive travel speeds, advisory speed signs of 25 miles per hour should be posted along the principal streets, as per a residential neighborhood.

On page 38 of the Traffic Impact Analysis, the report concludes that; "The internal circulation within both Eagle Crest developments is expected to operate at very acceptable levels. All of the intersections within the developments will operate at a very acceptable LOS "A". "

The Deschutes County Public Works Department has commented that the proposed 20' wide roads in the development will not be adequate for the scale of the proposed development. Public Works requests that local roads be improved to 26 to 28 feet in width. Staff noted that Title 17 has been amended since the Kittelson report was prepared. Section 17.48.180 now requires that the minimum paved roadway width for private roads, except in certain circumstances, be twenty-eight feet. These standards became effective through Ord No. 93-012 on August 4, 1993. The Applicant submitted this Conceptual Master Plan application on August 5, 1993. Therefore, the 28 foot minimum pavement width standard is applicable to this development.

The Deschutes County Bicycle Advisory Committee has provided substantial written comments regarding bicycle and pedestrian movements within and between the developments. The primary concern of the Bicycle Committee is that the bicycle and

pedestrian facilities shown on the CMP are only cursory, and that more thought and planning should be given to these facilities to actually promote and encourage their use. The Committee has submitted several comments and suggestions that should be utilized by Eagle Crest in designing the bicycle and pedestrian system for the Final Master Plan. These comments and suggestions are outlined above. These concerns must be resolved prior to FMP approval.

The Hearings Officer notes that, pursuant to Section 17.48.140 of Title 17, bike paths with multiple users (i.e. bikes, pedestrians, golf carts) must have a width of 12 feet. Ten-foot wide bike paths are allowed if bicyclists are the only intended users. In this application, these paths are designed to accommodate multiple uses.

Page 8 of the Wildlife Assessment submitted by the Applicant (Exhibit 6) recommends regulating traffic speeds through posted speed limits not to exceed 20 mph. The Traffic Impact Analysis, however, recommends a speed limit of 25 mph within the resort. The Hearings Officer, finds that a speed limit of 20 mph shall be established for roads within the resort's boundaries, other than Cline Falls Highway.

- H. **The development will not create the potential for natural hazards identified in the County Comprehensive Plan. No structure will be located on slopes exceeding 25 percent. A wildfire management plan will be implemented to ensure that wildfire hazards are minimized to the greatest extent practical and allow for safe evacuation. With the exception of the slope restriction of this section, which shall apply to destination resorts in forest zones, wildfire management of destination resorts in forest zones shall be subject to the requirements of Section 18.40.070, where applicable, as to each individual structure and dwelling. (Ord. 92-032 ss 1. 1992).**

FINDING: The Comprehensive Plan does not identify any specific natural hazards associated with the subject property. According to the Applicant's Burden of Proof Statement, p. 38, there are no slopes on the site which exceed 25%. The Deschutes Canyon portion of Phase I does, however, contain slopes in excess of 25%. No structures have been proposed for this area and no new structures will be allowed in this area. The Applicant has submitted a Wildfire Prevention and Evacuation Plan, identified as Exhibit 29, which addresses wildfire precautions and contingency plans for the proposed development. This plan appears to be adequate. The subject property has recently been annexed to the a rural fire district and a fire station has been built within a short distance of the resort. The resort also contains large irrigated golf course and lawn areas which minimize the risk of wildfire within the resort. The subject property is not located within a forest zone.

Policy 4 of the Natural Hazards section of the Comprehensive Plan (p. 111) requires that; "Plans (public and private) shall consider and reflect the effects of drought on the proposed projects." The Applicant has addressed this policy in Exhibit 7, the

Hydrogeologic Study prepared by David J. Newton & Associates, Inc. The elements of this study will be assessed in comments under section 18.113.070(K), below.

- I. Adequate public safety protection will be available through existing fire districts or will be provided on-site according to the specification of the state fire marshal. If the resort is located outside of an existing fire district, the developer will provide for staffed structural fire protection services. Adequate public facilities to provide for necessary safety services such as police and fire will be provided on the site to serve the proposed development.

FINDING: The Eagle Crest property has been annexed of the resort site to the Redmond Rural Fire Protection District. The Applicant shall provide written proof from the Redmond RFPD, that all portions of the resort have been annexed to the district, as a condition of approval of the final master plan.

Exhibit 17, the Domestic Water Supply System Master Plan prepared by W&H Pacific addresses fire protection needs. On page 5 of this plan, the Applicant states that the Redmond Fire Department has recommended a minimum fire protection flow rate of 750 gallons per minute, but this figure has not been verified by the Redmond Fire Department. The Hearings Officer is aware that flows of at least 1,000 gpm are ordinarily required for most urban residential development. According to this plan, the Applicant intends to provide a fire protection flow rate for residential areas of 1,000 to 1,500 gpm, and 2,500 gpm for commercial areas. The plan identifies the location of fire hydrants within the project area. The Applicant will be required to provide a minimum fire protection flow of 1000 gpm for residential uses and 2,500 gpm for commercial areas. This condition must be met for the existing development (Phase I, excluding CRT) at the time of approval of the FMP. This condition must be met prior to final platting of CRT expansion area or any phase of Phase II.

Exhibit 29, the Wildfire Prevention and Evacuation Plan identifies an evacuation plan in case of fire or other emergency.

Exhibit 25, the Eagle Crest Resort Employee Safety Manual, outlines emergency procedures and services which are to be employed by Eagle Crest personnel. Page 1 of this manual indicates that fire and ambulance service are located in Redmond, a distance of 6.4 miles, with an approximate 12 minute response time. The Applicant has stated that a new fire substation has been located within a short distance of the resort. AirLife service from St. Charles Hospital in Bend has a seven minute flight time to the resort. The manual goes on to provide detailed procedures for employees to follow in various types of emergency situations.

Page 2 of Exhibit 35, Proposed Uses in Eagle Crest Phase II, indicates that a "Fire Station" is contemplated as a proposed use within the resort. This station has,

actually, been built outside of the boundaries of the resort and the Applicant no longer intends to build a station within the resort.

This section also requires that "[a]dequate public facilities to provide for necessary safety services such as police . . . will be provided on the site to serve the proposed development." Some of the Applicant's employees perform resort security functions and call the Deschutes County Sheriff's Office to handle criminal matters. The Sheriff's Office is based in downtown Bend, many miles from the Eagle Crest resort. As the resort grows, the demand for Sheriff's Office services in this distant location will increase. The Hearings Officer believes that this growth in demand for police services may be alleviated by the Applicant developing an on-site police service, along the model of the Sunriver police force or by an increase in Sheriff Office staffing. The Hearings Officer has, therefore, required that the Applicant work with the Sheriff's Office to quantify the need for police facilities and services and to develop a plan to meet the need. The Planning Director shall review the plan and must determine that the plan meets the increased demand for police services, before the Applicant may receive FMP approval.

The Hearings Officer finds that adequate public safety services exist and can be provided by Eagle Crest for both the existing and proposed development, provided that the entire resort area is annexed to the Redmond RFPD and a plan is developed for police services, as described above, prior to final Master Plan approval.

- J. **Streams and drainage.** Unless otherwise agreed to in writing by the adjoining property owner(s), existing natural drainages on the site will not be changed in any manner which interferes with drainage patterns on adjoining property. All surface water drainage changes created by the development will be contained on-site in a manner which meets all standards of the Oregon State Department of Environmental Quality (DEQ). The erosion control plan for the subject development will meet all standards of ORS Chapter 468.

FINDING: According to the Applicant's Burden of Proof Statement, page 39, there are no natural drainages on the site that will in any way interfere with drainage patterns on any adjoining property. The Applicant's Erosion Control Plan, Exhibit 8, indicates that all surface water drainage will be contained on-site. This plan provides several erosion control methods which will be utilized by Eagle Crest in the construction process and in the design of roads and other facilities. The Applicant will be required to comply with this plan as a condition of approval of this CMP and of the FMP.

- K. **Adequate water will be available for all proposed uses at the destination resort, based upon the water study and a proposed water conservation plan. Water use will not reduce the availability of water in the water impact areas identified in the water study considering existing uses and potential development previously approved in**

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actually, been built outside of the boundaries of the resort and the Applicant no longer intends to build a station within the resort.

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The Hearings Officer finds that adequate public safety services exist and can be provided by Eagle Crest for both the existing and proposed development, provided that the entire resort area is annexed to the Redmond RFPD and a plan is developed for police services, as described above, prior to final Master Plan approval.

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FINDING: According to the Applicant's Burden of Proof Statement, page 39, there are no natural drainages on the site that will in any way interfere with drainage patterns on any adjoining property. The Applicant's Erosion Control Plan, Exhibit 8, indicates that all surface water drainage will be contained on-site. This plan provides several erosion control methods which will be utilized by Eagle Crest in the construction process and in the design of roads and other facilities. The Applicant will be required to comply with this plan as a condition of approval of this CMP and of the FMP.

- K. Adequate water will be available for all proposed uses at the destination resort, based upon the water study and a proposed water conservation plan. Water use will not reduce the availability of water in the water impact areas identified in the water study considering existing uses and potential development previously approved in

the affected area. Water sources shall not include any perched water table. Water shall only be taken from the regional aquifer. Where a perched water table is pierced to access the regional aquifer, the well must be sealed off from the perched water table.

FINDING: The Applicant has submitted a Hydrogeologic Study (Exhibit 7) and a Domestic Water Supply System Master Plan (Exhibit 17) which address these requirements. In addition the methodology and conclusions of the Hydrogeologic Study have been independently evaluated and verified by a Registered Professional Geologist hired by the County (Exhibit 21). The information contained in these exhibits is summarized on pages 40 through 42 of the Applicant's Burden of Proof Statement. The Applicant has also submitted a document entitled "Hydrogeologic Study, Eagle Crest Phase II, Supplemental Findings" that is dated September 30, 1993, a letter to Bill Lyche from David Newton regarding water supply issues and a November 1, 1993 letter from David Newton regarding groundwater adequacy. The opponents have submitted numerous documents about the water issue. The gist of these articles is that aquifers can become depleted by intensive use, that it is a poor idea to approve land use permits without first determining that water is available for the projected use, that development of Eagle Crest should be deferred until after the current groundwater study is completed for the Middle Deschutes Basin and that Eagle Crest's water use may adversely affect neighboring wells and natural resources.

The findings and conclusions found on page 2 of the Newton Hydrogeologic Study indicate that a highly productive, deep aquifer was encountered during the drilling program initiated at Eagle Crest Phase II during the fall of 1991 and winter of 1992. Groundwater elevations within this aquifer are at least 100 feet lower than elevations within surrounding domestic and agricultural wells, including adjacent Eagle Crest Resort wells. The reason that the aquifer is deeper at this location than it is at other locations is not conclusively known. Mr. Newton made statements that inferred that this Eagle Crest had tapped into some aquifer other than the regional aquifer but later stated that "in our initial report we documented that the Eagle Crest wells draw from this regional aquifer." This is consistent with the observation in the first Newton report that regional aquifers are sometimes found at deeper elevations around volcanic features like Cline Buttes. Mr. Newton also believes the deep aquifer from which Eagle Crest water is withdrawn is discharged into the Deschutes River approximately ten miles downriver from the resort. At the point of discharge, large quantities of ground water are discharged into the river from underground springs. Mr. Newton included a Deschutes River Flow Rate Exhibit that shows flow rates at various points in the river between May 11 and 15, 1992. This map shows that 56 cfs of water was measured at Eagle Crest, whereas 365 CFS was measured just upriver from the confluence of Squaw Creek and the Deschutes. The exhibit also shows that water levels in the river remain low for a considerable distance downriver when flow rates suddenly increase from 68 cfs to 216 cfs in a short stretch of water. This information

supports the assertions of Mr. Newton regarding the impact of pumping on groundwater.

Results from pump testing of the deep aquifer indicate that pumping the well at 1,500 gallons per minute will have no impact on surrounding wells. Pumping rates as high as 1,500 gpm were discharged from Eagle Crest Phase II well #1 with no more than 2.15 feet of drawdown. Pilot Hole #1, the observation hole 35 feet from EC II-1, had a drawdown of only 0.1 feet. A table top exercise was then performed, at the recommendation of Joseph Gonthier and field measurements, after a season of daily pumping water from the Eagle Crest Phase II well, indicate that there was little or no drawdown on the well.

There is no usable surface water source within the boundaries of Eagle Crest Phase II. The Deschutes River adjoins Phase I. The high yielding groundwater source is needed to meet the ultimate water demands. Water samples collected and analyzed from the aquifer indicate analyzed constituents well within Environmental Protection Agency drinking water quality standards.

The summary and recommendations on page 2 of Exhibit 17, the Domestic Water Supply System Master Plan, indicates that, at project build-out, the water system for Eagle Crest will serve over 3,600 people. The system will include six wells, a domestic water storage reservoir, one booster pumping station, surface water lake storage, and approximately 12 miles of distribution piping. It is anticipated that the domestic water consumption of Eagle Crest will be approximately 1,238,750 million gallons of water on a peak day. The required source contribution to meet this demand is 860 gpm. Eagle Crest will ultimately irrigate approximately 500 acres of golf course turf in addition to a substantial amount of open space. The irrigation source requirement is approximately 3,280 gpm during the peak consumptive use period. The combined domestic and irrigation source requirement totals 4,140 gpm at project build-out. The three existing wells within Eagle Crest Phase I, two existing wells within Phase II, plus one new well proposed for Phase II should provide the necessary contribution. The Hydrogeologic Study estimates (p. 2) that the ultimate water need for Eagle Crest Phase II itself will be 2,331 gpm. Both the Study and the Master Plan conclude that the water source is adequate to meet the water demands created by the development.

The Applicant's water conservation plan is found on pages 12 and 13 of Exhibit 17, the Domestic Water Supply System Master Plan. The following list of water conservation measures are proposed to be incorporated into the Phase II water system:

- * Each domestic water service will be metered.
- * A rate structure will be developed that provides financial incentive to conserve water.

- * Golf course irrigation will be controlled by an automatic irrigation controller to allow:
 - a) applications during efficient hours of the day;
 - b) reduction of the applications to accommodate weather conditions; and
 - c) hydraulically efficient valve controls to assure uniform and consistent applications throughout the irrigated areas.
- * Covenants and restrictions will be established which encourage the preservation of natural vegetation, the limitation of irrigated areas, and the promotion of non-irrigated landscape improvements.
- * Low-flow plumbing fixtures will be encouraged.

The Hearings Officer believes that the Applicant's water conservation program would be more effective if limits were placed upon irrigation hours for all system users so that irrigation will occur during the hours of the day when it will do the most good. An enforceable limit on hours of irrigation shall be established by Eagle Crest and/or Cline Butte Utility Company. The Hearings Officer finds that the Applicant must demonstrate to the County that these measures will, in fact, be implemented and that a system is set in place to enforce conservation measures. The Applicant shall demonstrate to the County Planning Director, that it has adopted this conservation system for its entire water system and that all new users will be bound to comply with conservation measures.

Based on the above information, the Hearings Officer concludes that adequate water will be available for all proposed uses at the destination resort, based upon the water study and the proposed water conservation plan, for the foreseeable future. It is not certain that there will always be an adequate supply of water for all users in Central Oregon if the rapid growth currently being experienced in Central Oregon continues, but it appears from the evidence gathered regarding current supplies of groundwater, that there is now an adequate supply of water to meet the project needs of the Eagle Crest Resort in the regional aquifer. It also appears that there is a large water resource in the regional aquifer and that the regional aquifer will not be depleted by Eagle Crest's water usage. This is apparent by the large amount of water that leaves the regional aquifer and enters the Deschutes River downriver from the Eagle Crest resort.

The Hearings Officer finds that the Newton study was prepared in accordance with the currently accepted standards of practice for hydrogeologic studies. The results and methodology employed in the study were reviewed and accepted by Joseph Gonthier. Mr.

Gonthier also agreed that there are significant volumes of ground water in the regional aquifer. The Hearings Officer also finds that water use in Phase II will not reduce the availability of water in the water impact areas identified in the water study, considering existing uses and potential development previously approved in the affected area as the amount of water resource is so large, by comparison to the use proposed by Eagle Crest. Additionally, the Oregon Water Resources Department typically conditions approval of water permits on the continued operation of the system without significant interference to prior, approved uses. The November 1, 1993 letter from David Newton to Bill Lyche (Exhibit 67) states that OWRD has imposed 15 conditions to require monitoring of water levels, to conserve water and to force a cessation of pumping if excessive declines occur. Evidence submitted by the opponents indicates that OWRD inadvertently left these conditions out of its permit for the Phase II irrigation water right. The Hearings Office finds that these conditions are necessary to assure that Phase II irrigation, commercial and industrial water use is not reduced, as required by the County's destination resort ordinance. The Hearings Officer has, therefore, conditioned approval of this application upon proof by Eagle Crest that all of its existing water rights contain the standard OWI conditions, including those items referenced by Mr. Newton. If such conditions are not currently included in the existing Phase II water rights, Eagle Crest cause its permit to be amended to include these conditions.

The Oregon Water Resources Division has complete authority to determine whether to allow Eagle Crest to withdraw water from the regional aquifer and whether there is adequate water in the aquifer to supply Eagle Crest, without harm to existing users. Eagle Crest has already obtained water rights for three wells in Eagle Crest Phase I and three wells in Eagle Crest Phase II. The Phase II wells are limited to irrigation and commercial water uses. Eagle Crest has applied for a groundwater permit for water for domestic use for Phase II properties. If this permit is not approved by OWRD, the Applicant will not be able to develop Phase II with any residential units. The Hearings Officer has, therefore, made approval of this permit by the Oregon Water Resource Department a condition of FMP approval.

It appears to the Hearings Officer, from a review of the Newton reports, that Eagle Crest's Phase I water sources do not include any perched water sources. This fact shall be verified prior to FMP approval.

The County's destination resort ordinance requires that "water shall only be taken from the regional aquifer." The Hearings Officer finds that this section prohibits the Applicant from obtaining groundwater from any aquifer other than the regional aquifer. This section does not prohibit the Applicant from using surface water in the resort. This is evident from the placement of this sentence between two sentences that refer to groundwater. The Applicant has demonstrated that all water that is or will be used by the resort will come from the regional aquifer. The Hearings Officer

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also finds that the proposed transfer of water with Swalley Water will not result in the resort using water from the Deschutes River, in violation of this restriction.

The County's destination resort ordinance also requires that "[w]here a perched water table is pierced to access the regional aquifer, the well must be sealed off from the perched water table." This requirement will be included as a condition of FMP approval.

- L. The waste water disposal plan includes beneficial use to the maximum extent practicable. Approval of the CMP shall be conditioned on Applicant making application to DEQ for a Water Pollution Control Facility (WPCF) permit consistent with such an approved waste water disposal plan. Approval shall also be conditioned upon Applicant's compliance with applicable Oregon Administrative Rules regarding beneficial use of waste water, as determined by DEQ. Applicant shall receive approval of a WPCF permit consistent with this provision prior to applying for approval for its final master plan under this chapter.

FINDING: The Applicant has submitted a Sanitary Sewerage Collection and Disposal System Master Plan (Exhibit 26) to address this requirement. Pages 35 through 37 of the Applicant's Burden of Proof Statement provide a summation of the information in Exhibit 26. The Burden of Proof also provides arguments for why it is not practicable to utilize the resort's wastewater for a beneficial use.

The Applicant states that destination resorts have unique characteristics with respect to wastewater. Resorts generate very low flows of sewage in the early stages of development and during low use periods. There are very high flows during holidays and peak vacation times. The Applicant further states that destination resorts are sensitive to the environment, to odors, to unsightliness, and safety due to the extent of outdoor activities that occur on the property.

The Applicant describes four types of sewage treatment and disposal which might be feasible for use in Eagle Crest. These include: 1) a mechanical sewage treatment plant with some form of effluent disposal; 2) a lagoon with effluent disposal; 3) subsurface disposal; and 4) the effluent could be conveyed to Redmond's mechanical treatment facility. The Applicant goes on to evaluate how each system could be utilized at Eagle Crest.

The Applicant concludes that the only practicable method to dispose of sewage at the resort, at this time, is the subsurface drainfield method. This is the current method of sewage disposal at Eagle Crest Phase I. While this system may work fairly efficiently, it provides no beneficial use of the waste water.

In order to determine whether the Applicant's sewage treatment plan complies with the requirements of the destination resort ordinance requirement that the waste water disposal

plan include beneficial use, to the maximum extent practicable, the Hearings Officer looked up the word "practicable" in Webster's New Universal Unabridged Dictionary, Deluxe 2nd Edition. In that dictionary, the word is defined as follows: 1. capable of being done, effected, or performed; feasible; as a practicable method; 2. capable of being practiced; as, a practicable virtue; 3. that can be used; usable; useful; as a practicable road; a practicable weapon. The Hearings Officer finds that the word "practicable," as used in the County's ordinance is used in the manner described as the first definition of the word in Webster's. The Hearings Officer, therefore, reviewed the Applicant's sewage treatment plan to determine whether it includes beneficial use of waste water, to the maximum extent it is capable of being done.

The four options identified as possible for the resort were analyzed by W & H Pacific. Option #4, connection to the Redmond sewage treatment facility, is not possible at this time. The Redmond system does not have the capacity to handle Eagle Crest effluent. In order to serve Eagle Crest, Redmond sewer lines would need to be extended for miles beyond the Redmond urban growth boundary. The sewer lines would also need to cross the Deschutes River, in a stretch of the river that is designated a scenic waterway. Additionally, if Redmond were to expand its treatment facilities and an extension of the system was constructed, there would be no guarantee that Redmond would provide for beneficial use to the maximum extent possible, as required by the destination resort. This option is also prohibited by DCZO Section 18.113.070 (O). That section states that Eagle Crest must be served by an on-site sewage system unless the County Comprehensive Plan allows connection to an existing public sewer system. The Comprehensive Plan does not contain a provision that allows such connection. The Hearings Officer believes that the Comprehensive Plan may be amended to allow Eagle Crest to connect to the Redmond sewer system at some time in the future. Connection to an urban treatment facility is allowed by ORS 197.450 and Goal 8. The Hearings Officer has, therefore, made provisions to allow such connection, if and when it becomes available.

Options #1 & #2 include central collection facilities. Option #1 is the only one of these options that would treat effluent to the point that it is capable of use to irrigate golf courses or to create wetlands. Option #1 facilities utilize chemicals and electrical power in order to treat effluent prior to irrigation or wetland use. Some sewer treatment plants discharge effluent into rivers and streams or into on-site storage facilities. Eagle Crest would not, however, be able to discharge effluent into the Deschutes River and would need to create a storage pond, on-site. The wide variation in flow levels generated by destination resorts make it difficult to maintain a mechanical sewage treatment facility. At high flow levels and low flow levels, these systems have a history of failure.

The Applicant submitted administrative regulations adopted by DEQ (OAR 340-55-005 through -0130) that prohibit the use of treated effluent on golf courses that are surrounded

by homes, unless the effluent meets Level IV treatment standards, the highest treatment standard for sewage. It is possible to irrigate golf courses with effluent treated to meet lower standards (Levels II and III) only if the course is not surrounded by homes and effluent is applied to rural or nonpublic lands and signs are erected warning of the hazards of effluent. Buffers of 10 feet for surface applications of effluent are also required. The regulations also require fencing of impoundments of effluent, except for Level IV treated effluent. Treated effluent would need to be impounded in storage facilities or lagoons during times of the year when effluent may not be applied. A 26 acre pond, five feet deep, would need to be built to store effluent over the course of the winter. The effluent would need to be fenced, unless it was treated to Level IV quality standards. W&H Pacific has not explained whether it would be possible to treat Eagle Crest effluent to Level IV standards, at which point the effluent could be utilized without many restrictions.

The Applicant says that Bijan Pour, a DEQ official, "indicated subsurface disposal possibly provides the best treatment, in excess of tertiary standards, when maintained aerobic" (Exhibit 18, p. 2). This comment is not a statement of official position by the State Department of Environmental Quality (DEQ) regarding this issue, and none was ever provided to the County, despite the Hearings Officer's requests that Planning Division staff and the Applicant request that DEQ comment regarding this issue. DEQ will need to approve any plan that is ultimately approved for wastewater treatment and disposal, so their input would have been extremely useful to the Hearings Officer in deciding whether it would be practicable for the Applicant to obtain approval of a sewage treatment facility that would put treated effluent to beneficial use.

W&H Pacific has stated that "certain areas of the Eagle Crest Development do not have sufficient soil profiles to accommodate single-family subsurface systems" (Exhibit 17, p. 11). The Applicant has, however, proceeded to file a Master Plan that calls for complete development of the entire Phase II property, even in areas that cannot be served by a subsurface system. Areas that are not suitable for subsurface systems should not be designated for development that requires septic sewer service. The Applicant's plan also lacks information about the planned back up system that will be provided for the individual drainfields. No central drainfield site has been designated for Phase II effluent. This must be done prior to FMP approval.

Based upon the foregoing, the Hearings Officer finds that a central, mechanical treatment facility designed and operated at the resort is the only facility that may be constructed by the Applicant that can assure that beneficial use of wastewater is maximized, as required by the destination resort ordinance, and that is capable of serving the entire resort. The Hearings Officer finds, however, that such a system is not feasible when low levels of effluent are generated and the levels fluctuate. The information provided by W&H Pacific regarding the Black Butte system indicates that as a sewage system grows to the level anticipated in Eagle Crest (similar to the size of Black Butte Ranch), it will be possible to

have two treatment plants and to use one as a reserve facility for treatment during high flow periods. If such a two treatment plant facility is constructed for Eagle Crest, a 26 acre pond, five feet deep, is needed for a mechanical treatment system at Eagle Crest to store effluent when it may not be used for irrigation. Eagle Crest created a reserve area for such a mechanical treatment system in its 1988 Master Plan, but removed the system from the Plan in the 1990s.

Based upon the foregoing, the Hearings Officer believes that the Applicant should be allowed to utilize a subsurface facility at this time, subject to compliance with conditions guaranteed to assure compliance with the beneficial use requirement when such use becomes feasible. The Hearings Officer believes that this objective may be achieved if the following conditions of approval are imposed:

1. Prior to FMP approval, the Applicant shall design a mechanical treatment facility and complete collection system, with at least two treatment plants to assure effective treatment of effluent during high flow and low flow periods. The facility shall be sited on a parcel of property within the destination resort that is large enough to accommodate all sewage treatment plant facilities, at least 23 acres. The Applicant shall set aside or obtain ownership of such a site and provide proof of ownership to the Planning Director, prior to FMP approval. The site must be shown on the FMP map. Plans for the treatment facility shall include an effluent pond designed to hold effluent during periods when it may not be utilized for irrigation or other beneficial uses.
2. The Applicant shall obtain DEQ approval of the mechanical treatment facility and collection system plan, prior to FMP approval. If it is documented that DEQ approval is not available, the Applicant shall demonstrate to the Deschutes County Planning Director that the facility design meets DEQ requirements for such facilities, prior to FMP approval.
3. Prior to FMP approval the Applicant shall do the following: (a) Design a wastewater reuse program that will utilize wastewater and which may include, but not be limited to, use of effluent to irrigate golf courses, to create wetlands or to irrigate cropland; and (b) Design the transportation and distribution system which will be used to transport and discharge effluent to and on the site of reuse; and (c) If effluent will be reused on property located outside of the boundaries of the resort, the Applicant must submit proof that it has obtained a binding legal commitment to discharge effluent on that site; and (d) State what level of treatment (I through IV) will be achieved by the plant designed, demonstrate how DEQ requirements (OAR regulations) on reuse will be met, and provide assurances acceptable to the Planning Director that measures to comply with the regulations will be met once effluent is put to beneficial use.

4. The Planning Director shall determine at what point of development a mechanical treatment facility will become feasible and require its construction at or prior to that time in the conditions of approval of the FMP. The Applicant shall provide a performance bond or other financial assurances satisfactory to Deschutes County Legal Counsel, assuring completion of the mechanical treatment facility and related facilities.
5. The Applicant shall identify, on the FMP, all areas in the resort that are not suited for development with septic systems. No buildings requiring sewer service may be sited, or residential or commercial lots platted, on these properties until such time as the mechanical treatment facility is constructed and operational.
6. The Applicant shall obtain septic system feasibility approval from the Deschutes County Environmental Health Department for each proposed lot in each phase of development platted prior to approval and filing of the plat, until such time as the central facility is constructed and operational and when service by that facility to the platted area is assured.
7. The Applicant has stated that the septic tanks on each lot will be backed up with a central collection system. This system has not been designed. The Applicant shall design the back up effluent collection system and designate an area for central and/or back up effluent disposal prior to FMP approval. The Applicant shall construct the back up, central drainfield prior to platting any portion of Phase II and shall install all collection lines for the system in each phase, prior to the issuance of building permits in that phase.
8. The Applicant shall make an application to DEQ for a WPCF permit, and comply with applicable Oregon Administrative Rules regarding beneficial use of waste water, as determined by DEQ. The Applicant shall have received approval of a WPCF permit consistent with this provision prior to applying for approval of the Final Master Plan. The Applicant shall also obtain approval of the mechanical system, prior to operation of that plant.
9. Approval of each phase of development that will utilize subsurface drainage systems may be denied by Deschutes County if DEQ has withdrawn approval for the subsurface system or if there is substantial evidence to indicate that the systems are failing or causing significant contamination of groundwater or river water.
10. If, at some time in the future, the Comprehensive Plan is amended to allow the Eagle Crest resort to connect to the Redmond sewer system, the Applicant may apply to the Planning Division for amendment of these conditions of approval to authorize that sewage treatment option and to remove the on-site treatment plant

requirements. The Applicant will need to demonstrate that Redmond's sewage treatment plant has adequate capacity to treat the sewage in compliance with all sewage treatment regulations and that the Applicant has obtained a binding, long-term commitment from the City of Redmond to accept and treat the Eagle Crest sewage and to make a beneficial use of the effluent.

- M. The resort will mitigate any demands it creates on publicly owned recreational facilities on public lands in the surrounding area.**

FINDING: The nearest publicly owned recreational facility on public lands in the surrounding area is the Cline Falls State Park. According to the Applicant's Burden of Proof Statement, page 16, Eagle Crest has attempted to provide a number of on-site recreational amenities, as well as access to the Deschutes River along its easterly boundary for resort guests. These are intended to mitigate created demands on Cline Falls State Park by attempting to capture the users of Eagle Crest on-site.

Planning Staff indicates that the Applicant will be required to either: 1) dedicate land for park purposes; or 2) pay a \$350 per-lot park acquisition and development fee in lieu of actual dedication as required by Section 17.44.010 of Title 17 (the County Subdivision Ordinance). This fee will be charged at the time of final plat review for the platting of all lots within the resort unless a dedication of park land occurs.

- N. Site improvements will be located and designed to avoid or minimize adverse effects of the resort on the surrounding land uses. Measures to accomplish this may include establishment and maintenance of buffers between the resort and adjacent land uses, including natural vegetation and appropriate fences, berms, landscaped areas and similar types of buffers, and setback of structures and other developments from adjacent land uses.**

FINDING: The Applicant has identified land uses on adjoining properties on pages 12 through 17 of the Burden of Proof Statement. Mitigation of adverse impacts has also been discussed, and includes, primarily, the maintenance of natural buffer areas around the perimeter of the resort and observation of the setbacks required by this ordinance. The Applicant's golf course significantly impacts residences in the Cline Falls Oasis subdivision on the north end of Phase II, as evidenced by the testimony of Linda Burwell. The Applicant offered to place berms and to plant vegetation along the Phase II boundary that adjoins Ms. Burwell's residential property. The Hearings Officer finds that buffering is needed along that portion of the northern boundary of Phase II that adjoins Cline Falls Oasis subdivision properties. The Hearings Officer has, therefore, required the Applicant to submit and receive approval of a landscaping plan that meets the requirements of this section for that area of Phase II, prior to FMP approval.

- O. The resort will be served by an on-site sewage system approved by DEQ and a water system approved by the Oregon State Health Division, except where connection to an existing public sewer or water system is allowed by the County Comprehensive Plan, such service will be provided to the resort.

FINDING: These issues have been discussed previously in sections 18.113.070(K) and (L) above. The Applicant shall be required to apply for and obtain WPCF approval from the DEQ prior to submittal of the Final Master Plan. The Hearings Officer has also required that the Applicant make provisions for an on-site treatment system, when such a system becomes feasible. No provision of the County Comprehensive Plan allows connection of Eagle Crest's sewage or water system to an existing public sewer or water system and none has been allowed by this decision, unless the Comprehensive Plan is amended to allow connection to an existing public sewer or water system.

The Oregon Water Resources Division has completed a technical review of the domestic water supply system plan (Exhibit 21). As required by the Oregon Health Division, the Applicant must submit water quality analyses from the new well before final approval of the well can be considered.

- P. The destination resort will not alter the character of the surrounding area in a manner that substantially limits, impairs or prevents permitted or conditional uses of surrounding properties.

FINDING: The Hearings Officer finds that the destination resort will not alter the character of the surrounding area in a manner that substantially limits, impairs or prevents permitted or conditional uses of surrounding properties. Surrounding properties are zoned either Multiple Use Agriculture - MUA-10, or Exclusive Farm Use - EFU-SC. The permitted and conditional uses within these zoning districts are found in Chapter 18.32 and 18.16 of Title 18. The Applicant has addressed this requirement on pages 43 and 44 of the Burden of Proof Statement. It is the Hearings Officer's opinion that the Applicant has adequately addressed this criterion and that those findings support the Hearings Officer's finding that the Applicant has complied with this section. The Hearings Officer also finds that the conditions of approval imposed on this decision were designed to insure that this objective will be achieved.

- Q. Commercial, cultural, entertainment or accessory uses provided as part of the destination resort will be contained within the development and will not be oriented to public highways adjacent to the property. Commercial, cultural and entertainment uses allowed within the destination resort will be incidental to the resort itself. As such, these ancillary uses will be permitted only at a scale suited to serve visitors to the resort.

FINDING: The Hearings Officer has previously found that Eagle Crest Resort is currently offering commercial, cultural and entertainment uses that are designed to draw participants from the entire Central Oregon community, not just to serve visitors of the resort. These events include such things as auctions, estate planning seminars that are advertised to the public, Dixieland jazz festivals and other such events. The occurrence of these events were well-documented by Betty Marquardt. The Hearings Officer also notes that the Applicant now conducts StarFest, a commercial Christmas light show that is advertised on a Highway 97 billboard, in The Bulletin and on local television and radio stations and that is in operation for approximately two months a year. These events, and others of their type, may not, however, be continued, in any part of Eagle Crest after CMP approval is final.

- R. The commercial uses permitted in the destination resort will be limited in type, location, number, dimensions and scale (both individually and cumulatively) to that necessary to serve the needs of resort visitors. A commercial use is necessary to serve the needs of visitors if:**
- a. Its primary purpose is to provide goods or services that are typically provided to overnight or other short-term visitors to the resort, or the use is necessary for operation, maintenance or promotion of the destination resort; and**
 - b. the use is oriented to the resort and is located away from or screened from highways or other major through roadways.**

FINDING: The submitted Conceptual Master Plan indicates a commercial core area in the center of the proposed Phase II development, a resort sales office in Phase I and a future commercial area in Phase I. These are the only areas in the Master Plan that may be developed for commercial uses. The Master Plan states that potential uses in the Phase II commercial area may include, but are not limited to, a golf pro shop, retail shops, restaurant, hotel, pool, and tennis courts. The Plan does not list any of the uses proposed for the area designated "Future Commercial Area" on the CMP. The Hearings Officer is unable to determine that these proposed commercial areas will be developed with uses that will meet the standards of this section. Before such a determination may be made, it must be known what types of uses will be conducted in the commercial areas. The Hearings Officer has, therefore, conditioned approval of this CMP and the FMP upon compliance with this section.

The Phase II commercial area will not be readily visible from outside of the resort boundary, and appears to be of a scale suited to serve visitors to the resort. This appears to be an appropriate area for commercial uses. The Phase I commercial area is located within view of the Cline Falls Highway, a major through roadway. This area must, therefore, be screened from the highway. The proposed sales office for Eagle Crest is oriented to face the highway, not the resort, and is in an area that is visible from Cline

Falls Highway. The Hearings Officer finds that the location of the sales office must be screened from the highway and that the back, rather than the front, of the building should face the Cline Falls Highway. No parking shall be placed between the sales office and Cline Falls Highway. No sales office signage or ground mounted signs advertising the sales office may be visible from Cline Falls Highway. These conditions have been made conditions of approval of the CMP and FMP.

Area 11 on the CMP is proposed to be a "combined development area, with potential uses including but not limited to hotel, sports facilities, conference center, business development center, pool and tennis courts, golf course related facilities, and residential." This area is the portion of the proposed resort closest to the Highway 126/Cline Falls Highway interchange, and if developed as contemplated, could form a primary attraction for visitors to the resort. In order to comply with this section regarding commercial uses, the development and uses allowed in this area shall not include any commercial facilities.

- R. A plan exists to ensure a transfer of common areas, facilities such as sewer, water, streets and responsibility for police and fire protection to owners' associations or similar groups if contemplated. If such transfer is not contemplated, the owner or responsible party shall be clearly designated. Adequate open space, facility maintenance and police and fire protection shall be ensured in perpetuity in a manner acceptable to the County.

FINDING: According to the Applicant's Burden of Proof Statement, page 44, the long-term responsibilities of the various homeowners' associations are disclosed in Exhibit 12, the Vacation Resort Owner Documents, Exhibit 13, the Estate Homesite Owner Documents, and Exhibit 14, the Estate Homesite Association - ARC. The same form of ownership and transfer of authority provided in these documents is intended to be carried through to Eagle Crest Phase II. These exhibits contain highly specific covenants, conditions, restrictions, and responsibilities of the homeowners' association, as well as the designation of authority to enforce the CC&R's.

The above referenced exhibits appear to adequately address management of common and open space areas, as well as responsibility for public facilities and services such as sewer, water, streets, and police and fire protection for Phase I. If similar documents are executed for Phase II, these items should be adequately assured for Phase II. The same form of ownership and transfer of authority will be carried through to Phase II. The Applicant will be required to provide proof of compliance with this requirement, as a condition of FMP approval.

- S. Temporary structures will not be allowed unless approved as part of the CMP. Temporary structures will not be allowed for more than 18 months and will be subject to all use and site plan standards of this title.

FINDING: There are several "temporary" structures currently in use at Eagle Crest. These include the temporary modular sales offices located at the entrance to Phase I, a temporary modular day care center near the Inn at Eagle Crest, and a temporary golf pro shop for the Eagle Ridge Golf Course within the proposed Eagle Crest Phase II area. These are the only temporary structures shown on the CMP and are the only such structures allowed in the entire Eagle Crest Resort. As required by this section, any new temporary structures would be allowed for no more than 18 months from the date that CMP approval is final, and would be subject to all use and site plan standards. The temporary sales office must be removed no later than when the new sales office is occupied. The temporary golf course pro shop shall be removed no later than when the first plat in Phase II is approved.

T. The open space management plan is sufficient to protect in perpetuity identified open space values.

FINDING: Eagle Crest's Open Space Management Plan is identified as Exhibit 15. According to this Plan, open space at Eagle Crest includes developed areas such as the golf courses, the trail network, playing fields, and picnic areas, as well as undeveloped area including the natural area from the canyon rim to the center of the Deschutes River in Phase I.¹³ Access to the natural area is restricted to foot traffic only on two primary access trails, with a soft-surface walking trail and primitive picnic areas along the river. With exception of the two access trails, access to the area between the river trail and the canyon rim is totally restricted. Policies are in place and are enforced which prohibit littering, smoking, and discarding burning materials in the river area. Undeveloped open space areas are under the ownership of the Eagle Crest Master Association of Homeowners. Management of the open space areas are controlled by recorded CC&R's, which guide management and strictly limit the uses allowed on the open space property. The Applicant shall provide proof to the Planning Director, prior to FMP approval, that the CC&Rs bind all of the property included within the resort.

As stated previously, the Hearings Officer has noted serious deficiencies in the Open Space Area map. Areas that do not qualify as open space have been shown as open space on the Applicant's CMP and Open Space Area map (Exhibit 70). This map must be revised to comply with the County's open space requirements. This has been required as a condition of approval of this decision. This may require the Applicant to revise the CMP to enlarge open space areas and that all such areas must be clearly shown on a revised and accurate Open Space Area map.

¹³ Playing fields and highly developed picnic areas do not qualify as open space under the County's ordinance.

- U. A mechanism to ensure that individually-owned units counting toward the overnight lodging total remain available for rent for at least 45 weeks per calendar year through a central reservation and check-in service. Such a mechanism shall include all of the following:
- a. Designation on the plat of which individually-owned units are to be considered to be overnight lodging as used in this chapter;
 - b. deed restrictions limiting use of such identified premises to overnight lodging purposes under this chapter for at least 45 weeks each year;
 - c. inclusion in the CC&Rs of an irrevocable provision enforceable by the County limiting use of such identified units to overnight lodging purposes under this chapter for at least 45 weeks each year;
 - d. inclusion of language in any rental contract between the owner of the unit and any central reservation and check-in service requiring that such units be made available as overnight lodging facilities under this chapter for at least 45 weeks each year; and
 - e. a requirement that each such unit be registered and a report be filed on each such unit yearly by the owner or central booking agent on January 1 with the Planning Division as to the following information:
 1. Who the owner or owners have been over the last year;
 2. how many nights out of the year the unit was available for rent through the central reservation and check-in service; and
 3. how many nights out of the year the unit was rented out as an overnight lodging facility under this chapter. (Ord. 92-004 ss 13, Exhibit C, 1992).

FINDING: On page 45 of the Burden of Proof Statement, the Applicant states that "it is not anticipated that any individually owned units are going to be necessary for counting the overnight lodging requirements except those within the Vacation Ownership area. Those Vacation Ownership areas are defined as timeshares meeting the criteria of overnight accommodations.

As discussed above, the townhouse timeshare units, and possibly the 1/5 share condominium units, can be counted as overnight accommodations. None of these units are individually owned.

The Applicant has provided a Rental Agency Agreement Form, Exhibit 32, which provides the mechanism for the rental of individually owned units.

COMPREHENSIVE PLAN POLICIES

The Hearings Officer makes the following findings regarding the policies contained in the Comprehensive Plan:

1. "The purpose of the Comprehensive Plan . . . is not to provide a site-specific identification of the appropriate land uses which may take place on a particular piece of land but rather it is to consider the significant factors which affect or are affected by development in the County and provide a general guide to the various decisions which must be made to promote the greatest efficiency and equity possible, while managing the continuing growth and change of the area." [p.1, Comp Plan] As a general rule, the Comprehensive Plan does not provide specific review standards for land use applications. Some sections do, however, include specific requirements and these requirements are discussed, below.
2. Pages 4 through 14 of the Plan contain definitions of terms that relate to destination resorts. These definitions are consistent with the definitions contained in DCZO 18.113.060, the County's destination resort ordinance.
3. Residential/Recreational Development Policy 1 states that future rural development will be stringently reviewed for public need before approval [p. 37, Comp Plan]. The Hearings Officer finds that Deschutes County has determined that the subject property is needed for destination resort development as it specially designated it for that purpose as a part of its Goal 8 mapping and designation process. The Hearings Officer also finds that Residential/Rural Development Policy 5 determines that there is a need for destination resorts in appropriately designated areas. That policy provides that "[d]estination resorts are important elements of the local economy. These developments shall not be permitted in exclusive farm use districts except in EFU-20 and EFU-40 zones pursuant to the County's Destination Resort Siting Map and Destination Resort Siting Combining Zone. . . They may be allowed in other rural areas if compatible with the environmental capabilities of the site, near existing transportation and utility facilities, consistent with the rural character of the area, and unlikely to create undue public service burdens." [p.38, Comp Plan]
4. The Comprehensive Plan contains a section entitled "DESTINATION RESORTS" at pages 122 through 127. This section states that there are numerous beneficial impacts of destination resort and that such resorts can diversify the economic base of the County. This section of the Plan states, and the Hearings Officer finds, that the zoning ordinance provisions applied in review of this CMP application were developed to implement Goal 8

requirements and to assure compliance with the Comprehensive Plan goals. The ordinance has been acknowledged by LCDC as complying with statewide land use planning goals.

5. The subject property has been mapped as a destination resort development area according to the destination resort mapping process provided in Policies 1 through 4 of the Destination Resorts section of the Comprehensive Plan [pp. 124 - 125].
6. Policies 5 through 9 of the Destination Resort section of the Comprehensive Plan lists ordinance provisions which are to be included in the County's destination resort ordinance. These provisions are included in DCZO Chapter 18.113, as required by the Plan.
7. Policy 19 of the Fish & Wildlife section of the Comprehensive Plan states that "an application for a destination resort, or any portion thereof, in a wildlife area combining zone shall not be accepted pending completion of the County's Goal 8 destination resort mapping process. The County shall complete the Goal 8 mapping process by December 31, 1992." The County has completed the Goal 8 mapping process for the subject property but has not completed the Goal 8 mapping process for the entire County as its mapping process was the subject of a legal challenge in 1992. No portion of Eagle Crest Phase I or Phase II is located within a wildlife combining zone or a sensitive bird and mammal combining zone. This policy, therefore, does not preclude approval of a destination resort on the subject property.
8. The Historic and Cultural section of the Comprehensive Plan [pp. 161 - 164] describes the general framework for identifying and protecting historic and cultural sites. Two archeological sites exist in Phase I of the subject property. The Plan contains no provisions that prevent resort development of property that includes such sites.
9. Water Resources Policy 10 [p. 167] states that "[a]ny project which would endanger the purity of local ground water shall be vigorously discouraged." The Hearings Officer finds that the criteria of DCZO 18.113.070 provides adequate discouragement for projects that endanger the purity of local ground water. The types of activities proposed by the Applicant are common throughout the developed residential sections of the County. It is well understood that commercial agricultural activities utilize pesticides and other chemical in their activities. The Hearing Officer finds that golf course and lawn irrigation and chemical use presents no greater threat to the purity of local ground water than do such agricultural activities.

18.132 - VARIANCE CRITERIA

In addition to the conditional use application for a conceptual master plan, the Applicant is also requesting approval of a Variance to the road setbacks contained within the Destination Resort

Combining Zone. The exterior setbacks as set forth in Section 18.113.060(G)(b)(1) requires an exterior setback of 100 feet for roads, 50' for golf courses, and 50' for jogging and bike trails where they abut private property.

The Applicant has addressed the variance criteria of Chapter 18.132 on pages 25 through 30 of the Burden of Proof Statement. A detailed map of the variance area has been prepared as Exhibit 38.

The Applicant is seeking a Variance for four sections of road and one section of bike path to allow these facilities to be sited within the minimum setbacks. These variances are requested to allow the Applicant to utilize an interconnected road system pattern which encircles large sections of the Phase II golf courses. The first road and bicycle path sections that are proposed to encroach on the setback area lie behind the number 13 green and the number 17 tee of the Eagle Ridge Golf Course which is currently in use and immediately adjacent to the Cline Fall Oasis Subdivision (Inset A on Exhibit 38). The second section lies at the 13th tee, adjacent to land managed by the Bureau of Land Management at the northwest corner of the project (Inset B, Exhibit 38). The third road section lies at the end of the 7th tee adjacent to lands managed by the BLM (Inset C, Exhibit 38). The final section of road lies behind the number 3 green on the southwest corner of the project (Inset D, Exhibit 38).

The Eagle Ridge Golf Course was given conditional land use approval in 1990 (File Nos. CU-90-189 and SP-90-115) prior to the time the Destination Resort Overlay Zone and its resort setbacks were adopted by the County. In 1992, after the County adopted setbacks for golf courses in destination resort, the Applicant filed a revised site plan for the golf course. The Applicant stated that the revised plan was intended to meet a condition of approval of the conditional use approval. The 1992 plan also moved the location of some of the golf course holes, fairways and greens. A number of these changes moved golf course facilities into or further into required setback areas. Additionally, by the time that the Applicant sought to finalize approval of the golf course conditional use permit, it appears that the permit may have become void, according to the terms of condition #8 of that approval. This fact was not, however, considered by the Hearings Officer, in reviewing the variance as it was not essential to decision of the variance application.

The following criteria from Section 18.132.020(A), Area Variance, are applicable:

1. A variance may be granted unqualifiedly or may be granted subject to prescribed conditions, provided that the Planning Director or Hearings Body shall make all of the following findings:
 - A. That the literal application of the ordinance would create practical difficulties resulting in greater private expense than public benefit.

FINDING: The Applicant states that the subject roadways and bike paths are located in required setback areas because it is necessary to do so in order to design a road and

bicycle system with a good circulation pattern. The Applicant states that it is necessary to encroach upon the setback areas in order to get around the tees, greens and holes constructed on the Eagle Ridge Golf Course in four sections of Phase II. The Hearings Officer finds, however, that the literal application of the setback standards of the ordinance will not create any practical difficulty in some of the setback variance areas requested. This is because it is possible to accommodate a road and bicycle path that creates a reasonable traffic pattern in these areas. These areas are:

Inset A/Hole # 13

The first road and bike path sections that are proposed to encroach on the setback area lie behind the number 13 green and the number 17 tee of the Eagle Ridge Golf Course which is currently in use and which is located adjacent to the Cline Fall Oasis Subdivision (Inset "A" on Exhibit 38). Hole #13 was moved from 218 feet from Cline Falls Oasis in the 1990 plan to approximately 175 feet from Cline Falls Oasis in the CMP, in the area where the variance to setback standards is sought. It appears that the Applicant has asked for the variance to allow a buffer of approximately 100 feet between the golf course and the proposed road. The Hearings Officer finds that there is no reason why the road cannot be located more than 100 feet from the property line with Cline Falls Oasis and why the bicycle path cannot be sited 50' away from that line, as required by the destination resort ordinance.

Inset C/11th Hole

The third road section lies at the end of the 7th tee adjacent to lands managed by the BLM (Inset C, Exhibit 38). The 7th tee is located approximately 200 feet from the nearest property boundary. There is sufficient area to accommodate a road around this tee within the 100 foot wide area between the tee and the property boundary. It appears that the Applicant has requested this variance in order to maximize the number of building lots that can be included in this area of Phase II or to accommodate a sweeping road pattern.

As to the remaining areas for which a variance is requested, a literal application of the ordinance would require that the Applicant find other locations for these roadway sections and bike path. Elimination of these road and path sections from the CMP would require the Applicant to redesign the road pattern, acquire adjoining property for use as a setback area or to move golf course sections. Redesign of the road system appears to be the least onerous. This option may not work a significant hardship on the Applicant because it appears to the Hearings Officer that more open space will need to be provided in order to meet the 50% open space requirement. The areas where road sections are planned and some of the areas they access are remote areas of the golf course that would make good areas for open space. This change will create a better buffer between the resort and its

neighbors and may make the resort more attractive and appealing to potential resort property owners. The major negative of such a redesign is that it will result in long cul-de-sacs, which are generally discouraged by County policies and ordinances due to impacts on traffic circulation and emergency access.

The area of inset "A" is the only portion of the variance request that is adjacent to private property. In this area, the proposed bike path will be 10 feet closer to Cline Falls Oasis than allowed by the setback and the road will be at least 50 feet closer than allowed by the required setbacks. The Applicant states that a substantial private expense would be incurred if these roadways had to be eliminated or the golf course changed. The Applicant has not explained what financial expense would be incurred if the roads were not located as planned. The financial expense of relocating the golf course is obvious. The Hearings Officer has found that the variance is not needed for the majority of the area shown on Inset "A" (the lower three quarters of the inset shown on Exhibit 38). The Hearings Officer also finds that this requested variance in the area shown on Inset "A" will also place a burden on adjoining private property owners. The location of resort roads closer than allowed will deprive these property owners of a significant portion of the buffering that was determined to be appropriate between the intensely used resort property and the low-density rural residential development found in places like Cline Falls Oasis. Allowing use of the setback area for a road and bike path might also preclude its use to provide utility services to Cline Falls Oasis homes. This problem was brought to the attention of the Hearings Officer and Applicant by Cline Falls Oasis homeowner, Linda Burwell. The Hearings Officer did not find any response to this issue in the materials submitted by the Applicant and no response was made at the hearings. A reading of the Applicant's 1990 Phase II golf course application file indicates that the patents received to the Phase II property included numerous utility company easements. Some of these easements cross the land sections that include the areas where variances are requested. Cline Falls Oasis are used by the utility company for access to power lines that service the Cline Falls Oasis area. In the aforementioned golf course approval in 1990, the Applicant was required to satisfy BLM concerns which included a concern that the Applicant should indicate all BLM easements on their maps. These easements have never been completely located and identified by the Applicant. If this variance were to be granted, it would be essential to determine whether the Applicant's requested use would interfere with the prior rights granted to utility companies on the Phase II property.

All three remaining areas abut vacant public lands managed by the BLM. There would be little public benefit in requiring that these roads be located in a different location as the BLM property is largely undeveloped. The primary public benefit of requiring the Applicant to comply with the setback standard would be to enhance the value of adjoining BLM land as deer and wildlife habitat or as a cattle grazing area.

- B. That the condition creating the difficulty is not general throughout the surrounding area but is unique to the Applicant's site.

FINDING: The condition creating the difficulty is unique to the Applicant's site and not general throughout the surrounding area. No other surrounding properties, other than Phase I Eagle Crest, are zoned for destination resort sites and have received conditional use approval for golf course development prior to adoption of the exterior setbacks established in the Destination Resort Combining Zone.

- C. That the condition was not created by the Applicant.

FINDING: At the time of application for the golf course the Applicant could not have known that there would be a future requirement for a 100 foot road and 50 foot bike path setback. The Applicant would, however, have known of this fact when it filed its revised golf course plan in 1992. The filing of that plan was a step that the Applicant was required to take prior to obtaining a permit to build the golf course. The Applicant chose, however, to file and proceed with the plan in 1992, knowing that the locations shown on the plan would cause it difficulty in meeting resort setbacks.

Most significant, however, is the fact that the condition that gives rise to the request for a variance was created by the Applicant in 1992, after adoption of the current destination resort ordinance and its setback standards. If the Applicant had built the Eagle Ridge golf course in compliance with the 1990 approved golf course site plan, a variance would not have been needed for any of the areas shown on the Applicant's insets.

Inset A/Holes 13 & 17 Existing Course

The Applicant has not proven that a variance is needed in the area of the 13th Hole. The road/bicycle sections near Hole #13 can be accommodated between the golf course and the setback area. Additionally, the location of Hole #13 on the golf course plan was moved from a location, in 1990, of approximately 218 feet to a location, in 1992, approximately 175 feet from the Cline Falls Oasis boundary.

As for Hole #17, the closest point of that course to a property boundary, in the 1990 plan (the tees), is approximately 180 feet from the Cline Falls Oasis property line. Hole #17 was located approximately 100 feet from the property line on the 1992 plan and on the CMP. The Hearings Officer finds that the location shown on the 1990 plan allowed enough area for the Applicant to place the road around the outside of this hole. The 1992 revisions, however, make it impossible to meet the 100 foot road setback, without removing a portion of the golf course or acquiring property from adjoining property owners. The Applicant, therefore, created its own hardship in this area.

Inset B/Hole #13 Tee

The second section lies at the 13th tee adjacent to land managed by the Bureau of Land Management at the northwest corner of the project (Inset B, Exhibit 38). The location of the 13th tee was approximately 175 feet from the western property line of Phase II. This location would have allowed the Applicant to locate the proposed road outside of the 100' wide setback area. The Applicant moved the 13th tee to approximately 50 feet of the western property line, necessitating this variance request and creating its own hardship.

Inset C/Hole #7

As discussed above, the Applicant has not proven that a variance is actually needed in order to fit the road and bicycle paths within the setback areas in this area.

Inset D/Hole #3

The final section of road for which a variance is sought lies behind the number 3 green on the southwest corner of the project (Inset D, Exhibit 38). In the 1990 plan, it appears that no portion of Hole #3 of the existing Phase II golf course was located any closer than 178 feet from the resort property boundary. No road or bike path variance would have been needed in this area if Hole #3 were built where it was approved in 1990. Hole #3 is now located approximately 50 feet from the BLM property line and requires a variance if the road to go around the outside of this hole. The Applicant has, therefore, created its own hardship.

The Applicant also argues that they had no idea that such a setback requirement would be imposed when it purchased or agreed to purchase the site. The Applicant assumed that a reasonable number of roads could abut adjoining properties to accommodate the layout of the Eagle Ridge Golf Course and to provide access for homes that would surround the golf course. The Applicant states that it had no knowledge that such a restriction would be imposed at the time the golf course was constructed.¹⁴ This argument is, however, without much merit, as the Applicant purchased the golf course in 1990, when destination resort or golf course homesite development was prohibited on the property. Any expectation about the properties capacity to accommodate resort development and to maximize lot space by placing golf courses and roads close to or abutting property boundaries was purely speculative as it was not known what conditions might be imposed upon such development, if allowed in the future. The Applicant took a calculated risk by purchasing the property and proceeding with golf course development before the rules

¹⁴ As mentioned previously, ORS 197.460 was adopted prior to 1990 and required the County to establish buffer areas and setbacks for structures and improvements in destination resorts.

regarding resort development on EFU lands, such as Phase II, were established. The Applicant then enhanced that risk in 1992, after adoption of the resort ordinance setbacks, by moving the location of the course closer to the property boundaries than approved in 1990. As the hardship was created by the Applicant, it is not appropriate to allow a variance to setback standards.

- D. That the variance conforms to the Comprehensive Plan and the intent of the ordinance being varied.

FINDING: Page 7 of Ordinance No. 92-001, an amendment to the Comprehensive Plan adding goals and policies regarding the siting of destination resorts, contains the following goal:

"To provide for development of destination resorts in the County consistent with Statewide Planning Goal 8 in a manner that will be compatible with farm and forest uses, (and) existing rural development . . ."

On page 8, Ordinance 92-001 lists ordinance provisions to be enacted to implement the goals of the Comprehensive Plan. To minimize the adverse effects of resorts on surrounding land uses, minimum measures are to include:

"The establishment and maintenance of buffers between the resort and adjacent land uses, including natural vegetation and where appropriate, fences, berms, landscaped areas, and other similar types of buffers."

"Setbacks of structures and other improvements from adjacent land uses."

The purpose and provisions of Chapter 18.113 of title 18 mirror these Comprehensive Plan goals and policies. The 100 foot setback for roadways and the 50 foot setback for jogging trails and bike paths found in Section 18.113.060(G) are intended to provide the buffer between resort development and adjacent lands required by the Comprehensive Plan. Allowing the Applicant to violate the setback standards that were adopted to implement these sections of the Comprehensive Plan, under the circumstances presented in this case, would be inconsistent with these provisions of the County's Comprehensive Plan.

VI. DECISION

Based upon the foregoing, the Applicant's request for a variance from the setback standards of the destination resort ordinance, Application V-93-28, is **DENIED** and the application for **Conceptual Master Plan, CU-93-94, is APPROVED** subject to the following conditions:

1. All areas platted in Phase II and CRT for individual lots are not authorized as legal lots by this approval. The Applicant shall obtain tentative plat approval from the County Planning Division prior to platting these and other areas of the expansion areas. All lot lines shown on the CMP maps shall be removed from the FMP maps as those boundaries will be determined in the platting process, not in the CMP or FMP process. Additionally, the Applicant shall accurately depict the boundary for Phase I, encompassing only those areas included in the CMP application and that were reviewed and approved as a part of the resort in this decision.
2. The Applicant must obtain County site plan and landscape management zone approval permit for the water intake and pumphouse structures that it has installed on the banks of the Deschutes River, unless the Applicant establishes that these structures/facilities are exempt from these review requirements. The Applicant must either obtain such approval or obtain a written statement of exemption from the Planning Director, prior to FMP approval. The water intake and pumphouse shall be shown on the FMP map, in the location approved by the Planning Division.
3. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland shall be a separate conditional use subject to all pertinent requirements of this title. The Applicant shall obtain a fill and removal permit for the pump that the Applicant has installed on the banks of the Deschutes River or shall remove all pump structures, prior to FMP approval, if the installation of the pump facilities involved fill and removal within the bed and banks of the river.
4. The Newton study adequately determined the impact area of the Phase II wells. The study did not, however, address the impact of Phase I wells. This information is required by the destination resort ordinance as the existing resort must comply with all standards of the ordinance, if existing resort facilities are used by the Applicant to qualify for destination resort approval of the expansion area, as has been done in this application. The Applicant must remedy this deficiency prior to FMP approval and prove that the standards of approval of the destination resort ordinance regarding wells are met by these wells.
5. The Applicant will be required to bond or assure improvements that are necessary for resort development, as required by DCZO 18.113.110.

6. The Applicant shall revise its sewer master plan provide greater detail about the specifications of the proposed sewer system prior to FMP approval. That document shall include plans for stormwater collection and disposal for the entire resort and shall indicate where all sewage system facilities will be located.
7. The Applicant shall designate the location of all utility lines and easements that burden the property on the FMP, including those granted by BLM and shall provide proof to the Planning Director, prior to FMP approval, that all development proposed in those areas is allowed by the terms of the easements granted. The Applicant shall also identify any areas currently used by utility companies to provide power to area residents that are not included in easement areas, if any. If some utility facilities are located outside of easements, the Planning Director or Applicant shall contact affected utilities to determine the length of time that these areas have been used by the companies and whether the companies intend to claim a prescriptive right to continue to use these areas. If the Planning Director determines that the utility companies are entitled to remain on portions of Eagle Crest property due to prescriptive rights, the Applicant shall be required to show those areas on the FMP as utility easement areas.
8. All portions of Eagle Crest resort must be managed and operated as one unit and as a self-contained development. The Applicant and its successors and assigns must assure owners and overnight visitors to either phase of the Eagle Crest Resort complete access to all areas open to use by owners and overnight visitors in the other phase. Failure to comply with this standard will void resort approval.
9. The Applicant shall accurately identify uses for the "combined development" area in Area 11 of Phase II, prior to FMP approval. The Applicant must remove the "including, but not limited to" language from its description of allowed uses.
10. The Applicant will be required to designate all currently existing commercial uses on the final master plan so that it is clear what uses have been allowed by this approval.
11. The Applicant shall further define what commercial uses may be allowed in the proposed commercial areas of Phase I and Phase II so that there is an exhaustive list of commercial uses allowed in the resort that shall be included with the FMP. All uses not listed shall not be allowed. Thereafter, the Applicant shall revise the sewer master plan to include demand estimates that include all commercial uses, including restaurants, stores, sales office, day care, pools, stables, golf pro shops, etc. If the increase in demand alters the demand for sewer facilities, appropriate changes shall be made to that plan. Compliance with this condition shall be assured by review by the Deschutes County Planning Director prior to approval of the FMP.
12. The commercial uses permitted in the destination resort will be limited in type, location, number, dimensions and scale (both individually and cumulatively) to that

necessary to serve the needs of resort visitors. A commercial use is necessary to serve the needs of visitors if:

- a. Its primary purpose is to provide goods or services that are typically provided to overnight or other short-term visitors to the resort, or the use is necessary for operation, maintenance or promotion of the destination resort; and
 - b. the use is oriented to the resort and is located away from or screened from highways or other major through roadways.
13. Commercial, cultural, entertainment or accessory uses provided as part of the destination resort will be contained within the development and will not be oriented to public highways adjacent to the property. Commercial, cultural and entertainment uses allowed within the destination resort will be incidental to the resort itself. As such, these ancillary uses will be permitted only at a scale suited to serve visitors to the resort. No such events may be conducted in any part of Eagle Crest after CMP approval is final. Compliance with this requirement shall also be included as a condition of FMP approval. No commercial activities that are intended to draw a large number of participants from outside of the resort boundaries, such as the Dixieland Jazz Festival, StarFest and public auctions may be conducted on any part of the resort property.
14. The Applicant and its successors shall guarantee that all open space used to meet the 50% open space requirement of the destination resort ordinance complies with DCZO 18.113.030 (E) which provides that "[u]ses permitted in open space areas generally include only those uses that, except as specified herein, do not alter the existing or natural landscape of the proposed open space areas. No improvements, development or other alteration of the natural or existing landscape shall be allowed in open space areas, except as necessary for development of golf course fairways and greens, hiking and bike trails, lakes and ponds and primitive picnic facilities including park benches and picnic tables. Where farming activities would be consistent with identified pre-existing open space uses, irrigation equipment and associated pumping facilities shall be allowed."
15. The Applicant shall revise the Open Space Area map (Exhibit 70) so that it properly excludes all areas that were erroneously included by the Applicant as open space (as described in the findings of this decision) and shall demonstrate that the 50% open space requirement of the destination resort ordinance is met, after revisions are made. The Applicant may be required to designate additional area as open space in order to meet this requirement. A revised open space map must be submitted at the time of Final Master Plan review and it must include at least 50% open space. The Applicant shall also furnish proof that all open space area has been permanently reserved for open space, prior to FMP approval.

16. The resort's day care center use is hereby limited to providing child care services for children of employees and guests of the resort.
17. The Applicant shall provide an economic impact and feasibility analysis of the proposed development that indicates that the resort development is economically feasible, prepared by a qualified professional economist or financial analyst, which addresses the economic viability of the proposed development. This analysis shall consider the income that could be anticipated from the resort operations and compare that income to project expenses. The Applicant will be required to supply this information to the Deschutes County Planning Director, prior to FMP approval. The Director will determine whether the report is adequate and whether it establishes that the proposed development is economically viable. If the report is not adequate, the report may be corrected to provide all information needed by the Planning Director. If the report does not establish that the proposed development is economically viable, this permit shall be void and FMP approval may not be granted.
18. The Applicant shall provide the Planning Director with a listing of any and all 1/5 share condominiums or timeshares, for which all shares of the unit are owned by a single owner or cotenants prior to FMP approval and at the time that each phase of development is platted so that the Director may determine that the ratio of visitor-oriented accommodations to residential units [DCZO 18.113.070(E)] is being met by the Applicant. The Planning Director shall verify that this ratio is met at the time of FMP and plat approval for each phase of development of the FMP.
19. The setback standards for the existing Eagle Crest resort are those setbacks established in prior land use approvals and those provided under other portions of the county zoning ordinance, according to DCZO 18.113.025 (B). This includes river and rimrock standards that are currently stated in other portions of the zoning ordinance. The existing resort must continue to comply with these standards as it contains rimrock and riverfront property.
20. All single-family residential lots shall comply with the standard 8 foot solar fence south-wall protection requirement of the County's solar setback ordinance. Exceptions to allow a 14 foot solar fence south roof-protection standard shall be reviewed and approved by the Planning Division, on a case by case basis, as individual property owners develop their lots, as allowed by the terms of the solar setback ordinance.
21. All multi-family units, commercial structures, and other resort facilities are exempted from the requirements of meeting solar setback standards, except for where their shadow would impact a single-family residential lot within or adjacent to the resort. A 14 foot solar fence standard should apply when shadows cast by multi-family, commercial structures or other resort facilities affect residential structures of any

type. If the shadow of a structure affects a commercial or nonresidential resort structure, no solar setback will be required.

22. Development within Eagle Crest Phase II and the CRT expansion area of Phase I shall comply with the following conditions:

Single Family Residential Lots. All provisions of DCZO Chapter 18.108, Planned Communities, regarding minimum lot area, width, lot coverage, frontage and yard requirements and building heights, that apply to RS District lots in a planned community shall apply to all single family residential lots in Phase II and to all CRT lots.

Multi-Family and Condominiums. All provisions of DCZO Chapter 18.108, Planned Communities, regarding minimum lot area, width, lot coverage, frontage and yard requirements and building heights, that apply to RM District lots in a planned community shall apply to all multi-family and condominium lots in Eagle Crest Phase II.

Commercial and Resort Amenities. Any Phase II lot designated and developed for commercial development or for resort services or recreational activities shall be subject to the provisions of DCZO Chapter 18.108 that apply to lots located in the C District of a planned community.

Building Height. The provisions of DCZO 18.120.040 regarding exceptions to and exemptions from building height restrictions shall apply to Eagle Crest Phase II buildings.

Definitions. The definitions that shall apply to measurement of building height, average lot width and yards are those contained in the definitions section of Title 18.

Off-Street Parking and Loading. Off-street parking and loading space shall be as provided in Section 18.116.160 as it is presently written. Single family residences shall have a minimum of two off-street parking spaces. Multiple family units shall have a minimum of one off-street parking space per dwelling unit. The Applicant shall comply with future amendments to that section, if any, for uses that are developed and approved after the section is amended.

Maximum Average Lot Size. No lot for a single-family residence shall exceed an overall project average of 22,000 square feet in size.

References to DCZO. All references to DCZO standards shall apply to the DCZO ordinance in place at the time of development application, unless such standards have been repealed and not replaced by a new section. In such event, the reference shall be to the ordinance as it was written at the time it was repealed. In the event that sections have

been renumbered, the newly numbered section may be utilized, in place of the section number cited by the Hearings Officer.

23. The Applicant shall revise the submitted CMP so that all bike paths, road sections, unconstructed golf course facilities and all other resort facilities meet the setback standard of DCZO 18.113.060(G)(b), including the sections of the golf course in Phase II that is located within close proximity to Cline Falls Highway. All future Phase II and CRT expansion area development, including the second, unconstructed Eagle Ridge golf course, shall comply with these setback requirements.
24. The Applicant must establish that the currently constructed golf course is a valid nonconforming use and, when altered to include golf course homesites, will comply with the standards of DCZO 18.120.010. The Applicant shall file an application for determination of a nonconforming use as to those portions of the constructed golf course that lie within the setback areas. That application shall be reviewed and decided by the Deschutes County Planning Director according to the law applicable to nonconforming uses.
25. The Applicant will be excused from complying with Condition #24 if it does any of the following: (1) purchases additional property along the areas of the golf course that encroach upon the setback and adds them to the destination resort property so that there is a 50 foot buffer between all sections of the existing Phase II golf course; or (2) obtains a variance from the 50 foot golf course setback requirement for the location of the first golf course; or (3) excludes the already constructed golf course area from the destination resort; or (4) moves those portions of the existing golf course that encroach upon the 50 foot setback area; or (5) obtains a legislative amendment to the destination resort ordinance to allow this condition to exist as to the already constructed golf course which, in the opinion of the Deschutes County Counsel, is legally applicable to this application and sufficient to cure the setback problem posed by the destination resort ordinance for the existing Eagle Ridge golf course.
26. The Applicant shall obtain a new conditional use permit for the second Eagle Ridge golf course, prior to FMP approval and any construction of that course, unless it can establish, to the satisfaction of the Deschutes County Planning Director, that all conditions of the 1990 conditional use permit issued for construction of that golf course were met prior to December 12, 1991.
27. The proposed platting of the CRT Expansion area must comply with the 150 foot minimum required setback for above-grade development. The proposed Lot 46 of "Area XV" in the Canyon River Territories (Exhibit 4) is situated so that it abuts an exterior property line of the resort property. This lot is only 126 feet wide, so there would be no buildable area on the lot outside of the 150 foot minimum setback. In addition, Lot 45

directly south of Lot 46 also lies partially within the 150 foot minimum setback, thus eliminating a substantial portion of this lot from residential development. If the configuration of CRT lots is to be shown on the FMP, the layout of those lots must be revised so that no portion of a residential lot is situated within the 150 foot setback from any exterior resort property boundary.

28. The areas of the resort property that are within the flood plain should be shown on the Applicant's flood plain map and excluded from the Applicant's open space calculations. No development is proposed within the flood plain. The Applicant shall convey a conservation easement along the Deschutes River as described in Section 18.116.220 of Title 18 for any portion of the property that is located within the 100 year flood plain, but that is not included in the land covered by the current conservation easement granted by the Applicant along the Deschutes River.
29. The Landscape Management Combining Zone (LM) requirements of Chapter 18.84 shall apply to all portions of the destination resort included within that zone. This includes all new development within 1/4 mile of the Deschutes River and/or Highway 126.
30. Eagle Crest will be required to be developed as a self-contained development as a condition of approval of this CMP application and all future land use approvals within the resort area.
31. The Applicant shall specify all recreational facilities and other key facilities within all proposed phases of Phase II. The Applicant shall also indicate which areas of Phase II the recreational and key facilities are intended to serve. The Applicant shall provide those facilities prior to the sale of lots in any phase that is served by such recreational or key facilities or shall guarantee construction of those facilities through surety bonding or other financial assurances approved by the County Counsel for Deschutes County. Specifically, the entire second golf course must be completed or bonded prior to the sale of lots in any phase that adjoins or includes a portion of the Phase II golf course, unless the Applicant removes the second golf course from its FMP design of Phase II, in order to comply with other conditions of CMP approval.
32. The Applicant may not conduct or allow the conduct of any activities not specifically listed in this decision or in the list of allowed uses contained in the County's destination resort ordinance. Any similar use must receive approval from the Deschutes County Planning Division as a similar use, prior to construction. No industrial uses are allowed on resort property.
33. Appropriate assurances shall be submitted by lending institutions or other financial entities that the developer has or can reasonably obtain adequate financial support for the proposal once approved, prior to FMP approval, as outlined in the Required Findings section, above.

34. An independent economic analysis of the impact of allowing this resort application and that determines the economic impact of changes in employment, demands for new or increased levels of public service, housing for employees and the effects of the loss of resource land and other indirect costs and revises the Hobson and Associates study to reflect all costs and benefits from the resort development shall be conducted prior to FMP approval. If the economic analyst finds that the resort will provide a substantial financial contribution which positively benefits the local economy throughout the life of the entire project, Eagle Crest will be allowed to obtain FMP approval without taking any actions to offset the costs incurred by the County, school district and community at large. If the analyst finds that Eagle Crest will not make a positive contribution, the analyst shall enumerate various ways in which Eagle Crest may correct this problem and shall estimate the economic impact of that action. Eagle Crest shall then select, from the list of options presented, actions that have the effect of reaching the goal of this section. Those actions must either be completed prior to FMP approval or be included in the conditions of approval of the FMP, at the option of the Planning Director. The independent economic analyst shall be selected by and shall report directly to the Planning Director. The costs of this study shall be borne by Eagle Crest. Payment of the costs of conducting the study shall be assured prior to commencement of the study.
35. Prior to FMP, the Applicant shall cause a study of the impact of Phase I, as constructed at this time and at build out, on fish and wildlife resources. Any negative impact on fish and wildlife resources will be completely mitigated so that there is no net loss or net degradation of the resource.
36. The FMP shall not be approved until such time as the Applicant has either completely mitigated all resort impacts on wildlife or has assured that such impacts will be mitigated after FMP approval by the imposition of enforceable conditions of approval, inclusion of wildlife protection obligations in covenants and restrictions that will burden all expansion area properties (CRT & Phase II), adoption of wildlife regulations by the resort's owners' association and by the execution of development agreements, where appropriate. The Applicant shall prepare and file a comprehensive wildlife mitigation master plan that explains how each mitigation measure will be or has been assured, prior to FMP approval. This explanation must be supported by documentation of consent by all landowners whose property will be used to meet the mitigation measures.
37. The following mitigation measures shall be completed or adequately assured, as discussed above, prior to FMP approval:
- A. Where possible the 150 to 250 foot buffer required around the perimeter of the project site should be retained in a natural, undisturbed condition to provide habitat for wildlife.

- B. Project landscaping should be designed to enhance and provide habitat for wildlife. Maintain as much of the existing habitat as practicable between residences, including the understory of sagebrush and grasses. Plant and develop shrub and tree patches within open space around residences to provide habitat structure and diversity important to many species of wildlife. Incorporate native and naturalized species with ornamental landscaping to provide a diversity of plant species attractive to native wildlife.
- C. The Applicant shall outline all areas that will be reserved in its natural state, as outlined in 35. A. & B., above and shall assure that no lawns are allowed in these areas through covenants and restrictions that will bind purchasers of property that is located in those areas. The Applicant will not, however, be required to include golf course holes, greens and fairways located in the 150 and 250 foot setback areas in a natural state.
- D. Develop an animal control policy consistent with the Deschutes County Comprehensive Plan to minimize harassment of wildlife, particularly that of deer by dogs. Property owners shall be required to keep dogs within maintained fenced areas or utilize other suitable measures to prevent dogs from straying off their property. When off premises, owners shall be required to maintain dogs either on leash or under verbal control.
- E. Regulate traffic speeds through posted speed limits not to exceed 20 mph. This speed limit shall not apply to any portion of Cline Falls Road.
- F. Erect and maintain bird boxes on wooden fence posts and tree trunks within open space areas to provide nesting sites for secondary cavity nesting species. Placement and dimensions of boxes should correspond to the likelihood of attracting appropriate species for the habitat present.
- G. Erect 2 to 3 nesting platforms for Canada geese on Eagle Lake.
- H. Increase the buffer of unmaintained shoreline on the north side of Eagle Lake to provide additional cover and habitat for wildlife. This part of the shoreline does not enter into play on the golf course.
- I. Develop riparian habitat along portions of the shorelines of new lakes where they do not hinder golf play. Plant shrub patches, seed with native grasses, and leave unmaintained to provide cover and wildlife habitat.
- J. Erect periodic raptor perch posts on existing transmission line poles which are of older designs and represent an electrocution hazard to raptors.
- K. Construct new electrical distribution lines for the development underground to

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- K. Construct new electrical distribution lines for the development underground to

eliminate avian electrocution hazards.

- L. Develop a joint project with the BLM on adjacent public lands to reduce potential adverse impacts on deer and improve the overall quality of wildlife habitat in the area. Potential activities include wildlife water developments, clearing and seeding of small patches of land, juniper thinning, snag creation, down log creation, brush pile creation and raptor perch posts.
- M. Develop an animal control policy to prevent harassment of wildlife.
- N. Create a wildlife education program.
- O. Develop riparian habitat along portions of any new lakes.
- P. Do not use poisonous baits to kill golf course rodents.
- Q. Work with ODFW and BLM to improve habitats on adjacent public lands.
- R. Any large expanses of fence built should be done to specifications which allow the passage of deer.
- S. Juniper habitats may be widespread, examples of ecologically balanced juniper-sage-bunchgrass communities containing "mature" older trees are extremely rare. The Hearings Officer interprets this comment as an indication that ODF&W that as many of these stands of trees should be protected when the subject property is developed. These areas should be identified and included as undeveloped open space areas on the FMP.
- T. The Deschutes County Comprehensive plan protects sensitive bird nesting sites. There are such sites for Golden Eagles upriver from the present development. The lands these birds hunt includes the land proposed for development. Having an adequate forage base is imperative to their survival and nesting success. The loss of nearly two square miles of foraging habitat must be considered in the mitigation assessment.
- U. Sewage and stormwater disposal systems shall be designed and built to prevent contamination of the Deschutes River and the aquifer below the resort.
- V. The Applicant should promote water conservation when facilities are constructed and when occupied through the use of low flow toilets and shower heads and other such measures. The Applicant shall provide an explanation of how this program will be accomplished, prior to FMP approval.
- W. Establish and implement an erosion control plan for all disturbed land, as required

by ORS Chapter 468. The Applicant's Erosion Control Plan, Exhibit 8, indicates that all surface water drainage will be contained on-site. This plan provides several erosion control methods which will be utilized by Eagle Crest in the construction process and in the design of roads and other facilities. The Applicant will be required to comply with this plan as a condition of approval of this CMP and of the FMP and to demonstrate that this plan complies with ORS Chapter 468.

- X. The Planning Director, with the assistance of ODF&W, shall assess to what extent the above listed mitigation measures have mitigated the fish and wildlife impact caused by the entire Eagle Crest resort on fish and wildlife habitat and resources, assuming that the most intensive development allowed by this approval will be undertaken by the Applicant and that all of the water that is withdrawn from the regional aquifer by Eagle Crest will reduce downstream flows in the Deschutes River by a like amount, starting at the point where the water from the aquifer enters the Deschutes River. If all impacts have not been mitigated by these measure, the Director and ODF&W shall develop a plan to mitigate the remaining impact through measures such as the purchase and rehabilitation of lands for fish and wildlife activities or for the protection of resources needed to assure fish and wildlife survival. The cost of undertaking these measures shall then be estimated and the Applicant shall be required to pay for the cost of undertaking these measures by making payments to an ODF&W trust fund that must be expended solely for mitigation activities.

Payments to the trust fund for the impact of Phase I, excluding the CRT property, shall be made prior to FMP approval. Payment for impacts caused by CRT expansion area shall be paid prior to platting of that area for building lots. Payment of the costs of mitigating the Phase II impacts shall be apportioned between the phases of the development in a manner that reasonably relates to the impact of each phase, and paid as a condition of plat approval for each phase.

- Y. The Applicant shall reimburse the County and ODF&W for the cost of determining the amount of the wildlife mitigation assessment, described in X., above.
- Z. The Applicant shall work with COID, BLM and the County if and when the new interchange (Highway 126 & Cline Falls Road) is built, to reclaim the areas adjacent to the existing Cline Falls Highway and Highway 126 adjacent to the property owned by COID (T15, R12, Sec. 14AO, Tax Lot 900). The Applicant shall remove the existing portion of the Cline Falls Highway that is abandoned and rehabilitate the road and dirt bike trails by tilling and seeding the property. Leave the area undeveloped, except for defined trails, to allow the area to act, in

conjunction with the COID property as a wildlife corridor to the Deschutes River.

38. The Applicant shall inventory and protect all important natural features, including but not limited to, significant wetlands, riparian habitat and landscape management corridors. Riparian vegetation within 100 feet of streams, rivers and significant wetlands will be maintained. Alterations to important natural features, including placement of structures, is allowed so long as the overall values of the feature are maintained. The wetlands and riparian areas along the Deschutes River shall be completely identified on the FMP map.
39. To ensure that all traffic impacts from the proposal are adequately mitigated, approval of this CMP should be contingent upon the following conditions of approval:
- * Applicant shall improve the Highway 126/Cline Fall Highway intersection so that it meets the full standards of the Oregon Department of Transportation. Eagle Crest is responsible for obtaining all required permits and approvals, including land use and Scenic Waterway (if applicable) approvals for construction of the interchange improvements prior to FMP approval. If the design and location of the proposed interchange is not approved by all permitting agencies, a different solution to the interchange traffic problem must be designed and approved prior to FMP review. Eagle Crest shall financially guarantee completion of the project through surety bonding or substantial financial assurances approved by the County prior to the closure of sale of individual lots or units in Phase II or CRT, as required by DCZO 18.113.110. The project shall be completed no later than when the impacts created by the resort development require the improvement. This date shall be determined by the Planning Director, prior to FMP approval. As the traffic study submitted by the Applicant did not include all resort generated traffic, the impact of commercial, sales office, employee and vendor traffic will need to be estimated and used to determine when the improvements will be needed.
 - * Applicant shall cause a traffic light to be installed at the intersection of Highway 20 and Cline Falls Highway prior to FMP approval. If ODOT refuses to allow installation of this traffic light, the Planning Director shall determine, by consultation with ODOT, the level of improvements that ODOT believes are warranted and shall require those improvements prior to FMP approval.
 - * The Final Master Plan for the proposed CMP shall include the proposed interchange design and the realignment of Cline Falls Highway, if approved. If the interchange is not approved, the Applicant shall scale back the size of the Phase II expansion, as required by DCZO 18.113.070(G)(1) or limit its impact on road systems as required by DCZO 18.113.070(G)(3).

- * The Applicant shall make all interim improvements recommended by the traffic study (i.e. - signs, flashing beacon, shoulder widening) to the Highway 126 and Cline Falls Highway intersection, prior to FMP approval.
 - * If a Comprehensive Plan amendment is needed to approve an interchange connection, the amendment should be adopted prior to, or concurrent with, Final Master Plan approval.
 - * The Applicant is responsible for all permit, engineering, and physical improvement costs. The Applicant also, must place money in a trust account with the County for the improvement of Cline Falls Highway with money to be paid on a per lot sales basis, at a rate to be determined by the Planning Director, payment of which shall be included as a condition of Final Master Plan approval.
 - * Deschutes County shall revise the figures projected in the Kittelson studies to reflect all resort generated traffic and to correct the omissions cited by the Hearings Officer, prior to FMP approval. The Applicant shall reimburse the County for the cost of obtaining such an update.
40. All roads within the development shall be built to a width of 28 feet. Additionally, the Applicant shall comply with all applicable improvement standards established by DCZO Chapter 17. The Applicant shall develop a street plan, including street construction specifications for all Phase II and CRT expansion area streets, all new streets in the existing resort and for all intersections (crosswalks, signs, etc.). All street development shall comply with the street plan. This plan must be approved by the Planning Director prior to FMP approval. The plan shall also include plans for the Cline Falls Highway and Eagle Crest entrance roads intersection and for crossings at this location. Cline Falls Highway must be improved to at least 28 feet in width with left turn lanes and right turn deceleration lanes at both entrances (existing and proposed).
41. All bicycle paths that are separate from the roadways shall be a minimum of twelve feet in width to accommodate both pedestrian and bicycle traffic. The system of paths shall be fully designed and clearly shown on the FMP. The path system shall be designed to incorporate the suggestions for paths made by the Bicycle Committee to the extent determined appropriate by the Planning Director. If paths are included in street sections the paths shall be of a width approved by the Deschutes County Public Works Department, but in no event may any roadway be less than 28' in width.
42. No structures may be constructed on any portion of the resort property where slopes exceed a grade of 25%.

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42. No structures may be constructed on any portion of the resort property where slopes exceed a grade of 25%.

43. Prior to FMP approval, the Applicant shall provide written proof from the Redmond RFPD that all portions of the resort have been annexed to the fire district.
44. The Applicant will be required to provide a minimum fire protection flow of 1000 gpm for residential uses and 2,500 gpm for commercial areas from fire hydrants located in all places within the resort identified by the Redmond Rural Fire Protection District. This condition must be met for the existing development (Phase I, excluding CRT) at the time of approval of the FMP. This condition must be met prior to final platting of CRT expansion area or any phase of Phase II.
45. The Applicant shall assure that "[a]dequate public facilities to provide for necessary safety services such as police . . . will be provided on the site to serve the proposed development" and that "adequate police . . . protection will be ensured in perpetuity in a manner acceptable to the County." The Applicant shall work with the Sheriff's Office to quantify the need for police facilities and services and to develop a plan to meet the need. The Planning Director shall review the plan and must determine that the plan meets the increased demand for police services and the requirements of DCZO 18.113.070 (R), before the Applicant may receive FMP approval.
46. The following list of water conservation measures shall be adopted for all Eagle Crest water users:
- * Each domestic water service will be metered.
 - * A rate structure will be developed that provides financial incentive to conserve water.
 - * Golf course irrigation will be controlled by an automatic irrigation controller to allow:
 - a) applications during efficient hours of the day;
 - b) reduction of the applications to accommodate weather conditions; and
 - c) hydraulically efficient valve controls to assure uniform and consistent applications throughout the irrigated areas.
 - * Covenants and restrictions will be established which encourage the preservation of natural vegetation, the limitation of irrigated areas, and the promotion of non-irrigated landscape improvements.
 - * Low-flow plumbing fixtures will be encouraged.

The Applicant shall cause limits to be placed upon the hours of irrigation for all system

users, so that irrigation will occur during the hours of the day when it will do the most good. The Applicant shall demonstrate how these conservation measures will be enforced, to the satisfaction of the Planning Director, prior to FMP approval. The Applicant shall demonstrate to the County Planning Director, that it has adopted this conservation system for its entire water system (Cline Butte Utility Company) and that all users will be bound to comply with conservation measures.

47. The Applicant shall provide proof that all of its existing Eagle Crest water rights contain the standard OWRD water right conditions (approximately 15), including those items referenced by David Newton in his November 1, 1993 letter to Bill Lyche (Exhibit 67). If such conditions are not currently included in the existing Phase II water rights, Eagle Crest shall consent to written amendment of its existing permits to include these conditions. This requirement is imposed to protect the water rights of prior water users, to assure that OWRD will be able restrict Eagle Crest's use of water use in the event of a water shortage and to force a cessation of pumping if excessive declines in well water levels occur.
48. The Applicant shall obtain approval from the Oregon Water Resource Department for domestic water use in the Phase II property, as a condition of FMP approval.
49. The Applicant shall provide proof that Eagle Crest's water sources do not include any perched water sources, prior to FMP approval.
50. If a perched water table is pierced to access the regional aquifer, the well must be sealed off from the perched water table.
51. Prior to FMP approval, the Applicant shall design a mechanical treatment facility and complete sewage collection system, with at least two treatment plants to assure effective treatment of effluent during high flow and low flow periods. The facility shall be sited on a parcel of property within the destination resort that is large enough to accommodate all sewage treatment plant facilities, at least 23 acres in size. The Applicant shall set aside or obtain ownership of such a site and provide proof of ownership to the Planning Director, prior to FMP approval. The site must be shown on the FMP. Plans for the treatment facility shall include an effluent pond designed to hold effluent during periods when it may not be utilized for irrigation or other beneficial uses.
52. The Applicant shall obtain DEQ approval of the mechanical treatment facility and collection system plan, prior to FMP approval. If it is documented that DEQ approval is not available, the Applicant shall demonstrate to the Deschutes County Planning Director that the facility design meets DEQ requirements for such facilities, prior to FMP approval.
53. Prior to FMP approval the Applicant shall do the following: (a) Design a wastewater

users, so that irrigation will occur during the hours of the day when it will do the most good. The Applicant shall demonstrate how these conservation measures will be enforced, to the satisfaction of the Planning Director, prior to FMP approval. The Applicant shall demonstrate to the County Planning Director, that it has adopted this conservation system for its entire water system (Cline Butte Utility Company) and that all users will be bound to comply with conservation measures.

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53. Prior to FMP approval the Applicant shall do the following: (a) Design a wastewater

reuse program that will utilize wastewater and which may include, but not be limited to, use of effluent to irrigate golf courses, to create wetlands or to irrigate cropland; and (b) Design the transportation and distribution system which will be used to transport and discharge effluent to and on the site of reuse; and (c) If effluent will be reused on property located outside of the boundaries of the resort, the Applicant must submit proof that it has obtained a binding legal commitment to discharge effluent on that site; and (d) State what level of treatment (I through IV) will be achieved by the plant designed, demonstrate how DEQ requirements (OAR regulations) on reuse will be met, and provide assurances acceptable to the Planning Director that measures to comply with the regulations will be met once effluent is put to beneficial use.

54. The Planning Director shall determine at what point of development a mechanical treatment facility will become feasible and require its construction at or prior to that time in the conditions of approval of the FMP. The Applicant shall provide a performance bond or other financial assurances satisfactory to Deschutes County Legal Counsel, assuring completion of the mechanical treatment facility and related facilities.
55. The Applicant shall identify, on the FMP, all areas in the resort that are not suited for development with septic systems. No buildings requiring sewer service may be sited, or residential or commercial lots platted, on these properties until such time as the mechanical treatment facility is constructed and operational.
56. The Applicant shall obtain septic system feasibility approval from the Deschutes County Environmental Health Department for each proposed lot in each phase of development platted prior to approval and filing of the plat, until such time as the central facility is constructed and operational and when service by that facility to the platted area is assured.
57. The Applicant has stated that the septic tanks on each lot will be backed up with a central collection system. This system has not been designed. The Applicant shall design the back up effluent collection system and designate an area for central and/or back up effluent disposal prior to FMP approval. The Applicant shall construct the back up, central drainfield prior to platting any portion of Phase II and shall install all collection lines for the system in each phase, prior to the issuance of building permits in that phase.
58. The Applicant shall make an application to DEQ for a WPCF permit for the proposed septic system and backup drainfield, and comply with applicable Oregon Administrative Rules regarding beneficial use of waste water, as determined by DEQ. The Applicant shall have received approval of a WPCF permit consistent with this provision prior to applying for approval of the Final Master Plan. The Applicant shall also obtain approval of the mechanical system, prior to operation.

59. Approval of each phase of development that will utilize subsurface drainage systems may be denied by Deschutes County if DEQ has withdrawn approval for the subsurface system or if there is substantial evidence to indicate that the systems are failing or causing significant contamination of groundwater or river water.
60. If, at some time in the future, the Comprehensive Plan is amended to allow the Eagle Crest resort to connect to the Redmond sewer system, the Applicant may apply to the Planning Division for amendment of these conditions of approval to authorize that sewage treatment option and to remove the on-site treatment plant requirements. The Applicant will need to demonstrate that Redmond's sewage treatment plant has adequate capacity to treat the sewage in compliance with all sewage treatment regulations and that the Applicant has obtained a binding, long-term commitment from the City of Redmond to accept and treat the Eagle Crest sewage and to make a beneficial use of the effluent.
61. The Applicant will be required to either: 1) dedicate land for park purposes; or 2) pay a \$350 per-lot park acquisition and development fee in lieu of actual dedication as required by Section 17.44.010 of Title 17 (the County Subdivision Ordinance). This fee will be charged at the time of final plat review for the platting of all lots within the resort unless a dedication of park land, that complies with the requirements of Section 17.44 occurs.
62. The Applicant shall develop a landscaping plan for the northern boundary of Phase II that adjoins Cline Falls Oasis and any other residential lots to provide buffering between the resort and these residential property. The Applicant shall submit and receive approval of a landscaping plan that meets the requirements of DCZO 18.113.070(N) for that area, prior to FMP approval.
63. The submitted Conceptual Master Plan indicates a commercial core area in the center of the proposed Phase II development, a resort sales office in Phase I and a future commercial area in Phase I. These are the only areas in the Conceptual Master Plan that may be developed for new commercial uses.
64. All commercial areas be screened from the highway. This includes the commercial area proposed in Phase I. The proposed sales office for Eagle Crest shall be turned to face the resort, rather than Cline Falls Highway and shall be screened from view from the Highway. No parking shall be placed between the sales office and Cline Falls Highway. No sales office signage, signs for commercial activities within the resort, or ground mounted signs advertising the sales office may be visible from Cline Falls Highway.
65. Area 11 of Phase II shall not include any commercial facilities.

66. The Applicant shall demonstrate, prior to FMP approval, that a plan exists to ensure a transfer of common areas, facilities such as sewer, water, streets and responsibility for police and fire protection to owners' associations or similar groups, if contemplated. If such transfer is not contemplated, the owner or responsible party shall be clearly designated. Adequate open space, facility maintenance and police and fire protection shall be ensured in perpetuity in a manner acceptable to the County.
67. There are several "temporary" structures currently in use at Eagle Crest. These include the temporary modular sales offices located at the entrance to Phase I, a temporary modular day care center near the Inn at Eagle Crest, and a temporary golf pro shop for the Eagle Ridge Golf Course within the proposed Eagle Crest Phase II area. These are the only temporary structures allowed in the entire Eagle Crest Resort. As required by this section, any new temporary structures would be allowed for no more than 18 months from the date that CMP approval is final, and would be subject to all use and site plan standards. The temporary sales office must be removed no later than when the new sales office is occupied. The temporary golf course pro shop shall be removed no later than when the first plat in Phase II is approved.
68. Applicant shall provide proof that its submitted Open Space Management Plan applies to all Eagle Crest Phase I and Phase II property owners, by inclusion in CC&Rs that bind all of the property included within the resort. The Open Space Management Plan must specifically protect the 50% open space required by the County's destination resort ordinance from development, unless such development is specifically allowed by the destination resort ordinance, as written at the time of submission of the CMP application.
69. The Applicant shall design and install fences or other buffers between the proposed golf course and any and all roadways, bikeways and pedestrian paths, so that golf balls do not enter the ways, prior to FMP approval or demonstrate that golf balls will not stray into such transportation areas. Additionally, the Applicant shall continue to comply with this condition once FMP approval is granted. If the Planning Director determines that there is substantial evidence to indicate that golf balls are straying from the golf course and entering roadways or pedestrian or bicycle paths, the Applicant shall design and implement measures to keep golf balls from entering such areas.
70. This approval is subject to continued compliance with all provisions of the County's destination resort ordinance, as outlined in this decision. The Applicant and its successors or assigns shall assure that all conditions of approval that is mentioned in any part of this decision, whether or not it is listed in this conditions of approval section. The applicant shall be required to demonstrate that the conditions of CMP and FMP approval have been, are being and will be met prior to approval of future land divisions and phases within the resort.

71. The applicant shall submit a Title Report for the subject property to show evidence of clear, marketable title and that no encumbrances exist on the areas being dedicated as open space or being developed with resort recreational facilities or sewer or water utilities. If any encumbrances exist, they shall be removed prior to acceptance by the County, unless otherwise approved by the Board of County Commissioners.
72. The applicant shall meet all conditions of Final Master Plan approval contained in DCZO 18.113.090 through 18.113.110 and in this decision.
73. Conditions of approval that were discussed in the text and which the Hearings Officer said would or should be imposed, are hereby made conditions of approval of this decision. This provision is included to make it clear that a failure to list such conditions in this section is not intended to absolve the Applicant of responsibility to comply with such conditions.
74. This Conditional Master Plan approval shall be void if the Final Master Plan is not submitted for final master plan review within two (2) years from the date this decision is final.

**THIS DECISION BECOMES FINAL 10 DAYS FROM THE DATE MAILED,
UNLESS APPEALED.**

DATED this _____ day of January, 1994.

LIZ FANCHER, Hearings Officer

DECISION OF DESCHUTES COUNTY HEARINGS OFFICER
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DECISION OF DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBERS: CU-93-94, V-93-28

HEARING DATES: October 14, 1993 and October 21, 1993

RECORD CLOSED: November 3, 1993

APPLICANT: Eagle Crest Partners, Ltd.
Post Office Box 1215
Redmond, Oregon 97756

PROPERTY OWNER: Eagle Crest Partners, Ltd.

REQUEST: Applicant is requesting approval of a Conditional Use for a Destination Resort Conceptual Master Plan (CMP) that would allow a 746 acre expansion of the existing Eagle Crest Destination Resort and a Variance to setback standards for certain proposed roadways along the perimeter of the resort.

STAFF REVIEWER: Dale Van Valkenburg, Associate Planner



I. APPLICABLE STANDARDS AND CRITERIA

Title 18 of the Deschutes County Code, the County Zoning Ordinance:

- Chapter 18.16, Exclusive Farm Use - EFU-SC Zone.
- Chapter 18.32, Multiple Use Agriculture - MUA-10 Zone.
- Chapter 18.84, Landscape Management - LM Zone.
- Chapter 18.113, Destination Resorts - DR Zone.
- Chapter 18.128, Conditional Uses.
- Chapter 18.132, Variances.

Title 22, the Deschutes County Land Use Procedures Ordinance.

PL-20, The Deschutes County Year 2000 Comprehensive Plan, Goals and Policies pertaining to the siting of Destination Resorts.

II. SCOPE OF REVIEW

This matter is reviewed by the Hearings Officer to determine whether the conditional use and variance applications filed by Eagle Crest meet the requirements of County and, where applicable, state subdivision and land use law. The Hearings Officer does not have authority to change or waive the requirements of the County's land use ordinances, except when the criteria for obtaining a variance have been established by the Applicant. The Applicant has the responsibility for proving that each and every applicable requirement of law has been or will be met by the proposed destination resort and that all conditions for obtaining a variance to County standards have been met. If this burden has not been met, the applications must be denied. Conversely, the Hearings Officer must approve the applications if all relevant criteria are met.

The Hearings Officer's decision is limited, by law, to the facts presented to the Hearings Officer and that are included in the record of this matter. These facts include written documents, oral testimony and matters observed by the Hearings Officer when visiting the Eagle Crest resort and Eagle Ridge golf course. The findings in this decision determine which facts presented are the basis for decision of the application and includes conclusions about whether the Applicant has satisfied the conditions for approval of the submitted applications.

III. SUMMARY OF DECISION

The Hearings Officer has approved Eagle Crest's application for conceptual master plan approval for a destination resort expansion. That application included the entire Eagle Crest Resort property, however, in order to meet the criteria of the County's destination resort ordinance. As a result, many of the provisions of this decision apply to the existing Eagle Crest resort and to the proposed expansion areas. The conceptual master plan was granted subject to compliance with a number of conditions, intended to assure that the requirements of the County's destination resort ordinance are met by the Applicant.

CONCEPTUAL MASTER PLAN:

SEWAGE DISPOSAL - The Applicant is required by the destination resort ordinance to develop a sewage disposal plan that makes a "beneficial use" of wastewater, if practicable. The waste treatment option preferred by the Applicant, septic tanks and a septic tank collection system, does not make any beneficial use of the wastewater. The Applicant has convinced the Hearings Officer that the Applicant's septic system plan is the only feasible plan for the resort at this time. This conclusion is based upon the fact that the sewage treatment demand for the resort is relatively low and subject to wide variations in volume.

The Hearings Officer has, however, required that the Applicant plan for a future central sewage treatment system, to reserve land for a treatment plant on Eagle Crest

property and to assure that such a system will be built when needed. The details of this plan will be formulated prior to final master plan approval. The Hearings Officer imposed this requirement because the septic tank disposal system will not be able to serve all lots in the resort. Additionally, information provided by the Applicant's wastewater treatment expert indicates that, as the resort community grows, it will become feasible to operate a central treatment facility, due to an increase in the volume of sewage, as back up facilities may be constructed and used only during periods of high demand. The construction of a central treatment system will enable the Applicant to provide service for all proposed uses and lots and will assure beneficial use of wastewater, when such use becomes feasible.

The Hearings Officer has also left open the possibility that the Applicant may obtain sewage treatment service from the City of Redmond through a connection to the Redmond sewage disposal system, in lieu of providing an on-site treatment plant. This option may not, however, be exercised until the County's Comprehensive Plan is amended to authorize the connection and until the Applicant has obtained a binding commitment by the City of Redmond to accept the resort's effluent and to make a beneficial use of the treatment plant effluent, as required by the County's destination resort ordinance.

GROUND WATER AVAILABILITY - The Applicant has demonstrated that an adequate water supply is available to provide water for the resort from a regional aquifer and surface water source, and not from a perched water table. Although water supplies are not infinite, it appears there is adequate water for the proposed resort development and to serve the surrounding area at its current level of development. The Applicant already has water rights for the irrigation of all resort golf courses and for domestic uses in Phase I. The Applicant has applied to the State Water Resources Board for a water permit for domestic uses in the Phase II area. That board will decide whether to issue water rights to Eagle Crest for domestic uses in Phase II. Approval of this application is conditioned upon approval of the Applicant's pending water rights application by the Oregon Water Resources Department.

TRANSPORTATION - The Applicant concedes that a grade-separated traffic interchange is required at the intersection of Highway 126 and the Cline Falls Highway and that a traffic light is needed at the intersection of Highway 20 and Cline Falls Highway. The Applicant has been required to cause these improvements to be made or assured, subject to obtaining land use approval for the interchange, before final master plan approval is granted. The amount of financial participation by the State of Oregon in these projects, if any, is subject to the State's discretion.

INTERNAL TRANSPORTATION - The minimum pavement width for private roads within the resort, pursuant to Table "A" of Title 17 (as amended by Ord. No. 93-012) is 28 feet. Also, Cline Falls Highway must be improved to at least 28 feet in

width, along the Eagle Crest property frontage on that road, with left turn lanes and right turn deceleration lanes at both entrances (existing and proposed).

BICYCLE & PEDESTRIAN - The Deschutes County Bicycle Advisory Committee has raised several concerns with the proposed bicycle facilities within and adjacent to the resort. The Committee has also offered several suggestions for improving the safety and usability of the proposed facilities. The Applicant will be required to incorporate these suggestions into the resort design as a condition of receiving final master plan approval.

GOLF COURSE SETBACKS - The Applicant has been required to meet destination resort setback standards for the Eagle Ridge golf courses in Phase II that has not yet been constructed. The existing Eagle Ridge golf course does not meet the 50 foot setback requirement of the destination resort ordinance. The applicant may, however, have a right to retain the golf course in its present location if it is determined by the County Planning Director, prior to final master plan approval, that the course is a valid nonconforming use. If the course is not determined to be a valid nonconforming use, the Applicant may either comply with the setback, in a number of different ways, or may seek permission to maintain the course in its present location. These actions must be accomplished prior to final master plan approval.

OPEN SPACE - The Applicant's Open Space Area map needs to be revised so that it accurately reflects areas that qualify as Open Space under the destination resort ordinance. Floodplains, most developed areas (except golf courses) and required landscaped areas must be excluded from Open Space areas. The Applicant's master plan may need to be revised to provide more open space than shown on the CMP.

EMERGENCY SERVICE PROVISION - The entire resort area must be annexed into the Redmond Rural Fire Protection District, prior to Final Master Plan approval. The Applicant must also assure that there will be adequate police service facilities at the resort by developing a police services plan prior to FMP approval.

WILDLIFE DAMAGE MITIGATION - The Hearing Officer has required the Applicant to mitigate wildlife damage caused by the resort development, as required by the destination resort ordinance. The Applicant will be required to do this by taking actions specified in this decision and by paying money, if necessary, to a wildlife trust fund. The fund will be used to mitigate damages that are not adequately mitigated by implementation of the mitigation actions listed in this decision. The amount of this contribution will be determined prior to final master plan approval.

ECONOMIC ANALYSIS - The economic analysis of the impact of resort development provided by the Applicant's economic expert failed to assess the economic cost of all items listed in the County's destination resort ordinance. The Applicant will be required to assess these indirect costs, prior to FMP approval. The

Applicant will then be required to revise the assessment of benefit in the submitted analysis to reflect these indirect costs. If the analysis establishes that the resort will not have a substantial economic benefit, the Applicant will be given an opportunity to revise its resort plan to achieve that benefit.

VARIANCE

BIKE PATH/ROAD VARIANCE - The Applicant request permission to build roads and bicycle paths in setback areas, on the edge of the resort property. The Applicant failed, however, to meet the stringent requirements included in the County's land use ordinance for variances of this type. The requested variances were either not needed in order to accommodate road and bike ways or were necessitated by the actions of the Applicant in moving the location of the golf course closer to the resort boundaries than approved by the County in 1990.

IV. FINDINGS OF FACT¹

The Hearings Officer makes the following findings of fact regarding land use applications CU-93-94 and V-93-28:

1. **SUBJECT PROPERTY:** The subject property consists of three adjacent areas:
 - A. The first area is the existing Eagle Crest destination resort, referred to in the application material, and in this Decision, as "Eagle Crest Phase I". This area contains 508 acres and is located on the east side of Cline Falls Highway, adjacent to the Deschutes River. Eagle Crest Phase I consists of numerous tax accounts. These accounts are shown on Staff Exhibit #1.
 - B. The second area is the proposed primary expansion area for Eagle Crest Resort, referred to as Eagle Crest Phase II. This property is located at 68397 Cline Falls Highway, Redmond, and is further identified as tax lots numbered 15-12-00-1506, 15-12-00-4600, 15-12-23B-1500, 15-12-23B-1400, 15-12-22-101 and 15-22-102. This area is located west of the Cline Falls Highway on the east slope of Cline Buttes and contains 710 acres. It is currently developed

¹Many of the findings made by Associate Planner Dale Van Valkenburg in his comprehensive and well-written Staff Report regarding the Eagle Crest application have been adopted by the Hearings Officer in this report as findings of the Hearings Officer. The Hearings Officer wishes to thank Mr. Van Valkenburg for the valuable assistance he has provided in developing and analyzing the voluminous record required for a destination resort conceptual master plan application.

with the 18-hole Eagle Ridge Golf Course approved under County conditional use and site plan file Nos. CU-90-189 and SP-90-115.

- C. The third area consists of 36 acres adjacent to Eagle Crest Phase I, referred to in the application material as "Canyon River Territories" (or "CRT Expansion"). The CRT Expansion area is adjacent to Condor Drive at the southwest corner of Phase I, and is comprised of the following tax lots: 15-12-23B-900; 15-12-23D-200; 15-12-23D-100; 15-12-23D-400; and 15-12-23D-300.

FINDING: The Applicant sought, in its Supplemental Burden of Proof Statement, to enlarge the size of the CRT Expansion Area to include Tax Lots 15-12-23B-1501 and 15-12-23B-1300 (See Exhibit 69). These areas were not included in the Applicant's CMP application. They may not, therefore, be added to the resort by the Hearings Officer, at this time. The Applicant has not provided any information about the impacts that will be caused by these additions on the entire resort proposal. No notice was provided to affected parties of the inclusion of these areas in the resort application, so it is not legally possible to include these properties in this approval.

2. **ZONING:** The Eagle Crest resort and proposed expansion areas include several different zoning designations. Eagle Crest Phase I is zoned primarily MUA-10, Multiple Use Agriculture, with areas of EFU-SC, Exclusive Farm Use - Sisters/Cloverdale Subzone. All of the residential and commercial development within Phase I is located on areas zoned MUA-10. The EFU zoning is found on areas utilized as open space, golf courses, and playing fields. There is also a Landscape Management Combining Zone along those portions of the property within 1/4 mile of the Deschutes River and within 1/4 mile of Highway 126.

Eagle Crest Phase II is zoned entirely EFU-SC, with that portion of the property located within 1/4 mile of Highway 126 also within the LM Combining Zone.

The Canyon River Territories area is zoned primarily Rural Residential - 10 Acre Minimum. Some Canyon River Territories lots are zoned EFU-TRB.

All three phases of Eagle Crest are within the Destination Resort (DR) Combining Zone.

3. **PROPOSAL:** The Applicant, Eagle Crest Partners, Ltd., has applied for a Conceptual Master Plan and Conditional Use Permit for a Destination Resort to allow a 746 acre expansion of Eagle Crest destination resort. The original application materials reversed the acreage for Phase I and Phase II, crediting Phase I with 710 acres and Phase II with only 508 acres. As a result of this error, the Notice of Public Hearing mailed to surrounding property owners referred to a 544 acre expansion of the resort instead of the actual expansion size of 746 acres. Notice of this error was

provided to affected parties, in the County Planning Division staff report regarding this application. The report was mailed to affected parties.

In actuality, the Applicant proposes to use the existing 508 acre Eagle Crest Phase I as a basis for expanding into two new areas. Eagle Crest Phase II will contain 710 acres and is located to the west of Phase I, across Cline Falls Highway. Canyon River Territories is adjacent to Phase I, on the east side of Cline Falls Highway and contains 36 acres. The total size of the proposed resort will be 1,254.34 acres.

The Applicant is seeking approval for an additional 497 single-family homesites (41 in the CRT Expansion and up to 456 in Phase II) over those already authorized in Eagle Crest Phase I, plus 162 multi-family units (1/5 share condominiums) and 120 timeshare townhouses and 226 hotel room facilities for a total of 891 new units and a total of 1410 total units in both phases, according to Exhibit 37. Narrative in the Applicant's burden of proof statement and a chart on Exhibit 2 indicate that the Applicant may not construct all 456 homes, but may elect to build multiple family units in their place. There appear to be inconsistencies between the burden of proof statement, Exhibit 2 and Exhibit 37 regarding the number of units allowed. The Hearings Officer, therefore, finds that the numbers shown in this Decision shall control over all other written documents submitted by Applicant regarding the number and type of units that are allowed by this approval. This number and type of units allowed by this approval is discussed in greater detail below.

Phase II is proposed to be constructed in a series of phases, as depicted on a map labelled "Eagle Crest II Preliminary Master Plan" [Exhibit 2]. Proposed project amenities will include tennis courts, swimming pools, recreation centers, two 18-hole golf courses (previously approved under CU-90-189 and SP-90-115), soccer and football fields, and significant areas of open space.

The CRT Expansion will be included as a part of Eagle Crest Phase I and is proposed to be built in two phases. No project amenities are to be located in the CRT Expansion other than open space areas.

The Applicant has submitted the following Exhibits in support of this application:

1. Eagle Crest Phase I and Phase II Preliminary Master Plan Map
2. Eagle Crest II Preliminary Master Plan Map
3. Eagle Crest II - Phase I Tentative Plan Map
4. Canyon River Territories Tentative Plan Map
5. Map of Office Expansion Area

6. April 1992 Wildlife Assessment by Beak Consultants, Incorporated with recommendations for mitigation of damage to wildlife habitat
7. Hydrogeologic Study by David J. Newton Associates, Inc. for Eagle Crest Phase II, April 1992
8. Letter dated March 11, 1992 regarding erosion control from Thomas A. Walker, P.E., Senior Associate for W&H Pacific to William D. Lyche of Eagle Crest Partners Ltd.
9. Traffic Impact Analysis by Kittelson & Associates, Inc. for proposed Eagle Crest Resort Expansion, dated April 1992
10. June 12, 1992 Letter from Kittelson & Associates to Bill Lyche of Eagle Crest Partners, Ltd. regarding impacts of adding 41 units to Phase I (CRT Expansion)
11. Letter from Daniel A. Seeman of Kittelson and Associates, Inc. to Mark DeVoney, ODOT Transportation Planner, regarding possible grade separated interchange agreement
12. Vacation Resort Owner Documents
13. Estate Homesite Owner Documents
14. Eagle Crest Estate Homesite Association - Architectural Review Committee Policies and Guidelines, February 1992
15. Eagle Crest Open Space Management Plan
16. Eagle Crest statement regarding public use of Eagle Crest facilities
17. Domestic Water Supply System Master Plan by W&H Pacific
18. Letter from W&H Pacific re Water Impact of CRT Expansion
19. October 1992 technical review of Eagle Crest, Phase II hydrogeologic study by Joseph B. Gonthier, Hydrologist and Registered Professional Geologist for Deschutes County Community Development Department.
20. October 16, 1992 letter from David J. Newton Associates, Inc. responding to concerns regarding groundwater raised by WaterWatch of Oregon.

21. April 19, 1993 letter from Oregon Water Resources Department (File G-12905) stating that the Eagle Ridge Development Corporation application for a water use permit for three wells to provide domestic water for 900 families and lawn irrigation satisfies OWRD technical review requirements. Letter states that the application was being subjected to a public interest review. Permit would authorize use of up to 3 CFS or 1330 gallons per minute. Proposed permit conditions would require beneficial use of all water, without waste, no later than October 1, 1996.
22. Letter from Central Electric Cooperative stating willingness and ability to serve Eagle Crest Phase II
23. Letter from U.S. West Communications regarding ability to serve Eagle Crest Phase II
24. Letter from Falcon Cable T.V. stating ability to serve Eagle Crest Phase II
25. Employee Safety Manual
26. Sewage Disposal Plan by W&H Pacific for Eagle Crest Phase II
27. Letter re Impact on Existing Sewage Collection System of CRT Expansion
28. Letter from Thomas A. Walker, Senior Associate, W&H Pacific re Domestic Water and Sanitary Sewage, with attachment of OAR 340-55-005 through -030
29. Wildfire Prevention and Evacuation Plan for Eagle Crest Phase II
30. Report by Janet Hardwick, Housing Available for Employees in Bend and Redmond
31. Analysis of Projected Economic and Fiscal Impacts of Eagle Crest II by Hobson & Associates
32. Rental Agency Agreement
33. Cost of Facilities to Date
34. Improvement Costs for Recreational Amenities Phase 1 & 2
35. Narrative of Existing Structures; Proposed Uses - Eagle Crest, Phase II

36. Open Space Calculations (two documents submitted at different times)(51.89% open space for entire resort per September 1993 calculations, 53.33% per October 1993 calculations)
37. Overnight Accommodations v. Total Units Calculations (original and revised, the original is on Holmes, Hurley letterhead)
38. Eagle Crest II - Roadway Setback Map
39. Letter from Eagle Crest CEO and President Jerol E. Andres re financing stating that Eagle Crest Partners, Ltd. had spent \$3.2 million dollars on Eagle Crest Phase II development and nearly \$700,000 in expenses in seeking approvals required for resort expansion.
40. Partial Transcript of October 8, 1992 Hearing regarding withdrawn applications for destination resort approval and variances (through Applicant's presentation, no testimony from opponents' or rebuttal testimony)
41. Letters of Support from Robert C. Riggs, Mayor of Redmond and Elton Gregory, Superintendent of Redmond School District 2J
42. United States Department of Interior, Bureau of Reclamation Memorandum dated October 1 1991 enclosing Technical Reconnaissance Report, Survey of Groundwater Resources, Upper Deschutes River Basin, Oregon by Gary King
43. Hydrogeologic Study, Eagle Crest Phase II, Supplemental Findings by David J. Newton Associates, Inc. dated September 30, 1993
44. October 11, 1993 letter from David J. Newton, P.E., C.G. to Bill Lyche stating that Eagle Crest wells obtain water from the regional groundwater aquifer, not from perched water tables.
45. October 14, 1993 letter from Daniel A. Seeman of Kittelson & Associates, Inc. regarding the traffic impact of Eagle Crest Phase II traffic on the intersections of U.S. Highway 20 and Cline Falls Highway and U.S. Highway 20 and 7th Street in Tumalo.
46. October 13, 1993 letter from Janet Hardwick, Director of Personnel for Eagle Crest to George Read, Planning Director stating that Eagle Crest did not invest in the Stoneybrook Apartments in Redmond, as stated in her February 21, 1992 letter.

47. Order No. 92-110 of the Board of County Commissioners of Deschutes County annexing Eagle Crest Phase II into Rural Fire Protection District No. 1.
48. Memorandum from Kurt Giesler, COIC, to Sharon R. Smith dated October 11, 1993 regarding the 1984 value of Eagle Crest resort improvements.
49. Flood Insurance Rate Map for Deschutes County
50. Open Space Map prepared by W&H Pacific, dated 10-8-93
51. November 2, 1993 letter from Kittelson and Associates to William Lyche regarding outstanding traffic issues regarding Eagle Crest impacts to public road systems²
52. Schematic Sewage Disposal Plan for Typical Single Family Septic Tank and Drainfield, November 1, 1993 by W&H Pacific
53. March 24, 1987 letter from Thomas A. Walker, P.E. to Karen Lyche of Eagle Crest Partners with water pollution control facilities permit for the Eagle Crest Resort Phase I
54. September 16, 1992 letter from Thomas A. Walker, P.E. to James L. VanDomelen, P.E. of the Water Quality Division of the Oregon Department of Environmental Quality and application for a Water Pollutant Control Facilities Permit.
55. June 4, 1992 Letter from Oregon Department of Environmental Quality (DEQ) to Eagle Crest Partners Ltd. acknowledging receipt of WPCF Permit Renewal Application.
56. June 7, 1990 Letter from DEQ stating that Eagle Crest Partners then possessed a current Water Pollution Control Facilities Permit (No. 100104) for its wastewater treatment system located in Eagle Crest Phase I and stating that system was operating properly when inspected on October 17, 1989 by DEQ.

²The applicant submitted a large scale map of the proposed new interchange of Cline Falls Road and U.S. Highway 126 as Exhibit 51 during the hearing of this matter. The applicant subsequently submitted this document and identified it as Exhibit 51. The Hearings Officer, therefore, renumbered the interchange map Exhibit 70.

57. August 10, 1992 letter from James L. Van Domelen, P.E. to Thomas A. Walker, P.E. regarding establishment of a sewerage system master plan for Phase II of Eagle Crest.
58. March 5, 1993 from Thomas A. Walker to Judy K. Johndohl of DEQ regarding water pollution control facilities permit application for Eagle Crest II sewerage system.
- 58A. Land Use Compatibility Statement submitted to DEQ regarding water pollution control facilities permit application for Eagle Crest II sewerage system.
59. Certificate of Limited Partnership for CBU Ltd., an Oregon Limited Partnership listing Eagle Crest G.P., Inc., an Oregon corporation, as only general partner.
60. October 8, 1992 letter from Judy K. Johndohl, DEQ, to Cline Butte Utility Company stating that water pollution control facilities permit was received by DEQ and assigned application number 997015 and requesting additional information.
61. June 3, 1991 letter from DEQ to Canyon River Territories residents regarding ground water, Deschutes River water and pesticide and lawn fertilizer concerns.
62. November 3, 1993 letter to the Hearings Officer from William D. Lyche, Director of Development for Eagle Crest, stating that Eagle Crest provides security, safety and emergency service through a staff of 11 full-time employees.
63. November 2, 1993 letter to the Hearings Officer from John Thronson, Director of Golf Maintenance of Eagle Crest, regarding water conservation measures employed by Eagle Crest on its golf courses.
64. Memorandum from Thomas W. Cook, Associate Professor of Horticulture for Oregon State University entitled "Are Golf Courses Polluting the Environment?" discussing golf courses in the Portland, Oregon area.
65. Summary of Results of Employee Questionnaire by Janet Hardwick, Personnel Department of Eagle Crest and Listing of Job Titles at Eagle Crest Resort as of June 15, 1993
66. November 1, 1993 letter to Hearings Officer regarding Eagle Crest Water Rights from Thomas A. Walker, P.E.

67. November 1, 1993 letter from David J. Newton, P.E., C.E.G., regarding Eagle Crest Phase II Groundwater Issues
68. October 20, 1993 Memorandum prepared by Hobson & Associates in response to testimony and documents submitted by Marjorie S. Turner and Clyde Everton criticizing Hobson & Associates' economic analysis of economic impacts.
69. Current Tax Map Designation of Eagle Crest Phases I and II, including CRT area and surrounding properties.
70. Interchange Map

The Applicant has also submitted the following documents prepared by Sharon R. Smith and Robert S. Lovlien, of Attorneys for Applicant (Holmes, Hurley, Bryant, Lovlien & Lynch), in support of this Application: Burden of Proof Statement, Response to Staff Report, Supplemental Burden of Proof Statement Addressing Questions Raised by Hearings Officer dated November 3, 1993, and Proposed Conditions of Approval.

All of the documents submitted by the Applicant have been marked and placed in three white notebooks.

The Applicant has also submitted the following documents that were not included in their submitted exhibits. The Hearings Officer has placed these items in the white notebooks provided by the Applicant and has numbered these documents as follows:

71. 10/20/93 letter from Thomas Walker of W&H Pacific about the proposed Highway 126 overpass.
72. 10/20/93 letter from William D. Lyche to Linda Burwell stating that there will be no access between Eagle Crest and Cline Butte Oasis. Mr. Lyche proposed using mounds and landscape vegetation near Ms. Burwell's property to minimize the impact of the proposed golf course on Ms. Burwell's property.
73. 10/21/93 letter from William D. Lyche to Dale Van Valkenburg stating that Eagle Crest did not run its water pump on the Deschutes River after Bob Main required that the pump be shut down. The main line is broken, so pumping is not possible.
74. 10/11/93 letter from J. Ned Dempsey, P.E., President of Century Testing Laboratories. Mr. Dempsey states that the coliform test obtain by Ms. Sands does not be used to analyze Deschutes River water and to indicate the presence of human pollution. The reasons are that: (1) coliforms are a group of

bacteria that are prevalent in the environment that are used as an indicator but are not any proof of contamination; and (2) coliform tests are used for drinking water and have no value by themselves; and (3) fecal coliforms are organisms living in the intestines of warm blooded animals (deer, cows, beavers, etc.) and their presence in the river do not necessarily indicate pollution by humans; and (4) it is normal to have fecal coliforms and total coliforms in any surface water.

FINDING: This information, provided by Mr. Dempsey, is the only evidence in the record regarding the meaning of the results of the river water testing commissioned by Sandra Sands. The Hearings Officer, therefore, accepts Mr. Dempsey's conclusion that a higher fecal coliform count downriver from the resort than upriver, does not necessarily indicate contamination of the Deschutes River by Eagle Crest septic drainfields.

75. 10/21/93 written testimony of William D. Lyche. Mr. Lyche states that Eagle Crest has met its burden of proof with numerous professional reports and extensive documentation.

76. 9/13/93 Meeting Notes prepared by Thomas A. Walker, P.E.

In addition to the Conditional Use application, the Applicant is requesting approval of a variance to the road setbacks contained within Section 18.113.060(G)(b)(1)(iv) of Title 18. This section requires an exterior setback of 100 feet for roads within destination resorts. The Applicant is seeking a variance for three sections of roads within Eagle Crest Phase II that the Applicant wishes to build within the setback. These road sections lie at the north edge of the project adjacent to the Cline Falls Oasis Subdivision and behind the number 13 green and the number 17 tee of the existing Eagle Ridge Golf Course, in Eagle Crest Phase II. The second section lies at the 13th tee adjacent to land managed by the Bureau of Land Management at the northwest corner of the project. The third section of road lies behind the number 3 green on the southwest corner of the project. The Applicant has submitted a detailed map representing the areas of the requested setback variance [Exhibit 38].

The Applicant has also submitted tentative plan maps for Area 1 of Phase II and the CRT. The Applicant has not, however, submitted a burden of proof statement addressing the criteria for such approval. The Hearings Officer, therefore, finds that the tentative plan map is intended as an illustration in support of the conditional use application for CMP approval, not as a separate application. The Planning Division and Hearings Officer have processed this application with this basic assumption in mind. The Applicant will be required to plat all phases of Phase II and CRT and to obtain tentative plat approval from the County Planning Division, after FMP approval. All lot lines shown on the CMP maps shall be removed from the FMP maps as those boundaries will be determined in the platting process, not in the CMP

or FMP process. Additionally, the Applicant has failed to clearly indicate the property boundary for Phase I on the CMP map. That boundary shall be accurately shown on the FMP map and shall be consistent with the area included in the CMP application. No additional property may be included.

4. **NATURAL CHARACTERISTICS OF THE SITE:** The project expansion site is located in a transitional region between the ponderosa pine forests along the eastern slope of the Cascade Mountains and the nonforested high desert country of Eastern Oregon. There are no wetlands, riparian areas or significant natural features or rock outcroppings within the expansion areas. Such areas are found in Phase I, along the Deschutes River. The dominant habitat throughout the expansion area is juniper woodland, except for the areas recently disturbed due to the development of the Eagle Ridge golf course [Exhibit 6].

A description of the site's specific geology is set forth in the Hydrogeologic Study prepared by David J. Newton Associates, Inc. [Exhibit 7]. This study finds that the site of Phase II rests on the eastern flank of Cline Buttes, on the eastern edge of the High Cascades region, and adjacent to the Volcanic Plateaus of Central and Eastern Oregon. The site is underlain by a varied assortment of volcanic dikes and ash flows, ash flow tuffs, cinder cones, and volcanically derived sediments. Overlying this assortment are intracanyon and plateau-forming basalt flows and other recent surface deposits including alluvium and slopewash. According to topographic maps of the Phase II site, the slopes are relatively gentle, generally less than ten percent, with primary aspects being east and northeast. The existing Eagle Crest Phase I development is bounded on the east by the Deschutes River. Resort development is perched atop the Deschutes River canyon and a flat and rolling area between the river and the eastern flank of Cline Buttes.

5. **EXISTING USES/STRUCTURES:** Eagle Crest Phase I contains numerous structures and uses, including a hotel, restaurant, conference facilities, timeshare units, single-family residences, a sports complex, outdoor pools, tennis courts, a golf course, playing fields, an equestrian center, and others. The locations for these developments are shown on Exhibit 1, and are described in Exhibit 36.

The site of the proposed Phase II development was approved for development as two 18 hole golf courses under County Planning file Nos. CU-90-189 and SP-90-115 in November of 1990. Construction of the first 18 holes on the western portion of the Phase II site is completed. In addition to the golf course approval, the Applicant has also received previous approval for a golf course maintenance building (SP-92-39), two pump house buildings (SP-92-54), and a temporary golf pro shop (SP-93-15).

6. **AFFECTED AGENCIES:** Deschutes County has received the following comments from governmental and private entities and agencies affected by this land use action:

A. Deschutes County Property Address Coordinator:

The address of record is 68937 Cline Falls Road.

B. Watermaster, District 11:

They need to keep in close contact with our office so that the water right record is updated as development occurs.

August 6, 1993 letter from Bob Main, Manager of South Central Region, District 11 to Bill Lyche of Eagle Ridge Development Corp.:

"Although you have applied to Oregon Water Resources Department for a change in point of diversion, since the change has not been approved you are not authorized to divert water from the Deschutes River at this point. Although the diversion point was not being used at the time of our visit, it had been used in the recent past. . . . Any diversion from this point without authorization is a violation of ORS 540.710, which could result in criminal or civil penalties."

C. Deschutes County Bicycle Advisory Committee:

The Bicycle Advisory Committee submitted a four page letter in response to the nearly identical proposal submitted by Eagle Crest in 1992. The Committee's observations are still applicable to this proposal, and are summarized in the following comments:

Exterior Roads

1. Cline Falls Highway and Highway 126 are road that are often used by cyclists for recreational and training rides. Highway 126 is a part of the Trans-America Route and is also a State bicycle route. Although the total number of cyclists on any given day may be relatively small, the area receives steady bicycle traffic and should not be diminished as a cycling resource.
2. While the Cline Falls Highway and Highway 126 intersection is not currently a cycling problem area, any redesign of the intersection should keep in mind that bicyclists use it regularly.
3. As traffic increases on Cline Falls Highway, a sufficient shoulder for bicyclists will be necessary. The shoulder should meet the minimum rural arterial standards contained in the Deschutes County Bicycle Master Plan.

Interior Roads

4. It appears that the most popular destination for cyclists within the resort will be the commercial core in the center of the development. To promote cycling and walking as a viable way to travel around the resort, the trail system should access this area clearly, efficiently, and safely.
5. The system of two multi-use paths must be much more extensive to actually encourage the use of the paths over roads. In addition, the paths will not work well in residential areas with numerous driveway crossings. The Committee recommends that the bicycle transportation system include both separated paths and shared use of the roads, which would require 4' wide shoulders on the main roads and no on-street parking. In addition, the plan provides numerous opportunities to connect cul-de-sacs with paths, which would encourage the use of bicycles over cars.
6. All two-way bike paths should be separated from roadways by landscaping or berms.
7. To reduce the speed of cars on the streets, the Committee recommends 10' wide travel lanes with clearly marked bicycle lanes. Where the separated bike path crosses a roadway, "bicycle crossing" signs, a change of paving texture, stripes, or a gradual speed bump would also alert cars to the need to reduce speed.
8. The Traffic Impact Analysis assumes that bicycle and pedestrian movements between the two Eagle Crest developments are not expected to be significant. The B.A.C. disagrees with this assumption, and recommends that bicycle cross-traffic be planned for at the intersection of the resort access and Cline Falls Highway.
9. The present configuration of the Cline Falls Highway crossing as shown on the plan is inadequate and dangerous. A two-way bike path on one side of the crossing has led to serious accidents in other places. Bicyclists and pedestrians should be routed off of the two-way path and onto the appropriate side of the road (in the same direction as cars) to cross Cline Falls Highway.

D. Oregon Department of Transportation, Highway Division, Region 4:

October 21, 1993 letter from Mark DeVoney, Region Planner for ODOT stated:

1. The existing Cline Falls Road and Highway 126 interchange does not have a left turn lane for westbound to southbound turns. This lane is warranted at this time. It is very expensive to provide such a turn lane as such an improvement would require ODOT to widen the Highway 126 bridge across the Deschutes River to accommodate the lane. A cost share with Eagle Crest is a way to address this existing need. Eagle Crest will pay the percentage that their traffic bears to all traffic in the intersection. Eagle Crest will pay 100% of planning and design costs and 100% of construction costs outside of State right of way. The public share is estimated at \$240,000.
2. Highway 20 and Cline Falls Road. If the traffic analysis of this intersection is accurate and Eagle Crest contributes only a small percentage to total traffic, it is ODOT's position that Eagle Crest should not be responsible for the cost of improvements to these intersections. According to the Applicant, the Cline Falls Road and Highway 20 intersection meets traffic signal warrants. ODOT would need to verify this finding prior to installing a signal. An interchange at this location does not appear feasible due to disruption of this small community.

E. Oregon Department of Fish & Wildlife:

June 24, 1993 letter from Stephen L. Lewis, Regional Supervisor of ODFW to Larry Nunn, Oregon Water Resources Department stating support for Eagle Crest's water transfer application as it will greatly increase the summer flow (20%) of the Deschutes River below Bend, an area of low flows.

October 13, 1993 letter from Ted Wise stated that:

1. The subject property is not located within a wildlife combining zone.
2. Many wildlife species inhabit the area of the proposed development.
3. The conclusion of Beak Consultants that "the significance of the habitat in the project area for wildlife is reduced due to regional abundance of this habitat type (Juniper)" is a "gross over simplification of the situation." Mr. Wise states that large, mature juniper stands provide habitat for birds, small mammals, big game, predators and sensitive, threatened and endangered species. These trees provide thermal cover and food during winter months.
4. The area is important as habitat for deer.

5. Alteration of 1254 acres of habitat has a significant impact on wildlife.
6. Raptor use, including golden eagles, of habitats in the project area is common. These birds nest in cliff faces of the Deschutes River canyon and other suitable sites in the general area. The birds use the subject property for foraging.
7. The County staff report comment that Eagle Crest's irrigation and domestic usage will be 4,140 gallon per minute is comparable to 1/3 the flow in the Deschutes River below North Canal diversion during spring and summer months. This must be a peak usage number but that the resort should use millions of gallons of water each day. Is there a connection between the Eagle Crest aquifer and the springs that feed into the Deschutes River down river and how Eagle Crest usage will affect these springs.
8. ODFW questions the wisdom of committing to a development requiring so much water when the results of a middle Deschutes basin water study are expected in a couple of years.
9. ODFW is concerned about the water quality of the Deschutes River and the impact of fertilizers and herbicides used to manage the resorts golf courses. Recommended that the Applicant be required to monitor water quality and to make adjustments if water quality is degraded.
10. Land Use Planning Goal 8 requires full mitigation of impacts on fish and wildlife resources.
11. Some or all of the following should be required as mitigation measures:
 - A. Eagle Crest should contribute funding for the middle Deschutes groundwater study.
 - B. Require annual contributions to a habitat trust fund based on Eagle Crest revenues.
 - C. Develop an animal control policy to prevent harassment of wildlife.
 - D. Create a wildlife education program.
 - E. Develop riparian habitat along portions of any new lakes.

- F. Purchase COID land in the northeast corner of the project area for the County or BLM.
- G. Do not use poisonous baits to kill golf course rodents.
- H. Work with ODFW and BLM to improve habitats on adjacent public lands.
- I. Any large expanses of fence built should be done to specifications which allow the passage of deer.
- J. Stated that ODFW will not be responsible for wildlife damage within the development.

November 1, 1993 letter from Ted Wise, Habitat Protection Biologist, with introduction to a National Geographic article regarding groundwater scarcity and contamination:

1. The Deschutes County Comprehensive Plan prohibits the siting of destination resorts in especially sensitive big game habitat areas. Even though the proposed development is not in especially sensitive big game habitat, it is still big game habitat. Mule deer frequent the area. Development will cause a loss of habitat.
2. While juniper habitats may be widespread, examples of ecologically balanced juniper-sage-bunchgrass communities containing "mature" older trees are extremely rare. The value of such stands is extremely rare.
3. The Deschutes County Comprehensive plan protects sensitive bird nesting sites. There are such sites for Golden Eagles upriver from the present development. The lands these birds hunt includes the land proposed for development. Having an adequate forage base is imperative to their survival and nesting success. The loss of nearly two square miles of foraging habitat must be considered in the mitigation assessment. Erecting raptor perches is little consolation for such loss.
4. The County Plan states that: "The county shall conduct a study of the legal, economic and environmental consequences of the use of irrigation water for non-agricultural uses. I am unaware of the status of this study. ODFW would like to have this addressed in the findings and decision for this project.

FINDING: Deschutes County is participating in a regional groundwater study

with other governmental entities. Results from the study are expected in 1995.

5. The Comprehensive Plan directs the County to seek funding for a county-wide hydrologic study. The reasons for this direction are: "Water in adequate quality and quantity is important to all communities, but in a semi-arid region such as where Deschutes County is located it is of particular importance. Drought is a recurring natural phenomenon which has done much to direct the county growth and to determine its economic bases. Unfortunately, inadequate information exists on water supplies and on water quality."
6. While Oregon Department of Water Resources is responsible for approving the ground water right application, Deschutes County can delay a decision this matter until the comprehensive groundwater study is complete. If the findings of the study indicate an abundance of water and no adverse impacts from pumping of the amounts of water proposed, then a sound decision can be made to move forward.
7. Maintaining the fish populations and their habitats in the Deschutes River for the recreational enjoyment of present and future Oregonians is the responsibility of ODFW. The springs which flow into the Deschutes north of Redmond are very important for the health of the river. Decisions which may unknowingly affect the river flow regimes are definitely of concern to us. Factors that affect water quality are also of major concern to ODFW. As in previously submitted comments, we urge no decision be made that will degrade the water quality. Sewage and stormwater disposal should be in accordance with standards that assure this will not be the case.
8. Policies in the Comprehensive Plan emphasize efforts directed at improving flows in the river. The county should approve no project that is contrary to this policy.
9. Central Oregon Irrigation District makes contributions to a fish and wildlife habitat trust fund on an annual basis to mitigate impacts of its hydro-power diversion. There are currently several hundred thousand dollars in the account. The impact of lost habitat will be felt throughout the life of the development, so mitigation funds should be paid for some years into the future.
10. The Applicant should promote water conservation when facilities are constructed and when occupied through the use of low flow toilets and shower heads and other such measures.

F. Deschutes County Environmental Health Division:

Obtain a current report from DEQ regarding the operation and future potential for the presently WPCF permitted system. Consider using the treated effluent as a supplement to irrigation water (4% is 4%). Perhaps treated effluent would require less odor remedy.

G. The Bureau of Land Management:

The BLM provided the following comments in response to a nearly identical proposal by Eagle Crest in 1992. The BLM has not responded as of this writing to the current proposal.

1. We concur with the mitigation option which affects public lands presented on page 9 of the Wildlife Assessment report, and encourage the implementation of these measures.
2. Mitigation projects proposed on public lands should be planned jointly with BLM staff specialists.
3. BLM supports the proposal to restore lands damaged by off road vehicle use.
4. Rerouting the approach of the Cline Falls Highway with Highway 126 may require a right of way from BLM if realignment affects adjacent public lands.
5. Deschutes County may wish to consider reptiles, amphibians and other species which would utilize the pond areas further. More assessment related to golden eagles which utilize the surrounding habitat for foraging and nesting along the Deschutes River corridor would also be useful.

A document entitled Environmental Assessment prepared by the BLM was submitted to the Hearings Officer, regarding the environmental impact of Eagle Crest's request to construct a water pipeline and 150' by 150', 300,000 gallon (initially 100,000 gallons) concrete water reservoir on BLM land on the east slope of Cline Butte, to provide proper water pressure for domestic uses and adequate flows of water for fire fighting in Eagle Crest Phase II. The document states:

1. Oregon Health Division regulations require a permanent maintenance road around the structure and fencing to prevent vandalism. The Applicant proposes a six foot high chain link fence with wood slats.

2. The project would not adversely impact any critical environmental element.
3. No cultural or archeological resources were found by a required archeological survey in the area of the proposed reservoir and in the proposed right of way for transmission mains.
4. No sensitive, threatened or endangered plants were found.
5. Cumulative impacts from the proposed project should be minimal.
6. Residual impacts would result from the physical presence of the surface portion of the reservoir facility and the periodic maintenance inspections to the site.

H. Deschutes County Department of Public Works:

The destination resort proposed is fine from an external traffic standpoint provided that the following conditions are met:

1. The turn lanes are placed on the Cline Falls Highway for vehicles making left turns into both Eagle Crest I and Eagle Crest II.
2. Deceleration and acceleration lanes are placed on the Cline Falls Highway at the entrance to Eagle Crest I and II when and if traffic warrants are met for those improvements.
3. The improvements are made at Highway 126 and the Cline Falls Highway as addressed in the Kittelson letter to Bill Lyche dated June 12, 1992 and the Kittelson letter to Mark DeVoney dated September 17, 1992. In addition, the grade separated interchange shown in the drawing furnished by Kittelson is a worthwhile project at a future time as traffic needs require it. Gary Judd and I (Dick Johnson) would add that Eagle Road should probably be brought into the design of any future interchange on Highway 126 and the Cline Falls Highway.

From an internal transportation perspective, the following comments are made about Eagle Crest I and II:

1. Many of the units take access directly from the internal system of collector streets rather than from cul-de-sacs or short loop streets. (Contrast this with Sunriver or Black Butte Ranch.)

2. The proposed second access to the Cline Falls Highway from Eagle Crest II comes in at a point where the sight distance may not be that good. Has this been checked in the field?
3. The bicycle/pedestrian path system is fairly limited. This means bicyclists and pedestrians will be sharing the road with cars. No big deal for the bicyclists, but not acceptable for pedestrians.
4. The local roads need to be wide enough, 26 to 28 feet, to accommodate two way traffic and bicyclists and keep vehicles off the edge of the roads and from breaking up the edge of the pavement.
5. The overall density is low, but pedestrians need to be accommodated on their own separate path system or share a path system with bicyclists. Maybe a bike path on one side of the roads with other paths connecting neighborhoods etc.
6. Higher density, smaller lots, would encourage more walking/biking and would reduce the lineal feet of road per dwelling unit thereby reducing road costs per unit.

At some point, a shuttle bus system could serve Eagle Crest from Redmond, Bend or even the Redmond Airport. A logical terminal/depot area could be set up in both Eagle Crest I and II at a central point. This could reduce external trips to and from this destination resort from nearby cities.

I. Oregon Health Division:

The domestic water system will require plan review through the Health Division Drinking Water Program.

J. Deschutes Reclamation & Irrigation Co., dba Swalley Water:

The master plan for Eagle Crest and our water rights maps coincide. We see no sign of improvements planning to be built on land with Swalley water rights. Therefore, we have no comments or objections concerning this master plan.

October 15, 1993 letter to the Hearings Officer from C.C. Brown, Ph.D., Office Manager for Swalley Water:

A number of years ago, Swalley Water, the WRD Regional Watermaster and ODFW discussed the problem of low river water flows in the Deschutes River between the Swalley irrigation diversion dam north of Bend to the area where

big springs add water to the river just below Eagle Crest. It was decided that it would be beneficial to the river to transfer the point of diversion of irrigation water that is currently diverted by Swalley at the north end of Bend to a point further downstream. This plan would, however, be more costly due to water pumping costs. Swalley contacted Eagle Crest about the possibility of selling Swalley surface water rights to Eagle Crest to replace Eagle Crest ground water rights. There was an existing pump facility in place, which meant water could be diverted as soon as the state approved the change of transfer point. There was an earlier right of withdrawal at the Eagle Crest location, but for a different right.

At present there is a normal summer flow of approximately 30 cfs below Bend. The Eagle Crest transfer adds another approximately 5.7 cfs to this total, nearly a 20% increase. When the additional flow reaches Eagle Crest, some 18 miles downstream, Eagle Crest will withdraw only 57% of the added water. The remaining 43% continues on downstream below Eagle Crest. This transfer was arranged with the cooperation and support of Swalley Water, the Regional Watermaster, ODF&W and the Deschutes Basin Resource Committee.

K. Oregon Parks and Recreation Department

October 15, 1993 letter from Jack Wiles, Northcentral Region Manager:

The proposed interchange of Highway 126 and Cline Falls Highway will influence traffic to Cline Falls State Park and will be within the scenic waterway corridor. All Notifications of Intent and necessary approval should be obtained prior to any design or construction of the highway interchange.

OPRD received no scenic waterway notification prior to construction of water intake and pumphouse directly across the Deschutes River from Cline Falls State Park. The project must have Notification of Intent for activity on a Scenic Waterway, with notification of Oregon State Parks and Recreation Department as adjacent landowners on behalf of Cline Falls State Park.

Proposed County visit to pumphouse to determine if it should be relocated or mitigated.

FINDING: The water intake and pumphouse is not a structure that is needed to assure the resort's water supply or to qualify for resort approval. The Applicant must, however, obtain County site plan and landscape management zone approval for the structure (DCZO Chapter 18.84), unless the Applicant establishes that the structure is exempt from those requirements. The structure should be shown on the CMP map, in the location approved by the Planning Division. The Applicant may also need to obtain scenic waterway approval from the State of Oregon.

L. Deschutes County Planning Division, Historical Resources

Michael Hall of the Planning Division provided copies of two confidential resource documents that describe archeological sites on Eagle Crest property and on surrounding properties. These documents are portions of a document entitled "A Cultural Resource Survey of the Deschutes River from Bend to the Deschutes/Jefferson County Line" that was prepared in January of 1986 by Sara A. Scott for Deschutes County. The Eagle Crest Phase I property contains two identified sites and there are a number of sites on surrounding property. No sites were identified on Eagle Crest Phase II or on the CRT expansion area of Phase I.

FINDING: The archeological sites identified in Phase I are located outside of the developed areas in Phase I and are not adversely affected by this CMP approval.

M. Oregon Water Resources Department

September 14, 1992 letter from Martha Pagel, Director to the Deschutes, Jefferson and Crook County Boards of Commissioners dated September 14, 1992:

"The Commission's approval of a request to use groundwater is predicated on . . . statutory mandates. Historically, when use of the state's groundwater resource was, in relative terms, small, the risk of depleting aquifers through permit issuance was correspondingly low. With Oregon growing at twice the national rate, the surface supplies largely fully subscribed during much of the year, reliance on groundwater is increasing. Now, the risk of depletion from permit issuance is far greater. Unfortunately, our understanding of this extremely complex physical system is not keeping pace with the demands being place on it. It is getting harder and harder to assure new uses will not impair the groundwater resource."

"A good illustration of these difficulties is the Commission's recent experience with applications for groundwater use for destination resorts in central Oregon. To the extent these developments represent demands not unlike that of small cities, the potential impacts on the groundwater resource can be great. In addition, impacts on nearby established users of the resource, as well as on surrounding creeks and springs can also be significant. . . . With ever-increasing requests and without more data, however, at some point a reasonable doubt is reached whether increased groundwater use is sustainable. We are very near, if not at, that point in many areas of the state, including parts of central Oregon."

"The groundwater information base will never be perfect. However, in many areas it must improve substantially before the Commission can both issue additional permits and meet its obligation to protect the groundwater resource. Through its statewide Groundwater Assessment Program, the Water Resources Department is attempting to establish the extent and capacity of the state's aquifers."

"We want to convey to you as clearly as we can that it is no longer safe to assume that obtaining a groundwater use permit is a formality. Without better information, it is possible that permit denials will be more common than permit approvals. Such actions on our part could, of course, have major impacts on local government actions as you seek to implement your comprehensive land use plans. Accordingly, I hope we can build a strong state/local partnership to address our mutual research and planning needs. Some initial ideas on how counties might participate in the process include supporting funding for or cooperating in comprehensive groundwater investigations, requiring additional groundwater analysis and information for certain land use decisions, or phasing development projects contingent upon results from groundwater monitoring."

FINDING: The federal, state and local governments are currently participating in a groundwater study of water in the Middle Deschutes basin. **Note:** After the close of the record in this matter, the State indicated that it did not have the resources to meet its financial commitment to fund a portion of the cost of the study. Whether the State will ultimately honor its commitment, whether other entities will finance the study or the study will be discontinued is unknown at this time. This fact has not been considered in this review, however, as it is not in the record upon which the Hearings Officer must make her decision.

N. Deschutes County Building Division, Redmond Fire Department, and U.S. West Communications responded with no comments.

7. **LOT OF RECORD:** Deschutes County previously determined that the subject property is a legal lot-of-record in land use matters #LR-90-177 and #LL-90-108.
8. **HISTORY:** The subject applications for a conditional use permit and variance are similar to the applications submitted under file Nos. CU-92-105 and V-92-21 in the Spring of 1992 by the Applicants. These two applications, which were accompanied by Tentative Plat file No. TP-92-775, were for a 710 acre expansion of Eagle Crest Resort and a variance to setback requirements for the same stretches of road covered in the subject variance request. The only substantive difference between the two sets of applications is the inclusion of the 36 acre Canyon River Territories Expansion area on the east side of Cline Falls Highway south of and contiguous to Eagle Crest I. This area was not included in the earlier applications.

Due to defects in the County's Destination Resort Combining Zone Map which were identified by the Land Use Board of Appeals and the State Court of Appeals, the previous applications were found to be invalid and no decision was reached. Now that the defects in the County's Destination Resort Map have been corrected, the Applicant has requested that the earlier applications be withdrawn and voided. The Applicant then filed the applications that are the subject of this land use action.

9. **COMMENTS BY OTHER PARTIES:** A large number of documents were received from persons, other than affected agencies, who were parties to the above-referenced land use actions. The testimony and exhibits submitted by this group is summarized below:

A. Nancy Hall submitted a memorandum, Exhibit 201, that made the following points:

1. Eagle Crest has the burden of proof and persuasion in the land use action.
2. Ground and surface water is held in trust for the people of Oregon.
3. It is the goal of the State of Oregon to prevent contamination of groundwater while conserving and restoring the resource.
4. "Once Eagle Crest Phase II is in place, natural drainages will be inundated with runoff from constant irrigation of the additional proposed golf course, lawns, gardens and grounds." Ms. Hall believes that this may cause a "downward moving saturation front" that could contaminate the principle aquifers. Newton's study assumes that the natural drainage will remain dry.
5. The Newton report finds that the chance of contamination is very low, not that contamination will be prevented or will not occur, as required by the County code and state law.

FINDING: Ms. Hall has not cited specific provisions of law to support this argument. The Department of Environmental Quality (DEQ) is charged with the responsibility for adopting and enforcing environmental regulations. Any system that will be used in Eagle Crest Phase II will need to obtain DEQ approval. In order to obtain such approval, the Applicant will need to establish that the system will meet all DEQ regulations and protect the environment to the extent provided in DEQ's rules.

6. Hydrologist Joseph Gonthier found, in his review of the Newton study, that "data may weakly support a statement in the study that suggests that Cline Buttes, a volcanic cone, could represent a local zone of

Relatively high vertical permeability." Mr. Gonthier then stated that no hydrogeologic evidence has been introduced to resolve whether Cline Buttes rocks are indeed low-permeability units. Gonthier also stated that it is extremely difficult to obtain sufficient field data to prepare accurate water level maps for the area.

7. Gonthier stated that the test he considered did not adequately assess the effects of long term pumping. Gonthier also recommended that additional work be done to assess the effect of long term pumping and should include sites outside of the resort boundaries.

FINDING: Mr. Gonthier stated that a "desk top" or "paper model" could be used to assess the impact of long-term pumping on the well tested by Mr. Newton. These additional studies were conducted by Mr. Newton, as suggested by Mr. Gonthier, to assess the impact of long term pumping. That study determined that the results of long-term pumping were negligible (Exhibit 43).

8. DCZO 18.113.050 requires analysis supporting delineation of the impact area. All of the studies address only the proposed expansion and not adjacent areas.

FINDING: The Newton study adequately determined the impact area of the Phase II wells. The study did not, however, address the impact of Phase I wells. This information is required by the destination resort ordinance as the existing resort must comply with all standards of the ordinance, if existing resort facilities are used by the Applicant to qualify for destination resort approval of the expansion area, as has been done in this application. The Applicant will be required to remedy this deficiency prior to FMP approval.

9. DCZO 18.113.050 require that the application include areas of potential instability and water areas. The Cline Falls area is on a known active fault and the Deschutes River from Tumalo to Lake Billy Chinook is a State Scenic Waterway. All improvements within 1/4 mile of a Scenic Waterway must be approved by Oregon State Parks.
10. Goal 5 requires that the County inventory and assess groundwater resources and watershed and state protected river, however, County staff states that there are no Goal 5 considerations.

FINDING: Deschutes County has inventoried and assessed groundwater resources. No groundwater resources in the area of Eagle Crest were placed on the County's Goal 5 inventory.

11. ORS 536.310 (5) states that competitive exploitation of water resources for single purpose uses is to be discouraged when other feasible uses are in the general public interest.

Ms. Hall also submitted a copy of ARLU-DECO's June 29, 1993 testimony, Exhibit 202, on water that was presented to the State of Oregon's Water Resources Department regarding Eagle Crest's water rights permit application. It appears that this document was originally prepared for prior County action on Eagle Crest Phase II and was altered for use in the Water Resource Department proceeding. This testimony includes many of the points raised in Ms. Hall's memorandum.

- B. **Andy Tillman**, member of the Deschutes County Planning Commission, submitted a written document, Exhibit 203, entitled "Likely Effect of Eagle Crest II on Traffic in the Tumalo Area - Cline Falls Road (Cook Avenue)/Highway 20. The document states that:

1. The total number of units allowed at build-out (1410) will be an increase of 3.5 times the current level of 403 dwelling units. At the County average of 2.645 occupants per household, the 1007 new units will house 2,663 new people at the Eagle Crest Resort.
2. The average number of vehicle trips per household in Deschutes County is six to ten. This means that there will be between 6,042 and 10,070 trips per day to and from Eagle Crest above the level which already exists. Additionally, Eagle Crest requires a large staff of employees, some of whom travel through Tumalo to reach the resort. There are currently 250 full and part-time employees at Eagle Crest. Using the growth factor of 3.5 times the current development, it is reasonable to expect that there will be an additional staff of 875 people, not 200 as stated by the Applicant.
3. The Applicant's estimate that 25% of vehicle trips generated by Eagle Crest will pass through Tumalo. Mr. Tillman believes that this number will be higher due to the fact that he believes that many people will be drawn to Bend for shopping and eating. If the 25% number is accepted, the Applicant will add 2,517 trips a day to "downtown" Tumalo. This number will be greater if you add a realistic percentage of the 1,750 trips generated by 875 additional staff members or if you increase the percentage of trips to a higher, more realistic, level. The intersection of 5th and Cook Avenue is already dangerously congested.
4. According to Title 18 of the DCZO, a destination resort must not alter the character of the surrounding area or existing farm uses. The

addition of a cloverleaf on Highway 126 to handle resort traffic will cause an irrevocable change in the character and land use patterns of surrounding areas.

5. Cline Butte is a dominant geographic landmark. 850 new dwellings should not be placed on this landmark.
6. "Grey" water should be used to irrigate the Eagle Crest golf courses. A community sewer system should be required of a city of 4,854 people.
7. Mr. Tillman was told by an Eagle Crest salesperson that Eagle Crest Phase II would be a separate facility from the existing development. The Application should, therefore, be treated as a new resort, not as an expansion of an existing facility. This would require the construction of resort amenities at a cost in two million dollars in 1984 dollars. Some guarantee must be made that this is an expansion, not a separate resort.

- C. Marion Millard, 3201 SW 73rd, Redmond, Oregon 97756 submitted a written objection, dated October 14, 1993, to the fact that notice was not published in The Bulletin 10 days before the October 14, 1993 hearing. The objection and its attachments are marked Exhibit 204. Ms. Millard also submitted a letter (Exhibit 205) dated October 21, 1993 requesting that the record be kept open for seven days for the submission of additional written testimony.

FINDING: The County failed to publish notice ten days prior to the October 14, 1993 hearing. Notice was published on October 10, 1993 in The Bulletin, a newspaper of general circulation in Deschutes County. That date is ten days prior to the October 21, 1993 hearing that was specially set to assure that 10 days prior notice was provided. All October 14, 1993 testimony was available to all who attended the October 21, 1993 hearing so that they would have adequate opportunity to respond to that testimony. Additionally, almost all of the people who testified on October 21, 1993 attended the October 14, 1993 hearing. Ms. Millard's request that the record be kept open was granted. The record remained open until November 3, 1993.

On November 3, 1993, Marion Millard, submitted a letter in opposition to the applications that is marked Exhibit 262. In that letter, Ms. Millard makes the following points:

1. There are no MUA-10 lots in Canyon River Territories. 1 CRT lot is zoned U, 5 are zoned R/R and the others are zoned RR 10 according to information gathered from the Deschutes County Assessor's Office.

FINDING: Lots in Canyon River Territories are zoned, primarily, RR 10. Some lots are zoned EFU-TRB subzone.

2. I oppose placing roads, paths and other paved areas in the setback areas.
3. Routing traffic through ECII to Highway 126 will make Cline Falls Oasis subdivision uninhabitable.
4. 10' wide travel lanes and 25 mph speeds will be unacceptable to the residents on Highway 126 who work in Bend and commute via Cline Falls Highway.
5. The access for the resort on Cline Falls Highway already presents a traffic problem with golf carts, bicycles and cars crossing from Eagle Crest Phase I to Phase II. Rerouting the road between Fairways 14 and 15 will cause heavy traffic to compete with golf balls. Who will pay for damages to vehicles and motorists caused by stray golf balls?

FINDING: The Hearings Officer has required that all holes of the Eagle Ridge golf course that are close to Cline Falls Highway and its future proposed location, be located at least fifty feet from the highway. The Hearings Officer has also required that, before FMP approval is granted, that the Applicant prevent stray golf balls from entering roadways, bike lanes and pedestrian ways.

6. Traffic impacts at Tumalo, where Cline Falls Road intersects Highway 20, could be a problem since Deschutes County has abandoned the major portion of the Tumalo streets, if not all of them.

FINDING: A review of Deschutes County road vacation ordinances indicates that Deschutes County has not removed County road status from any of the roads impacted by the Eagle Crest Resort.

7. Phase I does not meet the required 2 to 1 overnight to other dwelling ratio. There are only 293 overnight accommodations out of 560 units. Eagle Crest Phase II needs 400 overnight units to meet the 2/3 ratio. At build out, ECR I and II should contain 773 2/3 overnight units, not 543.

FINDING: Ms. Millard has reversed the ratio. The Applicant is allowed to build two individually owned residential units for each unit of visitor oriented overnight lodging according to DCZO 18.113.060(D)(b). The Applicant's proposed resort development meets that standard.

8. Title 18 states that commercial areas should be only for guests of the resort. The method of operation and advertising that has been followed in the past has not been applied. Advertising signs in downtown Redmond and the newspapers do not abide by these standards of guests only. They should be required to gate both ECR I and II and allow only resort paying guests on the property except for the golf courses and the gate person should collect and issue greens fee tickets.
9. The Hearings Officer should find that CU90-189 and SP90-115 have expired and that the second golf course needs a new conditional use permit.

FINDING: The Applicant will be required to obtain a new conditional use permit for the second Eagle Ridge golf course, unless it can establish that all conditions of that conditional use permit were met prior to December 12, 1991.

10. The Applicant should assure that the minimum investment requirements and financial backing requirements of DCZO 18.113.070(C) are met through surety bonding. The costs of all permits, engineering and physical improvement costs should be covered by surety bonding. Mr. Lyche and Mr. Chase's "track record" warrants this requirement.

FINDING: The Applicant has established that it has met the minimum investment requirements of DCZO 113.070(C). The Applicant will be required to bond or assure improvements that are necessary for resort development, as required by DCZO 18.113.110.

11. Eagle Crest should participate in a limited partnership with the Central Oregon Regional Housing Authority if ECR gets tax credits as per their letter which is in the file. This simply means that the public taxpayers cover their investment be it local money or federal money.
12. Page 29 of the staff report states that the proposed resort expansion areas do not appear to have ever been employed in any type of resource production. This is incorrect, as the subject property was BLM land that was rented for grazing and cattle.
13. There are a number of farm and commercial animal production properties within the 3 mile area of Eagle Crest, including Operation Santa Claus on Highway 126, Coons Hollow Ranch (horses and cattle), cattle operation on the other side of Highway 126, a sheep operation to the east of Cline Falls Park. Between Highway 126 and Eagle Road there are llamas and several large farms. Sunny Butte dairy is on Cline Falls Road within three miles of Eagle Crest Resort. Between Cline

Falls Road and Barr Road there is an Arabian horse farm. There are llamas and other exotic animals on Barr Road.

14. ECR Phase II will not be built out before the Year 2000 because if allowed they will just add more acres. The grade separated interchange on Highway 126 is a bad idea because it will cause more traffic problems than it cures when it circles the golf course Fairway 14 and 15.
15. Excessive speeds may be attained on Cline Falls Road going down hill from the area of the proposed cloverleaf. The interchange cloverleaf will need to be far enough west that it will not be visible from the river. I think that this should be in place before anything is granted. I am opposed to the realignment and abandonment of a portion of Cline Falls Road because most of the people who are being impacted by this overpass have not heard of it nor seen a map. I am asking that a public hearing be held to consider this project. Many of the persons who use this road daily have no knowledge of this project.

FINDING: Whether there will be a cloverleaf style, grade separated interchange in the location proposed by the Applicant will need to be determined in a separate land use proceeding, prior to FMP review. If this particular design is not approved, a different solution to the interchange traffic problem must be designed and approved prior to FMP review.

16. The Applicant should be required to dedicate park land rather than pay an in-lieu of park land fee. They should dedicate land in Canyon River Territory as park land and make a buffer zone along the south edge of ECR I as Charlie Brown promised the residents when he was soliciting signatures for the second amendment to the CC & Rs.

FINDING: The Eagle Crest CRT expansion includes a buffer area of open space between the residential lots in the CRT expansion and other Canyon River Territories lots.

- D. **Betty Marquardt**, PO Box 1138, Sisters, Oregon submitted a number of documents. They include:
 1. Exhibit 206 which includes an October 21, 1993 request to keep the record open for an additional 7 days, Comments on the Overpass Concept, a March 29, 1992 article by Rick Attig entitled "Highways May Need a Dozen Interchanges," a document that discusses commercial use allowed in destination resorts and commenting on road widths, a document entitled "Re: Non-allowed use in Destination

Resorts," a document entitled "Conceptual Water Plan" and a summary of exhibits introduced by Ms. Marquardt that summarizes the exhibits she submitted on poster boards and which she labelled Exhibits A1, A2 #1 and #2 and A3.

FINDING: Ms. Marquardt's request to keep the record open was granted by the Hearings Officer.

2. Exhibit 207 which includes excerpts of the Middle Deschutes/Lower Crooked River Wild and Scenic River Management Plan. This exhibit makes it clear that new structures and improvements must be set back a minimum of 100 feet from the ordinary high water line of the river. OAR 736-40-030 (1) prohibits persons from making "any improvement or change in land use of related adjacent land without first giving written notification to the Transportation Commission.
3. Ms. Marquardt's Exhibits A1, A2 #1, A2 #2 and A3 which include:
 - A1: Bulletin articles entitled "Farmers Hit Hard by Drought" dated 10/27/91, "Farmers Facing Dry Grim Season" dated 4/7/92, "Alley Owner, Watering Ban All Wet."
 - A2 #1: Photographs of an auction held in the Sunrise Room of Eagle Crest Phase I
 - A2 #2: Information regarding a Jazz Festival held on September 18 through 20, 1992
 - A3: Bulletin article of 12/29/91 entitled "Will Redmond Highway look like this in 1995?"
4. Exhibit 208 which is a letter dated October 14, 1993 stating that the published notice, which was enclosed with the letter, was not adequate and that she would wait until the October 21, 1993 hearing to testify.
5. Exhibit 263, November 3, 1993 documents that have been identified by Ms. Marquardt as follows:
 - 1/a Statement that hearing is legally flawed. This document states that the hearing was legally flawed because a public hearing regarding the overpass was not held. The document also states that the Hearings Officer cannot make a decision because certain County and State offices (DEQ) have not provided adequate

information and the State of Oregon has not completed its groundwater study.

FINDING: Approval of the CMP does not authorize construction of the overpass in the location shown on the plan. The applicant will be required to obtain such approval prior to FMP approval. The Hearings Officer is required to make a decision of the information presented into the record. The fact that some agencies have not commented on this important land use action is regrettable, but the Applicant is entitled to a decision on the merits of its applications, at this time. It is particularly disturbing that the Department of Environmental Quality did not comment on this application as they are ultimately responsible for the enforcement of environmental quality laws, regulate of wastewater disposal systems and have expertise that would have been useful in reviewing this matter.

- 1/b 10/26/93 Bulletin article entitled "Job Market has Ups and Downs." This article states that the unemployment rate in Deschutes County rose between August 1993 and September 1993 from 7.3% to 8.1%. This rise was attributed, by Mike Mahan, regional economist for the State Employment Division to a seasonal drop in tourism in the County.
- 1/c "Statement concerning previous exhibits entered into the Record." Ms. Marquardt said that Dale Van Valkenburg advised her that the County overlooks 1 to 3 day events at Eagle Crest. Ms. Marquardt believes that resort facilities should be made larger to accommodate this activity, if allowed, and that the County's ordinance should be adjusted to reflect actual uses.

FINDING: The Hearings Officer has addressed this issue in the Required Findings section of this decision.

- 1/d "Re: Addendum to the Staff Report Goal 5 Resources and Negative Impacts of Destination Resorts." Ms. Marquardt comments that Policy 5 of the Comprehensive Plan on pp. 37 & 38 was written in 1982 when Sunriver and Black Butte were considered "top-line." Ms. Marquardt says that the same is not true of Eagle Crest. Eagle Crest has a number of "temporary" buildings in Phase I that have never been replaced. These buildings should be replaced as a condition of approval of Phase 2. Now, in 1993, "destination resorts do have negative financial impacts on the citizens of Deschutes County." Ms. Marquardt says that if Sunriver becomes a city that the County will lose

much of its room tax revenue that funds County operations. Funds will need to come from other sources unless the County cuts its budget. Ms. Marquardt notes that the County spent money on legal fees when the Inn of the Seventh Mountain was involved in bankruptcy proceedings. Ms. Marquardt says that there are disputes over water usage and rights in Black Butte and the winter dumping of treated sewage water into Indian Ford Creek.

Ms. Marquardt says that Eagle Crest has had the following financial and other impacts: (1) taxes have risen on residences adjacent to Eagle Crest; (2) state and federal funds will be used to build roads and the overpass needed because of Eagle Crest project; (3) homes of the elderly will be condemned for the overpass; (4) Eagle Crest could become a city and take room tax dollars from County coffers; (5) low paying jobs, no adequate, affordable housing for employees and the expense of commuting for employees; (6) traffic through the Tumalo rural service center will increase and will adversely impact the area with air pollution, traffic congestion and road damage; (7) Redmond will become a traffic corridor for Eagle Crest traffic and the resort will draw Redmond area residents to the resort's commercial attractions and facilities at the expense of Redmond businesses.

- 1/e "Re: Employee housing in vicinity of Eagle Crest, be located in the Canyon River Territory Subdivision." Ms. Marquardt believes that employees of Eagle Crest could be housed in the Canyon River Territories expansion area. This area is bound by covenants that prevent lots in CRT from being less than 5 acres in size. The lots have not gone through the partitioning process. Employee housing in CRT would reduce employee traffic and would allow employees to use bicycles to travel to work. Local government is required by ISTEA to plan transportation systems that will reduce air pollution.
- 1/f "Covenants of Canyon River Territory." CRT lots must be at least five acres in size. No temporary residential structures are allowed in CRT beyond six months. Commercial raising and keeping of animals is prohibited. Buildings must be set back 20 feet from front and rear lot lines and 10 feet from side lot lines. Easements for utilities are reserved over the exterior 20 feet of each lot.

1/g "Copy of letter to Phillip Paterno, BLM office." In this letter Ms. marquardt objects to siting of the proposed Eagle Crest reservoir on BLM land.

- E. October 11, 1993 Letter from Terry Hatfield to Tom Hall, Regional Consultant for DEQ with response letter from Mr. Hall (Exhibit 209). The letter written by Mr. Hatfield requested information regarding Eagle Crest's sewage disposal system. Mr. Hall responded by saying that copies of inspection reports dated 9/18/92 and 7/6/93 from W&H Pacific accurately summarizes problems that have occurred with Eagle Crest's sewage disposal system. Mr. Hall also stated that no complaints regarding the system have been received by DEQ since May of 1991 when residents of Canyon River Territories complained about the system.

November 1, 1993 letter from Terry Hatfield to Hearings Officer (Exhibit 250) which is a written statement of his testimony at the October 14, 1993 hearing. In this letter, Mr. Hatfield states:

1. I have lived in Canyon River Territories since 1980 and believe that Eagle Crest is a good neighbor. Their presence has created a wildlife refuge. The animal population has grown since Eagle Crest Phase I was built.
2. One person testified that approximately 7,000 automobiles would travel Cline Falls Road at any given time. If this were true, traffic would be backed up for 48 miles.

FINDING: The testimony presented about volumes of vehicles was stated in terms of days or during peak hours, which is a measure of traffic in a one hour period, not at any one time.

3. We need neighbors like Eagle Crest who will provide jobs, promote tourism to offset the failing timber industry and to clean up "a virtual garbage dump" known as Cline Butte and turn it into a beautiful place to work, live and play.
- F. October 11, 1993 letter (Exhibit 210) from MaryPat Meekins, 66350 Cline Falls Road, Bend, Oregon (P.O. Box 493, Redmond, Oregon 97756), stating "WE live here; WE'VE made our HOMES here; WE'RE raising our FAMILIES HERE; Eagle Crest has been enough of an impact already. PLEASE consider US before you change forever our 'little piece of heaven.'" The letter stated that many vehicles speed past Ms. Meekins home on Cline Fall Road and that she does not want to see another 900 dwellings in her neighborhood. Ms. Meekins says that vehicles seem to be driving faster than

in the past (60 to over 80 mph). Ms. Meekins is concerned about road maintenance on Cline Falls Road. A young girl was killed while riding a horse on Cline Falls Road a number of years ago. Ms. Meekins also raised questions about the adequacy of the water supply and contamination that might result from fertilizers on Eagle Crest lawns and gardens. Ms. Meekins states that Cline Butte is visible from many places in Central Oregon and inferred that it should not be covered with lights and houses.

G. October 14, 1993 written testimony of Clyde Everton, 1283 NW Trenton Avenue, Bend, Oregon 97701 (Exhibit 211) recommending denial of the Eagle Crest Resort Master Plan for the following reasons:

1. The 2/21/92 letter from Janet Hardwick, Director of Personnel for Eagle Crest states that the majority of the 200 new employees needed for Phase II will be employed at the \$5 to \$7 an hour range and will commute from Redmond (5 miles), Bend (15 miles) and Sisters (15 miles). The Deschutes County work force is already top heavy with wage earners in the \$5 to \$7 an hour category. At the time the letter was written approximately 80 to 90 per cent of the jobs offered through the local state employment office were in the minimum wage category.
2. Deschutes County needs family wage jobs. A single parent with two dependents need an hourly income of at least \$9 to \$12 an hour to meet basic housing, food, utilities, automobile, clothing, child care and medical and dental needs. The needs of families on welfare are met so a wage above the \$5 to \$7 hour range is needed to convince a single welfare parent to find a job.
3. Persons earning \$5 to \$7 an hour at Eagle Crest will need public assistance to meet their basic needs and will become a part of the "working poor" placing a drain on taxpayers and social service agencies.
4. There is a lack of affordable housing for future Eagle Crest employees. This problem will be made worse by the construction of the Bend Parkway which will remove about 82 residences from Bend, most which provide low-income housing.
5. The list of people waiting for housing through the County's Housing Authority has grown from 1000 to 1300 names in the past year.

H. Letter dated September 22, 1992 to the Hearings Officer of Deschutes County from Gladys I. Biglor, 62139 Cody Road, Bend, Oregon 97701 (Exhibit 212) regarding the wildlife assessment prepared by Beak Consultants, Inc. with a

3/31/93 The Bulletin article entitled "Winter Meant Death to Deer." Ms. Biglor states:

1. The Applicant does not meet the requirements of Goal 8.

FINDING: Goal 8 is not applicable to review of this application for approval of a conceptual master plan for a destination resort. Goal 8 was considered by the Board of County Commissioners at the time that they adopted the destination resort ordinance and mapped destination resort sites.

2. The survey that is the basis for the Beak report was conducted in mid-March of 1992, well before the time of year when Peck's milk-vetch, a federal candidate for listing as a threatened plant and an Oregon threatened plant, could have been observed. The plant's vegetative growing season begins in April. The plant flowers in May through June 15, bears fruit in late June and enters the late vegetative period in July and August. The County is required to assure that the Applicant will maintain identified natural features, such as threatened or endangered species per page 11 of Ord. No. 92-001.

FINDING: Ord. No. 92-001 made amendments to the County's Comprehensive Plan to allow the siting of destination resorts in EFU zones. The language referenced by Ms. Biglor refers to the steps that must be taken in the Goal 8 resort site designation process. That process is now completed and the subject property has been found to be appropriate for resort development.

3. The Beak report states that a joint project should be developed with BLM on adjacent public lands to reduce potential adverse impacts on deer. BLM has not been contacted by the Applicant.
4. The Beak report recommends that more trails be developed in an area that is supposed to be used to mitigate wildlife disruption from the resort but also notes that trails and roads adversely affect deer.
5. Seventy percent of the site will be permanently lost or altered with construction of Phase II. This would leave 180 of 600 acres for wildlife.
6. Beak Consultants expects an increase in species diversity due to the artificial habitat. There will, instead, be a shift in wildlife types. Deer habitat will become chipmunk and ground squirrel habitat.

7. When wildlife interferes with resort usage, the resort owners interfere with the wildlife. Eagle Crest has set off firecrackers on the golf course to discourage geese from using the area as their feces were degrading the golfers' experience.
 8. Wildlife mitigation measures should be mandatory to be enforceable and successful.
- I. Written testimony of Howard Paine, 15845 W. Meadow Lane, Sisters, in opposition to the Eagle Crest expansion, with a 10/19/93 article from the Oregonian entitled "Hermiston, Port Seek to Get Needed Water by Tapping Columbia," and a summary of a paper prepared by Ron Harvey of the US Geological Survey, Water Resources Division entitled "Considerations for Modeling Transport of Bacteria in Contaminated Aquifers." Mr. Paine states:
1. The majority of employees at destination resorts are paid \$5 to \$6 per hour. If you eliminate the pay of executives, management and sales staff, the average pay of the remaining employees would fall below the poverty level. These poorly paid employees must rely on food stamps, subsidized housing and other public assistance.
 2. Low pay and high housing costs in the area have left many persons hungry and in need of assistance.
 3. This expansion will add 891 homes and rental unit to the resort, creating a small city. I was astonished to read that the developer plans to use on-site sewage septic systems. The effluent will eventually contaminate local wells, leach into ponds and, perhaps, the Deschutes River.
 4. The County's Comprehensive Plan, Environmental Quality Policy 5 requires the County to consider the impact on water resources while considering the public need for the proposed development.

FINDING: The provisions of the County's destination resort and development ordinances were adopted in compliance with Statewide land use planning goals. The County is not required, at this time, to revisit Goal 5 issues.

5. The Water Resources Chapter of the Comprehensive Plan, Policy 10 states that any project that endangers the purity of local ground water shall be vigorously discouraged.

FINDING: This Comprehensive Plan policy is a general policy that is implemented through the County's destination resort, development ordinances and State of Oregon environmental regulations.

6. The destination resort ordinance requires that water use must not reduce the availability of water in the water impact area. How can Eagle Crest water 3 golf course, serve 1340 housing units, fill swimming pools, serve a restaurant and a multitude of other water uses at the resort, totaling 5.9 million gallons a day without having an impact on ground water?
7. Hermiston's deep basalt aquifers are going dry after two decades of intensive use. This will occur here in Central Oregon due to Eagle Crest's water use.

FINDING: The hydrogeologic studies and recorded information about the aquifer in this region indicate that there is currently an abundant supply of water in the aquifer. No concrete evidence has been submitted to establish that the regional aquifer from which Eagle Crest obtains its water will run dry, given current usage of the resource. The volume of use contemplated by Eagle Crest alone is not sufficient to deplete the aquifer. This does not, however, mean that this aquifer will never become depleted from the many current and future users who do and will tap into the regional aquifer.

8. The Applicant should pay the full cost of all traffic improvements required by Eagle Crest according to DCZO 18.113.070 (G). The State should not pay 60% of the cost of the proposed interchange for Highway 126 and Cline Falls Road.
 9. The Applicant should be required to provide low cost, on-site housing for employees who are paid at a rate below the poverty level, to build a sewage treatment plant and use wastewater to irrigate the golf courses and pay all road improvement costs, without cost sharing.
- J. Written testimony of Sandra Sands, with exhibits (Exhibit 214). Ms. Sands states:
1. The BLM land swap with Eagle Crest should not have been completed without notice to the public.

FINDING: This issue is not relevant to decision of this application.

2. During a drought, Eagle Crest obtained approval for two new golf courses while Ms. Sands was watering her garden with dish water.

3. Ms. Sands learned that Eagle Crest plans to site homes on 1/2 acre lots with irrigation on each lot, around the new golf courses.
4. Ms. Sands is concerned about the potential for ground and surface water contamination from 500 septic tanks upslope from Canyon River Territories and the Deschutes River. Cline Buttes is sloping and the soils are sandy and porous. Constant irrigation of two golf courses and 500 irrigated lawns will turn the porous soil into a porous sponge, drawing septic and chemicals into the ground water.
5. State protective agencies have refused to monitor the resort, leaving monitoring to the resort. Cross-connection problems and a lack of inspections was turned over to W & H Pacific rather than being investigated by the Health Department.
6. Photos labelled Exhibit C show grease disposal contaminants oozing downslope toward the river from the Eagle Crest restaurant. The local health department was unaware of the problem.
7. Ms. Sands hired a consultant to take river water samples above and below river from the resort. The fecal coliform count is 7 MPN prior to the resort and 26 MPN directly below the golf course, almost 4 times as high. This should be monitored by DEQ.
8. The leach field at Eagle Crest is brown, not lushly green and it smells.

FINDING: The grass above the community drainfield is brown. This area is clearly identifiable from Cline Butte by the change in color from other resort grass areas.

9. Why must resort homeowners purchase water pressurizing systems?
10. Why did Eagle Crest install a pipe in the river and a 100 horsepower pumping station to withdraw river water without authorization? The Applicant should have addressed whether this pump and the proposed overpass/interchange will comply with the Scenic Waterways Act in its Burden of Proof statement.
11. Resolution of issues should not be deferred until Final Master Plan Review by the Planning Director.
12. A public hearing must be held regarding the proposed 30' concrete overpass and interchange. Tax dollars will fund 60% of the cost, solely to benefit Eagle Crest.

13. Eagle Crest will add 200 more persons to a waiting list of 1300 low-income persons waiting for housing in Central Oregon. Deschutes County has one of the highest costs of living in the nation. Destination resorts drive up the cost of living.
14. Eagle Crest will ultimately include 1,254+ acres. It will include 240 townhouses, 218 multi-family units, 656 permanent homes with 1/2 acre irrigation each, two 150 unit hotels, restaurants, conference centers, office complex, gas station, shopping mall, post office, convenience store and three golf courses irrigated by ground water. At 2 persons per unit there will be a population of 3,000 persons on Cline Buttes, excluding golfers and visitors to resort amenities (and employees).
15. Ground water is a Goal 5 resource. Eagle Crest will use 4,140 gallons of ground water per minute or 6,000,000 gallons per day. Eagle Crest has not proven that there is an adequate supply of water to meet the needs of the resort. Expansion of the resort should await the results of the comprehensive ground water study that is now being conducted.

The exhibits submitted by Ms. Sands, and attached to her written testimony (Exhibit 214), are:

- A. Petition to Watermaster Robert Main (Deschutes County), DEQ and the Deschutes County Board of Commissioners from 40 Canyon River Territories residents stating concerns about Eagle Crest septic tanks, fertilizers, pesticides and chemicals and excessive water use by Eagle Crest and requesting water monitoring of ground and river water by DEQ.
- B. Two Activity Reports of the Oregon Health Division regarding cross connection hazards at Eagle Crest.
- C. Eight photographs of areas around the Eagle Crest restaurant.
- D. Water test results of Deschutes River water taken from the river on 10/15/92.
- E-1. August 6, 1993 letter from Bob Main, Manager of South Central Region Watermaster's Office to Bill Lyche, Eagle Ridge Development Corp. regarding illegal diversion of river water.
- E-2. October 1, 1993 letter to Bob Main from Sandra Sands raising a number of questions regarding water rights.

Ms. Sands also submitted the following documents into the record:

1. Portions of the Deschutes County Comprehensive Plan (Exhibit 251) regarding water resources and archeological resources.
2. August 13, 1993 The Bulletin article by Scott Maben entitled "Groundwater to be Studied" (Exhibit 252). The article states that there has never been a systematic look at the groundwater hydrology of the area and that a study was begun in May 1993 to study this resource. The first phase of the project should be completed in approximately three years.
3. July 2, 1992 The Bulletin article entitled "Resorts: We've Got Enough" (Exhibit 253). This article cites the results of a major survey of County residents that showed that 80 percent of County residents believe that there are too many or enough destination resorts in Deschutes County.
4. August 5, 1992 article from The Spokesman dated August 5, 1992 (Exhibit 254) that states that Bend's cost of living is about 6 percent above the national average.
5. November 25, 1990 article from The Bulletin entitled "Resort Courses Ignite Debate" (Exhibit 254). The article states that County Planner Jim Raisanen said that allowing golf courses in what is now proposed as Phase II of Eagle Crest could open the door for homesites. Once golf courses are established, the developers can argue that the property is no longer suitable for farm uses.
6. June 29, 1993 letter from Jen Twining to Martha Pagel, Director of Oregon Water Resources Department submitting testimony to the Department regarding Eagle Ridge Development Corp.'s Water Permit Request No. G-12905, stating reasons why the permit application should be denied. These objections were that the report supporting the application did not meet the requirements of law for permit issuance as it lacked evaluations of required matters; that the County's Goal 8 ordinances are not acknowledged; the Department should not issue a water right until it receives County land use approval; the proposed use is not in the public interest; the application was processed out of order; the Water Resources Commission should review the application; the proposed use violates land use regulations and the Comprehensive Plan; the use is not compatible with environmental concerns and natural resources in the Deschutes basin.

FINDING: The County's destination resort ordinance and mapping of the Eagle Crest for resort development has been acknowledged by LCDC as being in compliance with statewide planning goals.

7. A document entitled "Questions and Objections to Staff Report and Burden of Proof" prepared by Sandra Sands, dated November 3, 1993, which is in a manilla file folder marked Exhibit 260. Numerous documents are included in the folder and are identified by Ms. Sands as follows:

- A. 9/21/91 Letter from Environmental Health Division of Deschutes County to the Deschutes County Planning Commission regarding the destination resort ordinance. This document suggested including language in the destination resort ordinance that would exclude drainfields and sewage lagoons, except under certain circumstances, from being considered beneficial uses of wastewater. The letter also states that the Deschutes County Planning Commission has a concern regarding the lack of a basin-wide groundwater study. The letter also indicated that resort Applicant should be required to develop an erosion control plan for all disturbed land, as required by ORS Chapter 468.
- B. National Geographic Article on Water. This article was submitted because it discusses contamination caused by runoff and supports Ms. Sand's request that runoff water be utilized for beneficial use.

FINDING: The Applicant will be required to provide greater detail about the specifications of the proposed sewer system prior to FMP approval. That document shall include plans for stormwater collection and disposal.

- C. Pages 138 and 139 from the Deschutes County Comprehensive Plan. These pages were submitted to establish that the County recognizes the fact that drought is a recurring natural phenomenon in this area.
- D. Groundwater Study Article. This article was submitted to support Ms. Sand's argument that development of Eagle Crest should await completion of the groundwater study.

FINDING: The Hearings Officer does not have the legal authority to impose a moratorium on development, which is what has been requested by Ms. Sands and various other opponents. The imposition

of a moratorium on development is an action that must be imposed by a governing body. The ability of governments to impose moratoriums are strictly limited by state law. No moratorium on destination resorts or Cline Buttes area development has been imposed by Deschutes County.

F. List of Dairies and other farms in Bend-Redmond Area.

FINDING: This document states that cows from the Everett and Eva Thornburg ranch graze on 160 acres of rangeland that border Phase II. The document does not, however, specifically identify the landowner or parcel. The Hearings Officer did not observe any cows grazing on any lands adjacent to Phase II property. None of the other operations are contiguous to Eagle Crest. The addresses given indicate that all operations are located a significant distance from the Eagle Crest Resort. No evidence was submitted to indicate how any of the listed dairies would be impacted by Eagle Crest operations.

- G. Bulletin Article - 10/17/93. This article documents the fact that Eagle Crest pumped water from the Deschutes River without first obtaining a state permit to authorize the withdrawal. The photograph that accompanies the story shows that pump equipment/structures and pipeline have been built on the banks of the Deschutes River.
- H. Correspondence from Sandra Sands to Bob Main, Watermaster about Eagle Crest's withdrawal of water from the Deschutes River, without a permit.
- I. Swalley River Water Transfer Application.
- J. Health Department Reports discussing possible cross-connection problems in the Eagle Crest irrigation water system.
- K. Memorandum dated April 30, 1991 from Sandra Sands to the County Commission regarding wildlife and plant resources on Phase II land.
- L. Letter to C. Calica, Confederated Tribes of the Warm Springs from Sandra Sands regarding potential wildlife, plant and cultural resources on Eagle Crest property.
- M. Opposition Testimony, October 1992

M-1 Ray Curry Testimony. This document also contains other testimony but it appears that Ms. Sands has submitted the document for consideration of the Ray Curry testimony, only. Mr. Curry was employed with the Soil and Water Conservation District for Deschutes County in October of 1992. Mr. Curry stated that he conferred with DEQ about the use of septic systems at Eagle Crest and was told that DEQ allows such systems only because the County allows their use. Mr. Curry stated concerns about contamination of groundwater from the Eagle Crest septic systems.

M-2 Sandra Sands Testimony. This testimony contains the concerns expressed by Ms. Sands in other documents and testimony.

- N. Letter from Amy Patton, DEQ, 1/6/92 to Virgil Harper. Ms. Patton states that DEQ's groundwater section has not conducted research on the impacts of golf courses on groundwater quality in Oregon. Ms. Patton also states that DEQ may have concerns about the proposed mechanism for sewage treatment and disposal for a resort community. Ms. Patton also said that "DEQ requires a permit for discharge of treated sewage to either a surface water body or to the subsurface. In the permit application process the applicant is required to provide sufficient information to demonstrate that the wastewater discharge will not create a significant adverse impact to either groundwater or surface water."
- O. This is the same document as Exhibit A. of Exhibit 260.
- P. Letter from Eagle Crest Agent, Charles C. Brown, offering one year's free cable service and hookup in return for the release of the covenants and restrictions of Canyon River Territories for properties acquired by Eagle Crest.
- Q. Letter from Martha Pagel, Director of Water Resources Department dated September 14, 1992. This letter has been submitted into the record by many parties.
- R. 1991 New Wells and Irrigation Permits for Central Electric Cooperative, Inc. This document shows that CEC added 65 irrigation pumps and 31 wells to its electric service system in 1991.

R-1. National Geographic Article on Water that points out that wells that once had an abundant supply of water are now going dry.

S. Letter from Bill Blosser to L. Stickel, Chair of Water Resources Commission regarding Parrot Mountain lawsuits because land use permits were issued when a water source was not assured.

T. Eagle Crest as Plaintiff

T-1, T-2 & T-3 Correspondence pertaining to Canyon River Territories Building and Use Restrictions

8. A document submitted by Sandra Sands on November 3, 1993 entitled "Overview of Oregon's Statewide Planning Goals" (Exhibit 261). This document contains the following exhibits:

1. Testimony prepared by Gladys Biglor, Wildlife Biologist, dated October 22, 1992.
2. Bend Municipal Golf Course Study prepared for BLM. This document states that the golf course would use up to 1,000,000 gallons of water per day and stated that Peck's milkvetch is normally found west of the Deschutes River.
3. Bureau of Reclamation - Department of the Interior report regarding groundwater. This document is generally consistent with statements made in the Newton and Gonthier groundwater studies.
4. Oregon water law - This is the ARLU-DECO testimony on water that was apparently presented to the State Water Resources Department in June of 1993. This document has been discussed elsewhere in this decision.
5. Letter to Anne Squier, Sr. Advisor, Natural Resources from Sandra Sands expressing concerns about Eagle Crest's expansion plans.
6. Letter to Martha Pagel, Dir. Water Resources Dept. requesting protection of ground and surface waters "in accordance with Goal 5 mandates." Ms. Sands requested an inventory of groundwater resources prior to authorization of additional water use by Eagle Crest.

7. ARLU DeCo Water Testimony presented during Goal 8 Mapping Process.
8. Letter from Brent Lake, DLCD, stating that surface and groundwater are Goal 5 resources, with the following attachments:
 - 8-B. Public Opinion Poll Summary in The Bulletin
 - 8-C. Agricultural Lands Article re resort mapping
 - 8-D. Farm Survey results indicate that some farmers blame golf courses and reports for using up valuable water that should go to irrigation uses
 - 8-E. 11/25/90 Bulletin article
9. Water Conservation editorial from The Bulletin dated May 7, 1993 stating that Deschutes County would probably maintain its drought status and that this would allow special water-use permits and other provisions to ration water, a prudent idea that would allow underground springs to recharge.
10. Golf Course Water Statistics Article. This article states that a well-maintained golf course in Hawaii or California uses 1.5 million gallons of water every day. Additionally, golf courses are generally built near waterways which means that pesticides and fertilizers from the course drain into the water, often harming local vegetation and marine life.
11. WaterWatch Testimony, 10/2/92, stating that water is scarce and that much of the water in the Deschutes comes from underground springs.
12. Canyon River Territories Petition
13. Testimony prepared by Dr. M. Turner re Economics.
14. Memo from C. Morrow re: Groundwater
15. 10/22/92 Sands Testimony
16. Testimony presented re: HB 2932 - Destination Resorts by Sandra Sands
17. Testimony presented to LCDC on 12/13/91 by Sandra Sands

18. ARLU DeCo Testimony 11/10/91
 19. Testimony presented to Senate Committee on Agriculture and Natural Resources
 20. Testimony presented to Senate Committee on Agriculture and Natural Resources
 21. BLM Grazing Allotments and Maps
 22. Oregon Natural Resources Council proposal
 23. Marge Turner testimony dated 10/8/92
 24. Bulletin article dated 6/27/91 regarding adoption of destination resort ordinance for EFU lands
 25. Cost of Living Article 8/5/92 The Spokesman
- K. Memorandum dated October 21, 1993 from **Linda Burwell**, 150 NW 83rd, Redmond, Oregon (Tax Lot 1400)(Exhibit 215). Ms. Burwell cites two concerns:
1. Utility companies need continued access to existing power poles and lines that border the south end of Cline Fall Oasis subdivision and the northern end of the Eagle Crest II property, on what used to be BLM land. Utility easements on Oasis subdivision lots do not match the location of power lines. Eagle Crest has requested to have no setbacks along the property boundary. Such development will preclude utility company access.
 2. Wayward balls will trespass onto Ms. Burwell's property is the golf course is sited on her property line with Eagle Crest Phase II, as proposed by Eagle Crest. Ms. Burwell will also lose the privacy of her back yard is the golf course is sited on her property line. Bill Lyche has offered to create mound with trees and other vegetation to block her property but she would also like to have the "normal 50 foot setback" honored.
- L. October 14, 1993 letter from **Louie Pitt**, Governmental Affairs and Planning Director for the Warm Springs Confederated Tribes (Exhibit 216). Mr. Pitt states that the Tribes have rights that extend off the reservation, reserved by the Treaty of 1855. Eagle Crest's development project must "protect materials

of particular cultural significance to the Confederated Tribes." Tribal Code 490.500.

FINDING: Mr. Pitt did not state whether there are any areas of particular cultural significance to the Confederated Tribes on Eagle Crest property. Two cultural sites identified by Deschutes County do exist in Phase I, but have not been disturbed by Phase I development.

M. October 14, 1993 Statement prepared by William Boyer, Chairman of The Alliance for Responsible Land Use: Deschutes County, 17575 Jordan Road, Sisters, Oregon 97759 (Exhibit 217). Mr. Boyer states:

1. The Applicant is unable to prove what long-term effects the "mini-city" will have on future water supplies with respect to quantity and quality. Information regarding quantity is currently being obtained by USGS and Eagle Crest expansion should await the results of that study.
2. Ground water should not be used for irrigating golf courses.
3. The use of the integrated septic tank system proposed is a potential threat to underground water. A treatment plant would solve the problem and effluent from the plant could be used to irrigate one of the golf courses.
4. There is no public need for more golf courses and destination resorts in a county glutted with such facilities.
5. Eagle Crest will alter the character of the surrounding area by creating a mini-city with traffic, congestion, increased wildlife road kill and commercial areas. This is prohibited by the County's destination resort ordinance. Once developed, there will be pressure for the area to become a city.
6. A \$600,000 public subsidy of the Highway 126 and Cline Falls Road interchange is intolerable.
7. There is no indication that conservation of energy is to be built into the development.

N. September 29, 1993 letter from A. H. McCloskey, 1/5 Share Owner in residence at Eagle Crest (Exhibit 218). Mr. McCloskey states that there is a "very apparent problem with the present sewage/septic process now being utilized with the existing volumes. Any additions would surely create a severe overload and cause unsanitary environmental impact on the area. I would

hope that the county would make sure than an adequate, appropriate sewage system would be designed and installed prior to a full permit being issued."

- O. Report from Marjorie S. Turner, PhD., Professor Emeritus, Department of Economics, San Diego State University, P.O. Box 8005, Sister, Oregon 97759 (Exhibit 219). Dr. Turner analyzed the Hobson & Associates report submitted by the Applicant and made comments that are discussed in the Required Findings section of this decision under the DCZO 18.113.070 (C)(c) heading.
- P. October 14, 1993 letter from Virgil L. Harper, Route 1, Box 332, Terrebonne, Oregon 97760 (Exhibit 220) that states:
 - 1. Will Eagle Crest meet the County's requirement that sewage be put to beneficial use if it pumps its effluent to Redmond's treatment plant?
 - 2. If sewage is pumped to Redmond, a sewage line will need to cross the Deschutes River. I assume this couldn't happen as this portion of the river is a scenic waterway. If it is run along or under the highway, will the local taxpayers incur a greater tax burden? As Redmond's sewage system is "maxed out," will local taxpayers be required to pay for improvements to Redmond's system to process Eagle Crest effluent?
 - 3. What happens if there is a drought and there is not enough water to serve residents? Is the County legally responsible as it has allowed development to take place when they have seen and been made aware of warning signals, such as reduced well levels on existing wells? The County is responsible for protecting the water supply of its current citizens for future needs.
 - 4. Why will it take the State Water Resources geologists 3 years to complete a study to determine if there are ample water supplies and it takes only days for the hired experts to determine there is adequate water?
 - 5. Who owns the water in the aquifer that Eagle Crest wants to tap into?
 - 6. Farming practices and destination resorts are not compatible. Adjoining BLM land is leased to a cattle owner for grazing. Cattle can't read No Trespassing signs and they often go through fences. Mr. Harper infers that the cattle owner will be sued by Eagle Crest for trespass, as Eagle Crest has sued the Sands family because they allegedly rode a horse on an Eagle Crest golf course.

Q. October 22, 1993 letter from Maret Pajutee, PO Box 801, Sisters, Oregon 97759 (Exhibit 221), with exhibits, stating:

1. Public need should be a major factor in the consideration of developmental request that could negatively influence public water resources. It is disturbing that Deschutes County processes land use applications without adequate water supply information. The Eagle Crest application should not be approved without the complete results of the County hydrology study.
2. Eagle Crest should be required to reuse waste water. Septic tanks have the potential of polluting groundwater. Watering golf course with ground water is an irresponsible waste of natural resources.
3. There can be little doubt that the expansion of Eagle Crest will affect the northerly moving aquifer, reduce discharge of the aquifer to the Deschutes and ultimately add to the cumulative adverse effects to the Columbia River.

FINDING: The Hearings Officer finds that the expansion of Eagle Crest will reduce discharge of the regional aquifer into the Deschutes River and will ultimately add to the cumulative adverse effect to the Columbia River. This fact will be considered in determining appropriate mitigation measures for fish and wildlife damages caused by the resort.

4. The Deschutes River displays moderate to severe non-point pollution which adversely affect fish and aquatic life. The County must consider the cumulative effects of allowing more water use, more toxic golf course chemicals and more untreated human sewage waste next to the river.

Ms. Pajutee's exhibits are:

- A. 10/17/91 Water Resources Department Interoffice Memo from Donn Miller to Steve Brown. This document is discussed below.
- B. 10/22/92 letter to Jen Twinning, Executive Director of ARLU-DeCo from Tom Throop, Deschutes County Commissioner.
- C. 9/14/92 letter from Martha Pagel, Director of the Oregon Water Resources Department, referenced and discussed above.

- D. 1988 Oregon Statewide Assessment of Nonpoint Sources of Water Pollution by Water Quality Division of Oregon Department of Environmental Quality.
- R. Document entitled "Summary of **Water Watch** Objections to Eagle Crest Permit" presented by William Boyer (Exhibit 222):
 - 1. The groundwater resource of the Deschutes Basin is poorly understood and not as closely regulated as surface water.
 - 2. The Applicant's technical water report is defective.
 - 3. The proposed use of water will deplete flows and adversely affect water quality and instream uses in the Deschutes River.
 - 4. The summary then contains a number of arguments directed to the Water Resources Board.

October 21, 1993 letter from **WaterWatch of Oregon** (Exhibit 223), with exhibits, stating that Deschutes County should not approve the Eagle Crest expansion until the ground water study of the Deschutes basin is completed as ground water resources in the Deschutes basin are poorly understood. WaterWatch points out that individual domestic and small industrial uses are exempt from regulation, allowing these uses to place a growing demand upon the area's ground water resources. WaterWatch points to the experience of Yamhill County, where the Parrot Mountain area was developed with County approval, in the face of evidence that groundwater supplies were inadequate. Portions of the area were withdrawn from further groundwater appropriations by the State and takings claims resulted. There is now pressure to build a municipal water system to serve area residents, contrary to land use planning policies. WaterWatch enclosed its June 30, 1993 letter of objections to the Applicant's technical water report that was submitted to the Oregon Water Resources Department and a February 29, 1992 letter from William Blosser to Lorna Stickel, Chair of the Water Resources Commission regarding the Parrot Mountain ground water situation.

- S. Written Statement of **Carrie Carmella** (Exhibit 224), 152 S. Canyon Drive, Redmond, Oregon 97756. Ms. Carmella opposes the Eagle Crest expansion and states:
 - 1. Eagle Crest will be a mini-city located outside of the Redmond Urban Area Growth Boundary that will impact the Redmond Urban Area. The Redmond Urban Area Comprehensive Plan should be considered relevant to the Eagle Crest application because of the immediate effects

a mini city will have on local resources because it is outside of the UGB. Ms. Carmella cites a number of policies from that Comprehensive Plan.

FINDING: The Redmond Urban Area Plan and implementing ordinances do not apply to land uses that occur outside of the Redmond urban growth boundary. This destination resort application is subject to review for compliance with Deschutes County land use ordinances and Comprehensive Plan, not the Redmond urban area plan and land use ordinances.

2. The groundwater study should be completed before these applications are approved. The water rights of farmers and existing users must be protected and water should not be squandered for golf course irrigation.
3. Redmond's sewage treatment plant is at or near capacity. If Eagle Crest connects to the system, Ms. Carmella and Redmond sewer users would be required to pay for the cost of expanding the sewage system.
4. Urban sprawl causes higher public service and facilities costs that are borne by taxpayers.
5. Improvements need to be made to the intersection of US Highways 97 and 126 in Redmond before an interchange for Cline Falls Road and Highway 126 is constructed with public funds to benefit Eagle Crest.
6. Development of Cline Buttes will harm the natural beauty of this natural feature.

T. Numerous documents submitted by **Sandra Sands**, described as follows:

1. May 3, 1993 letter from Ms. Sands to Representatives Bob Repine and Ray Baum regarding HB 2932 re destination resorts (Exhibit 225). Ms. Sands stated that Eagle Crest has no public services, depends on a septic system and ground water and uses 1.5 million gallons per day to irrigate each of its golf courses. Neighboring wells have dropped five to ten feet but Water Resources will not act until well levels have dropped 25 feet. Ms. Sands also expressed concern of public funding for the proposed Highway 126 overpass, fecal coliform contamination, impacts to wildlife and the large increase in activity in the area of the resort from the expansion.
2. Ms. Sand's 1992 testimony to Deschutes County Hearings Officer Denise Frisbee. The main points raised were:

- a. Eagle Crest has not assured development of recreational and key facilities by surety bonding, as required by County ordinance.
 - b. Cumulative negative impacts to EFU lands in the area of Eagle Crest due to depletion of ground water, septic disposal, traffic impacts, changes to rural quality of life and the impact of creating a new city in the rural EFU land of Deschutes County. This violates the purpose of the EFU zone to protect agricultural lands for farm use.
 - c. The destination resort expansion will occur on land that was formerly productive EFU farm land. Now that the land is irrigated it resembles lush high value farm land.
 - d. The proposed Highway 126 overpass will expend public dollars for a facility that is needed only because of the existence of the Eagle Crest resort. This facility will adversely impact the character of the surrounding area.
3. Memorandum from Ms. Sands to the Deschutes County Hearings Officer dated 10/22/22 (sic) (Exhibit 227) stating:
- a. The County has not finished mapping destination resorts as required by Goal 8 and the County's destination resort ordinance. The County has failed to minimize adverse impacts on surrounding lands and to require financial assurances.
 - b. The County has not assessed the recreational needs of the citizens of the state and its visitors. This assessment is needed to assure compliance with the purpose of Goal 8. Recreation planning must be coordinated with private enterprise and be implemented in such quantity, quality and location as consistent with the availability of natural resources.

FINDING: Deschutes County has held hearings and made voluminous findings documenting compliance with Goal 8 for the destination resort mapping process. The subject property was properly designated for destination resort zoning, according to that process. If the County failed to properly assess needs in that process, the appropriate time and place to have raised that objection would have been in an appeal to the Land Use Board of Appeals, after that decision had been made by the Deschutes County Commission. Foland v. Jackson County, 311 Or 167, 807 P2d 801 (1991).

- c. Ms. Sands believes that approval of Eagle Crest's expansion will violate Goal 5 because the County has not inventoried the quality and quantity of Goal 5 resources, especially ground water supply.
- 4. ARLU - DeCo Exhibits identified by ARLU-DeCo as exhibits numbered:
 - A. 10/17/91 Water Resources Department Interoffice Memo from Donn Miller to Steve Brown (Exhibit 228) regarding changes requested to Eagle Crest's application for a water rights permit for three wells on Cline Buttes and an appropriation of 9.12 cfs. Eagle Crest sought approval to locate the wells closer to the Deschutes River as there was insufficient water in the Deschutes Formation aquifer in the locations selected. The local groundwater is in motion to the north, discharging to the river beginning in the area of Tetherow Bridge so the relocation of the wells will be of little consequence to the river. Relocation of the wells will result in the diversion of water from the intended source aquifer and the hydraulic nature of the aquifer will allow for very high specific capacities which would prevent interference with neighboring wells. The Eagle Crest applications were erroneously approved without self-reporting and resource management conditions.
 - B. 4/26/91 Water Resources Department Interoffice Memo from Donn Miller to File (Exhibit 229) regarding review of Eagle Crest's application for a water rights permit for three wells on Cline Buttes and an appropriation of 9.12 cfs. Mr. Miller states that the Deschutes River loses water between Bend and Cline Falls due to porous lava. Little or no water is lost or added between Cline Falls and Tetherow Bridge. Below Tetherow Bridge, 4 miles from Eagle Crest, the river gains much flow from the regional aquifer. The head in the nearby Eagle Crest well is about 150' below the nearby stream level so the project should not have a significant surface water interference. The wells are not hydraulically connected to the Deschutes River, as defined by state rules. Little is known about the long-term water level response in the aquifer. A more detailed examination is needed. In grander terms, this development will almost certainly impact the flows of the Deschutes River downstream. The impact will be minute since it can not be greater than the diverted quantities. The influence will be delayed due to the slow nature of groundwater movement. The

impact will probably not be measurable but can be inferred through conceptualization of the setting.

- C. Portion of Eagle Ridge Development Corporation application for water rights (Exhibit 230) and three wells, received on 2/26/91, for the proposed use of year round irrigation, including golf courses and domestic use for 500 dwelling including irrigation of up to .5 acres per dwelling.
- D. January 28, 1993 Letter from Beverly Clarno, Majority Whip of Oregon House of Representatives to Martha Pagel, Director of Water Resource Department with enclosure of a January 26, 1993 letter from Jerol E. Andres of Eagle Crest. (Exhibit 231) Mr. Andres sought Ms. Clarno's assistance in obtaining water rights approval for water rights for the resort's proposed expansion. Ms. Clarno referred the request to Martha Pagel for response.
- E. 7/6/92 Memorandum from Steve Brown to Fred Lissner directing Mr. Lissner to expedite review of Application G-12905 filed with Water Resources Department (Exhibit 232).
- F. 2/9/93 Letter to Steve Brown of Oregon Water Resources Department from William Lyche and Thomas Walker (Exhibit 233) thanking him for his assistance with the pending groundwater appropriation application. This letter requests that Mr. Brown change the application from quasi-municipal uses to domestic water use for approximately 900 dwelling units, including irrigation of lawns and gardens, not to exceed .5 acre per unit.
- G. June 1992 Public Opinion Survey on Rural Land Issues prepared for the Deschutes County Board of Commissioners by Western Attitudes of Lake Oswego, Oregon (Exhibit 234).
- H. Testimony of ARLU-DECO on Water Issues in Goal 8 Mapping (Exhibit 235) previously presented to Deschutes County Board of Commissioners and Oregon Water Resources Department.
- I. Eagle Crest Phase II Testimony by ARLU-DECO on Water (Exhibit 236) that was apparently submitted to the State Water Resources Department regarding State issuance of proposed water permit G-12905 on 6/29/93, including 9/14/92 Martha Pagel letter. Both documents were discussed, above.

- J. Article entitled "Habitat Degradation May Push Grouse to Extinction" from The Bend View, April 15, 1993 (Exhibit 237)
- L. Letter dated May 31, 1993 from Maret Pajutee to Richard Benner, Director DLCD; Doug White, Reviewer for DLCD; and George Read, Deschutes County Planning Director (Exhibit 238) regarding periodic review by DLCD and claiming that Deschutes County has failed to adequately protect riparian zones by narrowly defining riparian zones.
- M. Letter dated January 3, 1993 from Maret Pajutee, Biologist, to Michael Rupp of DLCD (Exhibit 239) regarding Deschutes County's Wildlife Plan and Ordinances raising concerns about the County's protection of riparian habitat and zones. Ms. Pajutee enclosed an article entitled "Public Asks for Greater Wildlife Protection" from The Nugget of June 3, 1992, an article entitled "Opportunities and Constraints for Development and Conservation: Teller County/Woodland Park Growth Management Plan," a May 26, 1992 letter from Ms. Pajutee to the Deschutes County Board of Commissioners and Planning Department regarding riparian areas, April 22, 1992 letter to Deschutes County Planning Commission and Department regarding wildlife habitats, and article entitled "Wildlife Habitats in Managed Forests" by Jack Ward Thomas and excerpts from the Deschutes County River Study.

Unlabelled Bend Bulletin articles entitled "Alarms Sound on Fish" dated March 9, 1993 (Exhibit 240) and "Winter Meant Death to Deer" (Exhibit 241) dated March 31, 1993 were submitted into the record. A copy of pages from the 1988 Oregon Statewide Assessment of Nonpoint Sources of Water Pollution prepared by the Water Quality Division of DEQ (Exhibit 242) was also submitted.

- S. October 28, 1993 letter from Clyde Everton (Exhibit 243) making the following points:
 - 1. At the October 14, 1993 hearing an Eagle Crest representative (Mr. Andres) testified that Eagle Crest relies upon the Deschutes County Sheriff's Office for police protection and general security. Mr. Everton questioned the ability of that office to handle the increased workload that an Eagle Crest expansion would cause. The Sheriff is asking for a levy. If that levy fails, how can the Sheriff adequately police the Eagle Crest expansion? Further information is needed on the Eagle Crest security staff.

2. Is the proposed septic system safe? Is it adequate? What effect will it have on the Deschutes River? The smell of sewage at Eagle Crest's Phase I golf course is strong. This is a definite indication that the system has not functioned properly in the past. Has the problem been solved?
 3. Evidence has been submitted to demonstrate that the fecal count in the Deschutes River is considerably higher than above Eagle Crest. At what count is this a critical problem? Shouldn't there be an unbiased review of the system?
 4. Land use approval of Eagle Crest's expansion should await completion of the USGS ground water study.
 5. Does the rural fire district in which Eagle Crest is located perform up to ISO and FPA standards?
 6. Eagle Crest's assertion that the average salary of Eagle Crest employees is \$27,500 is misleading. The median salary and breakdown of wages of employees is needed to adequately assess the economic impact of Eagle Crest upon Deschutes County.
- T. October 25, 1993 letter from James L. Goodell (Exhibit 244), with attachment. Mr. Goodell says:

1. Eagle Crest should not be given BLM land tax free.

FINDING: Under the tax laws of the State of Oregon, the Eagle Crest Phase II property will be subject to ad valorem taxation, as is any other privately owned property, as it is now owned by a private party, not by BLM.

2. Eagle Crest should pay for the Highway 126 overpass.
3. Consider SB 1010 which was passed and the results of the water test that showed an increase in fecal coliform counts in the Deschutes River just below Eagle Crest.
4. Eagle Crest may not be able to use river water as the pumping system may not be allowed in a scenic riverway.
5. Eagle Crest Phases I and II are uphill from residential areas and the Deschutes River. With heavy use of fertilizers and pesticides on the golf courses and lawns, what happens to the runoff? These chemicals

are harmful to deer and rodents that eat plants. Golden eagles in turn eat contaminated rodents. You must remember House Bill 2538.

6. More studies of habitat for Golden Eagles in the Deschutes River corridor should be conducted.
7. Eagle Crest should put up a \$100 million bond because they have gone bankrupt before.

FINDING: This statement, that Eagle Crest declared bankruptcy, was not supported with any documentation. Documentation of such a fact is fairly easy to obtain. Additionally, the record of prior approvals indicate that a person who had granted an option to purchase land for the resort was a debtor in a bankruptcy matter. It may be that Mr. Goodell believes that this person's bankruptcy was an Eagle Crest bankruptcy, which it was not. For these reasons, the Hearings Officer finds that there is no credible evidence that Eagle Crest ever declared bankruptcy.

- U. Letter from Dorothy C. Schoonmaker (Exhibit 245) dated November 3, 1994 (sic). Ms. Schoonmaker states that an increase from 563 to 1,413 units on desert land, with no positive proof of sufficient water and with a septic disposal system is not in the public interest.
- V. Letter from Kathleen Plain, 5944 NW Zamia, Redmond, Oregon 97756 (Exhibit 246). Ms. Plain lived in Eagle Crest from May 1, 1990 to September 29, 1991. She opposes resort expansion because:
 1. There was a lack of water pressure at the resort, making it impossible to wash or shower.
 2. The smell of sewage was extreme in the area of the leach lines.
 3. Very few of the residential lots have been built on. When they are, the demand on the water and sewer systems will be much greater.
 4. The new development will demand large amounts of ground water. This may have an adverse affect on neighbor's wells.
 5. Having numerous septic tanks and leach lines on the hill, without a treatment plant, presents a potential pollution problem.
 6. The public will bear the greatest cost on Highway 126.
 7. Deschutes County doesn't need more low-paying jobs.

8. The resort will use huge amounts of fertilizers for its golf courses and homes.
 9. Numerous Eagle Crest homes are for sale and property values have dropped.
- W. October 22, 1992 letter from **Joanne VanMeter**, 67670 SW 75th Street, Redmond, Oregon 97756 (Exhibit 247). Ms. VanMeter recommends denial of the Eagle Crest applications for the following reasons:
1. The applications "fail to provide Burden of Proof as required in 18.113.070 (N) and (P).
 2. Ms. VanMeter lives approximately 1/4 of a mile from Eagle Crest Phase I. Ms VanMeter complained about the following forms of pollution from Eagle Crest: noise pollution of heavy construction equipment; light pollution in Phase II area, light pollution from Phase I; dust pollution for "dust bowl" effect created by construction activities and high winds; visual pollution of her view of Cline Buttes with numerous structures.
- X. Opposition Statement from **Frances Everton** (Exhibit 248). Ms. Everton questioned how staff and the Hearings Officer can form an educated opinion about whether to allow development with septic tanks for a resort located on the banks of a river, without information from DEQ or the Deschutes County Environmental Health Division. Ms. Everton also inferred that Deschutes County should have hired its own economic consultant and should have addressed the issue of the working poor. Ms. Everton included an October 28, 1993 editorial from The Bulletin which she says "directly pertains to the responsibility of the County." The editorial chastises the County's Community Development Department for falling behind on restaurant health inspections.
- Y. October 29, 1993 letter from **Howard Paine** (Exhibit 249).
1. The water conservation plan submitted by Eagle Crest will be ineffective because the majority of users will be overnight guests. There will be no financial incentive for the guests to conserve water. Taking waste water from each unit and home to water the golf course is the only effective way to conserve water.
 2. Eagle Crest cannot meet the requirements in 18.113.070(D). The displacement of wildlife, especially deer from loss of habitat and encroachment of human activity cannot be mitigated. 75 deer cannot be displaced or replaced by some other species, such as chipmunks.

3. The high usage of herbicides, pesticides and commercial fertilizer combined with the fecal coliform and household chemicals that are being released into the ground will impact the fish in the Deschutes River.
 4. The Eagle Crest resort will significantly increase the cost of farm or forest practices on surrounding lands by increasing land and housing costs in the vicinity of the resort.
- Z. Letter dated October 29, 1993 from C. R. Lindsay, 7107 SW Wickiup Avenue, Redmond, Oregon 97756 (Exhibit 256). Mr. Lindsay states that he lives on property that adjoins Eagle Crest, Canyon River Territories and BLM land. Mr. Lindsay favors approval of the applications for the following reasons
1. New Eagle Crest residences, at the rate of 100 per year, would be only 1/36th of the residences being built in Bend and Redmond so that they will have a minimal impact on the area's water supply.
 2. Traffic problems may be due to immigrants to Central Oregon, rather than by Eagle Crest traffic.
 3. The Deschutes County Assessor advised Mr. Lindsay, many years ago, that the proximity of Eagle Crest would not raise Mr. Lindsay's property tax bill. Eagle Crest keeps my taxes low because they pay the lion's share of taxes.
 4. In future years, Central Oregon will be thankful for tourism jobs.
 5. The offensive drainfield is in Canyon River Territories, not in Eagle Crest.
 6. The bald eagles were still nesting here four years after Eagle Crest started building. The balds and the golden eagles left when the rabbit population was drastically reduced, supposedly as a result of Canyon River Territory new residents who chose to shoot rabbits and raccoons instead of fencing their gardens. Likewise, the deer population dwindled when these residents cut through BLM fences to affect more convenient access to the land for their horseback riding and cross-country vehicle use, although the land was leased to a cattleman.
- AA. October 21, 1993 letter from Joe Hannan, City Manager of Redmond (Exhibit 257) expressed support for the development.

- BB. October 22, 1993 letter from **Bob Eberhard**, 729 North Canyon Drive, Redmond, Oregon 97756 stating support of Eagle Crest's expansion request because destination resorts are allowed uses; Eagle Crest is an excellent corporate citizen and has built a first class resort; Eagle Crest is a substantial employer in the Redmond area; only 1/2 of 1% of the County is developed with destination resorts; this application is supported by the City of Redmond, the Redmond Chamber of Commerce and the business community at large.
- CC. October 21, 1993 letter from **Paul Barnes** of Central Oregon Mortgage, Inc. (Exhibit 259) supports the Eagle Crest expansion. Mr. Barnes states that Eagle Crest has been a major economic force in the County and has been a good neighbor. The expansion will enhance Deschutes County and the State of Oregon.
- DD. October 27, 1993 letter, with attachments, from **C.T. Thomas** (Exhibit 264). Mr. Thomas states that "exploitation of Public Lands by a private enterprise for profit gain should not be allowed as in the case of Cline Butte Utilities (Eagle Crest). The documents submitted include:
1. Notice of Environmental Impact, Cline Butte Reservoir, in the 8/18/93 edition of The Spokesman.
 2. Environmental Assessment by BLM regarding proposed Cline Butte Reservoir dated 8/5/93.
 3. Letter from C.T. Thomas to Phil Paterno dated 8/28/93 objecting to approval of use of BLM land for Cline Butte Utilities' reservoir.
 4. Letter from James Kenna to C. Thomas dated September 22, 1993. Mr. Kenna stated that the reservoir is intended to provide a reliable source of potable water for fire protection purposes at the Eagle Crest resort. A gravity system is more reliable in the event of a fire than is a system that is reliant upon pumps which require electricity. Eagle Crest installed electric and telephone conduits under Cline Falls Highway, not water lines. The Eagle Crest water lines will be located near an existing utility line and access roads. The reservoir will be partially buried and screened by surrounding vegetation.
 5. Letter from C. T. Thomas to James G. Kenna dated 9/30/93. Mr. Thomas states that Eagle Crest intends to use the reservoir for domestic and irrigation purposes and to increase water pressure in their water system. Public land should not be used to irrigate golf courses and to store water for domestic use in Eagle Crest. Mr. Thomas asked Mr. Kenna to review photos of the pipes that were placed under Cline Falls

Highway which he claims are obviously water pipes, not conduit for electric and telephone lines.

6. Eagle Crest Phase II Domestic Water Supply System Master Plan, March 1992.
 7. Letter from Tom Blust, Deschutes County Engineer to C.T. Thomas dated October 20, 1993 stating that all utility crossing work on Cline Falls Highway was performed according to the permit and complied with County codes.
 8. Letter to George Kolb from Steven R. Hannas (W&H Pacific) dated 10/14/93 stating that a bank of conduits were placed under Cline Falls Highway for future power, telephone, cable television and "to allow for possible future needs such as irrigation, natural gas, domestic water, drainage, or sewage collection system crossings. These conduit banks consisted of four 4-inch PVC conduits, one 6-inch PVC conduit and one 8-inch PVC conduit. These conduits can be used as sleeves or piping to allow future utilities to be placed under the roadway, without disrupting the new street improvements. In addition to the conduit banks, a single 10-inch PVC line (C-900 PVC pipe) was installed across Cline Falls Highway. This line was placed for future needs and could connect the existing Eagle Crest I domestic system to the proposed Eagle Crest II addition. This domestic water connection would connect and strengthen both phases of Eagle Crest domestic and fire protection water systems and improve reliability."
- EE. October 29, 1993 letter from Oregon Trout (Exhibit 265). Oregon Trout states that the Deschutes River, north of Bend, maintains a population of brown, native rainbows and rare bull trout. Oregon Trout believes that Eagle Crest Phase II could easily damage the fishery by its use of ground water, surface water pumping from the Deschutes River and septic systems. The group believes that ground water hydrology is complicated but that the withdrawal of several millions of gallons of water a day could affect spring flow rates and hydraulic pressure miles away. The Eagle Crest section of the Deschutes gains most of its irrigation season flow from spring water flowing into the river between Bend and Lake Billy Chinook. Ultimately, flow levels affect anadromous fish in the Columbia River. The Draft Recovery Plan for endangered Columbia River salmon calls for a moratorium on further water withdrawals from the Columbia River basin. The group is also concerned about the possible impact of irrigation effluent on river fish. Oregon Trout

states: "It is our opinion that a development of this size could never mitigate its impact on this fishery and should not be built."

V. REQUIRED FINDINGS

The Hearings Officer has recited the provisions of law that govern approval of the conceptual master plan of Eagle Crest and the requested variance and has followed each provision of law with findings relating to that section. The Hearings Officer makes the following findings:

18.113.020 - APPLICABILITY

- A. The provisions of this chapter shall apply to proposals for the development of destination resorts, as defined in this title, in areas designated DR by the County zoning maps. The provisions of this chapter shall not apply to any development proposal in an area designated DR other than a destination resort.
- B. When these provisions are applicable, they shall supersede all other provisions of the underlying zone. Other provisions of the zoning ordinance, made applicable by specific map designations such as the SMIA, AH, CH, FP or LM, or otherwise applicable under the terms of the zoning ordinance text shall remain in full force and effect, unless otherwise specified herein.

FINDING: The subject proposal is for the development of a destination resort as defined by this ordinance. Thus the provisions of Chapters 18.16 (EFU Zones) and 18.32 (MUA-10 Zone) are not applicable to this application. The provisions of Chapter 18.84 (Landscape Management) will be applicable to each structure which is constructed within the LM Combining Zone.

18.113.025 - APPLICATION TO EXISTING RESORTS

Expansion proposals of existing developments approved as destination resorts shall meet the following criteria:

- A. Meet all criteria of this chapter without consideration of any existing development; or
- B. Meet all criteria of this chapter for the entire development (including the existing approved destination resort development and the proposed expansion area),

except that as to the area covered by the existing destination resort, compliance with setbacks and lot sizes shall not be required.

If the Applicant chooses to support its proposal with any part of the existing development, Applicant shall demonstrate that the proposed expansion will be situated and managed in a manner that will be integral to the remainder of the resort.

FINDING: The Applicant has chosen to pursue option B. Thus, this application will be considered to be an expansion of an existing resort, and all criteria, other than lot sizes and building setbacks, must be met for all areas of the development.

The Applicant is proposing two areas of expansion to the existing resort, hereafter identified as Eagle Crest Phase I (Phase I). These include the 710 acre area to the west of Cline Falls Highway identified as Eagle Crest Phase II (Phase II), and the 36 acre area contiguous to Phase I on the east side of Cline Falls Highway identified as the Canyon River Territories (CRT) Expansion Area. The CRT Expansion Area is considered by the Applicant to be a part of Phase I, as it is directly contiguous to Phase I and ties directly into existing developed areas within Phase I.

Phases I and II are adjacent to one another, but are separated by the Cline Falls Highway. This configuration results in 544 acres within Phase I (including the CRT Expansion) on the east side of the Highway, and 710 acres of new resort area on the west side. Eagle Crest Partners, Ltd. is responsible for resort operation and the ownership of resort facilities will be transferred to the Cline Butte Utility Company. Lots within Phase I are owned by many different persons and entities. A significant part of the property boundaries for each phase adjoin Cline Falls Road. Almost all of the Cline Falls Road frontage of each phase adjoins the frontage of the other phase. For this reason, the Hearings Officer finds that the expansion area can be managed and operated in a manner which is integral to the remainder of the resort and such management has been made a condition of approval of the Master Plan. This condition will require the Applicant to assure owners and visitors to either phase of the Eagle Crest Resort complete access to all areas open to use by owners and visitors in the other phase.

18.113.030 - USES IN DESTINATION RESORTS

18.113.030 Uses in Destination Resorts.

The following uses are allowed, provided they are part of and are intended to serve persons at the destination resort pursuant to this section and are approved in a final master plan:

- A. Visitor-oriented accommodations designed to provide for the needs of visitors to the resort:
- a. Overnight lodging, including lodges, hotels, motels, bed and breakfast facilities, time share units and similar transient lodging facilities;
 - b. Convention and conference facilities and meeting rooms;
 - c. Retreat centers;
 - d. Restaurants, lounges and similar eating and drinking establishments; and
 - e. Other similar visitor-oriented accommodations consistent with purposes of this chapter and Goal 8.

FINDING: The proposed Master Plan for Phases I and II includes overnight lodging, convention and conference facilities in its hotel and a restaurant and lounge (Phase I). Area 11 of Phase II also includes what is called a "business development center." The Applicant has not explained what types of activities would be conducted in this center. If the Applicant wishes to build a facility for a corporate retreat center, this is an allowed use. The Applicant also obtained approval to build a temporary conference center in 1992. That center was not shown on the CMP. If it has not been constructed, the permit for that use has lapsed. No activities that might qualify as "similar visitor-oriented accommodations" were mentioned by Applicant, therefore, none are authorized by this approval.

- B. Developed recreational facilities designed to provide for the needs of visitors and residents of the resort;
- a. Golf courses and clubhouses;
 - b. Indoor and outdoor swimming pools;
 - c. Indoor and outdoor tennis courts;
 - d. Physical fitness facilities;
 - e. Equestrian facilities;
 - f. Wildlife observation shelters;
 - g. Walkways, bike paths, jogging paths, equestrian trails;
 - h. Other similar recreational facilities consistent with the purposes of this chapter and Goal 8.

FINDING: Equestrian facilities, physical fitness facilities, a golf course, swimming pools, tennis courts, walkways and bike paths exist in Phase I of Eagle Crest. The Applicant has established one of two proposed golf courses in Phase II. The Applicant proposes to build bicycle paths and a second golf course in Phase II. The Applicant has also proposed a "combined development area" (Area 11) that the Applicant says could include, but not be limited to, "hotel, sports facilities, conference center, business development center, pool, tennis courts, golf course

related facilities and residential development." The Applicant does not list other uses that might be conducted in this area. The Applicant shall accurately identify uses for this area in further detail as a condition of FMP approval.

C. Residential accommodations;

- a. Single-family dwellings;
- b. Duplexes, triplexes, fourplexes and multi-family dwellings;
- c. Condominiums;
- d. Townhouses;
- e. Living quarters for employees;
- f. Time share projects.

FINDING: The proposed resort will include single-family dwellings, multi-family dwellings, condominiums and time share projects. No living quarters have been provided for employees.

D. Commercial services and specialty shops designed to provide for the visitors to the resort:

- a. Specialty shops including, but not limited to delis, clothing stores, book stores, gift shops and specialty food shops;
- b. Barber shops and beauty salons;
- c. Automobile service stations limited to fuel sales, incidental parts sales and minor repairs;
- d. Craft and art studios and galleries;
- e. Real estate offices;
- f. Convenience stores;
- g. Other similar commercial services which provide for the needs of resort visitors and are consistent with the purposes of this chapter and Goal

FINDING: There are currently a number of existing commercial uses located within Phase I. These include a gift shop, convenience store, pro shop and resort real estate sales office. The Applicant also sells golf items and refreshments in its Phase II golf clubhouse. The Applicant has not listed all commercial services and shops that currently exist in the development but the Hearings Officer has visited the subject property and finds that all of the current commercial service and specialty shops that presently exist in Phase I and Phase II function as an integral part of the resort and provide services for visitors to the resort. The Applicant will be required to designate all currently existing commercial uses on the final master plan so that it is clear what commercial activities have been allowed by this approval.

The Applicant also plans to include commercial uses in the center of Phase II and in an area designated as "future commercial area." It is not known what types of uses might be sited in these locations. It is also unknown what type of traffic and utility service demands these commercial uses might generate, as the type of use is not identified. For instance, if the Applicant were to include a car wash, in conjunction with a service station as a "similar commercial service" the car wash would generate a significant demand for water and sewer services. The amount of traffic generated by commercial uses varies depending on the type of use selected. A service station or post office would place a greater traffic demand upon the area in which it is located than would a pro shop that is operated in conjunction with a golf course. The impacts of these uses upon the volume of resort traffic was not considered in the Applicant's traffic study. This is apparent when reviewing the traffic expert's descriptions of Phase I and proposed Phase II on pages 3 and 19 of the Kittelson & Associates, Inc. Traffic Impact Analysis document, Exhibit 9. The impact was not estimated in the sewer study. Page 5 of the sewerage master plan, Exhibit 26, lists commercial uses but does not list an estimated sewage contribution for these facilities. As discussed above, estimation of the impact of these uses is difficult to make without knowing what types of uses will be sited in the commercial areas. This information should be obtained and new estimates should be made.

The Applicant has previously obtained land use approval for commercial development in Phase I. Some of that development has not yet occurred, especially in the area that is shown on the Applicant's proposed master plan as "future commercial area." In CU-88-97, the Applicant obtained approval to add the commercial area to the resort master plan. Hearings Officer Greg Hendrix required the Applicant to submit a modified master plan that would include proposals for retail shops. No such plan was found by this hearings officer. The Applicant then amended the Master Plan in 1990. The 1990 plan also did not specify the commercial uses intended for this area. Since that time, the Applicant has obtained site plan approval for development of a temporary day care facility (CU-92-55) and a post office and convenience store (CU-92-21). The Applicant has gone forward with plans for the day care facility but has not constructed the post office and convenience store. The conditional use permit for the post office and convenience store appear to have expired.

- E. Uses permitted in open space areas generally include only those uses that, except as specified herein, do not alter the existing or natural landscape of the proposed open space areas. No improvements, development or other alteration of the natural or existing landscape shall be allowed in open space areas, except as necessary for development of golf course fairways and greens, hiking and bike trails, lakes and ponds and primitive picnic facilities including park benches and picnic tables. Where farming activities would be consistent with identified pre-existing open space uses, irrigation equipment and associated pumping facilities shall be allowed.

FINDING: The Applicant has included developed areas in the area designated as open space on its open space map, Exhibit 50. The designation of developed golf course areas is proper, according to this ordinance provision. The designation of the softball field, a tennis court and soccer field as open space is not. It also appears that the Applicant may have included areas around the stables that are used for parking and other stable related uses in the open space calculations. The Applicant will be required to revise its open space map to comply with the provisions of this section for all designated and accepted open space areas in Phase I and II of the resort.

F. Facilities necessary for public safety and utility service within the destination resort.

FINDING: Sewer and water utility service facilities are included within the resort boundaries, including pumps, wells and a drainfield. 1988 Master Plan approval for Phase I included a reserve area for future sewage plant construction. That area was removed from the plan and platted for housing units in 1990. Power lines and utility service lines also cross and serve the property. The Applicant should designate the location of all utility lines and easements that burden the property, including those granted by BLM and shall provide proof to the Planning Director, prior to FMP approval, that all development proposed in those areas is allowed by the terms of the easements granted.

G. Other similar uses permitted in the underlying zone consistent with the purposes of this section.

The Applicant has not applied for approval of any such uses. None are authorized by this approval.

H. Accessory Uses in Destination Resorts:

- a. The following accessory uses shall be permitted provided they are ancillary to the destination resort and consistent with the purposes of this chapter and Goal 8:

1. Transportation-related facilities excluding airports;
2. Emergency medical facilities;
3. Storage structures and areas;
4. Kennels as a service for resort visitors only;
5. Recycling and garbage collection facilities;
6. Other similar accessory uses consistent with the purposes of this chapter and Goal 8.

FINDING: The resort includes storage facilities and garbage collection areas that are ancillary to resort uses. The resort also includes roads and bike paths that may be

considered transportation-related facilities. There are no emergency medical facilities or kennels within the resort and no such uses are proposed.

The Applicant has sited a day care center in its existing resort on property zoned MUA-10. The Applicant plans to move this center to the north, according to the 1992 conditional use application, to a piece of property zoned EFU. The Hearings Officer finds that this is a use that is a similar accessory use, provided that the center is limited to children of employees and guests of the resort.

FINDING: The Applicant may develop the resort for specifically listed uses only, other than similar uses approved in this decision. Any new uses that are desired as "similar" uses must be reviewed by Deschutes County Planning Division, according to ordinances then in effect. The Applicant has obtained numerous land use approvals for Eagle Crest development of Phase I. All previously approved master plans regarding resort development will be replaced at such time as the FMP for the resort is filed, except for the provisions of those approvals that established setback and lot sizes. The Applicant will, however, continue to be bound by the conditions of approval in any and all other land use actions relating to the resort property.

The Applicant has proposed a "business development center" as a possible use in Area 11, Phase II. This use may or may not qualify as an allowed use, depending upon what type of facilities are contemplated for the center. If the center is designed as a retreat for business conferences it would be permitted. If the center is intended to include professional offices for various businesses and to provide services for area businesses, such as a computer laboratory, teleconferencing facility, or classrooms, it would not be allowed in a resort setting. The Applicant has not provided any details about the nature of this proposed use. Approval of this application is not intended to authorize the construction of a business development center unless it provides only uses otherwise expressly allowed by the destination resort ordinance. No determination whether other possible business center uses might be allowed under the "similar use" sections listed above is possible at this time, as the Applicant has not defined the use.

18.113.040 - APPLICATION SUBMISSION

The authorization of a permit for a destination resort shall consist of three steps.

- A. **Conceptual Master Plan and Conditional Use Permit for Destination Resort.** A conceptual master plan (CMP) shall be submitted which addresses all requirements established in this section. The CMP application shall be processed as if it were a conditional use permit under Chapter 22 of the Deschutes County Code, shall be subject to Sections 18.128.010, 18.128.020 and 18.128.030 of the Deschutes County Code and shall be reviewed for compliance with the standards and criteria set forth in this chapter.

FINDING: DCZO 18.113.040 establishes a three step approval process for the authorization of a destination resort. These steps are: 1) Conceptual Master Plan (CMP); 2) Final Master Plan (FMP); and 3) Site Plan or Subdivision Review. The Applicant has applied for a Conditional Use Permit for Destination Resort Conceptual Master Plan. The purpose of this application is for the Applicant to demonstrate that all requirements of the DR Zone are currently met, or will be met through the imposition of conditions of approval. The provisions of DCZO Chapter 18.128, listed above, authorize the Hearings Officer to impose various conditions of approval and to require the posting of a performance bond to assure developments, as approved.

Once conceptual master plan development is approved, the Applicant must prepare and submit a Final Master Plan, which incorporates all requirements of the County approval for the CMP. The Final Master Plan will be reviewed by the Planning Director to determine if it complies with the approved CMP. The Planning Director has the authority to approve, deny, or return the FMP to the Applicant for additional information. If review of the FMP by the Planning Director involves discretion, it will be treated as a land use permit and will be processed in accordance with Title 22 of the County Code.

After the first two steps have been completed, each element or phase of development must receive additional approval through Site Plan Review (Chapter 18.124 and in some cases, Chapter 18.84 of Title 18) or Tentative Plat approval (Title 17). In addition to findings satisfying site plan or subdivision criteria, findings shall be made that the specific development proposal complies with the standards and criteria of this chapter and the FMP.

18.113.050 - REQUIREMENTS FOR CONDITIONAL USE AND CONCEPTUAL MASTER PLAN APPLICATIONS

FINDING: This section contains requirements for conceptual master plan applications. The application submitted by the Applicant substantially complies with all requirements of this section, with the exception of the items listed below. Modifications have been required to some of the documents, such as the open space map, to assure compliance with destination resort ordinance standards.

2. (B)(s) - An economic impact and feasibility analysis of the proposed development prepared by a qualified professional economist or financial analyst shall be provided which includes:
 1. An analysis which addresses the economic viability of the proposed development.

FINDING: The Applicant has provided an economic impact analysis (Exhibit 31) and a letter from the CEO regarding financing (Exhibit 39), but no independent

feasibility analysis or evidence of assurances that funding for the proposal has been secured. These documents do not, however, contain an analysis of the economic viability of the proposed development. Such an analysis would consider the income that could be anticipated from the resort operations and compare that income to project expenses. The Applicant will be required to supply this information, prior to FMP approval. The analysis should be prepared by an independent, qualified financial expert.

18.113.060 - STANDARDS FOR DESTINATION RESORTS

The following standards govern consideration of destination resorts:

- A. The destination resort shall, in the first phase, provide for and include as part of the CMP the following minimum requirements:

- a. At least 150 separate rentable units for visitor-oriented lodging.

FINDING: The Applicant has met this requirement as there are currently at least 194 units for visitor-oriented lodging in Eagle Crest Phase I. In making this finding, the Hearings Officer has determined that the resort's 74 hotel units and 120 time share townhouses qualify as visitor-oriented lodging. The Hearings Officer also finds that the Applicant's 1/5 share time share units qualify as visitor-oriented lodging, unless all 1/5 shares of a 1/5 share unit are owned by one or the same multiple owners. Visitor oriented accommodations are defined by DCZO 18.104.030 to include "overnight lodging." Overnight lodging is defined by DCZO 18.104.030 as "all permanent, separately rentable accommodations that are not available for residential use, including hotel and motel rooms, cabins and time share units." Time share units are defined by DCZO 18.104.030 to include a dwelling unit that is divided into periods of time that are transferred to separate owners or tenants for periods of time less than a full year in any given year, for a period of more than three years. Most Eagle Crest 1/5 share units and time share units meet the time share definition as they are both available for portions of a year to different owners or tenants and the right of use for each extends beyond three years. The only 1/5 share units that would not qualify as visitor-oriented lodging would be 1/5 share units in which all 1/5 shares were owned by a single owner or co-tenants. The Applicant has not provided information indicating whether all of the shares of any 1/5 share multi-family units are owned by a single owners or co-tenants, so the Hearings Officer is unable to conclude whether all 53 such units qualify as visitor-oriented lodging.

- b. Visitor-oriented eating establishments for at least 100 persons and meeting rooms which provide eating (sic) for at least 100 persons.

FINDING: The Lodge at Eagle Crest and the Inn at Eagle Crest are capable of accommodating over 100 persons in each category of eating establishments and meeting rooms.

- c. The aggregate cost of developing the overnight lodging facilities and the eating establishments and meeting rooms required in subsections (1) and (2) shall be at least two (2) million dollars (in 1984 dollars).

FINDING: The aggregate cost of developing overnight lodging facilities and eating establishments at Eagle Crest has exceeded two million dollars in 1984 dollars. This conclusion is supported by the Applicant's Burden of Proof Statement (page 20) and Exhibit 33, Cost of Facilities to Date. The Applicant has also provided information to show that the figures supplied in these exhibits exceed two million dollars in 1984 dollars (Exhibit 48) as inflation between 1984 and 1993 raised the cost of improvements by 39%. Therefore, an expenditure of \$3,000,000, or more, in 1993 dollars would clearly meet this requirement.

- d. At least two (2) million dollars (in 1984 dollars) shall be spent on developed recreational facilities.

FINDING: At least two million dollars in 1984 dollars have been spent on developed recreational facilities, such as golf courses, riding stables, pools, tennis courts and ball fields. Exhibit 34 provides the approximate improvement cost for recreational amenities within Eagle Crest Phase I and Phase II. The total improvement costs for recreational amenities in Phase I and II is approximately \$7,000,000. This figure was determined to be at least \$5,852,053 in 1984 expenditures, according to Exhibit 48. The Hearings Officer accepts this information in support of this finding.

- e. The facilities and accommodations required by this section must be physically provided or financially assured pursuant to Section 18.113.110 of this chapter prior to closure of sales, rental or lease of any residential dwellings or lots.

FINDING: The facilities and accommodations required by this section, as outlined in Exhibit 34, are already in existence. Their existence has been verified by site visits by Planning staff and the Hearings Officer. They are, therefore, "physically provided" as required by this section and no financial assurance that they will be provided by the Applicant is needed.

- B. All destination resorts shall have a minimum of 160 contiguous acres of land. Acreage split by public roads or rivers or streams shall count toward the acreage limit, provided that the CMP demonstrates that the isolated acreage will be operated or managed in a manner that will be integral to the remainder of the resort.

FINDING: As indicated on the submitted plans and page 20 of the Burden of Proof Statement, the total proposed destination resort area in Phase I (including CRT Expansion) and Phase II is 1,254.34 acres. The total acreage will be split by Cline Falls Highway, with 544.06 acres in Phase I and CRT Expansion on the east side of the road, and 710.08 acres in Phase II on the west side. Both phases, independently, meet the 160 contiguous acres of land requirement.

- C. All destination resorts shall have direct access onto a state or county arterial or collector roadway, as designated by the Comprehensive Plan.

FINDING: Both Phase I and Phase II have direct access onto Cline Falls Highway, a designated collector roadway on the Transportation Element of the Deschutes County Comprehensive Plan. Cline Falls Highway feeds directly into State Highway 126 (an arterial) just north of the project site.

- D. A destination resort shall, cumulatively and for each phase, meet the following minimum requirements:

- a. The resort shall have a minimum of 50% of the total acreage of the development dedicated to permanent open space, excluding yards, streets and parking areas. Portions of individual residential lots and landscape area requirements for developed recreational facilities, visitor-oriented accommodations or multi-family or commercial uses established by Section 18.124.070 shall not be considered open space;

FINDING: According to the Applicant's Burden of Proof Statement, page 21, the total resort area, with the addition of Phase II and CRT Expansion Area will be 1,254.34 acres, with approximately 650.87 acres of open space (51.89%). The open space acreage was purportedly calculated in accordance with Section 18.113.060(D)(1), as shown on Exhibit 36. The open space percentage was revised, by the Applicant, to 53% when open space areas were mapped on Exhibit 50, at the request of County Associate Planner Dale Van Valkenburg. The Hearings Officer has reviewed the open space map and has determined that the map includes areas that do not meet the various definitions of open space contained in the County's development ordinances. This is not surprising, as the County's destination resort ordinance contains a number of provisions that exclude property that meets the general definition of open space contained in DCZO 18.04.030. The Hearings Officer finds that the following exclusions of specific areas from destination resort open space calculations are required by DCZO 18.113.060(H), 18.113.030 (E) and this section: (1) space that is developed with uses that alter the existing or natural landscape, except as necessary for development of golf course fairways and greens, hiking and bike trails, lakes and ponds and primitive picnic facilities including park benches and picnic tables, DCZO 18.113.030 (E); and (2) flood plain areas, DCZO 18.113.060(H)(c); and (3) land that is planned for other uses, portions of individual lots and landscaped

areas required to obtain site plan approval, DCZO 18.113.060(D)(a). In applying these exclusions, all tennis courts, flood plain area along the Deschutes River, wells, the portion of Lot 33 on Condor Drive that is shaded purple (.29 acre), ball fields (soccer and baseball), the area of the resort that the Applicant will be required to designate as reserve area for a future sewer treatment facility and any other land that is not in either its natural state or the state in which it existed prior to resort development must be excluded from the open space map.

Without an Open Space Area map that properly excludes all areas that were erroneously included as open space, the Hearings Officer cannot verify that the 50% open space requirement is met. A revised open space map must be submitted at the time of Final Master Plan review and it must include at least 50% open space. The Applicant shall also furnish proof that all open space area has been permanently reserved for open space, prior to FMP approval.

- b. Individually-owned residential units shall not exceed two such units for each unit of visitor-oriented overnight lodging. Individually-owned units shall be considered visitor-oriented lodging if they are available for overnight rental use by the general public for at least 45 weeks per calendar year through one or more central reservation and check-in service(s).

FINDING: Revised Exhibit 37 indicates that there are a total of 247 overnight lodging units within Eagle Crest Phase I. These include 74 hotel room units, 120 timeshare townhouses and 53 1/5 share condominiums. The Applicant proposes to add an additional 20 timeshare townhouses, 18 multifamily 1/5 share condominiums and 76 hotel rooms to Phase I. All such units meet the definition of visitor oriented accommodations, as defined by DCZO 18.104.030, provided that they are not owned by a single owner or group of cotenants. It is believed that few, if any, timeshare units are owned by a single owner but this fact must be verified prior to FMP approval and prior to the platting of each phase of Phase II to assure that the proper ratios is met. If all timeshares qualify as overnight accommodations, the number of overnight accommodations in Phase I is 351.

Revised Exhibit 37 also indicates the number of units in Phase I that do not fit the definition of visitor-oriented overnight lodging. These units are the 138 single family homes that currently exist in Phase I. With the future build-out and the CRT Expansion, the Applicant plans to add 61 single family dwelling lots. This will raise the total number of such units in Phase I to 199. Thus, the proposed ratio of accommodations within Eagle Crest Phase I is 361 overnight to 199 residential units. Phase I, as currently developed and as proposed, therefore, can and will meet the required 1 to 2 overnight to residential unit ratio, unless the number of timeshare units that are owned by a single owner or cotenants is extremely and unusually large. The Hearings Officer believes that this number is certain to be very small. Due to

this fact, the Applicant will be able to prove complete compliance with the above-listed requirement prior to FMP approval and such proof will be included as a condition of approval of the CMP.

According to revised Exhibit 37, Eagle Crest Phase II will include 394 visitor-oriented overnight lodging units in the following categories: 100 timeshare townhouses, 144 multi-family 1/5 share condominiums (this number may increase if single family units are decreased), and 150 hotel rooms. The Applicant also proposes as many as 456 single-family homes in Phase II. If all timeshares are owned by different owners, this plan will result in a ratio of 394 visitor-oriented overnight lodging units to 456 residential units. This ratio meets the required 1 to 2 ratio for overnight lodging to residential units, without consideration of Phase I units. It appears that the Applicant will be able to plat each proposed phase, as planned, and maintain the required ratio, provided that the proposed 250 overnight accommodations are built during the platting of phases. The Applicant will be required to provide proof of compliance with this required ratio at the time that each phase is platted.

- E. **Phasing.** A destination resort authorized pursuant to this section may be developed in phases. If a proposed resort is to be developed in phases, each phase shall be as described in the CMP. Each individual phase shall meet the following requirements:
- a. Each phase, together with previously completed phases, if any, shall be capable of operating in a manner consistent with the intent and purpose of this chapter and Goal 8.

FINDING: The existing Phase I of Eagle Crest already operates as a destination resort in a manner consistent with the standards and guidelines provided by Goal 8. Thus, the primary consideration for each proposed development phase in Eagle Crest Phase II is whether proper housing ratios, densities and open space acreages are being maintained. This is discussed further, below.

- b. The first phase and each subsequent phase of the destination resort shall cumulatively meet the minimum requirements of this section and Section 18.113.070.

FINDING: The CMP for Phase II has identified eleven different areas that are proposed to be developed in phases, labelled as Areas 1 through 11. For each of these areas, the Applicant has proposed a potential buildout rate of various types of housing units, identified on the plan as either single-family or multi-family. These numbers are provided on the CMP, Exhibit 2, as follows:

Area 1, 38.5 acres, 66 single-family units (SF), 111 multi-family (MF)
Area 2, 13 acres, 39 SF, 46 MF

Area 3, 16.16 ac., 34 SF, 43 MF
Area 4, 12.86 ac., 39 SF, 43 MF
Area 5, 24.88 acres, 52 SF, 64 MF
Area 6, 18.84 acres, 35 SF, 44 MF
Area 7, 5.47 acres, 11 SF, 14 MF
Area 8, 17.38 acres, 27 SF, 37 MF
Area 9, 49.05 acres, 75 SF, 91 MF
Area 10, 29.25 acres, 66 SF, 74 MF
Area 11 12.2 acres, 12 SF, 33 MF

The Applicant lists the maximum single family units in Eagle Crest, Phase II as 456. The maximum number of multi-family units that could be allowed in Eagle Crest Phase II is shown as 600, assuming that no lots are developed for single family units. The total number of multi-family and single-family units that could be built in Phase II, if a mixture of single-family and multi-family will be some number between 456 and 600.

The Hearings Officer finds that the Applicant intends the multi-family units to be 1/5 share timeshare multi-family units. The Hearings Officer has drawn this conclusion from the fact that Exhibit 37 lists 144 1/5 share units in Phase II and 144 is the difference between the 456 single family and 600 total multi-family and single-family units proposed on Exhibit 2. The Applicant has requested flexibility to increase the number of 1/5 share condominium units, depending upon market conditions, as it plats each phase of Phase II. This is permissible, as long as the Applicant reduces the number of single family lots allowed by a corresponding amount. This shall be accomplished in the same phase of development. This will assure that the total units in each phase will not exceed the number shown in each phase under the "Multi-family" heading. This requirement is necessary to contain the total number of units allowed in Phase II to the 850 proposed by the Applicant in this land use action. As can be seen on Exhibit 2, tallying the numbers under the multi-family column and adding them to the 250 overnight visitor facilities equals the 850 units requested by the Applicant for Phase II. Compliance with the upper limit of 850 units is essential, as the Applicant has used that number in its traffic, water and sewer studies. Those studies would be virtually worthless if the number of units was allowed to climb much above 850. Additionally, the land use notice provided regarding this application would be faulty as the scope of the project would have been significantly understated. For instance, if the single-family and multi-family unit numbers were additive, the Applicant could construct a total of 1306 units in Phase II, an increase of 456 units.

The Applicant has included a tentative plan for lots in Area 1 of Phase II with the CMP map. That plan does not comply with the total numbers listed by the Applicant for Area 1 of Phase II. That plan shows 66 single family units, 66 multi-family units and no overnight visitor facilities for a total of 132 units. The chart on Exhibit 2 shows that the Applicant is requesting a total of 111 units (multi-family and single-

family). When this area is tentatively platted, it must be revised to comply with the limits shown on the Exhibit II chart, as interpreted by the Hearings Officer. The maximum number of multi-family units is 45. In order to build 66 such units in this phase, the Applicant would need to reduce the number of single family lots in this area to 45 single-family lots.

The Applicant has proposed to construct 250 overnight visitor facilities in Phase II. The Applicant has not stated when these units will be constructed, relative to the construction of various phases of Phase II of Eagle Crest. These 250 overnight visitor facilities consist of 100 townhouse timeshare units and 150 hotel rooms. These units must be constructed, if and when the ratio of visitor-oriented overnight accommodations to other accommodations falls below the 1 to 2 minimum ratio. Monitoring of this ratio has been included as a condition of approval. In determining whether the 1 to 2 ratio is met, the 1/5 share multi-family timeshares and other timeshare may be counted as overnight accommodations if at least one share is owned by an owner or owners other than the owner or owners of other shares. The Hearing's Officer finds that each phase of development can be developed in a manner consistent with Goal 8 and which will cumulatively meet the minimum requirements of this section and Section 18.113.070, if these conditions are honored. Compliance with this condition can be monitored by Planning Staff as each phase of development is submitted for tentative plat review.

- c. Each phase may include two or more distinct noncontiguous areas within the destination resort.

FINDING: It appears that each proposed phase of development includes only areas that are or will be contiguous.

- F. Destination resorts shall not exceed a density of 1-1/2 dwelling units per acre, including residential dwelling units and excluding visitor-oriented overnight lodging.

FINDING: Eagle Crest Phase I and Phase II, including the CRT Expansion area, consists of a total of 1254.34 acres. At one and one half dwelling units per acre, Eagle Crest could be allowed up to 1,881 residential units, excluding the overnight units. Eagle Crest is proposing a total of 1,410 residential units including overnight accommodations. Thus, the proposed overall density for Eagle Crest is well within allowable densities. If Eagle Crest were to build up to the maximum allowed density of 1,881 residential units, 941 visitor-oriented overnight lodging facilities would have to be provided to meet required ratios.

G. Dimension Standards:

- a. The minimum lot area, width, lot coverage, frontage and yard requirements and building heights otherwise applying to structures in underlying zones and the provisions of Chapter 18.116 relating to solar access shall not apply within a destination resort. These standards shall be determined by the Planning Director or Hearings Body at the time of the CMP. In determining these standards, the Planning Director or Hearings Body shall find that the minimum (sic) specified in the CMP are adequate to satisfy the intent of the Comprehensive Plan relating to solar access, fire protection, vehicle access, visual management within landscape management corridors and to protect resources identified by LCDC Goal 5 which are identified in the Comprehensive Plan. At a minimum a 100-foot setback shall be maintained from all streams and rivers. Rimrock setbacks shall be as provided in this title. No lot for single-family residence shall exceed an overall project average of 22,000 square feet in size.

FINDING: The setback standards for the existing Eagle Crest resort are those setbacks established in prior land use approvals and those provided under other portions of the county zoning ordinance, according to DCZO 18.113.025 (B). This includes river and rimrock standards that are currently stated in other portions of the zoning ordinance. The existing resort must continue to comply with these standards as it contains rimrock and riverfront property.

The setback standards for the expansion areas are determined by the above-cited section. There are no rivers or rimrocks within or adjacent to the proposed expansion areas (CRT and Phase II). River and rimrock setbacks are, therefore, not applicable to the expansion areas.

Goal 5 resources inventoried in the Comprehensive Plan, in the area of the destination resort, include scenic corridors associated with both the Deschutes River and Highway 126. A portion of Eagle Crest Phase I is located within 1/4 mile of the Deschutes River, and is thus within a designated Landscape Management Combining Zone. A portion of both phases of Eagle Crest are located within 1/4 mile of Highway 126, and are also within a Landscape Management Zone. All new development within the LM zone is subject to site plan review to assure compatibility with the standards and criteria established for the Landscape Management Zone.

To the west of Eagle Crest Phase II is a Surface Mining (SM) Zone, an active cinder pit which the Applicant proposes to utilize as a resource for building interior roads within Eagle Crest Phase II. Mineral and aggregate resources are a protected Goal 5 resource. The County has developed zoning restrictions intended to protect inventoried Surface Mines from encroaching noise and dust sensitive land uses. This

protection is implemented through Chapter 18.56 of Title 18, the Surface Mining Impact Area (SMIA) Combining Zone. This zone extends outward 1/2 mile from the exterior boundaries of all SM Zones. No portion of Eagle Crest Phase II lies within 1/2 mile of the nearby SM Zone. Thus, the provisions of the SMIA Combining Zone contained in Chapter 18.56 are not applicable to this proposal, and Goal 5 is satisfied in this respect.

There are no Goal 5 wildlife resources in the Phase II and CRT expansion areas which are identified in the Comprehensive Plan that must be considered in establishing setbacks and building standards. Phase II and CRT expansion areas do not affect any of the following inventoried Goal 5 resources: open space areas, energy sources, significant natural areas, water and wetland areas, wilderness areas, historic sites, cultural areas or Oregon recreational trails.

The Applicant has requested (page 24 of the Burden of Proof Statement) that all single-family dwelling lots be held to the standard solar setbacks contained in Title 18 for a 14 foot solar fence subject to final design review. The Hearings Officer finds, however, that all single-family residential lots should be held to the standard 8 foot solar fence south-wall protection requirement of the County's solar setback ordinance. Exceptions to allow a 14 foot solar fence south roof-protection standard could be reviewed and approved by the Planning Division, on a case by case basis, as individual property owners develop their lots.

The Applicant proposes (also on page 24 of the Burden of Proof statement) that multi-family units, commercial structures, and other resort facilities should be exempted from solar setback standards except for where their shadow would impact a single-family residential lot within or adjacent to the resort. The Hearings Officer finds that a 14 foot solar fence standard should apply when shadows cast by multi-family, commercial structures or other resort facilities affect residential structures of any type. If the shadow of a structure affects a commercial or nonresidential resort structure, no solar setback will be required.

The Applicant have not proposed any other yard and building height standards for this development. The opponents of this application have not suggested any such standards. The Hearings Officer, therefore, looked to the County's zoning ordinance for guidance in determining what such restrictions are appropriate for the proposed destination resort expansions. The Hearings Officer believes that the development allowed in a destination resort is similar to the development allowed in a planned community and that it is appropriate to apply planned community standards to Eagle Crest Phase II and CRT development.

The following standards apply to Eagle Crest Phase II and CRT development:

Single Family Residential Lots. All provisions of DCZO Chapter 18.108, Planned Communities, regarding minimum lot area, width, lot coverage, frontage and yard requirements and building heights, that apply to RS District lots in a planned community, shall apply to all single family residential lots in Phase II and to all CRT lots.

Multi-Family and Condominiums. All provisions of DCZO Chapter 18.108, Planned Communities, regarding minimum lot area, width, lot coverage, frontage and yard requirements and building heights, that apply to RM District lots in a planned community, shall apply to all multi-family and condominium lots in Eagle Crest Phase II.

Commercial and Resort Amenities. Any Phase II lot designated and developed for commercial development or for resort services or recreational activities shall be subject to the provisions of DCZO Chapter 18.108 that apply to lots located in the C District of a planned community.

Building Height. The provisions of DCZO 18.120.040 regarding exceptions to and exemptions from building height restrictions shall apply to Eagle Crest Phase II buildings.

Definitions. The definitions that shall apply to measurement of building height, average lot width and yards are those contained in the definitions section of Title 18.

Off-Street Parking and Loading. Off-street parking and loading space shall be as provided in Section 18.116.160. Single family residences shall have a minimum of two off-street parking spaces. Multiple family units shall have a minimum of one off-street parking space per dwelling unit.

Maximum Average Lot Size. No lot for a single-family residence shall exceed an overall project average of 22,000 square feet in size.

References to DCZO. All references to DCZO standards shall apply to the DCZO ordinance in place at the time of development application, unless such standards have been repealed and not replaced by a new section. In such event, the reference shall be to the ordinance as it was written at the time it was repealed. In the event that sections have been renumbered, the newly numbered section may be utilized, in place of the section number cited by the Hearings Officer.

b. Exterior setbacks.

1. Except as otherwise specified herein, all development (including structures, site-obscuring fences of over three feet in height and changes to the natural topography of the land) shall be set back from exterior property lines as follows:
 - i. 350 feet for commercial development including all associated parking areas;
 - ii. 250 feet for multi-family development and visitor-oriented accommodations (except for single-family residences) including all associated parking areas;
 - iii. 150 feet for above-grade development other than that listed in subsections (i) and (ii);
 - iv. 100 feet for roads;
 - v. 50 feet for golf courses; and,
 - vi. 50 feet for jogging trails and bike paths where they abut private developed lots and no setback for where they abut public roads and public lands.
2. Notwithstanding subsection (1)(iii), above-grade development other than that listed in subsection (1)(i) and (ii) shall be set back 250 feet in circumstances where state highways coincide with exterior property lines.
3. The setbacks of this section shall not apply to entry roadways and signs.

FINDING: The submitted CMP indicates several stretches of roadway, some bike and pedestrian trails, and several golf course areas which do not meet the setbacks required by this section. Concurrently with the submittal of this CMP, the Applicant has applied for a setback variance for four sections of roadway and bike paths. The variance approval standards of Chapter 18.132 will be addressed in detail below. The Hearings Officer has denied the requested variances and the Applicant will, therefore, be required to revise the submitted CMP so that all bike paths and road sections meet the requirements of this section.

The Applicant has not indicated any proposed building sites on the CMP for Eagle Crest Phase II which would violate required building setbacks from exterior lot lines.

There are, however, two proposed single-family residential lots within the CRT Expansion area (shown on Exhibit 4) which, if built upon, would result in a violation of the 150 foot minimum required setback for above-grade development. Lot 46 of "Area XV" in the Canyon River Territories is situated so that it abuts an exterior property line of the resort property. This lot is only 126 feet wide, so there would be no buildable area on the lot outside of the 150 foot minimum setback. In addition, Lot 45 directly south of Lot 46 also lies partially within the 150 foot minimum setback, thus eliminating a substantial portion of this lot from residential development. Exhibit 4 must be amended so that no portion of a residential lot is situated within the 150 foot setback from any exterior resort property boundary. This amendment could be made at the time of tentative plat submittal for the platting of this area.

Existing Eagle Ridge Golf Course

A number of sections of the existing Eagle Ridge golf course (Phase II) are built within the setback area designated for golf courses and some adjoin the resort's boundaries. The Applicant did not seek a variance to allow the existing golf course to be located within the setback area and has taken the position that because the golf course exists, it may continue to exist in its present location. This is, basically, an argument that the area of the golf course that encroaches on the 50 foot setback area is a nonconforming use.

A second Eagle Ridge golf course is planned for Phase II. Sections of that course are shown on the CMP in locations that encroach upon the 50 foot setback area. The golf courses for Phase II were approved by Conditional Use permit #CU-90-189 in 1990. At that time, no setback requirements existed for destination resort golf courses or for golf courses in Deschutes County land use ordinances. A general requirement for buffering and setbacks for all resorts did, however, exist in 1990 in ORS 197.460 and Goal 8. These laws require counties to insure resort compatibility with adjacent land uses by establishing and maintaining natural buffers between the resort and adjacent land uses, including, where appropriate fences, berms, landscaped areas and other similar types of buffers and setbacks of structures and other improvements from adjacent land uses.³ All persons are deemed to know the law. The Applicant had

³ORS 197.460 states that "A county shall insure that a destination resort is compatible with the site and adjacent land uses through the following measures: (2) Improvements and activities shall be located and designed to avoid or minimize adverse effects of the resort on uses on surrounding lands, particularly effects on intensive farming operations in the area. At a minimum, measures to accomplish this shall include: (a) Establishment and maintenance of buffers between the resort and adjacent land uses, including natural vegetation and where appropriate, fences, berms, landscaped areas and other similar types of buffers. (b) Setbacks of structures and other improvements from adjacent uses."

special reason to be aware of these laws as the Applicant was and is in the destination resort business.

In 1990, when golf course approval was obtained, the Applicant was planning to seek approval of future golf course residential development. The golf course map submitted with the 1990 conditional use application was labelled "Proposed Conceptual Development of Eagle Ridge, a Residential Golf Course Community" (Exhibit 101) and was designed to leave large areas between the greens and fairways that were suitable for residential development. The burden of proof document for that application (Exhibit 102) stated that "no dwellings will be constructed upon the subject property at this time." [pp. 4 & 5]. As Eagle Crest representative Bill Lyche stated, in a Bulletin article entitled "Resort Courses Ignite Debate" (Exhibit 254): "[I]t would be foolish not to plan for homesites sometime in the future." It is also clear that the golf course area and future residential community were intended to be operated in conjunction with the Eagle Crest resort. This fact is stated on page 2 of the burden of proof statement submitted in support of the 1990 application (Exhibit 102).

The Applicant has constructed the westerly 18 hole golf course approved in the 1990 conditional use permit. Construction of that course was underway in March of 1992, when the Applicant filed a letter enclosing what was called a preliminary master plan for Eagle Ridge. This preliminary plan included a 40 acre tract of land in the northeast corner of the lot, that had not been included in the 1990 site plan application. The "master plan" also moved portions of some of the golf course holes closer to the property boundaries. The Applicant has not constructed the easterly 18 hole golf course.

DCZO 18.113.020 (B), requires an applicant for destination resort approval to "meet all criteria of this chapter for the entire development (including the existing approved destination resort development and the proposed expansion area), except that as to the area covered by the existing destination resort, compliance with setbacks and lot sizes shall not be required." This section grants a reprieve from the setback standards for existing developments within the destination resort but does not include a similar exception for previously constructed facilities on property that is a part of the expansion area. County Planning Division staff believed that the constructed golf course would not be subject to the setback standards of the destination resort ordinance and from the provisions of DCZO 18.113.020 (B). The Hearings Officer believes that this conclusion was based upon staff's opinion that the encroachment was a nonconforming use that was entitled to be continued under DCZO 18.120.010 and ORS 215.130. The Hearings Officer finds that the applicant may be entitled to retain the existing golf course, if it can establish that it is a valid, lawfully created nonconforming use. The Applicant will also need to establish that the addition of homes around the golf course will not be an alteration of the nonconforming use or that, if it is an alteration, that such alteration will have no greater adverse impact on

the neighborhood. Gibson v. Deschutes County, 17 Or LUBA 692 (1990). As these nonconforming use issues were not directly addressed in the CMP application and the Hearings Officer is unable to make a conclusive determination of this issue on the facts presented, the Hearings Officer has required that this issue be resolved by the Planning Director, prior to FMP approval.

County staff raised concerns about whether the Applicant was entitled to rely upon rights granted in the 1990 conditional use approval as it was not clear that all conditions of that approval were met by the Applicant. The golf course must have been lawfully established, under the laws in effect at the time it was constructed, in order for it to achieve nonconforming use status. Staff was concerned about Condition of Approval #8 which states: "All conditions of preliminary approval shall be completed prior to final approval and the final mylar signed within one (1) year from the date the decision is mailed or the preliminary approval shall be void." Conditional use approval to build the two Eagle Ridge golf course was granted, and mailed, on December 12, 1990, subject to a number of conditions of preliminary approval that were to have been fulfilled no later than December 11, 1991. As stated in Condition #8, failure to fulfill any condition of approval by that date rendered the preliminary approval void.

A review of the Planning Division file for CU-90-189/SP-90-115 indicates that the Applicant may have failed to finalize its approval of the Eagle Ridge golf courses within the required one year period. This may be the case as a letter written to Deschutes County Planning Director George Read by Thomas A. Walker on behalf of Eagle Crest Resort was dated March 6, 1992 (Exhibit 103) and states that "[i]t is important to note this site plan submittal [that is included with this letter] is intended to meet the Item No. 1 Approval Condition designated in the findings and decisions document for file CU-90-189/SP-90-115." If a copy of the required document was not filed before December 12, 1991, the conditional use permit would have become void.⁴ Additionally, it appears that the Applicant may not have complied with some of the other conditions of approval. The letter from the Bureau of Land Management required by Condition #7 was not found in the Planning Division file. Written verification from the Deschutes County Watermaster, as required by Condition #8, that all water rights were resolved was, also, not found. Additionally, information regarding drainage of golf course ponds does not appear to have been submitted as required by Condition #6 and it does not appear that the requirements of BLM, including a request to map all easements granted by BLM prior to the sale of the

⁴This site plan application included plans and an application for site plan review of a maintenance building. Deschutes County reviewed and approved the maintenance facility plans without discussion of the status of the 1990 decision or the effect of filing the final site plan required by the 1990 approval. The Hearings Officer notes, however, that the County Planning staff has no authority to reactivate an approval after it has become void.

subject property, were addressed as required by Condition # 2. As at least one, if not a number, of the conditions of approval of the 1990 conditional use approval were not met prior to December 11, 1991, the conditional permit is now void. These issues will need to be addressed and resolved in order for the Applicant to establish that the golf course is a nonconforming use that may continue as it is currently shown on the CMP.⁵

If the Applicant does not prove that the golf course location within the destination resort setback area is a nonconforming use or if the Applicant does not wish to seek a nonconforming use determination from the Planning Division, the Applicant might elect to comply with the setback standard or obtain a variance to the standard in any of the following ways: (1) The Applicant may purchase additional property along the areas of the golf course that encroach upon the setback and add them to the destination resort property; or (2) The Applicant may seek and obtain a variance for the location of the first golf course;⁶ or (3) The Applicant might also elect to exclude the already constructed golf course area from the destination resort. This would be possible, under the destination resort ordinance, as the applicant does not need either of the two Phase II golf courses to qualify its project as a destination resort. Adequate recreational facilities exist in Phase I to meet all destination resort ordinance standards;⁷ or (4) The Applicant might elect to move those portions of the existing golf course that encroach upon the 50 foot setback area; or (5) The applicant might seek some type of legislative amendment to the destination resort ordinance to allow this condition to exist. The Hearings Officer understands that other destination resort developers have a similar problem and it is possible that this problem could be solved

⁵The Oregon Supreme Court stated that the following factors must be considered in order to determine whether a nonconforming use exists in any given case: (1) the ratio of prior expenditures to the total cost of the project, (2) the good faith of the landowner in making the prior expenditures, (3) whether the expenditures have any relationship to the completed project or could apply to various other uses of the land, and (4) the nature of the project, its location and ultimate cost. No one factor is predominant. Polk County v. Martin, 292 Or 69, 636 P2d 952 (1981).

⁶It is unknown whether the applicant could qualify for a variance for those golf course holes that were modified by the applicant after the setback standards were adopted or for any portion of the course as it appears that final course design was not approved until after adoption of the setback requirements by the County on February 7, 1992.

⁷The Applicant may be required to partition the golf course from the destination resort property in order to achieve this result and would be bound to develop the course property for EFU zone allowed uses only.

with a "legislative fix."⁸ The Hearings Officer has, therefore, conditioned approval of this application upon revision of the CMP to comply with the setback standard, approval of a variance to those setbacks, a legislative amendment or upon establishment that the currently constructed golf course is a valid nonconforming use and, when developed to include golf course homesites, will comply with the standards of DCZO 18.120.010.

Proposed Eagle Ridge Golf Course

The Applicant claims that it has a "vested right" to complete construction of the second 18 holes of the Eagle Ridge golf course because the County approved the construction of that course in 1990 (CU-90-189 and SP-90-115) and no setbacks were required for EFU zone golf courses at that time. This theory is an extension of the nonconforming use theory. The vested rights legal theory allows landowners to complete the construction of uses, under certain circumstances, that were approved prior to the adoption of a law that prohibits that use. Schmaltz v. City of Hood River, 22 Or LUBA 115 (1991). In the Eagle Crest situation, golf courses are allowed uses in destination resorts but must meet setback standards that do not apply to golf courses in EFU zones. The destination resort setbacks apply if, and only if, the Applicant chooses to redevelop the golf as a destination resort. The EFU zoning of the Phase II property allows the Applicant to continue to operate the golf course as approved in 1990. No vested rights legal cases that involved this type of a fact situation were submitted to the Hearings Officer by the Applicant. All cases cited by the Applicant involved a complete prohibition of a use, rather than a restriction upon the location of the use. Additionally, in all cases the landowner did not elect to apply for a special land use that required special restrictions. The Hearings Officer finds that the burden imposed by a requirement to move the proposed location of an unconstructed golf course a distance of no more than fifty feet, places a significantly smaller burden upon an Applicant than would a prohibition of the golf course use.

Oregon law regarding vested rights allows a landowner to complete construction or implementation of a use that was allowed or approved prior to adoption of a land use ordinance that prohibited the use, if a consideration of the following factors weighs in favor of the property owner: (1) good faith expenditures by the property owner to lawfully develop the property in a given manner; (2) the amount of notice of any proposed rezoning; (3) the amount of reliance on prior zoning classification in purchasing the property and expenditures of dollars; (4) the extent that expenditures relate more to the nonconforming use than to the conforming use; (5) the extent the nonconformity of the proposed use as compared to uses allowed in the subsequent

⁸It is unknown whether such a legislative change would meet the requirements of Goal 8 or ORS 197.435 and whether such a change could be applied to this application, if adopted between the time that the applicant obtains CMP and FMP approval.

ordinance; (6) whether money has been spent to take the use beyond being a mere contemplated use and has committed the property to the actual use which would in fact have been made but for the new law; (7) the ratio of expenditure vs. total cost of the proposed use. Once improvements are constructed they are treated as nonconforming uses, subject to the limitations applicable to such uses. Clackamas County v. Holmes, 265 Or 193, 508 P2d 190 (1973).

The Hearings Officer does not believe that the Applicant has established a vested right to complete the second, currently unconstructed golf course in the location proposed in 1990 or in the location shown on the 1993 CMP application. The Hearings Officer has arrived at this conclusion because the Applicant has failed to prove that all factors necessary to create a vested right exist. Additionally, there is a significant question whether the 1990 conditional use approval is still valid. If that approval is no longer valid, the applicant has no right to continue to rely upon it. Funds spent to construct a course would not have been spent to lawfully develop the property, if the conditional use permit is void, as required by Factor #1 for establishing a vested right. Factor #2 does not assist the Applicant's claim of a vested right as the EFU zoning of the Applicant's property still applies to the property. The proposed golf course may, if approval has not expired, be constructed in the location approved in 1990 under the current zoning. The only reason that the approved location is a problem is that the Applicant has chosen to apply for approval to develop the property as a destination resort and that special use requires special setbacks.

The Applicant established that it spent money to develop the Eagle Ridge golf courses in reliance upon the 1990 approval. The Applicant has not established that any of these funds were spent prior to the time that the Applicant knew or should have known of the County's proposed setback standards for destination resort golf courses. The Applicant claims that its expenditures of money to oversize its parking lot, to build a golf course irrigation system and to design the golf course entitle it to build the second course in the location approved in 1990. The Applicant failed, however, to demonstrate that these expenditures were directly related to the placement of the greens, holes and fairways of its golf course in the fifty foot setback area. It does not appear, to the Hearings Officer that these expenditures have anything to do with the location of the golf course holes in the setback area. Golf course construction is still feasible, so all of these facilities can and will be used to the same extent planned in 1990. The Applicant has, therefore, failed to establish that the expenditures made in reliance upon the 1990 approval are primarily directed to nonconforming rather than conforming development (Factor #4). The case of Union Oil Co. v. Board of County Commissioners of Clackamas County, 81 Or App 1, 6, 724 P2d 341 (1986) supports the Hearings Officer's conclusion as it requires that expenditures used to justify a vested rights claim be substantially and directly related to the nonconforming use. For Eagle Crest, the nonconforming use is limited to the portion of the golf course that encroaches on the fifty foot setback. This view is also consistent with the holding of a similar case. In that case a PUD approval was granted for two parcels,

expenses were incurred that would benefit the entire project and but no substantial construction had occurred on one of the parcels, prior to the change in regulations. The Court held that the developer did not have a vested right to develop the second parcel, as planned. Milcrest Corp. v. Clackamas County, 59 Or App 177, 650 P2d 963 (1982).

The Applicant has claimed that the golf course must be located in the setback area due to topographical features that have been incorporated in the design of the course. The Applicant has not, however, submitted facts to show that this is true for this particular golf course. A view of the area where the courses are proposed in the area of Cline Falls Oasis, by the Hearings Officer, revealed no remarkable geographical features that would prevent movement of the proposed golf course location a distance of fifty feet. In fact, the Applicant moved the location of many of the golf course holes between the time it submitted its 1990 plan and when it submitted this CMP. The Applicant did not submit facts to demonstrate that it is physically impossible to build the course outside of the setback areas, that movement would cost the Applicant money or render the irrigation system planned inoperable.

The Applicant spent money to design the second golf course and will, presumably, need to spend money to revise the course design. It is, however, unknown what that cost will be. Oregon vested rights law requires the Hearings Officer to quantify expenditures directly related to the nonconforming use and the anticipated cost of the entire project, in order to determine the impact of Factor #7, the "ratio of expenditures" test. DLCD v. Curry County, 19 Or LUBA 237 (1990). The Hearings Officer must determine that each cost incurred was incurred before the Applicant should have been aware of the more onerous restrictions. As the final plan for the golf course was not filed until February or March of 1992, it is possible that many of the expenses that the Applicant has cited as establishing a vested right were made after the Applicant had received notice that setbacks were being considered by the County for destination resort golf courses and after adoption of those standards. For the above reasons, there is insufficient information in the record to quantify costs and to apply the ratio of expenditures test.

There is ample room on the Phase II property to move all portions of the second golf course outside of the 50 foot setback area so that the imposition of the setback requirement will not prevent the construction of the second Eagle Ridge golf course. Movement of Holes #12 and #13 is especially important because these holes currently border private residential property in Cline Falls Oasis. The addition of a buffer area in this area will minimize the chance that stray golf balls will trespass onto private residential property and, possibly, cause damage to neighbors' property.

The Applicant has also failed to prove that it has spent money to take the use, placement of the course within the setbacks, beyond being a mere contemplated use or that the Applicant has committed the property to the actual use which would in fact

have been made but for the new law (Factor #6). No portion of the new course is constructed. No evidence was introduced to establish that any initial construction activity has occurred on this course and specifically, in the location that is prohibited by the destination resort ordinance.

The Applicant has claimed that it relied on the prior EFU zoning classification in purchasing the property and expending money to develop the Eagle Ridge golf courses (Factor #3). That Applicant claims that it assumed that it could place golf course greens on the boundaries of the lot and, thereby, maximize the number of building lots in the destination resort. The Hearings Officer finds that this reliance was not warranted because the EFU zoning prohibited both destination resort and residential golf course development when the Applicant purchased the Phase II property. At the time of purchase, the Applicant was speculating that it would be able to obtain future land use approval for homesites. The Applicant had no vested right to count on such an eventuality. Additionally, the Applicant stated in 1990 that it purchased the property knowing that it might not be able to obtain land use approval for homesites and that the golf course operation was a stand alone project (Exhibit 254). Under these circumstances, the Hearings Officer may not consider the cost of purchasing the property in weighing the cost of imposing the current restrictions on the Applicant's second golf course. Union Oil, 81 Or App at 6 - 7.

Based upon a weighing of all of the above-listed factors, the Hearings Officer finds that the applicant has not obtained a vested right to construct the second Eagle Ridge golf course in the fifty foot setback areas required for destination resort golf courses.

Course Locations Approved in 1990

The Hearings Officer reviewed the Applicant's 1990 Eagle Ridge golf course master plan to determine what type of vested right might have been obtained by the Applicant in that approval. This issue is discussed here to aid the County Commission in the event that this matter is appealed by any party and the Commission does not concur with the Hearings Officer's findings regarding vested rights law and finds that the 1990 approval is still a valid approval from which a vested right. This review is also made to assist the Planning Director in his review of the Applicant's claim of a nonconforming right to the current placement of the developed Eagle Ridge golf course.

The 1990 plan filed by the Applicant in the 1990 conditional use application to construct the Eagle Ridge golf courses is dated 1/6/90.⁹ The plan shows a golf course

⁹A subsequent preliminary master plan for the golf course was submitted in 1992, after adoption of the County's destination resort ordinance, as discussed above. The Applicant has not claimed to have obtained a vested right to proceed with construction in the locations shown

layout that is slightly, but significantly, different than that contained in the proposed CMP for Phase II of Eagle Crest and on the 1992 Preliminary Master Plan of the courses that was filed on February 27, 1992. The 1992 Plan and CMP for Phase II appear to show the golf course holes in the same locations. In the 1990 plan, the golf courses were set back further from the Applicant's property boundaries than shown on the CMP map and the 1992 Master Plan. The following is a summary of differences in golf course locations between the plans and their relevance to setback issues:

Existing Course.

Hole #3 In the 1990 plan, all portions of Hole #3¹⁰ of the existing Phase II golf course were located outside of the 50 foot setback area. In fact, measurement of the map indicates that the hole was set back approximately 178 feet from the resort property boundary. As a result, the Applicant did not obtain a vested right to site Hole #3 in the 50 foot setback area in 1990. In the CMP, a portion of Hole #3 is located close to the 50 foot setback line. If any portion of the hole encroaches into the setback, no vested right exists to authorize that encroachment.

Hole #5 In the 1990 plan, Hole #5 was located close to or adjoining BLM property, within the 50 foot setback area. This hole appears to be in roughly the same location shown on the CMP.

Hole #6 The closest portion of Hole #6, on the 1990 plan, is approximately 75 feet from the property line, outside of the 50 foot setback area. In the CMP, Hole #6 was moved into the 50 foot setback area. A portion of the hole now adjoins the property line. As a result, the Applicant did not obtain a vested right to build this hole in the setback area in the 1990 approval.

Hole #12 Hole #12 was and is located within the 50 foot setback area on the CMP and on the 1990 approved plan.

Hole #13 Hole #13 appears to be completely outside of the 50 foot setback area on

on that plan and would have obtained none, as that master plan was filed after the County had adopted its destination resort ordinance, with setbacks, on February 7, 1992 and with the subject property mapped for destination resort development. The doctrine of vested rights does not extend to protect those who had adequate notice of proposed zoning changes but who then proceed, in the face of that knowledge to proceed with subsequently prohibited development. All expenditures must be made in good faith with an intention to lawfully develop the property. Clackamas County v. Holmes, 265 Or 193, 508 P2d 190 (1973).

¹⁰All references to golf course holes are meant to include the entire green, fairway and golf hole, unless the context requires otherwise.

the 1990 plan (approximately 218 feet at its closest point) but the CMP shows Hole #13 adjoining the 50 foot setback line on the western end of the hole and being located approximately 175 feet from the northern property line on the north end of the hole. No other holes on the existing Phase II golf course are built within the 50 foot setback area.

Proposed Course.

The layout for second Phase II golf course shown on the CMP is different than the layout that was approved for that course in the 1990 approval. The Applicant has modified the golf course design to accommodate the relocation of Cline Falls Road and construction of a grade separated interchange on Highway 126. For instance, Hole #15 is oriented in a north-south direction on the CMP, rather than in the east-west direction shown on the 1990 plan. It appears that this was done to allow more room for development between the holes in what has been designated Area 11 of Phase II.

Holes #12 & #13 Holes #12 and #13 are both affected by the 50 foot setback standard of the destination resort ordinance. In both the 1990 and CMP plans, these holes are located within the 50 foot setback area.

Holes #4 & #15 Hole #4 is located within 50 feet of Cline Falls Road. Hole #4 is located in approximately the same location shown on the 1990 plan. Hole #15 is located within 50 feet of the proposed new location of Cline Falls Highway and is in a completely different location than shown on the 1990 plan. The County Planning Division treats road rights-of-way as exterior boundaries.¹¹ As a result, these holes should be setback at least 50 feet from the existing Cline Falls Highway and 50 feet from the area where the future Cline Falls Highway will be located.

- H. **Floodplain requirements.** The floodplain zone (FP) requirements of Chapter 18.96 shall apply to all developed portions of a destination resort in a FP zone in addition to any applicable criteria of this chapter. Except for floodplain areas which have been granted an exception to LCDC goals 3 and 4, floodplain zones shall not be considered part of a destination resort when determining compliance with the following standards:

¹¹The Hearings Officer believes that the exterior boundary requirement could be read either as interpreted by the Planning Division and by the Hearings Officer or to apply to the boundary that surrounds the entire area. The later interpretation is strongest when the fee ownership of the land under the road is retained by adjoining property owners. If such were the case in this instance (there is no evidence to indicate one way or the other), the argument could be made that the boundaries of all of the lots purchased by the applicant touch and form one large boundary and that the intervening right-of-way does not form a property boundary.

- a. 160-acre minimum site;
- b. density of development;
- c. open space requirements.

A Conservation Easement as described in this title shall be conveyed to the County for all areas within a floodplain which are part of a destination resort.

FINDING: There are no floodplain areas within Eagle Crest Phase II or the CRT Expansion. A few small portions of Phase I, along the banks of the Deschutes River fall within the 100-Year Flood Plain, and are zoned FP. The areas of the resort property that are within the flood plain should be shown on the Applicant's flood plain map and excluded from the Applicant's open space calculations. No development is proposed within the floodplain.

The Applicant has already conveyed to the County a Conservation Easement along the Deschutes River, as described in Section 18.116.220 of Title 18. This conveyance includes provisions for public access within the ten foot wide strip of land adjoining the subject property. The Applicant will be required to convey a conservation easement for any portion of the property that is located within the 100 year flood plain, but that is not included in the land covered by the current conservation easement, as a condition of approval.

- I. The Landscape Management Combining Zone (LM) requirements of Chapter 18.84 shall apply to destination resorts where applicable.

FINDING: The applicability of the LM zone has been discussed previously. All new development within 1/4 mile of the Deschutes River and/or Highway 126 shall be subject to individual Landscape Management site plan review.

- J. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland shall be a separate conditional use subject to all pertinent requirements of this title.

FINDING: The only wetland areas within the entire project area, as designated on the Oregon Division of State Lands Wetlands Maps, are either within the Deschutes River Canyon, or are intermittent excavated drainage ditches along Cline Falls Highway. No development is proposed for either of these designated wetland areas. The Applicant has, however, built a pump along the Deschutes River. If this activity involved fill and removal within the bed and banks of the river, the Applicant must obtain a separate conditional use permit for that use.

- K. Time share units not included in the overnight lodging calculations shall be

subject to approval under the conditional use criteria set forth in Chapter 18.128. Time share units identified as part of the destination resort's overnight lodging units shall not be subject to the time share conditional use criteria of Chapter 18.128.

FINDING: The Applicant states on page 31 of the Burden of Proof Statement that all proposed timeshare units will be available for overnight lodging pursuant to the ordinance definition of "overnight lodging". Any time share units which are not now identified as part of Eagle Crest's overnight lodging units shall be subject to individual conditional use approval pursuant to Chapter 18.128 of Title 18.

18.113.070 - APPROVAL CRITERIA

In order to approve a destination resort, the Planning Director or Hearings Body shall find from substantial evidence in the record that:

- A. The subject proposal is a destination resort as defined in Section 18.040.030 of this title.

FINDING: The reference in this section to Section 18.040.030 appear to be a typographical error as there is no such section. DCZO Section 18.04.030 contains the County's definition of a destination resort. The Hearings Officer finds that such definition is the one that is referenced by this section of the destination resort ordinance.

18.04.030, Definitions. Destination Resort. A self-contained development providing visitor-oriented accommodations and developed recreational facilities in a setting with high natural amenities. To qualify as a major destination resort under Goal 8, a proposed development must meet the following standards:

FINDING: Eagle Crest will be required to be developed as a self-contained development as a condition of approval of this CMP application. Eagle Crest Phase I currently provides visitor-oriented accommodations and developed recreational facilities in an setting of high natural amenities, on a beautiful area on the edge of the Deschutes River canyon. Phase II will be located on Cline Buttes, a local landmark. The Applicant will be required to provide access for visitors and owners in Phase II to Phase I and the Deschutes River in order to assure that Phase II will be functionally located in an area of high natural amenities.

- A. The resort is located on a site of 160 or more acres.

FINDING: Each phase of Eagle Crest contains 160 or more acres.

- B. At least 50 percent of the site is dedicated to permanent open space, excluding yards, street and parking areas.

FINDING: The Applicant will be required to revise the open space calculations shown on the Applicant's Open Space Map, Exhibit 50, and to comply with this standard as a condition of approval of FMP approval.

- C. At least two million dollars (\$2,000,000)(in 1984 dollars) is spent in the first phase 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. Developed recreational facilities and key facilities intended to serve the entire development and visitor-oriented accommodations must be physically provided or be guaranteed through surety bonding or substantially 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.

FINDING: The Applicant has established that it has spent at least two million dollars in 1984 dollars on improvements for on-site developed recreational facilities and for visitor-oriented accommodations (see discussion, above). These facilities include pools, tennis courts, ball fields, stables and golf courses. More than a third of this amount was spent on developed recreational facilities. As the financial investment requirement is met, there is no need to assure development of these facilities with surety bonding or equivalent financial assurances, prior to FMP approval. The Hearings Officer has, however, required the Applicant to provide recreational facilities and other key facilities intended to serve a particular phase prior to sales in that phase or to guarantee phase related facilities through surety bonding. As the exact nature of most of the recreational and key visitor-oriented facilities in Phase II is unspecified, it is not possible for the Hearings Officer to determine which of these facilities, other than the second Phase II golf course, is a facility designed to serve a particular phase. The entire second golf course must be completed or bonded prior to the sale of lots in any phase that adjoins or is included in the portion of Phase II that includes portions of the second Phase II golf course. This condition will be excused if the Applicant removes the second course from the FMP to meet other conditions of approval of this decision. The Applicant will also be required to specify the nature of all recreational and visitor-oriented accommodations in Phase II prior to FMP approval and to construct or bond those facilities prior to sales in phases of Phase II that are served by the facilities.

- D. Visitor-oriented accommodations are provided, including meeting rooms, restaurants with seating for 100 persons, and 150 separate rentable units

for overnight lodgings. Accommodations available for residential use will not exceed two such units for each unit of overnight lodging.

FINDING: The Applicant has demonstrated that it has provided the restaurant and meeting room space required by this section. The Applicant has also provided over 150 separate rentable units of overnight lodgings. The Applicant currently meets the 1 to 2 ratio of overnight lodgings v. residential units and will be able to meet this ratio as the various phases of the resort are platted. Compliance with the 1 to 2 ratio is a condition of approval of this CMP.

- E. Commercial uses limited to those types and levels necessary to meet the needs of visitors to the development. Industrial uses are not permitted.

FINDING: All commercial uses will be limited to those types and levels necessary to meet the needs of visitors to the development. The Hearings Officer interprets this condition as requiring that commercial uses must serve overnight resort visitors and not draw visitors who will visit the resort for periods of time that do not include an overnight stay at the resort. Some incidental daily visitors will inevitably visit the resort, but commercial activities must be primarily designed to provide services desired by overnight resort visitors.

Betty Marquardt and other opponents of this land use action introduced un rebutted evidence that the Applicant or others associated with the Eagle Crest destination resort currently advertise commercial events in The Bulletin and other public forums. These events include a three day long Dixieland Jazz Festival, auctions, and an estate seminar. Although not in the record, the Hearings Officer is also aware that the Applicant is currently conducting a holiday light show, called StarFest, at the resort and is inviting the public to tour the grounds of the resort and view Christmas lights for a fee of \$5.00 per carload. This event is advertised on U.S. Highway 97 between Bend and Redmond on a large billboard, The Bulletin and on local radio stations. This display lasts for a couple of months. The event is plainly designed to draw the general public to the resort and not to serve the needs of overnight visitors to the resort. These events, and those of a similar nature, all violate this restriction of the destination resort ordinance and will need to be discontinued on all parts of the Eagle Crest resort, as a condition of this and future land use approvals. All future land use applications for commercial activities in either phase of the Eagle Crest resort shall be limited to those types and levels of commercial activities necessary to meet the needs of overnight visitors or residents of the resort.

- B. All standards established by Section 18.113.060 of this chapter are or will be met.

FINDING: The standards established by Section 18.113.060 have been addressed at length above. The Hearings Officer finds that all standards established by this section have been met, or can be met, by the Applicant as conditions of approval of this

decision, to be verified at the time of Final Master Plan review or, in some instances, when each phase of the future development is platted.

C. The economic analysis demonstrates that:

- a. The necessary financial resources are available for the Applicant to undertake the development consistent with the minimum investment requirements established by this chapter.

FINDING: The Applicant has satisfied this requirement by developing facilities that meet the minimum investment requirements of this chapter, as discussed above.

- b. Appropriate assurance has been submitted by lending institutions or other financial entities that the developer has or can reasonably obtain adequate financial support for the proposal once approved.

FINDING: To address this criterion, the Applicant has provided a letter (Exhibit 39) from the President and CEO of Eagle Crest Partners, Jerol Andres, attesting to the financial strength of the project developer and the limited need for outside financing. Mr. Andres states that Eagle Crest Partners, Ltd. has already invested \$3.2 million of its own funds into the proposed expansion project (including golf course construction). Mr. Andres further states that Eagle Crest Partners, Ltd. has as some of its partners one of the largest privately held companies in Oregon and one of the largest contractors in Central Oregon, and that the partnership has sufficient banking relationships to secure financing for the project if financing is deemed necessary. As evidence of the financial strength of the partnership, Mr. Andres points to the fact that Eagle Crest Partners \$93.5 million investment in Eagle Crest I with only limited outside financing. The Applicant has not, however, provided assurances from lending institutions or other financial institutions that demonstrates that the developer has or can reasonably obtain financial support for development of the resort expansions, once the expansion is approved. The Hearings Officer believes that the Applicant should have no difficulty in obtaining this assurance based upon the resort's prior ability to construct significant resort facilities. The Hearings Officer, therefore, finds that this information may and must be required to be provided to the reviewer of the FMP, who shall determine whether the assurances are adequate.

- c. The destination resort will provide a substantial financial contribution which positively benefits the local economy throughout the life of the entire project, considering changes in employment, demands for new or increased levels of public service, housing for employees and the effects of loss of resource land.

CONCLUSION: The Applicant submitted an economic analysis prepared by Hobson & Associates. This economic analysis accounts for direct and indirect financial

benefits but does not account for indirect costs, such as those listed in this requirement (changes in employment, demands for new or increased levels of public service, housing for employees and the effects of loss of resource land). Hobson & Associates addresses some of these indirect costs in its rebuttal to the statements of Clyde Everton and Dr. Marjorie Turner, but the cost or benefit of these factors is not estimated. The Hobson analysis also makes benefit projections for a ten year period, rather than for the life of the project. The lack of projection is likely to be insignificant as the tenth year of the Applicant's projection show the economic impact of the resort at build out, after all construction activity has ceased. The Hearings Officer believes that it is reasonable to use this information to project the economic impact beyond that time, as well as such things may ever be forecast.

The Hearings Officer finds, however, that an analysis of the impact of changes in employment, demands for new or increased levels of public service, housing for employees and the effects of the loss of resource land and other indirect costs is plainly required by this section. A gathering and assessment of this information is needed before it can be concluded that the destination resort will provide a substantial financial contribution which will positively benefit the local economy throughout the life of the entire project. The Hearings Officer has, therefore, conditioned approval of this application and approval of the FMP for Eagle Crest Phase II and CRT on the completion of an independent economic analysis and subject to a finding by the analyst that this ordinance criterion has been satisfied. If the analyst so finds, Eagle Crest will be allowed to obtain FMP approval without taking any actions to offset the costs incurred by the County, school district and community at large. If the analyst finds that Eagle Crest will not make a positive contribution, the analyst shall enumerate various ways in which Eagle Crest may correct this problem and shall estimate the economic impact of that action. For instance, the analyst may find that Eagle Crest generates an unmet demand for affordable housing. The analyst might then find that the demand may be met by requiring Eagle Crest to provide rent subsidies for low paid or low-income employees, to provide housing for employees on or off-site that is limited to a percentage of employee income or by providing annual contributions to the local housing authority. Eagle Crest shall then select, from the list of options presented, actions that have the effect of reaching the goal of this section. Those actions will then be included in the conditions of approval of the FMP or may be required to be completed prior to FMP approval, at the option of the Planning Director. The independent economic analyst shall be selected by and shall report directly to the Planning Director. The costs of this study shall be borne by Eagle Crest and their payment assured prior to commencement of the study.

The following findings relate to the economic information provided to the Hearings Officer from economic experts, with consideration of the economic impact information provided by all parties. These findings support the above-listed conclusion:

The Hobson & Associates Report

In Exhibit 31, the Applicant provides projected economic and fiscal benefits of the proposed resort expansion. On pages 1 and 2 of this report, prepared by Hobson & Associates, the "Key Conclusions" are summarized as follows:

- * "The construction of the resort/residential complex is expected to generate over 1,000 full-time equivalent jobs at its peak, contributing over \$115.0 million to the regional payroll over a ten year period. When stabilized, ongoing operation of the resort and related tourist expenditures are expected to generate payroll contributions of over \$15.1 million annually, in both direct and indirect employment.
- * "In the first ten years, the total regional payroll contribution generated from the construction and operation of the resort is estimated at over \$196.0 million (stated in 1992 dollars and including indirect employment caused by resort construction and operation).
- * "The construction and operation of Eagle Crest II will place a minimal burden on Deschutes County, the County School District, or other service providers. Similarly, the population in the residential portion of the development will not "demand" county or school district services commensurate with the revenue generated. Significant sources of revenues generated by the resort and residences are property taxes, fees, licenses, and service charges."

FINDING: The construction and operation of Eagle Crest II will increase the demand for public services from the local school district and Deschutes County government. The resort relies upon the Deschutes County Sheriff's Office for law enforcement services and the demand for those services will increase as the resort grows. The resort is located many miles from Bend, the central office of the Sheriff's Office. The Hobson Report estimated that the cost to Deschutes County of resort development will be \$316,400 per year. School district expenses were not estimated. Hobson claims that costs will be minimal. The Hearings Officer is unable to concur with this assertion as the numerous single-family residential homesites that are planned for the resort may attract a significant number of year round residents. A number of golf course resort communities are currently marketing homes for year round residential use. A large number of people reside in the Sunriver and Black Butte destination resorts year round. Revenues for operation of the County and school district will not rise in relation to the growth of Eagle Crest as tax levies for local taxing districts are fixed at a flat dollar amount and allowed a maximum increase of 6% from that amount each year. In areas of rapid growth, such as Central Oregon, the amount of tax revenue for government services do not keep pace with the increase in growth and inflation. As a result, the districts will not see any new money to fund their services and to offset the increased costs generated by new development. The only way that tax levies may be increased is by a vote of the people.

The construction of Eagle Crest will allow school districts and local governments as it will allow those entities to collect a greater percentage of, or all of, their levies, if the levies of those districts exceed the Measure 5 tax limitation amounts because construction of Eagle Crest II will add assessed valuation to the County's tax rolls. This impact will not, however, assist the Redmond school district as the State of Oregon is mandated by Measure 5 to pay the school district for all tax revenues lost due to Measure 5's limitation. The only benefit to the local school district from this increase in tax collections will be that it will reduce the amount of money that the State of Oregon is required to raise to fund primary and secondary education. This reduction may benefit the district by allowing the State to provide more money in basic school support to all Oregon schools. Assuming that all of the savings achieved by Eagle Crest's impact on the district were returned to Oregon school district and was shared on a pro-rata basis, Redmond's share of the savings would be minuscule.

The increase in assessed valuation within the County achieved by the construction of Eagle Crest Phase II and CRT will inure to the benefit of County property tax payers. The amount that those taxpayers are required to pay in real property taxes will be reduced as the tax levies for the affected taxing districts will be spread over a broader base of property. This impact will make it less costly for all homeowners to live in Central Oregon. This tax savings may also benefit renters, as the tax costs of landlords will be reduced. This impact may even induce more senior citizens to retire in the area.

Eagle Crest II will generate significant room tax receipts for Deschutes County. This revenue is not, however, guaranteed over the life of the project, as Eagle Crest may seek to incorporate as a city in order to garner all of the room tax dollars. Residents of Sunriver are currently proposing to do just that, in an effort to use room tax dollars to finance activities formerly financed by the Sunriver Homeowner's Association. Such services include as security services, fire, ambulance, road maintenance and other such expenses. If that were to happen in Eagle Crest, the positive contribution of room tax dollars to County-wide residents would be eliminated.

- * "Reconciliation of anticipated costs and revenues associated with Eagle Crest II yields a net positive fiscal impact of roughly \$20.0 million for Deschutes County service providers and school districts over the next ten years (stated in 1992 dollars). Since this surplus includes only revenues from property and room taxes and does not account for potential revenue from fees and other charges it is inherently conservative."

FINDING: This reconciliation is meaningless and misleading because Eagle Crest's Phase II construction will not generate additional revenue for service providers and school districts, unless taxpayers vote to increase the tax levy of affected districts due to the lessening of the tax burden on those taxpayers. Instead, it will provide tax relief for those who reside in the taxing districts which cover the subject property.

The Marjorie Turner Report

A report from Marjorie S. Turner, PhD., Professor Emeritus, Department of Economics, San Diego State University, P.O. Box 8005, Sisters, Oregon 97759 (Exhibit 219) was entered into the record. Dr. Turner analyzed the Hobson & Associates report submitted by the Applicant and made the following comments:

1. The expansion of Eagle Crest has many economic and fiscal booby-traps.
 - a. The initial expansion will create a boomtown effect which will bring in high paid construction personnel who will impact the living arrangements, schools and social services of the County.
 - b. Prices will rise due to the boomtown effect.
2. Hobson's conclusion that there will be a net positive fiscal impact is based on false premises and a failure to account for all costs.

FINDING: Hobson's study fails to account for all costs associated with resort development. The study accounts only for direct costs and makes no effort to account for indirect costs. The study does, however, account for direct and indirect economic benefits (see exhibits attached to the Hobson report). This results in an unbalanced and inaccurate view of the economic impact of the resort on the local economy.

3. Hobson ignores the impact of the resort on small businesses. These businesses create the most new jobs for the U.S. economy. Pay for small manufacturing company workers is higher than for resort workers. Such jobs would be reasonable jobs for workers displaced by the shrinkage of the wood products industry in the Pacific Northwest. Small businesses should not be priced out of the area by increasing real estate prices.

FINDING: Rising real estate costs may price some small businesses out of doing business in Central Oregon. It has not been established, however, whether and to what extent resort development increases the cost of housing in a resort community.

4. Hobson does not admit that upperscale tourist development in the boomtown phases impacts prices and services, competing with the development of small business in Deschutes County.
5. Nearly everything that serves the upscale tourist is imported into the area, rather than being produced in Central Oregon.
6. The expanding retirement community in Central Oregon is an economic mainstay and is very price-sensitive.

7. Hobson is aware that this development will increase prices as it recognizes that absentee owners will buy property in Eagle Crest for its investment potential.

FINDING: It has not been established that the purchase of property within a destination resort for investment purposes or the expected increase in land values within a destination resort causes the value of Central Oregon homes and properties to increase. It appears logical to the Hearings Officer that the destination resort market is a very different market than is the general residential housing market. It seems unlikely to the Hearings Officer that a person who wishes to purchase resort property, with its rights to utilize resort amenities, would find properties outside of the resort comparable to resort property. The Hearings Officer also notes that those who invest in the early stages of any development project often do so in hopes that the project will succeed and that prices will increase over the course of the project's development. These investors, naturally, bear a greater risk of losing money, as well, if the project is not as well-received or is not developed as promised or expected.

8. Eagle Crest employees will demand public services.
9. There is no evidence to support Hobson's assertion that destination resorts are impervious to recessions.

FINDING: The Hearings Officer agrees that destination resorts are not impervious to recessions. Hobson & Associates concede this point in their rebuttal statement (Exhibit 68) but state that destination resorts fare better than other sectors of the economy during a recession. This makes sense as destination resorts attract wealthy people as visitors and owners and such people usually fare better in a recession than those with fewer financial resources.

10. Hobson claims that 2800 annual full-time equivalent jobs will be created related to construction activities associated with Eagle Crest. This is improbable as there are currently only 2180 construction and mining workers in the County at this time.
11. After the construction phase, jobs for approximately 250 full and part-time employees will remain for workers who will earn \$5 to \$7 per hour. If the figures cited by Hobson are correct, this will create a boomtown effect.
12. Hobson uses multipliers that are too high for Central Oregon.
13. Hobson does not account for all costs, including the costs of easements and variances applied for; increase in traffic and related highway improvements; the loss of wildlife; the exclusionary nature of a gated community; the establishment of a new city; the unwillingness of the Applicant to provide

employee housing except through investment credits; pressure on water resources; the impact of sprawl and density increases; tradeoffs with manufacturing development; and tradeoffs with increased retirement settlement in the area.

FINDING: The Hobson report does not account for such costs. Many of the items listed by Dr. Turner are extremely difficult to quantify in monetary terms. The Applicant is, however, required to account for many of these indirect impacts. The destination resort ordinance requires a determination of economic benefit "considering changes in employment, demands for new or increased levels of public service, housing for employees and the effects of loss of resource land."

14. The Hobson report does not meet the requirements of DCZO 18.113.050 B-19-(a)(b) as it looks at a ten year period rather than the life of the project.

FINDING: The Hobson report does not contain information about the impacts of the destination resort beyond the ten year construction period. It does, however, show the estimated financial cost in the tenth year, after construction is projected to have been completed. This number provides information which is some evidence that the resort will provide a substantial financial contribution to the local economy over the life of the entire project.

The Hobson & Associates Rebuttal

Hobson & Associates responded to Dr. Turner's paper with the following comments (Exhibit 68):

- * Deschutes County currently has a highly developed construction sector, supported to a large extent by construction in the area's destination resorts. Construction labor needs attributable to the proposed project are expected to be met by the resident work force. Since an influx of "high paying" construction personnel from outside of the area is unlikely, discussions of the boomtown effect are not relevant.

FINDING: The Hearings Officer finds that there is a large resident workforce of construction workers who will be available to construct the resort facilities for Phase II and the residences in Phase II and CRT expansion area of Phase I. The Pacific Gas pipeline project and numerous highway projects have been completed recently. Workers from these projects may find employment at Eagle Crest during the construction phase. Other local builders have been employed building the numerous new homes, businesses and multi-family residences built in Central Oregon each year. The large amount of construction already occurring in the County dwarfs the construction contemplated by Eagle Crest. Eagle Crest development is likely to be

phased in over a period of many years. It is unlikely that Eagle Crest construction will create a boomtown effect.

- * Ms. Turner's claim that the growth of small businesses in Central Oregon will be hurt by the development of tourism is unfounded and unsubstantiated. We believe that the impressive growth of both tourism and manufacturing in Deschutes County over the last decade supports our conclusion.

FINDING: The Hearings Officer finds that Ms. Turner's claim that the growth of small businesses will be hurt by the growth of tourism is unsubstantiated by data showing what has happened to small businesses as the existing destination resorts have developed.

- * The bulk of small business jobs in Central Oregon have occurred in the service and retail sectors, as opposed to manufacturing.

FINDING: The Hearings Officer accepts this statement as a finding of the Hearings Officer.

- * Tourism, destination resorts and retirement housing have all grown rapidly in Deschutes County over the last two decades.

FINDING: The Hearings Officer believes that no economic correlation has been established between the growth of Central Oregon as a retirement housing community and as a destination resort area. The Hearings Officer finds that it is generally true that resort communities have a higher cost of living than areas that are not resort communities but it has not been proven that the somewhat higher prices found in this resort community has discouraged senior citizens from retiring here. The cost of living in Bend is only about six percent higher than the national average, according to the American Chamber of Commerce Researchers Association. Portland, Oregon is 9% above the national average and New York City is 119% above the national average. The primary reason for Bend's higher cost of living is that the cost of housing is 132.9 percent of the cost of housing nationwide. This increased cost may be due to the fact that resort community homes are much more expensive than other types of homes (Exhibit 261, # 25).

- * The theory that almost everything which serves the "upscale tourist" is imported from elsewhere is highly questionable and unsubstantiated.

FINDING: A large percentage of the products purchased by all sectors of the population of Central Oregon is imported from elsewhere. Gasoline, most food, clothing, cars, airplanes, furniture and other household items are most often manufactured outside of the region and imported. The Hearings Officer does not believe that upscale tourists will purchase a higher percentage of goods manufactured

outside of the region. In fact, tourists are certainly more likely, in any given day in the area, to consume food prepared by Central Oregon chefs at Central Oregon restaurants, than are area residents.

- * Resort jobs projected to pay between \$5.00 and \$7.50 per hour will not offer sufficient pay to attract mass relocations and will, likely, be filled by local residents who are currently unemployed or under-employed.

FINDING: The Hearings Officer finds that wages between \$5.00 and \$7.50 per hour, especially for work in part-time positions, will not be sufficient to support a family of four at a lifestyle above the poverty level. This is a particular problem due to the growing portion of American families that are single parent families. Single wage earner families, in which the wage earner is employed in a \$5.00 to \$7.50 per hour job will qualify for public assistance and will place an economic burden upon the social welfare system. The Applicant has not done anything to correct this problem, that is endemic to the tourism industry. The Hearings Officer notes, however, that this is a nationwide problem. High paying manufacturing jobs are being phased out and are being replaced with lower paying service industry jobs. The Hearings Officer does not believe that wages for service workers will rise until such time as there is a shortage of workers to fill those positions. At this time, there is no shortage of persons who are willing to work for such wages.

The Hearings Officer also finds that not all workers employed by Eagle Crest will be the sole wage earner for their families. A number of workers may come from two income families or may be students who need seasonal or part-time employment to assist them in getting through college or high school.

- * Our report indicated 2800 FTE jobs relating to construction of the project, with each FTE representing one full year of work. Hobson believes that the one year peak in employment will be approximately 595 FTEs.

FINDING: This statement accurately reflects the numbers shown in the Hobson report (Exhibit 31). Hobson states, and the Hearings Officer concurs, that the area's construction industry workers (2,149 in March to 2,678 in August of 1991) should be able to meet the demand for work generated by resort development. Eventually, it is likely that there will be no more destination resort development in the County and these workers will need to find work in other areas. Construction work, by its very nature, is dependent upon growth to supply jobs. Eventually, projects are "built out" and workers must move to other areas for work.

- * Hobson & Associates states that the expansion of Eagle Crest is "absolutely essential to maintain the existing base of family wage construction industry jobs, much less to facilitate growth in new family wage employment opportunities."

FINDING: Hobson & Associates have not substantiated this claim. The Hearing Officer finds that it is unlikely that the construction of the Eagle Crest expansion area is "absolutely essential" to the local construction industry. The Hearings Officer finds that it is as likely that these workers will find work in other area wide construction projects. It is also likely that the lack of homesites and resort facilities in the Eagle Crest expansion area will accelerate building activity in the existing Eagle Crest development, development within existing golf course communities/resorts such as Broken Top, Awbrey Glen and Pine Meadows Estates and lead to the expansion of other destination resorts or siting of new resorts in other areas of the county. The Hearings Officer believes that there is a finite market for destination resort accommodations and for homes built in destination resorts and that the creation of new lots in Eagle Crest will not, necessarily, result in a rise in destination resort property purchases in Central Oregon.

Housing Survey

FINDING: The Applicant has submitted a survey of housing availability for employees, identified as Exhibit 30. This survey indicates that there are currently 250 full and part time employees at Eagle Crest Phase I, and that 200 additional employees are projected over the next 5 years. The majority of these employees commute from Redmond, Bend, and Sisters as there is limited housing available in the immediate vicinity. An in-house survey of employees indicated that 42% of respondents were renters seeking other housing alternatives, and that 74% indicated a preference to live in Redmond. Exhibit 30 indicates that there is a shortage of available affordable housing in the Redmond area. Eagle Crest had indicated that it intended to participate in a limited partnership with the Central Oregon Regional Housing Authority to assist in providing a 50 unit apartment complex for low to moderate income families in Redmond, but that project has been funded by a different entity.

Exhibit 30 does not address the possibility of providing on-site employee housing or transportation between Redmond and Eagle Crest. One Eagle Crest representative typified on-site employee housing as "a disaster." The Hearings Officer finds, however, that a more positive economic, as well as environmental, impact could be realized if on-site employee housing were provided.

County staff suggested that the resort would have a more positive economic impact on the region if an employee shuttle were developed between Redmond and Eagle Crest. Such a shuttle could transport resort guests to and from the Redmond Airport. The Applicant has, however, submitted information to show that few if any of its existing employees would use such a shuttle. Those employees who indicated that they would use the shuttle, travel to and from the resort at different times of day. This is due to the fact that the Applicant schedules employees to work shifts that start and end at various different times. The Hearings Officer reluctantly concludes that it is,

therefore, unlikely that the provision of a shuttle service would be of any real benefit to anyone.

Resource Land

FINDING: The proposed resort expansion areas do not appear to have ever been employed in any type of resource production, other than cattle grazing, a low-income producing agricultural activity (in Phase II). The proposed Phase II resort expansion area is currently developed as a golf course. In the land use action that approved the golf course development, it was determined that the parcel proposed for development was unproductive agricultural land. Most of the area that is included in Phase II was included in the golf course application. A parcel in the northeast corner of Phase II was added since golf course approval. This parcel is bisected by Highway 126 and has soil types and characteristics that are similar to those of the remainder of Phase II. As such, there will be no significant effect from removal of this parcel from availability for resource use.

Governmental Findings Regarding Economic Benefit

FINDING: The Oregon Legislature found, in 1987, that there is a growing need to provide destination resort accommodations to attract visitors and encourage them to stay in Oregon for longer periods of time. The Legislature also determined that the establishment of destination resorts will provide jobs and contribute to the state's economic development. ORS 197.440.

FINDING: The County's election to adopt a destination resort ordinance in 1992 to allow the siting of such resorts in agricultural and forest zones is evidence that Deschutes County believes that destination resorts are generally beneficial to the citizens of the county.

- d. The natural amenities of the site considered together with the identified developed recreation facilities to be provided with the resort will constitute a primary attraction to visitors, based on the economic feasibility analysis.

FINDING: It is apparent that Eagle Crest Phase I constitutes a primary attraction for visitors with its nearly ideal climate, proximity to the Deschutes River, natural aesthetics, and developed recreational facilities. Eagle Crest Phase II, which will share the same attributes as Phase I, will also constitute a primary attraction to visitors.

- D. Any negative impact on fish and wildlife resources will be completely mitigated so that there is no net loss or net degradation of the resource.

Resource Identification

FINDING: This criterion must be met for the entire destination resort due to the fact that the Applicant has chosen to use recreational and resort facilities in Phase I to meet the investment standards of the destination resort ordinance. The Beak Consultants, Inc. study, Exhibit 6, reviewed only the Phase II expansion area and made recommendations to mitigate fish and wildlife resources impacted by the Phase II development only. No study was made of the Phase I or CRT expansion area. In order to assure that this condition is met, the Applicant shall cause a study of the impact of Phase I, as constructed at this time and at build out, on fish and wildlife resources, prior to FMP approval. If any negative impact is found, the Applicant shall completely mitigate the loss.

Wildlife Mitigation Measures

Beak Consultants and ODF&W suggested wildlife mitigation measures. Those measures are described below.

Beak Consultants Incorporated

Beak Consultants studied the Phase II property and concluded that "a varied package of on-site and off-site measures will likely be required to meet the no net loss or degradation goal." Beak Consultant's identified 17 wildlife mitigation options which could be utilized to offset negative impacts on wildlife associated with the proposed development. These options are:

1. Topsoil should be carefully removed from the proposed residential sites, stockpiled and respread on final graded sites to provide an appropriate seedbed for revegetation. Where topsoil has been removed by past grading, a soil amendment such as compost or imported topsoil should be added. Excessive soil compaction by machinery should be avoided during seedbed preparation.
2. Topsoil stockpiles should be promptly seeded and mulched, or covered with polyethylene to prevent erosion.
3. Disturbed areas should be reseeded with a diverse grass/forb seed mixture compatible with existing soil types that will germinate quickly to minimize erosion potential and provide wildlife forage and cover. Native and naturalized species should be emphasized to the greatest extent possible.
4. Where possible the 150 to 250 foot buffer required around the perimeter of the project site should be retained in a natural, undisturbed condition to provide habitat for wildlife.

5. Seeding should begin immediately after final grading or temporary disturbance if seedbed preparation is completed during the spring through fall, irrigation may be required to successfully establish ground cover. An appropriate nitrogen fertilizer should be applied per suppliers recommendations. Mulch should be applied on areas of greater than 2:1 slope, and on sites which cannot be seeded during the growing season to protect these sites until the next seeding period.
6. Project landscaping should be designed to enhance and provide habitat for wildlife. Maintain as much of the existing habitat as practicable between residences, including the understory of sagebrush and grasses. Plant and develop shrub and tree patches within open space around residences to provide habitat structure and diversity important to many species of wildlife. Incorporate native and naturalized species with ornamental landscaping to provide a diversity of plant species attractive to native wildlife.
7. Develop an animal control policy consistent with the Deschutes County Comprehensive Plan to minimize harassment of wildlife, particularly that of deer by dogs. Property owners should be required to keep dogs within maintained fenced areas or utilize other suitable measures to prevent dogs from straying off their property. When off premises, owners should be required to maintain dogs either on leash or under verbal control.
8. Create an educational program encouraging residents to remain on developed trails to minimize undesired trail proliferation and associated habitat impact (i.e., trampling, soil compaction). Stress resident coexistence with wildlife. Foster a look, enjoy, but respect and do not disturb attitude towards wildlife.
9. Regulate traffic speeds through posted speed limits not to exceed 20 mph.
10. Erect and maintain bird boxes on wooden fence posts and tree trunks within open space areas to provide nesting sites for secondary cavity nesting species. Placement and dimensions of boxes should correspond to the likelihood of attracting appropriate species for the habitat present.
11. Erect 2 to 3 nesting platforms for Canada geese on Eagle Lake.
12. Increase the buffer of unmaintained shoreline on the north side of Eagle Lake to provide additional cover and habitat for wildlife. This part of the shoreline does not enter into play on the golf course.
13. Develop riparian habitat along portions of the shorelines of new lakes where they do not hinder golf play. Plant shrub patches, seed with native grasses, and leave unmaintained to provide cover and wildlife habitat.

14. Erect periodic raptor perch posts on existing transmission line poles which are of older designs and represent an electrocution hazard to raptors.
15. Construct new electrical distribution lines for the development underground to eliminate avian electrocution hazards.
16. Purchase the COID land in the northeast corner of the project area, west of Cline Falls Highway and south of Highway 126. Remove the existing portion of Cline Falls Highway and reroute the entrance farther west on Highway 126. Reclaim the old road and rehabilitate the extensive dirt bike trails through tilling and reseeding. Leave the area undeveloped except for defined trails, and set aside as a natural area to serve as a wildlife corridor to the Deschutes River.
17. Develop a joint project with the BLM on adjacent public lands to reduce potential adverse impacts on deer and improve the overall quality of wildlife habitat in the area. Potential activities include wildlife water developments, clearing and seeding of small patches of land, juniper thinning, snag creation, down log creation, brush pile creation and raptor perch posts.

Oregon Department of Fish & Wildlife

The Oregon Department of Fish & Wildlife submitted comments regarding the Beak Consultants study and recommended that Eagle Crest undertake the following wildlife mitigation measures comments:

18. The Applicant should be required to monitor water quality and to make adjustments to its use of fertilizers and herbicides if water quality is affected by fertilizers and/or herbicides used by the resort and its occupants.
19. Eagle Crest should contribute funding for the middle Deschutes groundwater study.
20. Eagle Crest should make annual contributions to a habitat trust fund based on Eagle Crest revenues. Central Oregon Irrigation District makes contributions to a fish and wildlife habitat trust fund on an annual basis to mitigate impacts of its hydro-power diversion. There are currently several hundred thousand dollars in the account. The impact of lost habitat will be felt throughout the life of the development, so mitigation funds should be paid for some years into the future.
21. Develop an animal control policy to prevent harassment of wildlife.
22. Create a wildlife education program.

23. Develop riparian habitat along portions of any new lakes.
24. Purchase COID land in the northeast corner of the project area for the County or BLM.
25. Do not use poisonous baits to kill golf course rodents.
26. Work with ODFW and BLM to improve habitats on adjacent public lands.
27. Any large expanses of fence built should be done to specifications which allow for the passage of deer.
28. Juniper habitats may be widespread, examples of ecologically balanced juniper-sage-bunchgrass communities containing "mature" older trees are extremely rare. The Hearings Officer interprets this comment as an indication that ODF&W that as many of these stands of trees should be protected when the subject property is developed. These areas should be identified and included as undeveloped open space areas on the FMP.
29. The Deschutes County Comprehensive plan protects sensitive bird nesting sites. There are such sites for Golden Eagles upriver from the present development. The lands these birds hunt includes the land proposed for development. Having an adequate forage base is imperative to their survival and nesting success. The loss of nearly two square miles of foraging habitat must be considered in the mitigation assessment.
30. Sewage and stormwater disposal systems should be designed and built to prevent contamination of the Deschutes River and the aquifer below the resort.
31. The Applicant should promote water conservation when facilities are constructed and when occupied through the use of low flow toilets and shower heads and other such measures.

Bureau of Land Management

BLM has not submitted any comments on the current application. BLM did, however, comment on the 1992 CMP application. In 1992, BLM suggested that waste water might be utilized to create artificial wetlands as a possible mitigation option for reptiles, amphibians, and other species which could utilize a wetland area. The Applicant makes several arguments against the use of waste water treatment facility to handle Eagle Crest effluent. Without such a facility, effluent could not be used to create wetlands. These arguments will be discussed, below.

The Eagle Crest Position

At the hearing of this matter on October 21, 1993, the Hearings Officer asked the Applicant whether it was willing to perform certain suggested mitigation measures that were recommended by the Applicant's consultant and by ODF&W. As a result, the Applicant's attorneys, Robert Lovlien and Sharon Smith, filed a written response to that question that is summarized as follows:

- * The Applicant does not want to make a financial contribution to the regional groundwater study, but is willing to donate the Newton & Associates Ground Water Study and background materials to the Middle Deschutes Ground Water Study.

FINDING: The Newton study and many background documents are already a matter of public record and may be obtained by the Middle Deschutes Ground Water Study group from Deschutes County. Additionally, a donation of such documents would do little to mitigate fish and wildlife resource damage caused by the resort, as the study group will have little or no power to affect resort operations, once FMP approval is granted..

- * The Applicant does not believe that the Hearings Officer has authority to require it to contribute to a wildlife habitat trust fund. The Applicants' attorneys claim that to require contributions to a trust fund would supersede the wildlife overlay zones adopted by the County.

FINDING: The Applicant does not argue that its resort has no impact upon wildlife resources. Impacts to such resources are documented in the record of this application. The destination resort ordinance specifically requires mitigation of wildlife impacts, in order to meet the requirements of Goal 8. The Hearings Officer is granted authority by DCZO 18.113.075 to impose conditions calculated to insure that the standards of the destination resort ordinance are met by the Applicant, in this case that all adverse impacts on fish and wildlife resources caused by the resort are mitigated. The fact that the County provides some protection for wildlife resources in wildlife overlay zones, does not mean that it intended its adoption of an overlay area to relieve destination resort developers from the expressly stated obligation to mitigate resort impacts on fish and wildlife. The Hearings Officer finds that the payment of funds to rehabilitate or preserve wildlife habitat will effectively mitigate the harm to habitat caused by the construction and operation of this destination resort on what was once farm and grazing land that provided habitat for wildlife. The Hearings Officer also finds that she has authority to impose such a requirement as a condition of approval of this application.

- * The Applicant does not want to purchase COID land that adjoins the destination resort for the purposes of rehabilitating that land. This mitigation

measure was recommended by the Applicant's expert, Beak Consultants in order to provide for a wildlife corridor to the Deschutes River. The Applicant states that COID is currently negotiating a land trade involving this parcel. The Applicant states that it is, however, willing to reclaim and rehabilitate the area of the existing Cline Falls and Highway 126 intersection, once a new intersection has been constructed.

FINDING: The Hearings Officer finds that she may have sufficient authority to require the Applicant to rehabilitate surrounding lands as a condition of approval, but is hesitant to do so. It may be that the current and new owners of the property will not wish to sell the property to the Applicants. It may be that the specific property is of greater utility for other purposes. If the Applicant were, however, to voluntarily undertake these activities, its obligation to mitigate the resort's impact on fish and wildlife resources would be reduced. This would result in a reduction in the amount of the payment that the Applicant would be required to make to the fish and wildlife damage mitigation trust fund.

- * The Applicant's attorneys claim that the Hearings Officer does not have the authority to mandate financial contributions to the groundwater study.

FINDING: The Hearings Officer may require participation by Eagle Crest in the groundwater study, under this criterion, if it is necessary to know more about groundwater in order to assess Eagle Crest's impact on fish in the Deschutes River or upon wildlife. The Hearings Officer does not believe that such a study is necessary for this purpose, if it is assumed that all water used by Eagle Crest is water that would otherwise reach the Deschutes River in determining the impact of the Eagle Crest water use on fish and wildlife resources. The water studies submitted into the record establish that the Applicant's water use from the regional aquifer for Phase II does not affect water flows in the Deschutes River until six miles upriver from Lake Billy Chinook. This is due to the fact that the water table of well water is located below the bed of the Deschutes River in the area of the Eagle Crest resort. Between the point six miles upriver from Lake Billy Chinook and the banks of that lake, huge amounts of water flow into the river which are believed, by hydrogeologists, to be coming from the regional aquifer tapped by Eagle Crest for domestic and irrigation purposes.

If Eagle Crest wishes to challenge the assumptions listed above, it may participate in the regional groundwater study, in an effort to obtain more exact information on the amount of water that is lost from the Deschutes River, due to Eagle Crest water use. Once that information is obtained, it may be utilized to determine what impact Eagle Crest has on fish and wildlife in the Deschutes basin. This may reduce the resort's obligation to mitigate such damages.

David Newton stated that there was adequate water during a drought year to maintain ODF&W requested instream water rights and that much greater quantities of water are present in the Deschutes River below the point where water from the aquifer tapped by Eagle Crest enters the Deschutes River. While this may be the case, there has been no evidence introduced to establish that the lowering of flows by the amount requested by Eagle Crest will have no impact on fish and wildlife resources. If there is some impact, that impact must be mitigated under the strict standard adopted by the County.

- * The Applicants' attorneys recommend that the Applicant undertake ODF&W mitigation measures listed as C, D, E, G, H, I, J by the Hearings Officer under her discussion of the 10/12/93 letter from Ted Wise of ODF&W, above, and items numbered 10, 11, 12, 13, 14, 15, 17 and 16, with modification to apply requirements to right of way that may be abandoned, if and when a new interchange for Highway 126 and Cline Falls Road is built.

FINDING: The Applicant has not established that undertaking these recommended actions would meet the ordinance criterion of completely mitigating any negative impact on fish and wildlife resources so that there is no net loss or net degradation of the resource. The Applicant has not included Mitigation Items #1 - 9 that were recommended by the Applicant's expert, in its recommended mitigation actions. The Applicant has not explained the reason that these items were not included. Some of these items would have required the Applicant to maintain larger buffer areas around resort activities and to provide for more natural landscaping than planned by the Applicant. The Applicant has also eviscerated the #16 recommendation for rehabilitation by seeking to transfer it from a parcel that has frontage on the Deschutes River, a water source for wildlife, to the right of way area that may be abandoned if and when a grade separated interchange is constructed on Highway 126.

In order to assure that the destination resort ordinance requirement of complete mitigation is met by the Applicant, the Hearings Officer has included the conditions as conditions of approval of this application:

1. The FMP shall not be approved until such time as the Applicant has either completely mitigated all resort impacts, as outlined below, or has assured that such impacts will be mitigated after FMP approval by the imposition of enforceable conditions of approval, inclusion of wildlife protection obligations in covenants and restrictions that shall burden all expansion area properties (CRT & Phase II), adoption of wildlife regulations by the resort's owners' association and by the execution of development agreements, where appropriate. The Applicant shall prepare and file a comprehensive wildlife mitigation master plan that explains how each mitigation measure will be or has been assured, prior to FMP approval. This explanation must be supported

by documentation of consent by all landowners whose property will be used to meet the mitigation measures.

2. The following mitigation measures shall be performed or adequately assured, as discussed above: (a) Measures 4, 6, 7, 9, 10 through 15, 17, 18, 21 through 23, 25 through 31¹²; (b) the Applicant shall outline all areas that will be reserved in a natural state, as recommended in Measures 4 and 6, on the FMP, and shall assure that no lawns are allowed in these areas through covenants and restrictions that will bind purchasers of property that is located in these areas. The Applicant will not be required to maintain golf course holes, greens and fairways located in the 150 and 250 foot setback areas in a natural state; (c) establish and implement an erosion control plan for all disturbed land, as required by ORS Chapter 468; (d) the Planning Director, with the assistance of ODF&W, shall assess the extent of the fish and wildlife impact (assuming that the most intensive development allowed by this approval will be undertaken by the Applicant) that is not met or certain to be met by the imposition of the mitigation requirements and shall develop a plan to mitigate the remaining impact through measures such as the purchase and rehabilitation of lands for fish and wildlife activities or for the protection of resources needed to assure fish and wildlife survival. The cost of undertaking these measures shall then be estimated and the Applicant shall be required to pay for the cost of undertaking these measures by making payments to an ODF&W trust fund that must be expended solely for mitigation activities. Payment for the impact of Phase I, excluding the CRT property, shall be made prior to FMP approval. Payment for impacts caused by CRT expansion area shall be paid prior to platting of that area for building lots. Payment of the costs of mitigating the Phase II impacts shall be apportioned between the phases of the development in a manner that reasonably relates to the impact of each phase, and paid as a condition of plat approval for each phase. (d) the Applicant shall reimburse the County and ODF&W for the cost of determining the amount of the wildlife mitigation assessment; and (e) the Applicant shall be required to work with COID, BLM and the County if and when the new interchange (Highway 126 & Cline Falls Road) is built, to reclaim the areas adjacent to the existing Cline Falls Highway and Highway 126 adjacent to the property owned by COID (T15, R12, Sec. 14AO, Tax Lot 900). The Applicant shall remove the existing portion of the Cline Falls Highway that is abandoned and rehabilitate the road and dirt bike trails by tilling and seeding the property. The Applicant will be required to leave the area undeveloped, except for defined trails, to allow the area to act, in conjunction with the

¹²The mitigation measure numbers are those numbers assigned to the measures by the Hearings Officer under this discussion of DCZO 18.113.070 (D).

COID property, as a wildlife corridor to the Deschutes River (assuming that the COID property remains undeveloped)..

- E. Important natural features, including but not limited to, significant wetlands, riparian habitat and landscape management corridors will be maintained. Riparian vegetation within 100 feet of streams, rivers and significant wetlands will be maintained. Alterations to important natural features, including placement of structures, is allowed so long as the overall values of the feature are maintained.

FINDING: There are no wetlands or riparian habitats within project boundaries. There are no significant natural features in Phase II. There are wetlands and riparian areas along the Deschutes River. No new development has been proposed for this area and the only development near this area is a river trail. The Applicant will be required to inventory and protect these areas in Phase I, as a condition of FMP approval. Landscape Management corridors will be maintained through individual site plan review for the various phases of development. This condition may require the Applicant to move the newly constructed irrigation water pump that is located on the banks of the Deschutes River.

- F. The development will not force a significant change in accepted farm or forest practices or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

FINDING: The Applicant has identified uses on surrounding properties on pages 12 through 16 of the Burden of Proof Statement. According to this information, none of the surrounding lands, other than BLM land, are devoted to farm or forest uses. The BLM land has been used for cattle grazing in the past and is zoned for farm uses. The BLM land is not currently used for cattle grazing and it is unknown whether BLM will allow grazing in the future.

According to information provided to the County by the OSU Extension Service, activities and impacts generally associated with this type of agricultural use are as follows:

Livestock: Cow/calf grazing operations have potential year round impacts such as dust, manure odor, flies, cattle noises, livestock escape and property damage. Possible vehicular interference with farm equipment can occur on local roads.

The impact of a resort development upon cattle grazing is usually minimal, if the animals are appropriately fenced out of resort property. The Applicant will be required to assure that resort and adjoining cattle grazing areas are separated by fencing that does not hinder the ability of deer to cross the area, unless BLM indicates in writing, to the County, that they do not want to have fencing installed to

separate the uses. Additionally, HB 3661 which was adopted by the 1993 Legislature, provides protection for farm activities from nuisance complaints by adjoining landowners. The Hearings Officer finds, that the HB 3661 "right to farm" provisions and appropriate fencing of livestock will prevent the resort from forcing a significant change in accepted farm or forest practices or from significantly increasing the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

- G. a. Destination resort developments that significantly affect a transportation facility shall assure that the development is consistent with the identified function, capacity and level of service of the facility. This shall be accomplished by either:
1. Limiting the development to be consistent with the planned function, capacity and level of service of the transportation facility;
 2. providing transportation facilities adequate to support the proposed development consistent with OAR Chapter 660, Division 12; or
 3. altering land use densities, design requirements or using other methods to reduce demand for automobile travel and to meet travel needs through other modes.

A destination resort significantly affects a transportation facility if it would result in levels of travel or access that are inconsistent with the functional classification of a facility or would reduce the level of service of the facility below the minimum acceptable level identified in the relevant transportation system plan.

FINDING: The Applicant has submitted a Traffic Impact Analysis for the expansion of Eagle Crest Phase II prepared by Kittelson & Associates (Exhibit 9). A supplemental letter was submitted by Kittelson & Associates which addresses impacts associated with the CRT Expansion in Phase I (Exhibit 10). The Applicant also submitted a Kittelson report regarding the impact of the resort on U.S. Highway 20 in the Tumalo area (Exhibit 45).

The study methodology used in the Kittelson reports includes four steps. The first step is to assess the existing traffic conditions in terms of the capacity and safety of the system. Second, the characteristics of the project traffic are determined. Third, future conditions are assessed by projecting "background" traffic without the proposed development, and then adding in the projected traffic generated by the proposed development. Fourth, strategies are recommended to mitigate any deficiencies identified in the system. The application of these four steps to the Eagle Crest project

have been summarized on pages 8 through 10 of the Applicant's Burden of Proof Statement and are detailed within Exhibit 9.

The Hearings Officer has a number of concerns about the Kittelson & Associates reports and believes that the reports understate the traffic that will be generated by the resort. The reports based their traffic estimates on golf course, hotel and residential uses. They did not make estimates for traffic that will be drawn to the commercial uses in the resort. For instance, the Canyon Club restaurant draws customers from outside of the resort. The same is true of the resort's stables. Additionally, the resort sponsors conferences (in 1992 they obtained approval for a temporary conference center) and it is unclear whether the Kittelson report considered this use. Kittelson also failed to account for trips generated by employees who commute to work at the resort. The Kittelson report also failed to include all proposed Phase I residential and hotel units in its calculations. The report lists 74 hotel units, when authorization for 150 units was sought by the Applicant. Additionally, the report states that 365 residential homes are planned for Phase I when the Applicant actually plans 410 units that fit in this category. The report also estimates that there will be three trips per day per residential home. This number appears to be very low, given the fact that the traffic expert believes that hotel visitors will make 6 trips a day. Also, the County Public Works Department estimates standard residential homes generate 6 to 10 trips per day. It is likely that a number of the resort's single family homes will be purchased for use as a primary residence and that those homes will generate traffic similar to that generated by other homes in the County.

The report identified two critical intersections within the study area: Highway 126 and Cline Falls Highway and the main resort entrance's intersection with Cline Falls Highway. The report found that both intersections currently function at acceptable levels of service, however, it was found that these intersections would not function at acceptable levels of service as traffic from the proposed Eagle Crest expansion is added to the system.

The October 14, 1993 supplemental report prepared by Kittelson & Associates, regarding Tumalo area traffic identified two intersections that are impacted by resort traffic. These intersections are Seventh Street and Highway 20 and Cline Falls Highway and Highway 20. The level of service for the 7th Street intersection is currently at level D. The level of service at this intersection will fall to Level F once Eagle Crest Phase II traffic is added to the intersection. Level of service for the Highway 20 intersection is currently F. These findings confirm the information provided by Deschutes County Planning Commissioner Andy Tillman, that the Tumalo intersections that are used by resort traffic are currently overwhelmed by traffic. The Kittelson report concludes that the Highway 20 intersection now meets warrants for a traffic light, assuming that the evening peak traffic is ten percent of all traffic in the intersection. Kittelson found that, with a traffic light and Phase II

traffic, the Highway 20 and Cline Falls Highway intersection would operate at LOS B.

- b. Where the option of providing transportation facilities is chosen, the Applicant shall be required to improve impacted roads 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.

FINDING: Since the report found that the existing transportation facilities would fail, due to resort traffic, without improvements, the Applicant has proposed several improvements to impacted facilities to mitigate the identified deficiencies. The Applicant indicates on page 9 of the Burden of Proof Statement that an agreement with the Oregon Department of Transportation has been reached regarding mitigation measures which includes a grade-separated interchange at Cline Falls Highway and Highway 126. A copy of this agreement, including a conceptual design, has been included as Exhibit 11. According to this letter, the interchange would be completed by October of 1995 if development of Eagle Crest Phase II proceeds as projected, with Eagle Crest responsible for 40% of the costs and ODOT picking up the other 60%.

Opponents of the resort expansion application have argued that ODOT should not spend public funds to construct the new grade separated interchange. The Hearings Officer cannot control ODOT decisions regarding its funding of projects. If ODOT wishes to finance 60% of the cost of this project at the time that the Applicant needs to construct the facility to meet CMP and FMP conditions of approval, that is their choice to make. The Hearings Officer finds, however, that she must impose the entire obligation for making to the Highway 126 and Cline Falls Highway road improvements upon the Applicant due to the provision of this section that states that the Applicant must be required to improve impacted roads to the full standards of the affected authority as a condition of approval, if they elect to improve roadways rather than to scale back their project to prevent overburdening the public roadways.

The Deschutes County Public Works Department road improvement standards require that the Applicant provide a left-turn refuge and right-turn deceleration lanes at the intersection of all driveway entrances and Cline Falls Highway. This left-turn refuge has already been constructed at the main entrance to Eagle Crest Phase II as a condition of approval for the golf course. To further mitigate traffic congestion at this main entrance, a second entrance onto Cline Falls Highway further to the north is proposed to be constructed when Eagle Crest Phase II reaches 70% build-out. This entrance would also be constructed with left-turn refuges and right-turn deceleration lanes. In addition, Cline Falls Highway must be improved to at least 28 foot overall

paved width along the entire property frontage, including an additional 4 feet for shoulder bikeways on either side of the automobile travel lanes.

The Kittelson Report concluded that the installation of a traffic light at the intersection would remedy most of the Tumalo area traffic problem. Naturally, a great deal more traffic will travel through this rural service center but it will be better managed if a traffic light is installed. Although the Seventh Street and Highway 20 intersection would rate an F LOS, the report believed that the light at Highway 20 and Cline Falls Highway would provide a reasonable alternative to this intersection for drivers. The traffic expert also found that the F LOS would only be experienced by minor street movements. The Kittelson Report concluded that the impact of Eagle Crest Phase II traffic would have a minor impact on the Highway 20 and Cline Falls Highway intersection and that Eagle Crest should not be required to install the traffic signal recommended. The Hearings Officer finds, however, that the Eagle Crest Resort will have a significant impact on this intersection. First, the Kittelson Report fails to include Phase I Eagle Crest traffic in its assessment of impact. This omission results in a number that is only approximately 60 percent of Kittelson estimated Eagle Crest traffic, based upon the percentage of total resort population that will be sited in each phase. Second, the Kittelson report appears to understate the number of trips generated per day by the resort's residential units, especially as it has estimated these trips at one half the rate generated by the hotel. Many of the residential units in the traffic study are timeshare and condominium units that function much like hotel accommodations. Additionally, a fair number of the single family residences may be purchased by year round residents whose vehicle use should be closer to the 6 to 10 trip a day range expected for County single-family residences, rather than the three per day estimated by Kittelson. Third, the Kittelson report includes no estimates for traffic generated by commercial areas. Fourth, the Kittelson report states that Phase II traffic will constitute 6.3% of the traffic at Highway 20 and Cline Falls Highway. This number increases to approximately 10.5% when Phase I traffic is added to the traffic estimates. Additionally, there is a large volume of through traffic on Highway 20. Kittelson and Associates states that 20% of the cross traffic in the intersection is generated by Phase II. This number increase to approximately 32% when Phase I is included in the estimate. The Hearings Officer believes that it is cross traffic, not through traffic that generates a need for a turn signal in this intersection. As a result, it is clear that Eagle Crest traffic will significantly impact this intersection.

The approval of this CMP will also place a significant burden on Cline Falls Road and raise a need to improve that roadway. The Applicant will be required to pay funds to assist the County in improving that roadway in order to mitigate the impact of resort traffic on that road. The amount of this contribution will need to be calculated prior to FMP approval.

To ensure that all traffic impacts from the proposal are adequately mitigated, approval of this CMP should be contingent upon the following conditions of approval:

- * Applicant shall improve the Highway 126/Cline Falls Highway intersection so that it meets the full standards of the Oregon Department of Transportation. Eagle Crest is responsible for obtaining all required permits and approvals, including land use and Scenic Waterway (if applicable) approvals for construction of the interchange improvements prior to FMP approval. If the design and location of the proposed interchange is not approved by all permitting agencies, a different solution to the interchange traffic problem must be designed and approved prior to FMP review. Eagle Crest shall financially guarantee completion of the project through surety bonding or substantial financial assurances approved by the County, prior to the closure of sales of individual lots or units in Phase II or CRT, as required by DCZO 18.113.110. The project shall be completed no later than when the impacts created by the resort development require the improvement. This date shall be determined by the Planning Director, prior to FMP approval. As the traffic study submitted by the Applicant did not include all resort generated traffic, the impact of commercial, sales office, employee and vendor traffic will need to be estimated and used to determine when the improvements will be needed.
- * Applicant shall cause a traffic light to be installed at the intersection of Highway 20 and Cline Falls Highway prior to FMP approval. If ODOT refuses to allow installation of this traffic light, the Planning Director shall determine, by consultation with ODOT, the level of improvements that ODOT believes are warranted and shall require those improvements prior to FMP approval.
- * The Final Master Plan for the proposed CMP shall include the proposed interchange design and the realignment of Cline Falls Highway, if approved. If the interchange is not approved, the Applicant shall scale back the size of the Phase II expansion, as required by DCZO 18.113.070(G)(1) or limit its impact on road systems as required by DCZO 18.113.070(G)(3).
- * The Applicant shall make all interim improvements recommended by the traffic study (i.e. - signs, flashing beacon, shoulder widening) to the Highway 126 and Cline Falls Highway intersection, prior to FMP approval.
- * If a Comprehensive Plan amendment is needed to approve an interchange connection, the amendment should be adopted prior to, or concurrent with, Final Master Plan approval.
- * The Applicant is responsible for all permit, engineering and improvement costs. The Applicant also, must place money in a trust account with the County for the improvement of Cline Falls Highway. Money shall be paid on a per lot sales basis, at a rate to be determined by the Planning Director prior

to FMP approval, payment of which shall be included as a condition of Final Master Plan approval.

- * Deschutes County shall revise the figures projected in the Kittelson studies to reflect all resort generated traffic and to correct the omissions cited by the Hearings Officer, prior to FMP approval. The Applicant shall reimburse the County for the cost of obtaining such an update.
- c. Access within the project shall be adequate to serve the project in a safe and efficient manner for each phase of the project.

FINDING: The Traffic Impact Analysis addresses internal site circulation on page 36, and recommends the following development standards be met to ensure acceptable safety and operational standards:

- * All roadways within both Eagle Crest developments be constructed to private street standards (Section 17.48.180 of Title 17 - 20' width).
- * All minor street approaches intersecting with the principal roadways in both Eagle Crest I and II should be stop sign controlled.
- * Since the design of the roadway system will allow for excessive travel speeds, advisory speed signs of 25 miles per hour should be posted along the principal streets, as per a residential neighborhood.

On page 38 of the Traffic Impact Analysis, the report concludes that; "The internal circulation within both Eagle Crest developments is expected to operate at very acceptable levels. All of the intersections within the developments will operate at a very acceptable LOS "A"."

The Deschutes County Public Works Department has commented that the proposed 20' wide roads in the development will not be adequate for the scale of the proposed development. Public Works requests that local roads be improved to 26 to 28 feet in width. Staff noted that Title 17 has been amended since the Kittelson report was prepared. Section 17.48.180 now requires that the minimum paved roadway width for private roads, except in certain circumstances, be twenty-eight feet. These standards became effective through Ord No. 93-012 on August 4, 1993. The Applicant submitted this Conceptual Master Plan application on August 5, 1993. Therefore, the 28 foot minimum pavement width standard is applicable to this development.

The Deschutes County Bicycle Advisory Committee has provided substantial written comments regarding bicycle and pedestrian movements within and between the developments. The primary concern of the Bicycle Committee is that the bicycle and

pedestrian facilities shown on the CMP are only cursory, and that more thought and planning should be given to these facilities to actually promote and encourage their use. The Committee has submitted several comments and suggestions that should be utilized by Eagle Crest in designing the bicycle and pedestrian system for the Final Master Plan. These comments and suggestions are outlined above. These concerns must be resolved prior to FMP approval.

The Hearings Officer notes that, pursuant to Section 17.48.140 of Title 17, bike paths with multiple users (i.e. bikes, pedestrians, golf carts) must have a width of 12 feet. Ten-foot wide bike paths are allowed if bicyclists are the only intended users. In this application, these paths are designed to accommodate multiple uses.

Page 8 of the Wildlife Assessment submitted by the Applicant (Exhibit 6) recommends regulating traffic speeds through posted speed limits not to exceed 20 mph. The Traffic Impact Analysis, however, recommends a speed limit of 25 mph within the resort. The Hearings Officer, finds that a speed limit of 20 mph shall be established for roads within the resort's boundaries, other than Cline Falls Highway.

- H. The development will not create the potential for natural hazards identified in the County Comprehensive Plan. No structure will be located on slopes exceeding 25 percent. A wildfire management plan will be implemented to ensure that wildfire hazards are minimized to the greatest extent practical and allow for safe evacuation. With the exception of the slope restriction of this section, which shall apply to destination resorts in forest zones, wildfire management of destination resorts in forest zones shall be subject to the requirements of Section 18.40.070, where applicable, as to each individual structure and dwelling. (Ord. 92-032 ss 1. 1992).

FINDING: The Comprehensive Plan does not identify any specific natural hazards associated with the subject property. According to the Applicant's Burden of Proof Statement, p. 38, there are no slopes on the site which exceed 25%. The Deschutes Canyon portion of Phase I does, however, contain slopes in excess of 25%. No structures have been proposed for this area and no new structures will be allowed in this area. The Applicant has submitted a Wildfire Prevention and Evacuation Plan, identified as Exhibit 29, which addresses wildfire precautions and contingency plans for the proposed development. This plan appears to be adequate. The subject property has recently been annexed to the a rural fire district and a fire station has been built within a short distance of the resort. The resort also contains large irrigated golf course and lawn areas which minimize the risk of wildfire within the resort. The subject property is not located within a forest zone.

Policy 4 of the Natural Hazards section of the Comprehensive Plan (p. 111) requires that; "Plans (public and private) shall consider and reflect the effects of drought on the proposed projects." The Applicant has addressed this policy in Exhibit 7, the

Hydrogeologic Study prepared by David J. Newton & Associates, Inc. The elements of this study will be assessed in comments under section 18.113.070(K), below.

- I. Adequate public safety protection will be available through existing fire districts or will be provided on-site according to the specification of the state fire marshal. If the resort is located outside of an existing fire district, the developer will provide for staffed structural fire protection services. Adequate public facilities to provide for necessary safety services such as police and fire will be provided on the site to serve the proposed development.

FINDING: The Eagle Crest property has been annexed of the resort site to the Redmond Rural Fire Protection District. The Applicant shall provide written proof from the Redmond RFPD, that all portions of the resort have been annexed to the district, as a condition of approval of the final master plan.

Exhibit 17, the Domestic Water Supply System Master Plan prepared by W&H Pacific addresses fire protection needs. On page 5 of this plan, the Applicant states that the Redmond Fire Department has recommended a minimum fire protection flow rate of 750 gallons per minute, but this figure has not been verified by the Redmond Fire Department. The Hearings Officer is aware that flows of at least 1,000 gpm are ordinarily required for most urban residential development. According to this plan, the Applicant intends to provide a fire protection flow rate for residential areas of 1,000 to 1,500 gpm, and 2,500 gpm for commercial areas. The plan identifies the location of fire hydrants within the project area. The Applicant will be required to provide a minimum fire protection flow of 1000 gpm for residential uses and 2,500 gpm for commercial areas. This condition must be met for the existing development (Phase I, excluding CRT) at the time of approval of the FMP. This condition must be met prior to final platting of CRT expansion area or any phase of Phase II.

Exhibit 29, the Wildfire Prevention and Evacuation Plan identifies an evacuation plan in case of fire or other emergency.

Exhibit 25, the Eagle Crest Resort Employee Safety Manual, outlines emergency procedures and services which are to be employed by Eagle Crest personnel. Page 1 of this manual indicates that fire and ambulance service are located in Redmond, a distance of 6.4 miles, with an approximate 12 minute response time. The Applicant has stated that a new fire substation has been located within a short distance of the resort. AirLife service from St. Charles Hospital in Bend has a seven minute flight time to the resort. The manual goes on to provide detailed procedures for employees to follow in various types of emergency situations.

Page 2 of Exhibit 35, Proposed Uses in Eagle Crest Phase II, indicates that a "Fire Station" is contemplated as a proposed use within the resort. This station has,

actually, been built outside of the boundaries of the resort and the Applicant no longer intends to build a station within the resort.

This section also requires that "[a]dequate public facilities to provide for necessary safety services such as police . . . will be provided on the site to serve the proposed development." Some of the Applicant's employees perform resort security functions and call the Deschutes County Sheriff's Office to handle criminal matters. The Sheriff's Office is based in downtown Bend, many miles from the Eagle Crest resort. As the resort grows, the demand for Sheriff's Office services in this distant location will increase. The Hearings Officer believes that this growth in demand for police services may be alleviated by the Applicant developing an on-site police service, along the model of the Sunriver police force or by an increase in Sheriff Office staffing. The Hearings Officer has, therefore, required that the Applicant work with the Sheriff's Office to quantify the need for police facilities and services and to develop a plan to meet the need. The Planning Director shall review the plan and must determine that the plan meets the increased demand for police services, before the Applicant may receive FMP approval.

The Hearings Officer finds that adequate public safety services exist and can be provided by Eagle Crest for both the existing and proposed development, provided that the entire resort area is annexed to the Redmond RFPD and a plan is developed for police services, as described above, prior to final Master Plan approval.

- J. Streams and drainage. Unless otherwise agreed to in writing by the adjoining property owner(s), existing natural drainages on the site will not be changed in any manner which interferes with drainage patterns on adjoining property. All surface water drainage changes created by the development will be contained on-site in a manner which meets all standards of the Oregon State Department of Environmental Quality (DEQ). The erosion control plan for the subject development will meet all standards of ORS Chapter 468.

FINDING: According to the Applicant's Burden of Proof Statement, page 39, there are no natural drainages on the site that will in any way interfere with drainage patterns on any adjoining property. The Applicant's Erosion Control Plan, Exhibit 8, indicates that all surface water drainage will be contained on-site. This plan provides several erosion control methods which will be utilized by Eagle Crest in the construction process and in the design of roads and other facilities. The Applicant will be required to comply with this plan as a condition of approval of this CMP and of the FMP.

- K. Adequate water will be available for all proposed uses at the destination resort, based upon the water study and a proposed water conservation plan. Water use will not reduce the availability of water in the water impact areas identified in the water study considering existing uses and potential development previously

approved in the affected area. Water sources shall not include any perched water table. Water shall only be taken from the regional aquifer. Where a perched water table is pierced to access the regional aquifer, the well must be sealed off from the perched water table.

FINDING: The Applicant has submitted a Hydrogeologic Study (Exhibit 7) and a Domestic Water Supply System Master Plan (Exhibit 17) which address these requirements. In addition the methodology and conclusions of the Hydrogeologic Study have been independently evaluated and verified by a Registered Professional Geologist hired by the County (Exhibit 21). The information contained in these exhibits is summarized on pages 40 through 42 of the Applicant's Burden of Proof Statement. The Applicant has also submitted a document entitled "Hydrogeologic Study, Eagle Crest Phase II, Supplemental Findings" that is dated September 30, 1993, a letter to Bill Lyche from David Newton regarding water supply issues and a November 1, 1993 letter from David Newton regarding groundwater adequacy. The opponents have submitted numerous documents about the water issue. The gist of these articles is that aquifers can become depleted by intensive use, that it is a poor idea to approve land use permits without first determining that water is available for the projected use, that development of Eagle Crest should be deferred until after the current groundwater study is completed for the Middle Deschutes Basin and that Eagle Crest's water use may adversely affect neighboring wells and natural resources.

The findings and conclusions found on page 2 of the Newton Hydrogeologic Study indicate that a highly productive, deep aquifer was encountered during the drilling program initiated at Eagle Crest Phase II during the fall of 1991 and winter of 1992. Groundwater elevations within this aquifer are at least 100 feet lower than elevations within surrounding domestic and agricultural wells, including adjacent Eagle Crest Resort wells. The reason that the aquifer is deeper at this location than it is at other locations is not conclusively known. Mr. Newton made statements that inferred that this Eagle Crest had tapped into some aquifer other than the regional aquifer but later stated that "in our initial report we documented that the Eagle Crest wells draw from this regional aquifer." This is consistent with the observation in the first Newton report that regional aquifers are sometimes found at deeper elevations around volcanic features like Cline Buttes. Mr. Newton also believes the deep aquifer from which Eagle Crest water is withdrawn is discharged into the Deschutes River approximately ten miles downriver from the resort. At the point of discharge, large quantities of ground water are discharged into the river from underground springs. Mr. Newton included a Deschutes River Flow Rate Exhibit that shows flow rates at various points in the river between May 11 and 15, 1992. This map shows that 56 cfs of water was measured at Eagle Crest, whereas 365 CFS was measured just upriver from the confluence of Squaw Creek and the Deschutes. The exhibit also shows that water levels in the river remain low for a considerable distance downriver when flow rates suddenly increase from 68 cfs to 216 cfs in a short stretch of water. This information

supports the assertions of Mr. Newton regarding the impact of pumping on groundwater.

Results from pump testing of the deep aquifer indicate that pumping the well at 1,500 gallons per minute will have no impact on surrounding wells. Pumping rates as high as 1,500 gpm were discharged from Eagle Crest Phase II well #1 with no more than 2.15 feet of drawdown. Pilot Hole #1, the observation hole 35 feet from EC II-1, had a drawdown of only 0.1 feet. A table top exercise was then performed, at the recommendation of Joseph Gonthier and field measurements, after a season of daily pumping water from the Eagle Crest Phase II well, indicate that there was little or no drawdown on the well.

There is no usable surface water source within the boundaries of Eagle Crest Phase II. The Deschutes River adjoins Phase I. The high yielding groundwater source is needed to meet the ultimate water demands. Water samples collected and analyzed from the aquifer indicate analyzed constituents well within Environmental Protection Agency drinking water quality standards.

The summary and recommendations on page 2 of Exhibit 17, the Domestic Water Supply System Master Plan, indicates that, at project build-out, the water system for Eagle Crest will serve over 3,600 people. The system will include six wells, a domestic water storage reservoir, one booster pumping station, surface water lake storage, and approximately 12 miles of distribution piping. It is anticipated that the domestic water consumption of Eagle Crest will be approximately 1,238,750 million gallons of water on a peak day. The required source contribution to meet this demand is 860 gpm. Eagle Crest will ultimately irrigate approximately 500 acres of golf course turf in addition to a substantial amount of open space. The irrigation source requirement is approximately 3,280 gpm during the peak consumptive use period. The combined domestic and irrigation source requirement totals 4,140 gpm at project build-out. The three existing wells within Eagle Crest Phase I, two existing wells within Phase II, plus one new well proposed for Phase II should provide the necessary contribution. The Hydrogeologic Study estimates (p. 2) that the ultimate water need for Eagle Crest Phase II itself will be 2,331 gpm. Both the Study and the Master Plan conclude that the water source is adequate to meet the water demands created by the development.

The Applicant's water conservation plan is found on pages 12 and 13 of Exhibit 17, the Domestic Water Supply System Master Plan. The following list of water conservation measures are proposed to be incorporated into the Phase II water system:

- * Each domestic water service will be metered.
- * A rate structure will be developed that provides financial incentive to conserve water.

- * Golf course irrigation will be controlled by an automatic irrigation controller to allow:
 - a) applications during efficient hours of the day;
 - b) reduction of the applications to accommodate weather conditions; and
 - c) hydraulically efficient valve controls to assure uniform and consistent applications throughout the irrigated areas.
- * Covenants and restrictions will be established which encourage the preservation of natural vegetation, the limitation of irrigated areas, and the promotion of non-irrigated landscape improvements.
- * Low-flow plumbing fixtures will be encouraged.

The Hearings Officer believes that the Applicant's water conservation program would be more effective if limits were placed upon irrigation hours for all system users so that irrigation will occur during the hours of the day when it will do the most good. An enforceable limit on hours of irrigation shall be established by Eagle Crest and/or Cline Butte Utility Company. The Hearings Officer finds that the Applicant must demonstrate to the County that these measures will, in fact, be implemented and that a system is set in place to enforce conservation measures. The Applicant shall demonstrate to the County Planning Director, that it has adopted this conservation system for its entire water system and that all new users will be bound to comply with conservation measures.

Based on the above information, the Hearings Officer concludes that adequate water will be available for all proposed uses at the destination resort, based upon the water study and the proposed water conservation plan, for the foreseeable future. It is not certain that there will always be an adequate supply of water for all users in Central Oregon if the rapid growth currently being experienced in Central Oregon continues, but it appears from the evidence gathered regarding current supplies of groundwater, that there is now an adequate supply of water to meet the project needs of the Eagle Crest Resort in the regional aquifer. It also appears that there is a large water resource in the regional aquifer and that the regional aquifer will not be depleted by Eagle Crest's water usage. This is apparent by the large amount of water that leaves the regional aquifer and enters the Deschutes River downriver from the Eagle Crest resort.

The Hearings Officer finds that the Newton study was prepared in accordance with the currently accepted standards of practice for hydrogeologic studies. The results and methodology employed in the study were reviewed and accepted by Joseph

Gonthier. Mr. Gonthier also agreed that there are significant volumes of ground water in the regional aquifer. The Hearings Officer also finds that water use in Phase II will not reduce the availability of water in the water impact areas identified in the water study, considering existing uses and potential development previously approved in the affected area as the amount of water resource is so large, by comparison to the use proposed by Eagle Crest. Additionally, the Oregon Water Resources Department typically conditions approval of water permits on the continued operation of the system without significant interference to prior, approved uses. The November 1, 1993 letter from David Newton to Bill Lyche (Exhibit 67) states that OWRD has imposed 15 conditions to require monitoring of water levels, to conserve water and to force a cessation of pumping if excessive declines occur. Evidence submitted by the opponents indicates that OWRD inadvertently left these conditions out of its permit for the Phase II irrigation water right. The Hearings Officer finds that these conditions are necessary to assure that Phase II irrigation, commercial and industrial water use is not reduced, as required by the County's destination resort ordinance. The Hearings Officer has, therefore, conditioned approval of this application upon proof by Eagle Crest that all of its existing water rights contain the standard OWRD conditions, including those items referenced by Mr. Newton. If such conditions are not currently included in the existing Phase II water rights, Eagle Crest cause its permit to be amended to include these conditions.

The Oregon Water Resources Division has complete authority to determine whether to allow Eagle Crest to withdraw water from the regional aquifer and whether there is adequate water in the aquifer to supply Eagle Crest, without harm to existing users. Eagle Crest has already obtained water rights for three wells in Eagle Crest Phase I and three wells in Eagle Crest Phase II. The Phase II wells are limited to irrigation and commercial water uses. Eagle Crest has applied for a groundwater permit for water for domestic use for Phase II properties. If this permit is not approved by OWRD, the Applicant will not be able to develop Phase II with any residential units. The Hearings Officer has, therefore, made approval of this permit by the Oregon Water Resource Department a condition of FMP approval.

It appears to the Hearings Officer, from a review of the Newton reports, that Eagle Crest's Phase I water sources do not include any perched water sources. This fact shall be verified prior to FMP approval.

The County's destination resort ordinance requires that "water shall only be taken from the regional aquifer." The Hearings Officer finds that this section prohibits the Applicant from obtaining groundwater from any aquifer other than the regional aquifer. This section does not prohibit the Applicant from using surface water in the resort. This is evident from the placement of this sentence between two sentences that refer to groundwater. The Applicant has demonstrated that all water that is or will be used by the resort will come from the regional aquifer. The Hearings Officer

also finds that the proposed transfer of water with Swalley Water will not result in the resort using water from the Deschutes River, in violation of this restriction.

The County's destination resort ordinance also requires that "[w]here a perched water table is pierced to access the regional aquifer, the well must be sealed off from the perched water table." This requirement will be included as a condition of FMP approval.

- L. The waste water disposal plan includes beneficial use to the maximum extent practicable. Approval of the CMP shall be conditioned on Applicant making application to DEQ for a Water Pollution Control Facility (WPCF) permit consistent with such an approved waste water disposal plan. Approval shall also be conditioned upon Applicant's compliance with applicable Oregon Administrative Rules regarding beneficial use of waste water, as determined by DEQ. Applicant shall receive approval of a WPCF permit consistent with this provision prior to applying for approval for its final master plan under this chapter.

FINDING: The Applicant has submitted a Sanitary Sewerage Collection and Disposal System Master Plan (Exhibit 26) to address this requirement. Pages 35 through 37 of the Applicant's Burden of Proof Statement provide a summation of the information in Exhibit 26. The Burden of Proof also provides arguments for why it is not practicable to utilize the resort's wastewater for a beneficial use.

The Applicant states that destination resorts have unique characteristics with respect to wastewater. Resorts generate very low flows of sewage in the early stages of development and during low use periods. There are very high flows during holidays and peak vacation times. The Applicant further states that destination resorts are sensitive to the environment, to odors, to unsightliness, and safety due to the extent of outdoor activities that occur on the property.

The Applicant describes four types of sewage treatment and disposal which might be feasible for use in Eagle Crest. These include: 1) a mechanical sewage treatment plant with some form of effluent disposal; 2) a lagoon with effluent disposal; 3) subsurface disposal; and 4) the effluent could be conveyed to Redmond's mechanical treatment facility. The Applicant goes on to evaluate how each system could be utilized at Eagle Crest.

The Applicant concludes that the only practicable method to dispose of sewage at the resort, at this time, is the subsurface drainfield method. This is the current method of sewage disposal at Eagle Crest Phase I. While this system may work fairly efficiently, it provides no beneficial use of the waste water.

In order to determine whether the Applicant's sewage treatment plan complies with the requirements of the destination resort ordinance requirement that the waste water

disposal plan include beneficial use, to the maximum extent practicable, the Hearings Officer looked up the word "practicable" in Webster's New Universal Unabridged Dictionary, Deluxe 2nd Edition. In that dictionary, the word is defined as follows: 1. capable of being done, effected, or performed; feasible; as a practicable method; 2. capable of being practiced; as, a practicable virtue; 3. that can be used; usable; useful; as a practicable road; a practicable weapon. The Hearings Officer finds that the word "practicable," as used in the County's ordinance is used in the manner described as the first definition of the word in Webster's. The Hearings Officer, therefore, reviewed the Applicant's sewage treatment plan to determine whether it includes beneficial use of waste water, to the maximum extent it is capable of being done.

The four options identified as possible for the resort were analyzed by W & H Pacific. Option #4, connection to the Redmond sewage treatment facility, is not possible at this time. The Redmond system does not have the capacity to handle Eagle Crest effluent. In order to serve Eagle Crest, Redmond sewer lines would need to be extended for miles beyond the Redmond urban growth boundary. The sewer lines would also need to cross the Deschutes River, in a stretch of the river that is designated a scenic waterway. Additionally, if Redmond were to expand its treatment facilities and an extension of the system was constructed, there would be no guarantee that Redmond would provide for beneficial use to the maximum extent possible, as required by the destination resort. This option is also prohibited by DCZO Section 18.113.070 (O). That section states that Eagle Crest must be served by an on-site sewage system unless the County Comprehensive Plan allows connection to an existing public sewer system. The Comprehensive Plan does not contain a provision that allows such connection. The Hearings Officer believes that the Comprehensive Plan may be amended to allow Eagle Crest to connect to the Redmond sewer system at some time in the future. Connection to an urban treatment facility is allowed by ORS 197.450 and Goal 8. The Hearings Officer has, therefore, made provisions to allow such connection, if and when it becomes available.

Options #1 & #2 include central collection facilities. Option #1 is the only one of these options that would treat effluent to the point that it is capable of use to irrigate golf courses or to create wetlands. Option #1 facilities utilize chemicals and electrical power in order to treat effluent prior to irrigation or wetland use. Some sewer treatment plants discharge effluent into rivers and streams or into on-site storage facilities. Eagle Crest would not, however, be able to discharge effluent into the Deschutes River and would need to create a storage pond, on-site. The wide variation in flow levels generated by destination resorts make it difficult to maintain a mechanical sewage treatment facility. At high flow levels and low flow levels, these systems have a history of failure.

The Applicant submitted administrative regulations adopted by DEQ (OAR 340-55-005 through -0130) that prohibit the use of treated effluent on golf courses that are

surrounded by homes, unless the effluent meets Level IV treatment standards, the highest treatment standard for sewage. It is possible to irrigate golf courses with effluent treated to meet lower standards (Levels II and III) only if the course is not surrounded by homes and effluent is applied to rural or nonpublic lands and signs are erected warning of the hazards of effluent. Buffers of 10 feet for surface applications of effluent are also required. The regulations also require fencing of impoundments of effluent, except for Level IV treated effluent. Treated effluent would need to be impounded in storage facilities or lagoons during times of the year when effluent may not be applied. A 26 acre pond, five feet deep, would need to be built to store effluent over the course of the winter. The effluent would need to be fenced, unless it was treated to Level IV quality standards. W&H Pacific has not explained whether it would be possible to treat Eagle Crest effluent to Level IV standards, at which point the effluent could be utilized without many restrictions.

The Applicant says that Bijan Pour, a DEQ official, "indicated subsurface disposal possibly provides the best treatment, in excess of tertiary standards, when maintained aerobic" (Exhibit 18, p. 2). This comment is not a statement of official position by the State Department of Environmental Quality (DEQ) regarding this issue, and none was ever provided to the County, despite the Hearings Officer's requests that Planning Division staff and the Applicant request that DEQ comment regarding this issue. DEQ will need to approve any plan that is ultimately approved for wastewater treatment and disposal, so their input would have been extremely useful to the Hearings Officer in deciding whether it would be practicable for the Applicant to obtain approval of a sewage treatment facility that would put treated effluent to beneficial use.

W&H Pacific has stated that "certain areas of the Eagle Crest Development do not have sufficient soil profiles to accommodate single-family subsurface systems" (Exhibit 17, p. 11). The Applicant has, however, proceeded to file a Master Plan that calls for complete development of the entire Phase II property, even in areas that cannot be served by a subsurface system. Areas that are not suitable for subsurface systems should not be designated for development that requires septic sewer service. The Applicant's plan also lacks information about the planned back up system that will be provided for the individual drainfields. No central drainfield site has been designated for Phase II effluent. This must be done prior to FMP approval.

Based upon the foregoing, the Hearings Officer finds that a central, mechanical treatment facility designed and operated at the resort is the only facility that may be constructed by the Applicant that can assure that beneficial use of wastewater is maximized, as required by the destination resort ordinance, and that is capable of serving the entire resort. The Hearings Officer finds, however, that such a system is not feasible when low levels of effluent are generated and the levels fluctuate. The information provided by W&H Pacific regarding the Black Butte system indicates that as a sewage system grows to the level anticipated in Eagle Crest (similar to the size

of Black Butte Ranch), it will be possible to have two treatment plants and to use one as a reserve facility for treatment during high flow periods. If such a two treatment plant facility is constructed for Eagle Crest, a 26 acre pond, five feet deep, is needed for a mechanical treatment system at Eagle Crest to store effluent when it may not be used for irrigation. Eagle Crest created a reserve area for such a mechanical treatment system in its 1988 Master Plan, but removed the system from the Plan in the 1990s.

Based upon the foregoing, the Hearings Officer believes that the Applicant should be allowed to utilize a subsurface facility at this time, subject to compliance with conditions guaranteed to assure compliance with the beneficial use requirement when such use becomes feasible. The Hearings Officer believes that this objective may be achieved if the following conditions of approval are imposed:

1. Prior to FMP approval, the Applicant shall design a mechanical treatment facility and complete collection system, with at least two treatment plants to assure effective treatment of effluent during high flow and low flow periods. The facility shall be sited on a parcel of property within the destination resort that is large enough to accommodate all sewage treatment plant facilities, at least 23 acres. The Applicant shall set aside or obtain ownership of such a site and provide proof of ownership to the Planning Director, prior to FMP approval. The site must be shown on the FMP map. Plans for the treatment facility shall include an effluent pond designed to hold effluent during periods when it may not be utilized for irrigation or other beneficial uses.
2. The Applicant shall obtain DEQ approval of the mechanical treatment facility and collection system plan, prior to FMP approval. If it is documented that DEQ approval is not available, the Applicant shall demonstrate to the Deschutes County Planning Director that the facility design meets DEQ requirements for such facilities, prior to FMP approval.
3. Prior to FMP approval the Applicant shall do the following: (a) Design a wastewater reuse program that will utilize wastewater and which may include, but not be limited to, use of effluent to irrigate golf courses, to create wetlands or to irrigate cropland; and (b) Design the transportation and distribution system which will be used to transport and discharge effluent to and on the site of reuse; and (c) If effluent will be reused on property located outside of the boundaries of the resort, the Applicant must submit proof that it has obtained a binding legal commitment to discharge effluent on that site; and (d) State what level of treatment (I through IV) will be achieved by the plant designed, demonstrate how DEQ requirements (OAR regulations) on reuse will be met, and provide assurances acceptable to the Planning Director that measures to comply with the regulations will be met once effluent is put to beneficial use.

4. The Planning Director shall determine at what point of development a mechanical treatment facility will become feasible and require its construction at or prior to that time in the conditions of approval of the FMP. The Applicant shall provide a performance bond or other financial assurances satisfactory to Deschutes County Legal Counsel, assuring completion of the mechanical treatment facility and related facilities.
5. The Applicant shall identify, on the FMP, all areas in the resort that are not suited for development with septic systems. No buildings requiring sewer service may be sited, or residential or commercial lots platted, on these properties until such time as the mechanical treatment facility is constructed and operational.
6. The Applicant shall obtain septic system feasibility approval from the Deschutes County Environmental Health Department for each proposed lot in each phase of development platted prior to approval and filing of the plat, until such time as the central facility is constructed and operational and when service by that facility to the platted area is assured.
7. The Applicant has stated that the septic tanks on each lot will be backed up with a central collection system. This system has not been designed. The Applicant shall design the back up effluent collection system and designate an area for central and/or back up effluent disposal prior to FMP approval. The Applicant shall construct the back up, central drainfield prior to platting any portion of Phase II and shall install all collection lines for the system in each phase, prior to the issuance of building permits in that phase.
8. The Applicant shall make an application to DEQ for a WPCF permit, and comply with applicable Oregon Administrative Rules regarding beneficial use of waste water, as determined by DEQ. The Applicant shall have received approval of a WPCF permit consistent with this provision prior to applying for approval of the Final Master Plan. The Applicant shall also obtain approval of the mechanical system, prior to operation of that plant.
9. Approval of each phase of development that will utilize subsurface drainage systems may be denied by Deschutes County if DEQ has withdrawn approval for the subsurface system or if there is substantial evidence to indicate that the systems are failing or causing significant contamination of groundwater or river water.
10. If, at some time in the future, the Comprehensive Plan is amended to allow the Eagle Crest resort to connect to the Redmond sewer system, the Applicant may apply to the Planning Division for amendment of these conditions of approval to authorize that sewage treatment option and to remove the on-site

treatment plant requirements. The Applicant will need to demonstrate that Redmond's sewage treatment plant has adequate capacity to treat the sewage in compliance with all sewage treatment regulations and that the Applicant has obtained a binding, long-term commitment from the City of Redmond to accept and treat the Eagle Crest sewage and to make a beneficial use of the effluent.

- M. The resort will mitigate any demands it creates on publicly owned recreational facilities on public lands in the surrounding area.

FINDING: The nearest publicly owned recreational facility on public lands in the surrounding area is the Cline Falls State Park. According to the Applicant's Burden of Proof Statement, page 16, Eagle Crest has attempted to provide a number of on-site recreational amenities, as well as access to the Deschutes River along its easterly boundary for resort guests. These are intended to mitigate created demands on Cline Falls State Park by attempting to capture the users of Eagle Crest on-site.

Planning Staff indicates that the Applicant will be required to either: 1) dedicate land for park purposes; or 2) pay a \$350 per-lot park acquisition and development fee in lieu of actual dedication as required by Section 17.44.010 of Title 17 (the County Subdivision Ordinance). This fee will be charged at the time of final plat review for the platting of all lots within the resort unless a dedication of park land occurs.

- N. Site improvements will be located and designed to avoid or minimize adverse effects of the resort on the surrounding land uses. Measures to accomplish this may include establishment and maintenance of buffers between the resort and adjacent land uses, including natural vegetation and appropriate fences, berms, landscaped areas and similar types of buffers, and setback of structures and other developments from adjacent land uses.

FINDING: The Applicant has identified land uses on adjoining properties on pages 12 through 17 of the Burden of Proof Statement. Mitigation of adverse impacts has also been discussed, and includes, primarily, the maintenance of natural buffer areas around the perimeter of the resort and observation of the setbacks required by this ordinance. The Applicant's golf course significantly impacts residences in the Cline Falls Oasis subdivision on the north end of Phase II, as evidenced by the testimony of Linda Burwell. The Applicant offered to place berms and to plant vegetation along the Phase II boundary that adjoins Ms. Burwell's residential property. The Hearings Officer finds that buffering is needed along that portion of the northern boundary of Phase II that adjoins Cline Falls Oasis subdivision properties. The Hearings Officer has, therefore, required the Applicant to submit and receive approval of a landscaping plan that meets the requirements of this section for that area of Phase II, prior to FMP approval.

- O. The resort will be served by an on-site sewage system approved by DEQ and a water system approved by the Oregon State Health Division, except where connection to an existing public sewer or water system is allowed by the County Comprehensive Plan, such service will be provided to the resort.

FINDING: These issues have been discussed previously in sections 18.113.070(K) and (L) above. The Applicant shall be required to apply for and obtain WPCF approval from the DEQ prior to submittal of the Final Master Plan. The Hearings Officer has also required that the Applicant make provisions for an on-site treatment system, when such a system becomes feasible. No provision of the County Comprehensive Plan allows connection of Eagle Crest's sewage or water system to an existing public sewer or water system and none has been allowed by this decision, unless the Comprehensive Plan is amended to allow connection to an existing public sewer or water system.

The Oregon Water Resources Division has completed a technical review of the domestic water supply system plan (Exhibit 21). As required by the Oregon Health Division, the Applicant must submit water quality analyses from the new well before final approval of the well can be considered.

- P. The destination resort will not alter the character of the surrounding area in a manner that substantially limits, impairs or prevents permitted or conditional uses of surrounding properties.

FINDING: The Hearings Officer finds that the destination resort will not alter the character of the surrounding area in a manner that substantially limits, impairs or prevents permitted or conditional uses of surrounding properties. Surrounding properties are zoned either Multiple Use Agriculture - MUA-10, or Exclusive Farm Use - EFU-SC. The permitted and conditional uses within these zoning districts are found in Chapter 18.32 and 18.16 of Title 18. The Applicant has addressed this requirement on pages 43 and 44 of the Burden of Proof Statement. It is the Hearings Officer's opinion that the Applicant has adequately addressed this criterion and that those findings support the Hearings Officer's finding that the Applicant has complied with this section. The Hearings Officer also finds that the conditions of approval imposed on this decision were designed to insure that this objective will be achieved.

- Q. Commercial, cultural, entertainment or accessory uses provided as part of the destination resort will be contained within the development and will not be oriented to public highways adjacent to the property. Commercial, cultural and entertainment uses allowed within the destination resort will be incidental to the resort itself. As such, these ancillary uses will be permitted only at a scale suited to serve visitors to the resort.

FINDING: The Hearings Officer has previously found that Eagle Crest Resort is currently offering commercial, cultural and entertainment uses that are designed to draw participants from the entire Central Oregon community, not just to serve visitors of the resort. These events include such things as auctions, estate planning seminars that are advertised to the public, Dixieland jazz festivals and other such events. The occurrence of these events were well-documented by Betty Marquardt. The Hearings Officer also notes that the Applicant now conducts StarFest, a commercial Christmas light show that is advertised on a Highway 97 billboard, in The Bulletin and on local television and radio stations and that is in operation for approximately two months a year. These events, and others of their type, may not, however, be continued, in any part of Eagle Crest after CMP approval is final.

- R. The commercial uses permitted in the destination resort will be limited in type, location, number, dimensions and scale (both individually and cumulatively) to that necessary to serve the needs of resort visitors. A commercial use is necessary to serve the needs of visitors if:
- a. Its primary purpose is to provide goods or services that are typically provided to overnight or other short-term visitors to the resort, or the use is necessary for operation, maintenance or promotion of the destination resort; and
 - b. the use is oriented to the resort and is located away from or screened from highways or other major through roadways.

FINDING: The submitted Conceptual Master Plan indicates a commercial core area in the center of the proposed Phase II development, a resort sales office in Phase I and a future commercial area in Phase I. These are the only areas in the Master Plan that may be developed for commercial uses. The Master Plan states that potential uses in the Phase II commercial area may include, but are not limited to, a golf pro shop, retail shops, restaurant, hotel, pool, and tennis courts. The Plan does not list any of the uses proposed for the area designated "Future Commercial Area" on the CMP. The Hearings Officer is unable to determine that these proposed commercial areas will be developed with uses that will meet the standards of this section. Before such a determination may be made, it must be known what types of uses will be conducted in the commercial areas. The Hearings Officer has, therefore, conditioned approval of this CMP and the FMP upon compliance with this section.

The Phase II commercial area will not be readily visible from outside of the resort boundary, and appears to be of a scale suited to serve visitors to the resort. This appears to be an appropriate area for commercial uses. The Phase I commercial area is located within view of the Cline Falls Highway, a major through roadway. This area must, therefore, be screened from the highway. The proposed sales office for Eagle Crest is oriented to face the highway, not the resort, and is in an area that is

visible from Cline Falls Highway. The Hearings Officer finds that the location of the sales office must be screened from the highway and that the back, rather than the front, of the building should face the Cline Falls Highway. No parking shall be placed between the sales office and Cline Falls Highway. No sales office signage or ground mounted signs advertising the sales office may be visible from Cline Falls Highway. These conditions have been made conditions of approval of the CMP and FMP.

Area 11 on the CMP is proposed to be a "combined development area, with potential uses including but not limited to hotel, sports facilities, conference center, business development center, pool and tennis courts, golf course related facilities, and residential." This area is the portion of the proposed resort closest to the Highway 126/Cline Falls Highway interchange, and if developed as contemplated, could form a primary attraction for visitors to the resort. In order to comply with this section regarding commercial uses, the development and uses allowed in this area shall not include any commercial facilities.

- R. A plan exists to ensure a transfer of common areas, facilities such as sewer, water, streets and responsibility for police and fire protection to owners' associations or similar groups if contemplated. If such transfer is not contemplated, the owner or responsible party shall be clearly designated. Adequate open space, facility maintenance and police and fire protection shall be ensured in perpetuity in a manner acceptable to the County.

FINDING: According to the Applicant's Burden of Proof Statement, page 44, the long-term responsibilities of the various homeowners' associations are disclosed in Exhibit 12, the Vacation Resort Owner Documents, Exhibit 13, the Estate Homesite Owner Documents, and Exhibit 14, the Estate Homesite Association - ARC. The same form of ownership and transfer of authority provided in these documents is intended to be carried through to Eagle Crest Phase II. These exhibits contain highly specific covenants, conditions, restrictions, and responsibilities of the homeowners' association, as well as the designation of authority to enforce the CC&R's.

The above referenced exhibits appear to adequately address management of common and open space areas, as well as responsibility for public facilities and services such as sewer, water, streets, and police and fire protection for Phase I. If similar documents are executed for Phase II, these items should be adequately assured for Phase II. The same form of ownership and transfer of authority will be carried through to Phase II. The Applicant will be required to provide proof of compliance with this requirement, as a condition of FMP approval.

- S. Temporary structures will not be allowed unless approved as part of the CMP. Temporary structures will not be allowed for more than 18 months and will be subject to all use and site plan standards of this title.

FINDING: There are several "temporary" structures currently in use at Eagle Crest. These include the temporary modular sales offices located at the entrance to Phase I, a temporary modular day care center near the Inn at Eagle Crest, and a temporary golf pro shop for the Eagle Ridge Golf Course within the proposed Eagle Crest Phase II area. These are the only temporary structures shown on the CMP and are the only such structures allowed in the entire Eagle Crest Resort. As required by this section, any new temporary structures would be allowed for no more than 18 months from the date that CMP approval is final, and would be subject to all use and site plan standards. The temporary sales office must be removed no later than when the new sales office is occupied. The temporary golf course pro shop shall be removed no later than when the first plat in Phase II is approved.

- T. The open space management plan is sufficient to protect in perpetuity identified open space values.

FINDING: Eagle Crest's Open Space Management Plan is identified as Exhibit 15. According to this Plan, open space at Eagle Crest includes developed areas such as the golf courses, the trail network, playing fields, and picnic areas, as well as undeveloped area including the natural area from the canyon rim to the center of the Deschutes River in Phase I.¹³ Access to the natural area is restricted to foot traffic only on two primary access trails, with a soft-surface walking trail and primitive picnic areas along the river. With exception of the two access trails, access to the area between the river trail and the canyon rim is totally restricted. Policies are in place and are enforced which prohibit littering, smoking, and discarding burning materials in the river area. Undeveloped open space areas are under the ownership of the Eagle Crest Master Association of Homeowners. Management of the open space areas are controlled by recorded CC&R's, which guide management and strictly limit the uses allowed on the open space property. The Applicant shall provide proof to the Planning Director, prior to FMP approval, that the CC&Rs bind all of the property included within the resort.

As stated previously, the Hearings Officer has noted serious deficiencies in the Open Space Area map. Areas that do not qualify as open space have been shown as open space on the Applicant's CMP and Open Space Area map (Exhibit 70). This map must be revised to comply with the County's open space requirements. This has been required as a condition of approval of this decision. This may require the Applicant to revise the CMP to enlarge open space areas and that all such areas must be clearly shown on a revised and accurate Open Space Area map.

¹³Playing fields and highly developed picnic areas do not qualify as open space under the County's ordinance.

- U. A mechanism to ensure that individually-owned units counting toward the overnight lodging total remain available for rent for at least 45 weeks per calendar year through a central reservation and check-in service. Such a mechanism shall include all of the following:
- a. Designation on the plat of which individually-owned units are to be considered to be overnight lodging as used in this chapter;
 - b. deed restrictions limiting use of such identified premises to overnight lodging purposes under this chapter for at least 45 weeks each year;
 - c. inclusion in the CC&Rs of an irrevocable provision enforceable by the County limiting use of such identified units to overnight lodging purposes under this chapter for at least 45 weeks each year;
 - d. inclusion of language in any rental contract between the owner of the unit and any central reservation and check-in service requiring that such units be made available as overnight lodging facilities under this chapter for at least 45 weeks each year; and
 - e. a requirement that each such unit be registered and a report be filed on each such unit yearly by the owner or central booking agent on January 1 with the Planning Division as to the following information:
 1. Who the owner or owners have been over the last year;
 2. how many nights out of the year the unit was available for rent through the central reservation and check-in service; and
 3. how many nights out of the year the unit was rented out as an overnight lodging facility under this chapter. (Ord. 92-004 ss 13, Exhibit C, 1992).

FINDING: On page 45 of the Burden of Proof Statement, the Applicant states that "it is not anticipated that any individually owned units are going to be necessary for counting the overnight lodging requirements except those within the Vacation Ownership area. Those Vacation Ownership areas are defined as timeshares meeting the criteria of overnight accommodations.

As discussed above, the townhouse timeshare units, and possibly the 1/5 share condominium units, can be counted as overnight accommodations. None of these units are individually owned.

The Applicant has provided a Rental Agency Agreement Form, Exhibit 32, which provides the mechanism for the rental of individually owned units.

COMPREHENSIVE PLAN POLICIES

The Hearings Officer makes the following findings regarding the policies contained in the Comprehensive Plan:

1. "The purpose of the Comprehensive Plan . . . is not to provide a site-specific identification of the appropriate land uses which may take place on a particular piece of land but rather it is to consider the significant factors which affect or are affected by development in the County and provide a general guide to the various decisions which must be made to promote the greatest efficiency and equity possible, while managing the continuing growth and change of the area." [p.1, Comp Plan] As a general rule, the Comprehensive Plan does not provide specific review standards for land use applications. Some sections do, however, include specific requirements and these requirements are discussed, below.
2. Pages 4 through 14 of the Plan contain definitions of terms that relate to destination resorts. These definitions are consistent with the definitions contained in DCZO 18.113.060, the County's destination resort ordinance.
3. Residential/Recreational Development Policy 1 states that future rural development will be stringently reviewed for public need before approval [p. 37, Comp Plan]. The Hearings Officer finds that Deschutes County has determined that the subject property is needed for destination resort development as it specially designated it for that purpose as a part of its Goal 8 mapping and designation process. The Hearings Officer also finds that Residential/Rural Development Policy 5 determines that there is a need for destination resorts in appropriately designated areas. That policy provides that "[d]estination resorts are important elements of the local economy. These developments shall not be permitted in exclusive farm use districts except in EFU-20 and EFU-40 zones pursuant to the County's Destination Resort Siting Map and Destination Resort Siting Combining Zone. . . They may be allowed in other rural areas if compatible with the environmental capabilities of the site, near existing transportation and utility facilities, consistent with the rural character of the area, and unlikely to create undue public service burdens." [p.38, Comp Plan]
4. The Comprehensive Plan contains a section entitled "DESTINATION RESORTS" at pages 122 through 127. This section states that there are numerous beneficial impacts of destination resort and that such resorts can diversify the economic base of the County. This section of the Plan states, and the Hearings Officer finds, that the zoning ordinance provisions applied in review of this CMP application were developed to implement Goal 8 requirements and to assure compliance with the

Comprehensive Plan goals. The ordinance has been acknowledged by LCDRC as complying with statewide land use planning goals.

5. The subject property has been mapped as a destination resort development area according to the destination resort mapping process provided in Policies 1 through 4 of the Destination Resorts section of the Comprehensive Plan [pp. 124 - 125].
6. Policies 5 through 9 of the Destination Resort section of the Comprehensive Plan lists ordinance provisions which are to be included in the County's destination resort ordinance. These provisions are included in DCZO Chapter 18.113, as required by the Plan.
7. Policy 19 of the Fish & Wildlife section of the Comprehensive Plan states that "an application for a destination resort, or any portion thereof, in a wildlife area combining zone shall not be accepted pending completion of the County's Goal 8 destination resort mapping process. The County shall complete the Goal 8 mapping process by December 31, 1992." The County has completed the Goal 8 mapping process for the subject property but has not completed the Goal 8 mapping process for the entire County as its mapping process was the subject of a legal challenge in 1992. No portion of Eagle Crest Phase I or Phase II is located within a wildlife combining zone or a sensitive bird and mammal combining zone. This policy, therefore, does not preclude approval of a destination resort on the subject property.
8. The Historic and Cultural section of the Comprehensive Plan [pp. 161 - 164] describes the general framework for identifying and protecting historic and cultural sites. Two archeological sites exist in Phase I of the subject property. The Plan contains no provisions that prevent resort development of property that includes such sites.
9. Water Resources Policy 10 [p. 167] states that "[a]ny project which would endanger the purity of local ground water shall be vigorously discouraged." The Hearings Officer finds that the criteria of DCZO 18.113.070 provides adequate discouragement for projects that endanger the purity of local ground water. The types of activities proposed by the Applicant are common throughout the developed residential sections of the County. It is well understood that commercial agricultural activities utilize pesticides and other chemical in their activities. The Hearing Officer finds that golf course and lawn irrigation and chemical use presents no greater threat to the purity of local ground water than do such agricultural activities.

18.132 - VARIANCE CRITERIA

In addition to the conditional use application for a conceptual master plan, the Applicant is also requesting approval of a Variance to the road setbacks contained within the Destination

Resort Combining Zone. The exterior setbacks as set forth in Section 18.113.060(G)(b)(1) requires an exterior setback of 100 feet for roads, 50' for golf courses, and 50' for jogging and bike trails where they abut private property.

The Applicant has addressed the variance criteria of Chapter 18.132 on pages 25 through 30 of the Burden of Proof Statement. A detailed map of the variance area has been prepared as Exhibit 38.

The Applicant is seeking a Variance for four sections of road and one section of bike path to allow these facilities to be sited within the minimum setbacks. These variances are requested to allow the Applicant to utilize an interconnected road system pattern which encircles large sections of the Phase II golf courses. The first road and bicycle path sections that are proposed to encroach on the setback area lie behind the number 13 green and the number 17 tee of the Eagle Ridge Golf Course which is currently in use and immediately adjacent to the Cline Fall Oasis Subdivision (Inset A on Exhibit 38). The second section lies at the 13th tee, adjacent to land managed by the Bureau of Land Management at the northwest corner of the project (Inset B, Exhibit 38). The third road section lies at the end of the 7th tee adjacent to lands managed by the BLM (Inset C, Exhibit 38). The final section of road lies behind the number 3 green on the southwest corner of the project (Inset D, Exhibit 38).

The Eagle Ridge Golf Course was given conditional land use approval in 1990 (File Nos. CU-90-189 and SP-90-115) prior to the time the Destination Resort Overlay Zone and its resort setbacks were adopted by the County. In 1992, after the County adopted setbacks for golf courses in destination resort, the Applicant filed a revised site plan for the golf course. The Applicant stated that the revised plan was intended to meet a condition of approval of the conditional use approval. The 1992 plan also moved the location of some of the golf course holes, fairways and greens. A number of these changes moved golf course facilities into or further into required setback areas. Additionally, by the time that the Applicant sought to finalize approval of the golf course conditional use permit, it appears that the permit may have become void, according to the terms of condition #8 of that approval. This fact was not, however, considered by the Hearings Officer, in reviewing the variance as it was not essential to decision of the variance application.

The following criteria from Section 18.132.020(A), Area Variance, are applicable:

1. A variance may be granted unqualifiedly or may be granted subject to prescribed conditions, provided that the Planning Director or Hearings Body shall make all of the following findings:
 - A. That the literal application of the ordinance would create practical difficulties resulting in greater private expense than public benefit.

FINDING: The Applicant states that the subject roadways and bike paths are located in required setback areas because it is necessary to do so in order to design a road

and bicycle system with a good circulation pattern. The Applicant states that it is necessary to encroach upon the setback areas in order to get around the tees, greens and holes constructed on the Eagle Ridge Golf Course in four sections of Phase II. The Hearings Officer finds, however, that the literal application of the setback standards of the ordinance will not create any practical difficulty in some of the setback variance areas requested. This is because it is possible to accommodate a road and bicycle path that creates a reasonable traffic pattern in these areas. These areas are:

Inset A/Hole # 13

The first road and bike path sections that are proposed to encroach on the setback area lie behind the number 13 green and the number 17 tee of the Eagle Ridge Golf Course which is currently in use and which is located adjacent to the Cline Fall Oasis Subdivision (Inset "A" on Exhibit 38). Hole #13 was moved from 218 feet from Cline Falls Oasis in the 1990 plan to approximately 175 feet from Cline Falls Oasis in the CMP, in the area where the variance to setback standards is sought. It appears that the Applicant has asked for the variance to allow a buffer of approximately 100 feet between the golf course and the proposed road. The Hearings Officer finds that there is no reason why the road cannot be located more than 100 feet from the property line with Cline Falls Oasis and why the bicycle path cannot be sited 50' away from that line, as required by the destination resort ordinance.

Inset C/11th Hole

The third road section lies at the end of the 7th tee adjacent to lands managed by the BLM (Inset C, Exhibit 38). The 7th tee is located approximately 200 feet from the nearest property boundary. There is sufficient area to accommodate a road around this tee within the 100 foot wide area between the tee and the property boundary. It appears that the Applicant has requested this variance in order to maximize the number of building lots that can be included in this area of Phase II or to accommodate a sweeping road pattern.

As to the remaining areas for which a variance is requested, a literal application of the ordinance would require that the Applicant find other locations for these roadway sections and bike path. Elimination of these road and path sections from the CMP would require the Applicant to redesign the road pattern, acquire adjoining property for use as a setback area or to move golf course sections. Redesign of the road system appears to be the least onerous. This option may not work a significant hardship on the Applicant because it appears to the Hearings Officer that more open space will need to be provided in order to meet the 50% open space requirement. The areas where road sections are planned and some of the areas they access are remote areas of the golf course that would make good areas for open space. This change will create a better buffer between the resort and its neighbors and may make

the resort more attractive and appealing to potential resort property owners. The major negative of such a redesign is that it will result in long cul-de-sacs, which are generally discouraged by County policies and ordinances due to impacts on traffic circulation and emergency access.

The area of inset "A" is the only portion of the variance request that is adjacent to private property. In this area, the proposed bike path will be 10 feet closer to Cline Falls Oasis than allowed by the setback and the road will be at least 50 feet closer than allowed by the required setbacks. The Applicant states that a substantial private expense would be incurred if these roadways had to be eliminated or the golf course changed. The Applicant has not explained what financial expense would be incurred if the roads were not located as planned. The financial expense of relocating the golf course is obvious. The Hearings Officer has found that the variance is not needed for the majority of the area shown on Inset "A" (the lower three quarters of the inset shown on Exhibit 38). The Hearings Officer also finds that this requested variance in the area shown on Inset "A" will also place a burden on adjoining private property owners. The location of resort roads closer than allowed will deprive these property owners of a significant portion of the buffering that was determined to be appropriate between the intensely used resort property and the low-density rural residential development found in places like Cline Falls Oasis. Allowing use of the setback area for a road and bike path might also preclude its use to provide utility services to Cline Falls Oasis homes. This problem was brought to the attention of the Hearings Officer and Applicant by Cline Falls Oasis homeowner, Linda Burwell. The Hearings Officer did not find any response to this issue in the materials submitted by the Applicant and no response was made at the hearings. A reading of the Applicant's 1990 Phase II golf course application file indicates that the patents received to the Phase II property included numerous utility company easements. Some of these easements cross the land sections that include the areas where variances are requested. Cline Falls Oasis are used by the utility company for access to power lines that service the Cline Falls Oasis area. In the aforementioned golf course approval in 1990, the Applicant was required to satisfy BLM concerns which included a concern that the Applicant should indicate all BLM easements on their maps. These easements have never been completely located and identified by the Applicant. If this variance were to be granted, it would be essential to determine whether the Applicant's requested use would interfere with the prior rights granted to utility companies on the Phase II property.

All three remaining areas abut vacant public lands managed by the BLM. There would be little public benefit in requiring that these roads be located in a different location as the BLM property is largely undeveloped. The primary public benefit of requiring the Applicant to comply with the setback standard would be to enhance the value of adjoining BLM land as deer and wildlife habitat or as a cattle grazing area.

- B. That the condition creating the difficulty is not general throughout the surrounding area but is unique to the Applicant's site.

FINDING: The condition creating the difficulty is unique to the Applicant's site and not general throughout the surrounding area. No other surrounding properties, other than Phase I Eagle Crest, are zoned for destination resort sites and have received conditional use approval for golf course development prior to adoption of the exterior setbacks established in the Destination Resort Combining Zone.

- C. That the condition was not created by the Applicant.

FINDING: At the time of application for the golf course the Applicant could not have known that there would be a future requirement for a 100 foot road and 50 foot bike path setback. The Applicant would, however, have known of this fact when it filed its revised golf course plan in 1992. The filing of that plan was a step that the Applicant was required to take prior to obtaining a permit to build the golf course. The Applicant chose, however, to file and proceed with the plan in 1992, knowing that the locations shown on the plan would cause it difficulty in meeting resort setbacks.

Most significant, however, is the fact that the condition that gives rise to the request for a variance was created by the Applicant in 1992, after adoption of the current destination resort ordinance and its setback standards. If the Applicant had built the Eagle Ridge golf course in compliance with the 1990 approved golf course site plan, a variance would not have been needed for any of the areas shown on the Applicant's insets.

Inset A/Holes 13 & 17 Existing Course

The Applicant has not proven that a variance is needed in the area of the 13th Hole. The road/bicycle sections near Hole #13 can be accommodated between the golf course and the setback area. Additionally, the location of Hole #13 on the golf course plan was moved from a location, in 1990, of approximately 218 feet to a location, in 1992, approximately 175 feet from the Cline Falls Oasis boundary.

As for Hole #17, the closest point of that course to a property boundary, in the 1990 plan (the tees), is approximately 180 feet from the Cline Falls Oasis property line. Hole #17 was located approximately 100 feet from the property line on the 1992 plan and on the CMP. The Hearings Officer finds that the location shown on the 1990 plan allowed enough area for the Applicant to place the road around the outside of this hole. The 1992 revisions, however, make it impossible to meet the 100 foot road setback, without removing a portion of the golf course or acquiring property from adjoining property owners. The Applicant, therefore, created its own hardship in this area.

Inset B/Hole #13 Tee

The second section lies at the 13th tee adjacent to land managed by the Bureau of Land Management at the northwest corner of the project (Inset B, Exhibit 38). The location of the 13th tee was approximately 175 feet from the western property line of Phase II. This location would have allowed the Applicant to locate the proposed road outside of the 100' wide setback area. The Applicant moved the 13th tee to approximately 50 feet of the western property line, necessitating this variance request and creating its own hardship.

Inset C/Hole #7

As discussed above, the Applicant has not proven that a variance is actually needed in order to fit the road and bicycle paths within the setback areas in this area.

Inset D/Hole #3

The final section of road for which a variance is sought lies behind the number 3 green on the southwest corner of the project (Inset D, Exhibit 38). In the 1990 plan, it appears that no portion of Hole #3 of the existing Phase II golf course was located any closer than 178 feet from the resort property boundary. No road or bike path variance would have been needed in this area if Hole #3 were built where it was approved in 1990. Hole #3 is now located approximately 50 feet from the BLM property line and requires a variance if the road to go around the outside of this hole. The Applicant has, therefore, created its own hardship.

The Applicant also argues that they had no idea that such a setback requirement would be imposed when it purchased or agreed to purchase the site. The Applicant assumed that a reasonable number of roads could abut adjoining properties to accommodate the layout of the Eagle Ridge Golf Course and to provide access for homes that would surround the golf course. The Applicant states that it had no knowledge that such a restriction would be imposed at the time the golf course was constructed.¹⁴ This argument is, however, without much merit, as the Applicant purchased the golf course in 1990, when destination resort or golf course homesite development was prohibited on the property. Any expectation about the properties capacity to accommodate resort development and to maximize lot space by placing golf courses and roads close to or abutting property boundaries was purely speculative as it was not known what conditions might be imposed upon such development, if allowed in the future. The Applicant took a calculated risk by purchasing the property and proceeding with golf course development before the rules regarding

¹⁴As mentioned previously, ORS 197.460 was adopted prior to 1990 and required the County to establish buffer areas and setbacks for structures and improvements in destination resorts.

resort development on EFU lands, such as Phase II, were established. The Applicant then enhanced that risk in 1992, after adoption of the resort ordinance setbacks, by moving the location of the course closer to the property boundaries than approved in 1990. As the hardship was created by the Applicant, it is not appropriate to allow a variance to setback standards.

D. That the variance conforms to the Comprehensive Plan and the intent of the ordinance being varied.

FINDING: Page 7 of Ordinance No. 92-001, an amendment to the Comprehensive Plan adding goals and policies regarding the siting of destination resorts, contains the following goal:

"To provide for development of destination resorts in the County consistent with Statewide Planning Goal 8 in a manner that will be compatible with farm and forest uses, (and) existing rural development . . ."

On page 8, Ordinance 92-001 lists ordinance provisions to be enacted to implement the goals of the Comprehensive Plan. To minimize the adverse effects of resorts on surrounding land uses, minimum measures are to include:

"The establishment and maintenance of buffers between the resort and adjacent land uses, including natural vegetation and where appropriate, fences, berms, landscaped areas, and other similar types of buffers."

"Setbacks of structures and other improvements from adjacent land uses."

The purpose and provisions of Chapter 18.113 of title 18 mirror these Comprehensive Plan goals and policies. The 100 foot setback for roadways and the 50 foot setback for jogging trails and bike paths found in Section 18.113.060(G) are intended to provide the buffer between resort development and adjacent lands required by the Comprehensive Plan. Allowing the Applicant to violate the setback standards that were adopted to implement these sections of the Comprehensive Plan, under the circumstances presented in this case, would be inconsistent with these provisions of the County's Comprehensive Plan.

VI. DECISION

Based upon the foregoing, the Applicant's request for a variance from the setback standards of the destination resort ordinance, Application V-93-28, is **DENIED** and the application for Conceptual Master Plan, CU-93-94, is **APPROVED** subject to the following conditions:

1. All areas platted in Phase II and CRT for individual lots are not authorized as legal lots by this approval. The Applicant shall obtain tentative plat approval from the County Planning Division prior to platting these and other areas of the expansion areas. All lot lines shown on the CMP maps shall be removed from the FMP maps as those boundaries will be determined in the platting process, not in the CMP or FMP process. Additionally, the Applicant shall accurately depict the boundary for Phase I, encompassing only those areas included in the CMP application and that were reviewed and approved as a part of the resort in this decision.
2. The Applicant must obtain County site plan and landscape management zone approval permit for the water intake and pumphouse structures that it has installed on the banks of the Deschutes River, unless the Applicant establishes that these structures/facilities are exempt from these review requirements. The Applicant must either obtain such approval or obtain a written statement of exemption from the Planning Director, prior to FMP approval. The water intake and pumphouse shall be shown on the FMP map, in the location approved by the Planning Division.
3. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland shall be a separate conditional use subject to all pertinent requirements of this title. The Applicant shall obtain a fill and removal permit for the pump that the Applicant has installed on the banks of the Deschutes River or shall remove all pump structures, prior to FMP approval, if the installation of the pump facilities involved fill and removal within the bed and banks of the river.
4. The Newton study adequately determined the impact area of the Phase II wells. The study did not, however, address the impact of Phase I wells. This information is required by the destination resort ordinance as the existing resort must comply with all standards of the ordinance, if existing resort facilities are used by the Applicant to qualify for destination resort approval of the expansion area, as has been done in this application. The Applicant must remedy this deficiency prior to FMP approval and prove that the standards of approval of the destination resort ordinance regarding wells are met by these wells.
5. The Applicant will be required to bond or assure improvements that are necessary for resort development, as required by DCZO 18.113.110.

6. The Applicant shall revise its sewer master plan provide greater detail about the specifications of the proposed sewer system prior to FMP approval. That document shall include plans for stormwater collection and disposal for the entire resort and shall indicate where all sewage system facilities will be located.
7. The Applicant shall designate the location of all utility lines and easements that burden the property on the FMP, including those granted by BLM and shall provide proof to the Planning Director, prior to FMP approval, that all development proposed in those areas is allowed by the terms of the easements granted. The Applicant shall also identify any areas currently used by utility companies to provide power to area residents that are not included in easement areas, if any. If some utility facilities are located outside of easements, the Planning Director or Applicant shall contact affected utilities to determine the length of time that these areas have been used by the companies and whether the companies intend to claim a prescriptive right to continue to use these areas. If the Planning Director determines that the utility companies are entitled to remain on portions of Eagle Crest property due to prescriptive rights, the Applicant shall be required to show those areas on the FMP as utility easement areas.
8. All portions of Eagle Crest resort must be managed and operated as one unit and as a self-contained development. The Applicant and its successors and assigns must assure owners and overnight visitors to either phase of the Eagle Crest Resort complete access to all areas open to use by owners and overnight visitors in the other phase. Failure to comply with this standard will void resort approval.
9. The Applicant shall accurately identify uses for the "combined development" area in Area 11 of Phase II, prior to FMP approval. The Applicant must remove the "including, but not limited to" language from its description of allowed uses.
10. The Applicant will be required to designate all currently existing commercial uses on the final master plan so that it is clear what uses have been allowed by this approval.
11. The Applicant shall further define what commercial uses may be allowed in the proposed commercial areas of Phase I and Phase II so that there is an exhaustive list of commercial uses allowed in the resort that shall be included with the FMP. All uses not listed shall not be allowed. Thereafter, the Applicant shall revise the sewer master plan to include demand estimates that include all commercial uses, including restaurants, stores, sales office, day care, pools, stables, golf pro shops, etc. If the increase in demand alters the demand for sewer facilities, appropriate changes shall be made to that plan. Compliance with this condition shall be assured by review by the Deschutes County Planning Director prior to approval of the FMP.
12. The commercial uses permitted in the destination resort will be limited in type, location, number, dimensions and scale (both individually and cumulatively) to that

necessary to serve the needs of resort visitors. A commercial use is necessary to serve the needs of visitors if:

- a. Its primary purpose is to provide goods or services that are typically provided to overnight or other short-term visitors to the resort, or the use is necessary for operation, maintenance or promotion of the destination resort; and
 - b. the use is oriented to the resort and is located away from or screened from highways or other major through roadways.
13. Commercial, cultural, entertainment or accessory uses provided as part of the destination resort will be contained within the development and will not be oriented to public highways adjacent to the property. Commercial, cultural and entertainment uses allowed within the destination resort will be incidental to the resort itself. As such, these ancillary uses will be permitted only at a scale suited to serve visitors to the resort. No such events may be conducted in any part of Eagle Crest after CMP approval is final. Compliance with this requirement shall also be included as a condition of FMP approval. No commercial activities that are intended to draw a large number of participants from outside of the resort boundaries, such as the Dixieland Jazz Festival, StarFest and public auctions may be conducted on any part of the resort property.
14. The Applicant and its successors shall guarantee that all open space used to meet the 50% open space requirement of the destination resort ordinance complies with DCZO 18.113.030 (E) which provides that "[u]ses permitted in open space areas generally include only those uses that, except as specified herein, do not alter the existing or natural landscape of the proposed open space areas. No improvements, development or other alteration of the natural or existing landscape shall be allowed in open space areas, except as necessary for development of golf course fairways and greens, hiking and bike trails, lakes and ponds and primitive picnic facilities including park benches and picnic tables. Where farming activities would be consistent with identified pre-existing open space uses, irrigation equipment and associated pumping facilities shall be allowed."
15. The Applicant shall revise the Open Space Area map (Exhibit 70) so that it properly excludes all areas that were erroneously included by the Applicant as open space (as described in the findings of this decision) and shall demonstrate that the 50% open space requirement of the destination resort ordinance is met, after revisions are made. The Applicant may be required to designate additional area as open space in order to meet this requirement. A revised open space map must be submitted at the time of Final Master Plan review and it must include at least 50% open space. The Applicant shall also furnish proof that all open space area has been permanently reserved for open space, prior to FMP approval.

16. The resort's day care center use is hereby limited to providing child care services for children of employees and guests of the resort.
17. The Applicant shall provide an economic impact and feasibility analysis of the proposed development that indicates that the resort development is economically feasible, prepared by a qualified professional economist or financial analyst, which addresses the economic viability of the proposed development. This analysis shall consider the income that could be anticipated from the resort operations and compare that income to project expenses. The Applicant will be required to supply this information to the Deschutes County Planning Director, prior to FMP approval. The Director will determine whether the report is adequate and whether it establishes that the proposed development is economically viable. If the report is not adequate, the report may be corrected to provide all information needed by the Planning Director. If the report does not establish that the proposed development is economically viable, this permit shall be void and FMP approval may not be granted.
18. The Applicant shall provide the Planning Director with a listing of any and all 1/5 share condominiums or timeshares, for which all shares of the unit are owned by a single owner or cotenants prior to FMP approval and at the time that each phase of development is platted so that the Director may determine that the ratio of visitor-oriented accommodations to residential units [DCZO 18.113.070(E)] is being met by the Applicant. The Planning Director shall verify that this ratio is met at the time of FMP and plat approval for each phase of development of the FMP.
19. The setback standards for the existing Eagle Crest resort are those setbacks established in prior land use approvals and those provided under other portions of the county zoning ordinance, according to DCZO 18.113.025 (B). This includes river and rimrock standards that are currently stated in other portions of the zoning ordinance. The existing resort must continue to comply with these standards as it contains rimrock and riverfront property.
20. All single-family residential lots shall comply with the standard 8 foot solar fence south-wall protection requirement of the County's solar setback ordinance. Exceptions to allow a 14 foot solar fence south roof-protection standard shall be reviewed and approved by the Planning Division, on a case by case basis, as individual property owners develop their lots, as allowed by the terms of the solar setback ordinance.
21. All multi-family units, commercial structures, and other resort facilities are exempted from the requirements of meeting solar setback standards, except for where their shadow would impact a single-family residential lot within or adjacent to the resort. A 14 foot solar fence standard should apply when shadows cast by multi-family, commercial structures or other resort facilities affect residential structures of any

type. If the shadow of a structure affects a commercial or nonresidential resort structure, no solar setback will be required.

22. Development within Eagle Crest Phase II and the CRT expansion area of Phase I shall comply with the following conditions:

Single Family Residential Lots. All provisions of DCZO Chapter 18.108, Planned Communities, regarding minimum lot area, width, lot coverage, frontage and yard requirements and building heights, that apply to RS District lots in a planned community shall apply to all single family residential lots in Phase II and to all CRT lots.

Multi-Family and Condominiums. All provisions of DCZO Chapter 18.108, Planned Communities, regarding minimum lot area, width, lot coverage, frontage and yard requirements and building heights, that apply to RM District lots in a planned community shall apply to all multi-family and condominium lots in Eagle Crest Phase II.

Commercial and Resort Amenities. Any Phase II lot designated and developed for commercial development or for resort services or recreational activities shall be subject to the provisions of DCZO Chapter 18.108 that apply to lots located in the C District of a planned community.

Building Height. The provisions of DCZO 18.120.040 regarding exceptions to and exemptions from building height restrictions shall apply to Eagle Crest Phase II buildings.

Definitions. The definitions that shall apply to measurement of building height, average lot width and yards are those contained in the definitions section of Title 18.

Off-Street Parking and Loading. Off-street parking and loading space shall be as provided in Section 18.116.160 as it is presently written. Single family residences shall have a minimum of two off-street parking spaces. Multiple family units shall have a minimum of one off-street parking space per dwelling unit. The Applicant shall comply with future amendments to that section, if any, for uses that are developed and approved after the section is amended.

Maximum Average Lot Size. No lot for a single-family residence shall exceed an overall project average of 22,000 square feet in size.

References to DCZO. All references to DCZO standards shall apply to the DCZO ordinance in place at the time of development application, unless such standards have been repealed and not replaced by a new section. In such event, the reference shall be to the ordinance as it was written at the time it was repealed. In the event that

sections have been renumbered, the newly numbered section may be utilized, in place of the section number cited by the Hearings Officer.

23. The Applicant shall revise the submitted CMP so that all bike paths, road sections, unconstructed golf course facilities and all other resort facilities meet the setback standard of DCZO 18.113.060(G)(b), including the sections of the golf course in Phase II that is located within close proximity to Cline Falls Highway. All future Phase II and CRT expansion area development, including the second, unconstructed Eagle Ridge golf course, shall comply with these setback requirements.
24. The Applicant must establish that the currently constructed golf course is a valid nonconforming use and, when altered to include golf course homesites, will comply with the standards of DCZO 18.120.010. The Applicant shall file an application for determination of a nonconforming use as to those portions of the constructed golf course that lie within the setback areas. That application shall be reviewed and decided by the Deschutes County Planning Director according to the law applicable to nonconforming uses.
25. The Applicant will be excused from complying with Condition #24 if it does any of the following: (1) purchases additional property along the areas of the golf course that encroach upon the setback and adds them to the destination resort property so that there is a 50 foot buffer between all sections of the existing Phase II golf course; or (2) obtains a variance from the 50 foot golf course setback requirement for the location of the first golf course; or (3) excludes the already constructed golf course area from the destination resort; or (4) moves those portions of the existing golf course that encroach upon the 50 foot setback area; or (5) obtains a legislative amendment to the destination resort ordinance to allow this condition to exist as to the already constructed golf course which, in the opinion of the Deschutes County Counsel, is legally applicable to this application and sufficient to cure the setback problem posed by the destination resort ordinance for the existing Eagle Ridge golf course.
26. The Applicant shall obtain a new conditional use permit for the second Eagle Ridge golf course, prior to FMP approval and any construction of that course, unless it can establish, to the satisfaction of the Deschutes County Planning Director, that all conditions of the 1990 conditional use permit issued for construction of that golf course were met prior to December 12, 1991.
27. The proposed platting of the CRT Expansion area must comply with the 150 foot minimum required setback for above-grade development. The proposed Lot 46 of "Area XV" in the Canyon River Territories (Exhibit 4) is situated so that it abuts an exterior property line of the resort property. This lot is only 126 feet wide, so there would be no buildable area on the lot outside of the 150 foot minimum setback. In addition, Lot 45 directly south of Lot 46 also lies partially within the 150 foot

minimum setback, thus eliminating a substantial portion of this lot from residential development. If the configuration of CRT lots is to be shown on the FMP, the layout of those lots must be revised so that no portion of a residential lot is situated within the 150 foot setback from any exterior resort property boundary.

28. The areas of the resort property that are within the flood plain should be shown on the Applicant's flood plain map and excluded from the Applicant's open space calculations. No development is proposed within the flood plain. The Applicant shall convey a conservation easement along the Deschutes River as described in Section 18.116.220 of Title 18 for any portion of the property that is located within the 100 year flood plain, but that is not included in the land covered by the current conservation easement granted by the Applicant along the Deschutes River.
29. The Landscape Management Combining Zone (LM) requirements of Chapter 18.84 shall apply to all portions of the destination resort included within that zone. This includes all new development within 1/4 mile of the Deschutes River and/or Highway 126.
30. Eagle Crest will be required to be developed as a self-contained development as a condition of approval of this CMP application and all future land use approvals within the resort area.
31. The Applicant shall specify all recreational facilities and other key facilities within all proposed phases of Phase II. The Applicant shall also indicate which areas of Phase II the recreational and key facilities are intended to serve. The Applicant shall provide those facilities prior to the sale of lots in any phase that is served by such recreational or key facilities or shall guarantee construction of those facilities through surety bonding or other financial assurances approved by the County Counsel for Deschutes County. Specifically, the entire second golf course must be completed or bonded prior to the sale of lots in any phase that adjoins or includes a portion of the Phase II golf course, unless the Applicant removes the second golf course from its FMP design of Phase II, in order to comply with other conditions of CMP approval.
32. The Applicant may not conduct or allow the conduct of any activities not specifically listed in this decision or in the list of allowed uses contained in the County's destination resort ordinance. Any similar use must receive approval from the Deschutes County Planning Division as a similar use, prior to construction. No industrial uses are allowed on resort property.
33. Appropriate assurances shall be submitted by lending institutions or other financial entities that the developer has or can reasonably obtain adequate financial support for the proposal once approved, prior to FMP approval, as outlined in the Required Findings section, above.

34. An independent economic analysis of the impact of allowing this resort application and that determines the economic impact of changes in employment, demands for new or increased levels of public service, housing for employees and the effects of the loss of resource land and other indirect costs and revises the Hobson and Associates study to reflect all costs and benefits from the resort development shall be conducted prior to FMP approval. If the economic analyst finds that the resort will provide a substantial financial contribution which positively benefits the local economy throughout the life of the entire project, Eagle Crest will be allowed to obtain FMP approval without taking any actions to offset the costs incurred by the County, school district and community at large. If the analyst finds that Eagle Crest will not make a positive contribution, the analyst shall enumerate various ways in which Eagle Crest may correct this problem and shall estimate the economic impact of that action. Eagle Crest shall then select, from the list of options presented, actions that have the effect of reaching the goal of this section. Those actions must either be completed prior to FMP approval or be included in the conditions of approval of the FMP, at the option of the Planning Director. The independent economic analyst shall be selected by and shall report directly to the Planning Director. The costs of this study shall be borne by Eagle Crest. Payment of the costs of conducting the study shall be assured prior to commencement of the study.
35. Prior to FMP, the Applicant shall cause a study of the impact of Phase I, as constructed at this time and at build out, on fish and wildlife resources. Any negative impact on fish and wildlife resources will be completely mitigated so that there is no net loss or net degradation of the resource.
36. The FMP shall not be approved until such time as the Applicant has either completely mitigated all resort impacts on wildlife or has assured that such impacts will be mitigated after FMP approval by the imposition of enforceable conditions of approval, inclusion of wildlife protection obligations in covenants and restrictions that will burden all expansion area properties (CRT & Phase II), adoption of wildlife regulations by the resort's owners' association and by the execution of development agreements, where appropriate. The Applicant shall prepare and file a comprehensive wildlife mitigation master plan that explains how each mitigation measure will be or has been assured, prior to FMP approval. This explanation must be supported by documentation of consent by all landowners whose property will be used to meet the mitigation measures.
37. The following mitigation measures shall be completed or adequately assured, as discussed above, prior to FMP approval:
- A. Where possible the 150 to 250 foot buffer required around the perimeter of the project site should be retained in a natural, undisturbed condition to provide habitat for wildlife.

- B. Project landscaping should be designed to enhance and provide habitat for wildlife. Maintain as much of the existing habitat as practicable between residences, including the understory of sagebrush and grasses. Plant and develop shrub and tree patches within open space around residences to provide habitat structure and diversity important to many species of wildlife. Incorporate native and naturalized species with ornamental landscaping to provide a diversity of plant species attractive to native wildlife.
- C. The Applicant shall outline all areas that will be reserved in its natural state, as outlined in 35. A. & B., above and shall assure that no lawns are allowed in these areas through covenants and restrictions that will bind purchasers of property that is located in those areas. The Applicant will not, however, be required to include golf course holes, greens and fairways located in the 150 and 250 foot setback areas in a natural state.
- D. Develop an animal control policy consistent with the Deschutes County Comprehensive Plan to minimize harassment of wildlife, particularly that of deer by dogs. Property owners shall be required to keep dogs within maintained fenced areas or utilize other suitable measures to prevent dogs from straying off their property. When off premises, owners shall be required to maintain dogs either on leash or under verbal control.
- E. Regulate traffic speeds through posted speed limits not to exceed 20 mph. This speed limit shall not apply to any portion of Cline Falls Road.
- F. Erect and maintain bird boxes on wooden fence posts and tree trunks within open space areas to provide nesting sites for secondary cavity nesting species. Placement and dimensions of boxes should correspond to the likelihood of attracting appropriate species for the habitat present.
- G. Erect 2 to 3 nesting platforms for Canada geese on Eagle Lake.
- H. Increase the buffer of unmaintained shoreline on the north side of Eagle Lake to provide additional cover and habitat for wildlife. This part of the shoreline does not enter into play on the golf course.
- I. Develop riparian habitat along portions of the shorelines of new lakes where they do not hinder golf play. Plant shrub patches, seed with native grasses, and leave unmaintained to provide cover and wildlife habitat.
- J. Erect periodic raptor perch posts on existing transmission line poles which are of older designs and represent an electrocution hazard to raptors.
- K. Construct new electrical distribution lines for the development underground to

eliminate avian electrocution hazards.

- L. Develop a joint project with the BLM on adjacent public lands to reduce potential adverse impacts on deer and improve the overall quality of wildlife habitat in the area. Potential activities include wildlife water developments, clearing and seeding of small patches of land, juniper thinning, snag creation, down log creation, brush pile creation and raptor perch posts.
- M. Develop an animal control policy to prevent harassment of wildlife.
- N. Create a wildlife education program.
- O. Develop riparian habitat along portions of any new lakes.
- P. Do not use poisonous baits to kill golf course rodents.
- Q. Work with ODFW and BLM to improve habitats on adjacent public lands.
- R. Any large expanses of fence built should be done to specifications which allow the passage of deer.
- S. Juniper habitats may be widespread, examples of ecologically balanced juniper-sage-bunchgrass communities containing "mature" older trees are extremely rare. The Hearings Officer interprets this comment as an indication that ODF&W that as many of these stands of trees should be protected when the subject property is developed. These areas should be identified and included as undeveloped open space areas on the FMP.
- T. The Deschutes County Comprehensive plan protects sensitive bird nesting sites. There are such sites for Golden Eagles upriver from the present development. The lands these birds hunt includes the land proposed for development. Having an adequate forage base is imperative to their survival and nesting success. The loss of nearly two square miles of foraging habitat must be considered in the mitigation assessment.
- U. Sewage and stormwater disposal systems shall be designed and built to prevent contamination of the Deschutes River and the aquifer below the resort.
- V. The Applicant should promote water conservation when facilities are constructed and when occupied through the use of low flow toilets and shower heads and other such measures. The Applicant shall provide an explanation of how this program will be accomplished, prior to FMP approval.
- W. Establish and implement an erosion control plan for all disturbed land, as

required by ORS Chapter 468. The Applicant's Erosion Control Plan, Exhibit 8, indicates that all surface water drainage will be contained on-site. This plan provides several erosion control methods which will be utilized by Eagle Crest in the construction process and in the design of roads and other facilities. The Applicant will be required to comply with this plan as a condition of approval of this CMP and of the FMP and to demonstrate that this plan complies with ORS Chapter 468.

- X. The Planning Director, with the assistance of ODF&W, shall assess to what extent the above listed mitigation measures have mitigated the fish and wildlife impact caused by the entire Eagle Crest resort on fish and wildlife habitat and resources, assuming that the most intensive development allowed by this approval will be undertaken by the Applicant and that all of the water that is withdrawn from the regional aquifer by Eagle Crest will reduce downstream flows in the Deschutes River by a like amount, starting at the point where the water from the aquifer enters the Deschutes River. If all impacts have not been mitigated by these measure, the Director and ODF&W shall develop a plan to mitigate the remaining impact through measures such as the purchase and rehabilitation of lands for fish and wildlife activities or for the protection of resources needed to assure fish and wildlife survival. The cost of undertaking these measures shall then be estimated and the Applicant shall be required to pay for the cost of undertaking these measures by making payments to an ODF&W trust fund that must be expended solely for mitigation activities.

Payments to the trust fund for the impact of Phase I, excluding the CRT property, shall be made prior to FMP approval. Payment for impacts caused by CRT expansion area shall be paid prior to platting of that area for building lots. Payment of the costs of mitigating the Phase II impacts shall be apportioned between the phases of the development in a manner that reasonably relates to the impact of each phase, and paid as a condition of plat approval for each phase.

- Y. The Applicant shall reimburse the County and ODF&W for the cost of determining the amount of the wildlife mitigation assessment, described in X., above.
- Z. The Applicant shall work with COID, BLM and the County if and when the new interchange (Highway 126 & Cline Falls Road) is built, to reclaim the areas adjacent to the existing Cline Falls Highway and Highway 126 adjacent to the property owned by COID (T15, R12, Sec. 14AO, Tax Lot 900). The Applicant shall remove the existing portion of the Cline Falls Highway that is abandoned and rehabilitate the road and dirt bike trails by tilling and seeding the property. Leave the area undeveloped, except for defined trails, to allow

the area to act, in conjunction with the COID property as a wildlife corridor to the Deschutes River.

38. The Applicant shall inventory and protect all important natural features, including but not limited to, significant wetlands, riparian habitat and landscape management corridors. Riparian vegetation within 100 feet of streams, rivers and significant wetlands will be maintained. Alterations to important natural features, including placement of structures, is allowed so long as the overall values of the feature are maintained. The wetlands and riparian areas along the Deschutes River shall be completely identified on the FMP map.
39. To ensure that all traffic impacts from the proposal are adequately mitigated, approval of this CMP should be contingent upon the following conditions of approval:
 - * Applicant shall improve the Highway 126/Cline Fall Highway intersection so that it meets the full standards of the Oregon Department of Transportation. Eagle Crest is responsible for obtaining all required permits and approvals, including land use and Scenic Waterway (if applicable) approvals for construction of the interchange improvements prior to FMP approval. If the design and location of the proposed interchange is not approved by all permitting agencies, a different solution to the interchange traffic problem must be designed and approved prior to FMP review. Eagle Crest shall financially guarantee completion of the project through surety bonding or substantial financial assurances approved by the County prior to the closure of sale of individual lots or units in Phase II or CRT, as required by DCZO 18.113.110. The project shall be completed no later than when the impacts created by the resort development require the improvement. This date shall be determined by the Planning Director, prior to FMP approval. As the traffic study submitted by the Applicant did not include all resort generated traffic, the impact of commercial, sales office, employee and vendor traffic will need to be estimated and used to determine when the improvements will be needed.
 - * Applicant shall cause a traffic light to be installed at the intersection of Highway 20 and Cline Falls Highway prior to FMP approval. If ODOT refuses to allow installation of this traffic light, the Planning Director shall determine, by consultation with ODOT, the level of improvements that ODOT believes are warranted and shall require those improvements prior to FMP approval.
 - * The Final Master Plan for the proposed CMP shall include the proposed interchange design and the realignment of Cline Falls Highway, if approved. If the interchange is not approved, the Applicant shall scale back the size of the Phase II expansion, as required by DCZO 18.113.070(G)(1) or limit its impact on road systems as required by DCZO 18.113.070(G)(3).

- * The Applicant shall make all interim improvements recommended by the traffic study (i.e. - signs, flashing beacon, shoulder widening) to the Highway 126 and Cline Falls Highway intersection, prior to FMP approval.
 - * If a Comprehensive Plan amendment is needed to approve an interchange connection, the amendment should be adopted prior to, or concurrent with, Final Master Plan approval.
 - * The Applicant is responsible for all permit, engineering, and physical improvement costs. The Applicant also, must place money in a trust account with the County for the improvement of Cline Falls Highway with money to be paid on a per lot sales basis, at a rate to be determined by the Planning Director, payment of which shall be included as a condition of Final Master Plan approval.
 - * Deschutes County shall revise the figures projected in the Kittelson studies to reflect all resort generated traffic and to correct the omissions cited by the Hearings Officer, prior to FMP approval. The Applicant shall reimburse the County for the cost of obtaining such an update.
40. All roads within the development shall be built to a width of 28 feet. Additionally, the Applicant shall comply with all applicable improvement standards established by DCZO Chapter 17. The Applicant shall develop a street plan, including street construction specifications for all Phase II and CRT expansion area streets, all new streets in the existing resort and for all intersections (crosswalks, signs, etc.). All street development shall comply with the street plan. This plan must be approved by the Planning Director prior to FMP approval. The plan shall also include plans for the Cline Falls Highway and Eagle Crest entrance roads intersection and for crossings at this location. Cline Falls Highway must be improved to at least 28 feet in width with left turn lanes and right turn deceleration lanes at both entrances (existing and proposed).
 41. All bicycle paths that are separate from the roadways shall be a minimum of twelve feet in width to accommodate both pedestrian and bicycle traffic. The system of paths shall be fully designed and clearly shown on the FMP. The path system shall be designed to incorporate the suggestions for paths made by the Bicycle Committee to the extent determined appropriate by the Planning Director. If paths are included in street sections, the paths shall be of a width approved by the Deschutes County Public Works Department, but in no event may any roadway be less than 28' in width.
 42. No structures may be constructed on any portion of the resort property where slopes exceed a grade of 25%.

43. Prior to FMP approval, the Applicant shall provide written proof from the Redmond RFPD that all portions of the resort have been annexed to the fire district.
44. The Applicant will be required to provide a minimum fire protection flow of 1000 gpm for residential uses and 2,500 gpm for commercial areas from fire hydrants located in all places within the resort identified by the Redmond Rural Fire Protection District. This condition must be met for the existing development (Phase I, excluding CRT) at the time of approval of the FMP. This condition must be met prior to final platting of CRT expansion area or any phase of Phase II.
45. The Applicant shall assure that "[a]dequate public facilities to provide for necessary safety services such as police . . . will be provided on the site to serve the proposed development" and that "adequate police . . . protection will be ensured in perpetuity in a manner acceptable to the County." The Applicant shall work with the Sheriff's Office to quantify the need for police facilities and services and to develop a plan to meet the need. The Planning Director shall review the plan and must determine that the plan meets the increased demand for police services and the requirements of DCZO 18.113.070 (R), before the Applicant may receive FMP approval.
46. The following list of water conservation measures shall be adopted for all Eagle Crest water users:
 - * Each domestic water service will be metered.
 - * A rate structure will be developed that provides financial incentive to conserve water.
 - * Golf course irrigation will be controlled by an automatic irrigation controller to allow:
 - a) applications during efficient hours of the day;
 - b) reduction of the applications to accommodate weather conditions; and
 - c) hydraulically efficient valve controls to assure uniform and consistent applications throughout the irrigated areas.
 - * Covenants and restrictions will be established which encourage the preservation of natural vegetation, the limitation of irrigated areas, and the promotion of non-irrigated landscape improvements.
 - * Low-flow plumbing fixtures will be encouraged.

The Applicant shall cause limits to be placed upon the hours of irrigation for all

system users, so that irrigation will occur during the hours of the day when it will do the most good. The Applicant shall demonstrate how these conservation measures will be enforced, to the satisfaction of the Planning Director, prior to FMP approval. The Applicant shall demonstrate to the County Planning Director, that it has adopted this conservation system for its entire water system (Cline Butte Utility Company) and that all users will be bound to comply with conservation measures.

47. The Applicant shall provide proof that all of its existing Eagle Crest water rights contain the standard OWRD water right conditions (approximately 15), including those items referenced by David Newton in his November 1, 1993 letter to Bill Lyche (Exhibit 67). If such conditions are not currently included in the existing Phase II water rights, Eagle Crest shall consent to written amendment of its existing permits to include these conditions. This requirement is imposed to protect the water rights of prior water users, to assure that OWRD will be able restrict Eagle Crest's use of water use in the event of a water shortage and to force a cessation of pumping if excessive declines in well water levels occur.
48. The Applicant shall obtain approval from the Oregon Water Resource Department for domestic water use in the Phase II property, as a condition of FMP approval.
49. The Applicant shall provide proof that Eagle Crest's water sources do not include any perched water sources, prior to FMP approval.
50. If a perched water table is pierced to access the regional aquifer, the well must be sealed off from the perched water table.
51. Prior to FMP approval, the Applicant shall design a mechanical treatment facility and complete sewage collection system, with at least two treatment plants to assure effective treatment of effluent during high flow and low flow periods. The facility shall be sited on a parcel of property within the destination resort that is large enough to accommodate all sewage treatment plant facilities, at least 23 acres in size. The Applicant shall set aside or obtain ownership of such a site and provide proof of ownership to the Planning Director, prior to FMP approval. The site must be shown on the FMP. Plans for the treatment facility shall include an effluent pond designed to hold effluent during periods when it may not be utilized for irrigation or other beneficial uses.
52. The Applicant shall obtain DEQ approval of the mechanical treatment facility and collection system plan, prior to FMP approval. If it is documented that DEQ approval is not available, the Applicant shall demonstrate to the Deschutes County Planning Director that the facility design meets DEQ requirements for such facilities, prior to FMP approval.
53. Prior to FMP approval the Applicant shall do the following: (a) Design a wastewater

reuse program that will utilize wastewater and which may include, but not be limited to, use of effluent to irrigate golf courses, to create wetlands or to irrigate cropland; and (b) Design the transportation and distribution system which will be used to transport and discharge effluent to and on the site of reuse; and (c) If effluent will be reused on property located outside of the boundaries of the resort, the Applicant must submit proof that it has obtained a binding legal commitment to discharge effluent on that site; and (d) State what level of treatment (I through IV) will be achieved by the plant designed, demonstrate how DEQ requirements (OAR regulations) on reuse will be met, and provide assurances acceptable to the Planning Director that measures to comply with the regulations will be met once effluent is put to beneficial use.

54. The Planning Director shall determine at what point of development a mechanical treatment facility will become feasible and require its construction at or prior to that time in the conditions of approval of the FMP. The Applicant shall provide a performance bond or other financial assurances satisfactory to Deschutes County Legal Counsel, assuring completion of the mechanical treatment facility and related facilities.
55. The Applicant shall identify, on the FMP, all areas in the resort that are not suited for development with septic systems. No buildings requiring sewer service may be sited, or residential or commercial lots platted, on these properties until such time as the mechanical treatment facility is constructed and operational.
56. The Applicant shall obtain septic system feasibility approval from the Deschutes County Environmental Health Department for each proposed lot in each phase of development platted prior to approval and filing of the plat, until such time as the central facility is constructed and operational and when service by that facility to the platted area is assured.
57. The Applicant has stated that the septic tanks on each lot will be backed up with a central collection system. This system has not been designed. The Applicant shall design the back up effluent collection system and designate an area for central and/or back up effluent disposal prior to FMP approval. The Applicant shall construct the back up, central drainfield prior to platting any portion of Phase II and shall install all collection lines for the system in each phase, prior to the issuance of building permits in that phase.
58. The Applicant shall make an application to DEQ for a WPCF permit for the proposed septic system and backup drainfield, and comply with applicable Oregon Administrative Rules regarding beneficial use of waste water, as determined by DEQ. The Applicant shall have received approval of a WPCF permit consistent with this provision prior to applying for approval of the Final Master Plan. The Applicant shall also obtain approval of the mechanical system, prior to operation.

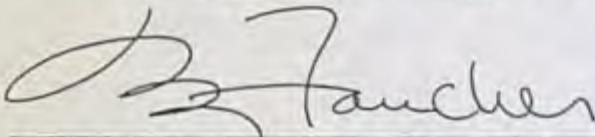
59. Approval of each phase of development that will utilize subsurface drainage systems may be denied by Deschutes County if DEQ has withdrawn approval for the subsurface system or if there is substantial evidence to indicate that the systems are failing or causing significant contamination of groundwater or river water.
60. If, at some time in the future, the Comprehensive Plan is amended to allow the Eagle Crest resort to connect to the Redmond sewer system, the Applicant may apply to the Planning Division for amendment of these conditions of approval to authorize that sewage treatment option and to remove the on-site treatment plant requirements. The Applicant will need to demonstrate that Redmond's sewage treatment plant has adequate capacity to treat the sewage in compliance with all sewage treatment regulations and that the Applicant has obtained a binding, long-term commitment from the City of Redmond to accept and treat the Eagle Crest sewage and to make a beneficial use of the effluent.
61. The Applicant will be required to either: 1) dedicate land for park purposes; or 2) pay a \$350 per-lot park acquisition and development fee in lieu of actual dedication as required by Section 17.44.010 of Title 17 (the County Subdivision Ordinance). This fee will be charged at the time of final plat review for the platting of all lots within the resort unless a dedication of park land, that complies with the requirements of Section 17.44 occurs.
62. The Applicant shall develop a landscaping plan for the northern boundary of Phase II that adjoins Cline Falls Oasis and any other residential lots to provide buffering between the resort and these residential property. The Applicant shall submit and receive approval of a landscaping plan that meets the requirements of DCZO 18.113.070(N) for that area, prior to FMP approval.
63. The submitted Conceptual Master Plan indicates a commercial core area in the center of the proposed Phase II development, a resort sales office in Phase I and a future commercial area in Phase I. These are the only areas in the Conceptual Master Plan that may be developed for new commercial uses.
64. All commercial areas be screened from the highway. This includes the commercial area proposed in Phase I. The proposed sales office for Eagle Crest shall be turned to face the resort, rather than Cline Falls Highway and shall be screened from view from the Highway. No parking shall be placed between the sales office and Cline Falls Highway. No sales office signage, signs for commercial activities within the resort, or ground mounted signs advertising the sales office may be visible from Cline Falls Highway.
65. Area 11 of Phase II shall not include any commercial facilities.

66. The Applicant shall demonstrate, prior to FMP approval, that a plan exists to ensure a transfer of common areas, facilities such as sewer, water, streets and responsibility for police and fire protection to owners' associations or similar groups, if contemplated. If such transfer is not contemplated, the owner or responsible party shall be clearly designated. Adequate open space, facility maintenance and police and fire protection shall be ensured in perpetuity in a manner acceptable to the County.
67. There are several "temporary" structures currently in use at Eagle Crest. These include the temporary modular sales offices located at the entrance to Phase I, a temporary modular day care center near the Inn at Eagle Crest, and a temporary golf pro shop for the Eagle Ridge Golf Course within the proposed Eagle Crest Phase II area. These are the only temporary structures allowed in the entire Eagle Crest Resort. As required by this section, any new temporary structures would be allowed for no more than 18 months from the date that CMP approval is final, and would be subject to all use and site plan standards. The temporary sales office must be removed no later than when the new sales office is occupied. The temporary golf course pro shop shall be removed no later than when the first plat in Phase II is approved.
68. Applicant shall provide proof that its submitted Open Space Management Plan applies to all Eagle Crest Phase I and Phase II property owners, by inclusion in CC&Rs that bind all of the property included within the resort. The Open Space Management Plan must specifically protect the 50% open space required by the County's destination resort ordinance from development, unless such development is specifically allowed by the destination resort ordinance, as written at the time of submission of the CMP application.
69. The Applicant shall design and install fences or other buffers between the proposed golf course and any and all roadways, bikeways and pedestrian paths, so that golf balls do not enter the ways, prior to FMP approval or demonstrate that golf balls will not stray into such transportation areas. Additionally, the Applicant shall continue to comply with this condition once FMP approval is granted. If the Planning Director determines that there is substantial evidence to indicate that golf balls are straying from the golf course and entering roadways or pedestrian or bicycle paths, the Applicant shall design and implement measures to keep golf balls from entering such areas.
70. This approval is subject to continued compliance with all provisions of the County's destination resort ordinance, as outlined in this decision. The Applicant and its successors or assigns shall assure that all conditions of approval that is mentioned in any part of this decision, whether or not it is listed in this conditions of approval section. The applicant shall be required to demonstrate that the conditions of CMP and FMP approval have been, are being and will be met prior to approval of future land divisions and phases within the resort.

71. The applicant shall submit a Title Report for the subject property to show evidence of clear, marketable title and that no encumbrances exist on the areas being dedicated as open space or being developed with resort recreational facilities or sewer or water utilities. If any encumbrances exist, they shall be removed prior to acceptance by the County, unless otherwise approved by the Board of County Commissioners.
72. The applicant shall meet all conditions of Final Master Plan approval contained in DCZO 18.113.090 through 18.113.110 and in this decision.
73. Conditions of approval that were discussed in the text and which the Hearings Officer said would or should be imposed, are hereby made conditions of approval of this decision. This provision is included to make it clear that a failure to list such conditions in this section is not intended to absolve the Applicant of responsibility to comply with such conditions.
74. This Conditional Master Plan approval shall be void if the Final Master Plan is not submitted for final master plan review within two (2) years from the date this decision is final.

**THIS DECISION BECOMES FINAL 10 DAYS FROM THE DATE MAILED,
UNLESS APPEALED.**

DATED this 13th day of January, 1994.



LIZ FANCHER, Hearings Officer



Creative Solutions . . . Superior Service

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April 1, 1993

Via Facsimile - 378-8130

Mr. Steve Brown
Oregon Water Resources Department
3850 Portland Road, N.E.
Salem, Oregon 97310

Re: Land Use Compatibility Requirements for the Pending
Eagle Crest Application

Dear Steve:

As promised, I am writing to outline my understanding of the Department's rules relating to land use compatibility statements and the processing of applications. As you know, these rules are contained in Divisions 5 and 11, and in the August, 1990 Land Use Procedures Guide.

The starting place is OAR 690-05-035(4). This regulation requires applicants to submit land use information as specified on the forms contained in the Department's Land Use Planning Procedures Guide, and that if local land use approvals are pending, that the Department will condition any permit to preclude use of water until the necessary local land use approvals are obtained. Similarly, OAR 690-11-020(1)(g) also require that the land use information specified in the Department's Land Use Planning Procedures Guide be submitted (OAR 690-11-025(1) and OAR 690-11-030(7) also requires that this information be submitted before completion of a technical review). Finally, OAR 690-11-160(6), which sets forth the procedures for technical review of applications, simply refers back to the Department's Land Use Guide and OAR 690-05-035 summarized earlier.

Eagle Crest has obtained a land use compatibility form from the county indicating that discretionary land use approvals are required and that satisfactory progress is being made in obtaining these approvals. The Department's regulations do not require discretionary local land use approvals to be obtained before issuance of a permit for the use of surface or ground water. Nor is there anything in the rules requiring that such approvals be obtained prior to technical review of applications. In fact, the Department's Land Use Planning and Procedures Guide, referenced in the Division 5 and Division 11 rules, clearly provides that in situations such as this one where land uses are allowable, but discretionary approvals are required, that the

BALL, JANIK & NOVACK

Mr. Steve Brown

April 1, 1993

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Department will approve permits with conditions requiring the land use approvals prior to the use of water. The specific section I'm referring to is as follows:

"D. Land Use Compatibility - the Department will:

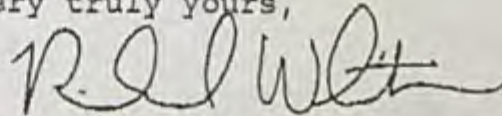
...
a. approve a permit with conditions prohibiting water use, and the placement or construction of facilities to support such use, until the applicant has received all applicable local land use approvals and local appeals periods have expired if:

...
2. Land uses are allowable, with discretionary land use and approval, under acknowledged comprehensive plans and the applicant is pursuing all applicable land use approvals to the satisfaction of the planning director." Land Use Planning Procedures Guide at 67-68.

In the case of this application, the applicant has obtained a land use compatibility form from Deschutes County indicating that the applicant is pursuing all applicable land use approvals to the satisfaction of the planning director. In short, I believe the Department, under the clear terms of its rules and Land Use Procedures Guide, can proceed with technical review of the application and issuance of the permit notwithstanding the fact that discretionary land use approvals have not yet been obtained, so long as the permit includes a condition requiring that the land use approval be obtained before water is used under the permit.

I hope this walk through the rules is helpful to you in evaluating how to proceed with the Eagle Crest application. Once you have had an opportunity to review this letter, please call me to confirm that the Department is proceeding with technical review of the Eagle Crest application.

Very truly yours,



Richard M. Whitman

RMW/mfc

cc: Mr. Tom Walker

Mr. Bill Lyche

Ms. Nancy Craven

dcw\rmw\leagle\water\ltr\Brown.ltr

STATE OF OREGON
WATER WELL REPORT
(as required by ORS 537.765)

(START CARD) # 36097

(1) OWNER: Well Number: 41
Name: Layle Raine Development Corporation
Address: P.O. Box 1215
City: Redmond State: OR Zip: 97756

(2) TYPE OF WORK:
☒ New Well ☐ Deepen ☐ Recondition ☐ Abandon

(3) DRILL METHOD
☒ Rotary Air ☐ Rotary Mud ☐ Cable
☐ Other

(4) PROPOSED USE:
☐ Domestic ☐ Community ☐ Industrial ☒ Irrigation
☐ Thermal ☐ Injection ☐ Other

(5) BORE HOLE CONSTRUCTION:
Special Construction approval Yes No Depth of Completed Well 300 ft.
Explosives used ☐ Yes ☐ No Type Amount

HOLE			SEAL			Amount sacks or pounds
Diameter	From	To	Material	From	To	
24	0	47	cement	0	47	0. sacks
17	47	300				

How was seal placed: Method ☐ A ☐ B ☒ C ☐ D ☐ E
☐ Other

Backfill placed from ft. to ft. Material
Gravel placed from ft. to ft. Size of gravel

(6) CASING/LINER:

	Diameter	From	To	Gauge	Steel	Plastic	Welded	Threaded
Casing	14"	+1	47	.250	☒	☐	☒	☐
Liner	14"	+2	300	.375	☒	☐	☒	☐

Final location of sheet: 400'

(7) PERFORATIONS/SCREENS:
☐ Perforations Method: Factory perforated
☐ Screens Type Material

From	To	Slot size	Number	Diameter	Tele/pipe size	Casing	Liner
510	790	1/2x3	8000	14"	---	☐	☒

(8) WELL TESTS: Minimum testing time is 1 hour
☐ Pump ☐ Bailer ☒ Air ☐ Flowing ☐ Artesian
Yield gal/min Drawdown Drill stem at Time
100 (est.) 750 1 hr.

Temperature of water 92° Depth Artesian Flow Found
Was a water analysis done? ☐ Yes By whom
Did any strata contain water not suitable for intended use? ☐ Too little
☐ Salty ☐ Muddy ☐ Odor ☐ Colored ☐ Other
Depth of strata:

(9) LOCATION OF WELL by legal description:
County Deschutes Latitude Longitude
Township 15 N or S. Range 12 E E or W. WM.
Section 15 SW 1/4 SE 1/4
Tax Lot 1500 Lot Block Subdivision
Street Address of Well (or nearest address) 1/1

(10) STATIC WATER LEVEL:
513 ft. below land surface. Date 7/20/92
Artesian pressure lb. per square inch. Date

(11) WATER BEARING ZONES:

Depth at which water was first found 340

From	To	Estimated Flow Rate	SW
340	300	600	51

(12) WELL LOG: Ground elevation

Material	From	To	SW
Sand & cobbles	1	4	
Broken lava red and brown	4	40	
Basalt gray hard	40	55	
Lava cinders red	55	60	
Lava brown	60	65	
Basalt gray and brown hard	65	85	
Basalt softer	85	93	
Lava red & brown broken soft	93	111	
Basalt gray hard	111	157	
Basalt gray softer w/ red cinder	157	162	
Lava red	162	165	
Lava brown w/sandstone	165	299	
Lava dark brown w/pumice	299	330	
Andacite brown hard	330	375	
Andacite gray	375	400	
Andacite Gray & brown hard	400	469	
Andacite gray softer	469	502	
Andacite hard brown	502	524	
Andacite light brown softer	524	568	
Rock black and red	568	600	
Andacite brown hard	600	608	
Red cinder	608	612	
Andacite brown hard	612	620	

Date started 1/20/92 Completed 2/20/92

(unbonded) Water Well Constructor Certification:
I certify that the work I performed on the construction, alteration, abandonment of this well is in compliance with Oregon well construction standards. Materials used and information reported above are true to my knowledge and belief.
Signed [Signature] WWC Number 1355 Date 3/4/92

(bonded) Water Well Constructor Certification:
I accept responsibility for the construction, alteration, or abandonment work performed on this well during the construction dates reported above. Work performed during this time is in compliance with Oregon construction standards. This report is true to the best of my knowledge and belief.
Signed [Signature] WWC Number 723 Date 3/4/92

STATE OF OREGON
WATER WELL REPORT
(as required by ORS 537.765)

Page 1 of 2

(START CARD) # 34267

(1) OWNER: Well Number _____
Name Eagle Ridge Development
Address P.O. Box 1215
City Redmond State OR Zip 97756

(2) TYPE OF WORK:
☒ New Well ☐ Deepen ☐ Recondition ☐ Abandon

(3) DRILL METHOD:
☒ Rotary Air ☐ Rotary Mud ☐ Cable
☐ Other _____

(4) PROPOSED USE:
☒ Domestic ☐ Community ☐ Industrial ☒ Irrigation
☐ Thermal ☐ Injection ☐ Other _____

(5) BORE HOLE CONSTRUCTION:
Special Construction approval ☐ Yes ☒ No Depth of Completed Well _____ ft.
Explosives used ☐ Yes ☒ No Type _____ Amount _____

HOLE		SEAL		Amount	
Diameter	From	To	Material	From	To
13	0	50	Bentonite	0	18
10	50	100	Cement	18	100
8	100	300			

How was seal placed: Method ☐ A ☐ B ☒ C ☐ D ☐ E
☒ Other Bentonite dry in top 18'

Backfill placed from _____ ft. to _____ ft. Material _____
Gravel placed from _____ ft. to _____ ft. Size of gravel _____

(6) CASING/LINER:
Diameter From To Gauge Steel Plastic Welded Threaded
Casing: 13 0 50 .25 ☒ ☐ ☐ ☐
8 +2 98 .25 ☐ ☐ ☒ ☐
Liner: 8 0 300 ☐ ☐ ☐ ☐

Final location of shoe(s) 300

(7) PERFORATIONS/SCREENS:
☒ Perforations Method Air
☐ Screens Type _____ Material _____

From	To	Slot size	Number	Diameter	Tele/pipe size	Casing	Liner
000	620	1x1/8	400	6		☐	☒
700	800	1x1/8	2000	6		☐	☒

(8) WELL TESTS: Minimum testing time is 1 hour

☐ Pump ☐ Bailor ☒ Air ☐ Flowing Artesian

Yield gal/min _____ Drawdown _____ Drill stem at _____ Time _____

Temperature of Water 54 Depth Artesian Flow Found _____
Was a water analysis done? ☐ Yes By whom _____
Did any strata contain water not suitable for intended use? ☐ Too little
☐ Salty ☐ Muddy ☐ Odor ☐ Colored ☐ Other _____
Depth of strata: _____

(9) LOCATION OF WELL by legal description:

County _____ Latitude _____ Longitude _____
Township 15 S N or S. Range 12 E E or W. WM.
Section 22 SW 1/4 NE 1/4
Tax Lot _____ Lot _____ Block _____ Subdivision _____
Street Address of Well (or nearest address) Cline Falls Hwy

(10) STATIC WATER LEVEL:

528 ft. below land surface. Date 10-11-91
Artesian pressure _____ lb. per square inch. Date _____

(11) WATER BEARING ZONES:

Depth at which water was first found 605

From	To	Estimated Flow Rate	SWL
608	615		
720	735		

(12) WELL LOG:

Ground elevation _____

Material	From	To	SWL
Dirt	0	2	
Broken rock	2	12	
Sand black coarse dry	12	25	
Broken rock red & gray	25	30	
Rock harder	30	42	
Sandstone soft brown	42	48	
Lava porous gray & brown	48	55	
Broken lava red & gray	55	83	
Lava harder red & gray	83	132	
Basalt gray hard	132	160	
Lava red medium	160	185	
Lava red with white pumice	185	203	
Multi-colored lava brown red	203		
gray		310	
Broken lava red brown	310	375	
Rock medium brown	375	392	
Rock gray with some pumice	392	400	
Rock gray and white	400	435	
Rock brown gray white	435	442	
Basalt gray hard	442	461	
UNDETERMINED LAY			
CONTINUED			

Date started 9-18-91 Completed 10-11-91

(unbonded) Water Well Constructor Certification:

I certify that the work I performed on the construction, alteration, or abandonment of this well is in compliance with Oregon well construction standards. Materials used and information reported above are true to my best knowledge and belief.

Signed [Signature] WWC Number 1358
Date 3-8-93

(bonded) Water Well Constructor Certification:

I accept responsibility for the construction, alteration, or abandonment work performed on this well during the construction dates reported above. All work performed during this time is in compliance with Oregon well construction standards. This report is true to the best of my knowledge and belief.

Signed [Signature] WWC Number 723
Date 3-8-92

RECEIVED
AUG 23 1991
W & H PACIFIC INC

Thomas Wall

STATE OF OREGON

COUNTY OF DESCHUTES

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

EAGLE RIDGE DEVELOPMENT CORPORATION
P.O. BOX 1215
REDMOND, OREGON 97756

to use the waters of THREE WELLS in the DESCHUTES RIVER BASIN for IRRIGATION OF 317.22 ACRES AND COMMERCIAL USE (GOLF COURSE).

This permit is issued approving Application G-12429. The date of priority is FEBRUARY 26, 1991. The use is limited to not more than 4.28 CUBIC FEET PER SECOND (CFS); BEING 3.97 CFS FOR IRRIGATION AND 0.31 CFS FOR COMMERCIAL USE, or its equivalent in case of rotation, measured at the wells.

The wells are located as follows:

WELL 1 - NE 1/4 NE 1/4, SECTION 22, T 15 S, R 12 W, W.M.; 350 FEET SOUTH AND 1170 FEET WEST FROM NE CORNER, SECTION 22;

WELL 2 - NW 1/4 SE 1/4, SECTION 15, T 15 S, R 12 W, W.M.; 840 FEET SOUTH AND 200 FEET EAST FROM C 1/4 CORNER, SECTION 15;

WELL 3 - SE 1/4 NE 1/4, SECTION 22, T 15 S, R 12 W, W.M.; 2300 FEET SOUTH AND 150 FEET WEST FROM NE CORNER, SECTION 22.

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 3.0 acre-feet for each acre irrigated. The use of water for irrigation may be made at any time that water can be put to beneficial use.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the proposed place of use under this permit is as follows:

SW 1/4 NE 1/4 1.43 ACRES AND COMMERCIAL USE
NW 1/4 NW 1/4 20.15 ACRES AND COMMERCIAL USE
SW 1/4 NW 1/4 17.24 ACRES AND COMMERCIAL USE
SE 1/4 NW 1/4 7.26 ACRES AND COMMERCIAL USE
NE 1/4 SW 1/4 19.38 ACRES AND COMMERCIAL USE
NW 1/4 SW 1/4 23.32 ACRES AND COMMERCIAL USE
SW 1/4 SW 1/4 24.27 ACRES AND COMMERCIAL USE
SE 1/4 SW 1/4 13.08 ACRES AND COMMERCIAL USE
SECTION 14

317.22 AC

SW 1/4 NE 1/4 11.87 ACRES AND COMMERCIAL USE
SE 1/4 NE 1/4 19.31 ACRES AND COMMERCIAL USE
NE 1/4 SE 1/4 20.07 ACRES AND COMMERCIAL USE
NW 1/4 SE 1/4 16.15 ACRES AND COMMERCIAL USE
SW 1/4 SE 1/4 14.56 ACRES AND COMMERCIAL USE
SE 1/4 SE 1/4 26.58 ACRES AND COMMERCIAL USE
SECTION 15

NE 1/4 NE 1/4 26.88 ACRES AND COMMERCIAL USE
NW 1/4 NE 1/4 23.36 ACRES AND COMMERCIAL USE
SE 1/4 NE 1/4 11.04 ACRES AND COMMERCIAL USE
SECTION 22

NE 1/4 NW 1/4 COMMERCIAL USE
NW 1/4 NW 1/4 21.27 ACRES AND COMMERCIAL USE
SECTION 23

TOWNSHIP 15 SOUTH, RANGE 12 EAST, W.M.

PAGE TWO

The well shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times. When required by the department, the permittee shall install and maintain a weir, meter, or other suitable measuring device, and shall keep a complete record of the amount of ground water withdrawn.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

Actual construction work shall begin on or before August 12, 1992, and shall be completed on or before October 1, 1993. Complete application of the water shall be made on or before October 1, 1994.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for beneficial use of water without waste. The water user is advised that new regulations may require use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water shall be limited when it interferes with any prior surface or ground water rights.

Issued this date, AUGUST 12, 1991.

William H. Young
Water Resources Department
William H. Young
Director