

## **Oregon destination resort case law**

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### **Goal exceptions for Goals 3, 4, 11, and 14 – ORS 197.450**

### **Siting of destination resorts – mapping, not mapping, effect of map – ORS 197.455, 197.465**

*Alliance for Resp. Land Use v. Deschutes County*, 23 Or LUBA 476 (1992)

Where a county adopts a plan map designating land within three miles of the county's borders as available for destination resort siting, without determining whether such land is within three miles of high-value crop areas located in a neighboring county, the county has failed to comply with the requirement of ORS 197.455 and Goal 8 that land within three miles of high-value crop areas not be available for destination resort use.

### **Required development – overnight accommodations, recreational facilities – ORS 197.445**

*Wetherell v. Douglas County*, 44 Or LUBA 745 (2003)

Without some explanation or evidence regarding how 100 proposed time share units, with separate “lock-out” suites, will be marketed and made available for overnight lodging, the application fails to assure that the proposed destination resort will offer at least 150 separate rentable units for overnight lodging, as required by ORS 197.445(4).

Facilities such as an “internet café,” a “music festival stage,” a lounge and dance area, and facilities intended to benefit permanent residents do not qualify as “developed recreational facilities” for purposes of statutes requiring a minimum expense on recreational facilities in order to qualify as a destination resort.

*Gould v. Deschutes County*, 54 Or LUBA 205 (2007)

Because ORS 197.445(4)(b)(B) requires that the first 50 units of the required 150 units of overnight lodging in a destination resort be constructed before sales may close on individually owned lots or residential units, a county code standard that was adopted to implement the statute that allows those first 50 units to be financially assured rather than constructed is inconsistent with the statute and the statute controls.

### **Compatibility with adjacent uses, neighboring farm operations – ORS 197.460, 197.\*\*\***

*Burke v. Crook County*, 48 Or LUBA 23 (2004)

Even if intersection improvements that are required in approving a destination resort will maintain acceptable levels of service on nearby roads and key intersections, it does not

necessarily follow that there will not be conflicts between the increased levels of traffic the proposed destination resort will generate on these roads and agricultural traffic (including livestock and large slow-moving agricultural vehicles) seeking to negotiate these same roads. However, where the relevant approval standard only requires “reasonable compatibility,” and the testimony on both sides of the seriousness of the conflicts from such traffic is speculative, LUBA cannot say the county was unreasonable in finding the destination resort will be “reasonably compatible” with nearby farm use and farm traffic.

### **Phased decision-making – conceptual or preliminary plans, final plans**

*Foland v. Jackson County*, 18 Or LUBA 731 (1990), ultimately affirmed by Supreme Ct. in *Foland v. Jackson County*, 311 Or 167, 807 P2d 801 (1991)

The requirement to comply with ordinance criteria applicable to the resolution/conceptual site plan stage of the destination resort review process cannot be avoided by deferring those determinations to the preliminary development plan stage of the review process, through restatement of the first stage approval criteria as conditions of approval for the second stage.

*Foland v. Jackson County*, 215 Or App 157, 164, 168 P3d 1238, *rev den* 343 Or 690, 174 P3d 1016 (2007)

Where county code provides that destination resorts are approved in a two-stage process, whereby a final development plan must be submitted within three years of preliminary development approval, the county can not amend the three year limitation by “interpreting” language that does not exist to allow submission of the final plan more than ten years after the remand of the preliminary development approval decision.

*Broken Top Community Assoc. v. Deschutes County*, 54 Or LUBA 84 (2007)

A hearings officer’s failure to address arguments that the applicant should improve transportation facilities affected by a proposed destination resort provides no basis for reversal or remand, where a prior development agreement and two earlier development approvals conclusively established the type and extent of transportation improvements the applicant is obligated to make in developing the resort, and the petitioners cite no authority for the hearings officer to require different improvements in approving a subdivision within that resort.

*Gould v. Deschutes County*, 216 Or App 150, 171 P3d 1017 (2007)

Where the county code requires complete mitigation of impacts to wildlife, the criterion is not satisfied by the county imposing a condition of approval requiring the applicant to sign a memorandum of understanding with the BLM to develop the mitigation plan at some later date, where the terms of the mitigation plan had not yet been negotiated and thus could not be known and where the public would not be involved in the BLM’s

review or approval of the proposed mitigation plan under the MOU. In order to defer a decision regarding a required criterion to a later stage of the process, the county must make findings that satisfaction of the criterion is feasible (which requires existence of and reasonable specificity regarding the proposed solutions) and that the later process will provide the same level of public participation rights as the current one.

*Gould v. Deschutes County*, \_\_\_ Or LUBA \_\_\_ (LUBA 2008-068, Sept. 11, 2008) (CoA appeal pending)

“[N]either *Gould II* nor *Paterson* support petitioner’s position that the county must first find that it is “feasible,” within the meaning of the second principle in *Meyer*, for the destination resort to comply with [a local code provision], before it can defer a decision concerning whether the proposed destination resort complies with [the local code provision] to a future public process as part of FMP approval.”

### **Local code requirements**

*Gould v. Deschutes County*, 54 Or LUBA 205 (2007)

An applicant for destination resort approval must demonstrate that there will be adequate water available to serve the proposed destination resort. An applicant’s demonstration that there is no legal barrier to securing the needed permits to withdraw groundwater to serve the destination resort is sufficient. The applicant need not secure the mitigation credits that ultimately will be needed prior to conceptual master plan approval.

*Foland v. Jackson County*, 18 Or LUBA 731 (1990)

Compliance with a criterion that "adequate sewer [and] water \* \* \* services will be provided" to serve a proposed destination resort requires identification of an available method for providing adequate sewage disposal and domestic water service to the proposed development that is reasonably certain to comply with applicable standards and produce the desired result.

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### **Interplay of destination resort map with adopted Goal 5 inventory sites**

*Johnson v. Jefferson County* at LUBA - <http://www.oregon.gov/LUBA/docs/Opinions/2008/02-08/07016.pdf>

*Johnson v. Jefferson County*, 221 Or App 156, 189 P3d 30 (2008), *review granted*, 345 Or \_\_\_, \_\_\_ P3d \_\_\_ (2008). - <http://www.publications.ojd.state.or.us/A138263.htm>

*Johnson v. Jefferson County* at OR Sup. Ct. (review granted, briefing submitted, no decision yet)