

This memo discusses the potential impacts to TID and landowners within TID's service area regarding Deschutes County's proposed wildlife inventory update. The memo focuses on the holdings of Tumalo Irrigation District and all landowners within TID's Boundaries.

## ***Background***

Deschutes County received a state grant to evaluate potential updates to three of its Goal 5 wildlife inventories: mule deer winter range, elk winter range, and sensitive bird (bald and golden eagle) habitat. The inventories are effectively maps showing areas of the County that provide such species-specific habitat. As part of that evaluation, the County formed a technical advisory committee comprised of wildlife biologists from state and federal agencies as well as a wildlife consultant. This advisory group reviewed current data for each species to determine how it aligns with the County's existing inventories. Based on that review, the advisory group proposed significant expansions of the wildlife inventories.

As it relates to land use and development, the wildlife inventories correspond to species-specific overlay zones. Properties within those overlay zones are subject to additional requirements, regulations, and processes beyond the regulations in the underlying zone. TID and Tumalo landowners would be encumbered by potentially all three of the aforementioned species-specific overlay zones if the updated inventories proposed by the technical advisory committee are adopted in full.

The County is not obligated under state law to perform any such updates. However, at its November 1, 2021 meeting, the Board of County Commissioners nonetheless proposed to move forward with updating the mule deer inventory. It is anticipated that action on the updated mule deer maps could come in the next few months (a specific schedule is still being formulated). It is unclear at this time whether the action will also involve any corresponding code updates to the implementing overlay zone or if the County will simply apply the current code language to properties added to the various overlay zones. Although only the mule deer inventory is authorized to move forward at this time, it is anticipated that the other inventories will move forward at some point in the future.

Set out below are the concerns of expanding inventory maps and discussion of the land use implications for TID and TID patrons.

## ***Updated Winter Mule Deer Range***

In general, the existing range ends several hundred yards south of Tumalo Reservoir Road and the proposed additional area would incorporate the entirety of Tumalo Irrigation District Boundaries.

The implementing overlay zone allows for all of the permitted and conditional uses allowed in the underlying zone except for golf courses that are not included in a destination resort, commercial dog kennels, public or private schools, bed and breakfast inns, dude ranches, playgrounds, recreation facilities or community centers owned and operated by a government agency or a nonprofit community organization, timeshare units, veterinary clinics, or fishing lodges.

As alluded to above, the overlay zone development requirements increase the minimum amount of open space to 80% compared to 65% required for a planned development outside of the overlay zone. Furthermore, a development must have an approved “wildlife management plan” for the open space. The wildlife plan must include the following with respect to open space:

1. Preserves, protects and enhances wildlife habitat for WA zone protected species as specified in the Deschutes County Comprehensive Plan; and
2. Prohibits golf courses, tennis courts, swimming pools, marinas, ski runs or other developed recreational uses of similar intensity. Low intensity recreational uses such as properly located bicycle, equestrian and pedestrian trails, wildlife viewing areas and fitness courses may be permitted; and
3. Provides a supplemental, private open space area on home lots by imposing special yard setback of 100 feet on yards adjacent to required open space areas. In this yard, no structures other than fences consistent with DCC 18.88.070 may be constructed. The size of the yard may be reduced during development review if the County finds that, through the review of the wildlife management plan, natural landscape protection or wildlife values will achieve equal or greater protection through the approval of a reduced setback. In granting an adjustment, the County may require that a specific building envelope be shown on the final plat or may impose other conditions that assure the natural resource values relied upon to justify the exception to the special yard requirements will be protected.
4. Off-road motor vehicle use shall be prohibited in the open space area.
5. Adequate corridors on the cluster property to allow for wildlife passage through the development

Finally, the overlay zone requires that the footprint of any resulting structure must be located within 300 feet of a roadway in existence on August 5, 1992 with limited exceptions to this requirement. Finally, there are requirements for certain fencing to be wildlife friendly.

## ***Updated Winter Elk Range***

Set out below for the are the proposed updates for elk winter range. The Entirety of Tumalo Irrigation District boundaries would be mapped as elk winter range under the advisory committee's proposal. The regulations for elk range are the same as for deer range except, that the current regulations for elk simply specify a minimum lot size of 160 acres. Elk range would thus dramatically reduce developability of properties within TID boundaries

## ***Sensitive Bird Habitat***

Set out below is the proposed updated sensitive bird habitat. The sensitive bird habitat overlay zone allows for all of the uses permitted either outright or conditionally in the underlying zone unless the ESEE (the document added to the Comprehensive Plan for a specific resource) for the specific sensitive bird resource (i.e. each nesting, hibernation, or rookery site) provides differently. However, the overlay zone requires all building permits, land division, and site plans to go through some extra process. Specifically, a site plan must be generated (even as part of a land division application) showing roads, driveways, and structures. The site plan narrative must also describe operating characteristics of the proposed use that could generate impacts to the sensitive bird resource, the timing of construction activities, and vegetation preservation/removal.

The site plan is reviewed by ODFW, but ODFW can only comment (not approve/deny/condition). Rather, the County renders a decision on the site plan based on whether it will cause the resource area to be abandoned, whether development will occur within sensitive portions of the year identified in the ESEE, whether roads, driveways, or trails, are located as far away from the site as practical, and whether the proposal otherwise meets any specific requirements set out in the applicable ESEE. In sum, the sensitive bird regulations introduce a number of subjective criteria that may it more difficult to predict whether a particular development could be approved.

## ***Conclusion***

All the various updates will have a significant impact on Tumalo Irrigation District holdings and the holdings of private landowners within the boundaries of Tumalo Irrigation District. Please contact your County Commissioners with any concerns or questions about this process.

Copied below are applicable state statutes, OARs, and code provisions.

## **CHAPTER 18.88 WILDLIFE AREA COMBINING ZONE; WA**

### **18.88.010 Purpose**

### **18.88.020 Application Of Provisions**

### **18.88.030 Uses Permitted Outright**

### **18.88.040 Uses Permitted Conditionally**

### **18.88.050 Dimensional Standards**

### **18.88.060 Siting Standards**

### **18.88.070 Fence Standards**

### **18.88.010 Purpose**

The purpose of the Wildlife Area Combining Zone is to conserve important wildlife areas in Deschutes County; to protect an important environmental, social and economic element of the area; and to permit development compatible with the protection of the wildlife resource.

#### HISTORY

Adopted by Ord. [PL-15 §4.190\(1\)](#) on 11/1/1979

Amended by Ord. [93-043 §§13 and 13A](#) on 8/25/1993

### **18.88.020 Application Of Provisions**

The provisions of DCC 18.88 shall apply to all areas identified in the Comprehensive Plan as a winter deer range, significant elk habitat, antelope range or deer migration corridor.

Unincorporated communities are exempt from the provisions of DCC 18.88.

#### HISTORY

Adopted by Ord. [PL-15 §4.190\(2\)](#) on 11/1/1979

Amended by Ord. [92-042 §1](#) on 8/5/1991

Amended by Ord. [96-003 §6](#) on 3/27/1996

Amended by Ord. [2004-013 §9](#) on 9/21/2004

### **18.88.030 Uses Permitted Outright**

In a zone with which the WA Zone is combined, the uses permitted outright shall be those permitted outright by the underlying zone.

#### HISTORY

Adopted by Ord. [PL-15](#) on 11/1/1979

Repealed & Reenacted by Ord. [91-020 §1](#) on 5/29/1991

Amended by Ord. [92-042 §1](#) on 8/5/1991

### **18.88.040 Uses Permitted Conditionally**

1. Except as provided in DCC 18.88.040(B), in a zone with which the WA Zone is combined, the conditional uses permitted shall be those permitted conditionally by the underlying zone subject to the provisions of the Comprehensive Plan, DCC 18.128 and other applicable sections of this title. To minimize impacts to wildlife habitat, the County may include conditions of approval limiting the duration, frequency, seasonality, and total number of all outdoor assemblies occurring in the WA Zone, whether or not such outdoor assemblies are public or private, secular or religious.
2. The following uses are not permitted in that portion of the WA Zone designated as deer winter ranges, significant elk habitat or antelope range:
  0. Golf course, not included in a destination resort;
  1. Commercial dog kennel;
  2. Public or private school;
  3. Bed and breakfast inn;
  4. Dude ranch;

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5. Playground, recreation facility or community center owned and operated by a government agency or a nonprofit community organization;
  6. Timeshare unit;
  7. Veterinary clinic;
  8. Fishing lodge.
3. Subject to DCC 18.88.040(E), the following uses are permitted in that portion of the WA zone designated as the Bend/La Pine Deer Migration Corridor as conditional uses:
    0. Religious institutions or assemblies;
    1. Public or private school;
    2. Bed and breakfast inn;
    3. Playground, recreation facility or community center owned and operated by a government agency or a nonprofit community organization;
  4. Subject to DCC 18.113, destination resorts are allowed as a conditional use in that portion of the WA zone designated as the Bend/La Pine Deer Migration Corridor as long as the property is not in an area designated as “Deer Migration Priority Area” on the 1999 ODFW map submitted to the South County Regional Problem Solving Group.
  5. Use limitations. The uses listed in DCC 18.88.040(C) are subject to the applicable provisions of DCC 18.116 and 18.124 and the following criteria:
    0. The parcel shall be zoned RR-10;
    1. The parcel shall be located within one-quarter mile of a rural service center and be located adjacent to a rural collector or a rural arterial identified on the Deschutes County Transportation Plan;
    2. The parcel shall be no less than one acre and no more than five acres in size;
    3. The parcel shall be farther than 100 feet from identified wetlands, floodplains or riparian areas.
    4. The property shall be outside areas designated as “Existing High Use Migration Areas” or “Important Connective Areas Through Existing Developed Areas” on the 1997 ODFW map submitted to the South County Regional Problem Solving Group.
    5. Fences developed as part of the conditional uses listed in DCC 18.88.040(C) shall be built from posts and poles or smooth wire and shall have a minimum bottom pole or wire height of 18 inches from the ground and a maximum top pole or wire height of 40 inches from the ground. Fences exempted from these standards shall be constructed in accordance with the provisions of DCC 18.88.070(B).
  6. Expansion of any use listed in DCC 18.88.040(B) that was lawfully established prior to August 5, 1992, is allowed, subject to provisions of DCC Title 18 applicable to the establishment of such uses. Expansion of golf courses under DCC 18.88.040 shall be limited to a final size of 18 holes.

## HISTORY

Adopted by Ord. [PL-15 §4.190\(4\)](#) on 11/1/1979

Amended by Ord. [92-042 §1](#) on 8/5/1991

Amended by Ord. [95-001 §3](#) on 3/29/1995

Amended by Ord. [95-075 §1](#) on 11/29/1995

Amended by Ord. [98-013 §1](#) on 1/28/1998

Amended by Ord. [2001-019 §1](#) on 4/25/2001

Amended by Ord. [2018-003 §1](#) on 1/25/2018

Amended by Ord. [2020-001 §11](#) on 4/21/2020

## **18.88.050 Dimensional Standards**

In a WA Zone, the following dimensional standards shall apply:

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1. In the Tumalo, Metolius, North Paulina and Grizzly deer winter ranges designated in the Comprehensive Plan Resource Element, the minimum lot size for new parcels shall be 40 acres except as provided in DCC 18.88.050(D).
2. In areas designated as significant elk habitat in the Comprehensive Plan Resource Element, the minimum lot size for new parcels shall be 160 acres.
3. In areas designated as antelope range in the Comprehensive Plan Resource Element, the minimum lot size for new parcels shall be 320 acres.
4. Residential land divisions, including partitions, in deer winter range where the underlying zone is RR-10 or MUA-10, shall not be permitted except as a planned development or cluster development conforming to the following standards:
  0. The minimum area for a planned or cluster development shall be at least 40 acres.
    1. The planned or cluster development shall retain a minimum of 80 percent open space and conform with the provisions of DCC 18.128.200 or 210.
    2. Notwithstanding the provisions of DCC 18.128.200 or 210, or DCC 18.60.060(C), the total number of residences in a cluster development may not exceed the density permitted in the underlying zone.
5. Residential land divisions, including partitions, in the Bend/La Pine Deer Migration Corridor where the underlying zone is RR-10 shall not be permitted except as a cluster development conforming to the following standards:
  0. The minimum area for a cluster development shall be at least 20 acres.
    1. The cluster development shall retain a minimum of 80 percent open space and conform with the provisions of DCC 18.128.200 or 210.
    2. Notwithstanding the provisions of DCC 18.128.200, or DCC 18.60.060(C), the total number of residences in the cluster development may not exceed the density permitted in the underlying zone.

## HISTORY

Adopted by Ord. [PL-15 §4.190\(6\)](#) on 11/1/1979

Amended by Ord. [92-042 §1](#) on 8/5/1991

Amended by Ord. [95-075 §1](#) on 11/29/1995

## **18.88.060 Siting Standards**

1. Setbacks shall be those described in the underlying zone with which the WA Zone is combined.
2. The footprint, including decks and porches, for new dwellings shall be located entirely within 300 feet of public roads, private roads or recorded easements for vehicular access existing as of August 5, 1992 unless it can be found that:
  0. Habitat values (i.e., browse, forage, cover, access to water) and migration corridors are afforded equal or greater protection through a different development pattern; or,
    1. The siting within 300 feet of such roads or easements for vehicular access would force the dwelling to be located on irrigated land, in which case, the dwelling shall be located to provide the least possible impact on wildlife habitat considering browse, forage, cover, access to water and migration corridors, and minimizing length of new access roads and driveways; or,
    2. The dwelling is set back no more than 50 feet from the edge of a driveway that existed as of August 5, 1992.
3. For purposes of DCC 18.88.060(B):

0. A private road, easement for vehicular access or driveway will conclusively be regarded as having existed prior to August 5, 1992 if the applicant submits any of the following:
  0. A copy of an easement recorded with the County Clerk prior to August 5, 1992 establishing a right of ingress and egress for vehicular use;
  1. An aerial photograph with proof that it was taken prior to August 5, 1992 on which the road, easement or driveway allowing vehicular access is visible;
  2. A map published prior to August 5, 1992 or assessor's map from prior to August 5, 1992 showing the road (but not showing a mere trail or footpath).
1. An applicant may submit any other evidence thought to establish the existence of a private road, easement for vehicular access or driveway as of August 5, 1992 which evidence need not be regarded as conclusive.

## HISTORY

Amended by Ord. [92-042 §1](#) on 8/5/1991

Amended by Ord. [95-001 §3](#) on 3/29/1995

## **18.88.070 Fence Standards**

The following fencing provisions shall apply as a condition of approval for any new fences constructed as a part of development of a property in conjunction with a conditional use permit or site plan review.

1. New fences in the Wildlife Area Combining Zone shall be designed to permit wildlife passage. The following standards and guidelines shall apply unless an alternative fence design which provides equivalent wildlife passage is approved by the County after consultation with the Oregon Department of Fish and Wildlife:
  0. The distance between the ground and the bottom strand or board of the fence shall be at least 15 inches.
  1. The height of the fence shall not exceed 48 inches above ground level.
  2. Smooth wire and wooden fences that allow passage of wildlife are preferred. Woven wire fences are discouraged.
2. Exemptions:
  0. Fences encompassing less than 10,000 square feet which surround or are adjacent to residences or structures are exempt from the above fencing standards.
  1. Corrals used for working livestock.

## **18.128.200 Cluster Development (Single-Family Residential Uses Only)**

1. Such uses may be authorized as a conditional use only after consideration of the following factors:
  0. Need for residential uses in the immediate area of the proposed development.
  1. Environmental, social and economic impacts likely to result from the development, including impacts on public facilities such as schools and roads.
  2. Effect of the development on the rural character of the area.

3. Effect of the development on agricultural, forestry, wildlife or other natural resource uses in the area.
2. The conditional use shall not be granted unless the following findings are made:
  0. All development and alterations of the natural landscape, will be limited to 35 percent of the land and at least 65 percent shall be kept in open space. In cases where the natural landscape has been altered or destroyed by a prior land use, such as surface mining, dam construction or timber removal, the County may allow reclamation and enhancement of the open space area if enhancement creates or improves wetlands, creates or improves wildlife habitat, restores native vegetation or provides for agricultural or forestry use of the property after reclamation.
  1. The area not dedicated to open space or common use may be platted as residential dwelling lots or parcels that are a minimum of two acres and a maximum of three acres in size. Their use shall be restricted to single-family use. Single-family use may include accessory uses and County authorized home occupations. Uses permitted in the open space area may include the management of natural resources, trail systems or other outdoor uses that are consistent with the character of the natural landscape.
  2. In the Wildlife Area Combining Zone, in addition to compliance with the WA zone development restrictions, uses and activities must be consistent with the required Wildlife Management Plan. The Plan shall be approved if it proposes all of the following in the required open space area:
    0. Preserves, protects and enhances wildlife habitat for WA zone protected species as specified in the Deschutes County Comprehensive Plan; and
    1. Prohibits golf courses, tennis courts, swimming pools, marinas, ski runs or other developed recreational uses of similar intensity. Low intensity recreational uses such as properly located bicycle, equestrian and pedestrian trails, wildlife viewing areas and fitness courses may be permitted; and
    2. Provides a supplemental, private open space area on home lots by imposing special yard setback of 100 feet on yards adjacent to required open space areas. In this yard, no structures other than fences consistent with DCC 18.88.070 may be constructed. The size of the yard may be reduced during development review if the County finds that, through the review of the wildlife management plan, natural landscape protection or wildlife values will achieve equal or greater protection through the approval of a reduced setback. In granting an adjustment, the County may require that a specific building envelope be shown on the final plat or may impose other conditions that assure the natural resource values relied upon to justify the exception to the special yard requirements will be protected.
    3. Off-road motor vehicle use shall be prohibited in the open space area.



4. Adequate corridors on the cluster property to allow for wildlife passage through the development.
3. All lots within the development shall be contiguous to one another except for occasional corridors to allow for human passage, wildlife travel, natural features such as a stream or bluff or development of property divided by a public road which shall not be wider than the average lot width, unless the Planning Director or Hearings Body finds that special circumstances warrant a wider corridor.
4. All applicable subdivision or partition requirements contained in DCC Title 17, the Subdivision/Partition Ordinance, shall be met.
5. The total number of units shall be established by reference to the lot size standards of the applicable zoning district and combining zones.
6. The open space of the proposed development shall be platted as a separate parcel or in common ownership of some or all of the clustered lots or parcels. For any open space or common area provided as a part of the cluster development, the owner shall submit proof of deed restrictions recorded in the County records. The deed restrictions shall preclude all future rights to construct a residential dwelling on the lot, parcel or tract designated as open space or common area for as long as the lot, parcel or tract remains outside an urban growth boundary. The deed shall also assure that the use of the open space shall be continued in the use allowed by the approved cluster development plan, unless the whole development is brought inside an urban growth boundary. If open space is to be owned by a homeowner's association or if private roads are approved, a homeowner's association must be formed to manage the open space and/or road areas. The bylaws of the association must be recorded prior to or concurrent with the filing of the final plat. If the open space is located within the Wildlife Area Combining Zone, the management plan for the open space must be recorded with the deed restrictions or bylaws of the homeowner's association.
7. Notwithstanding any provision to the contrary in other parts of the County's land use regulations, roads within a cluster development may be private roads and lots or parcels may be created that front on private roads only. These roads must meet the private road standards of DCC Title 17, and are not subject to public road standards under DCC Title 17. An agreement acceptable to the Road Department and County Legal Counsel shall be required for the maintenance of private roads. Public roads may be required where street continuation standards of DCC Title 17 call for street connections and the County finds that the benefits of street extension are significant and needed in the future, given the established pattern of street development on adjoining properties and transportation distribution needs. The area dedicated for public road rights of way within or adjacent to a planned or cluster development or required by the County during cluster development review shall be subtracted from the gross acreage of the cluster development prior to calculating compliance with open space requirements.

8. All service connections shall be the minimum length necessary and underground where feasible.
  9. The number of new dwelling units to be clustered does not exceed 10.
  10. The number of new lots or parcels to be created does not exceed 10.
  11. The development is not to be served by a new community sewer system or by any new extension of a sewer system from within an urban growth boundary or from within an unincorporated community.
  12. The development will not force a significant change in accepted farm or forest practices on nearby lands devoted to farm or forest use, and will not significantly increase the cost of accepted farm or forest practices there.
  13. All dwellings in a cluster development must be setback a minimum of 100 feet from the boundary line of an adjacent lot zoned Exclusive Farm Use that is receiving special assessment for farm use.
3. All applications shall be accompanied by a plan with the following information:
    0. A plat map meeting all the subdivision requirements of DCC Title 17, the Subdivision/Partition Ordinance.
      1. A draft of the deed restrictions required by DCC 18.128.200(B)(7).
      2. A written document establishing an acceptable homeowners association assuring the maintenance of common property, if any, in the development. The document shall include a method for the resolution of disputes by the association membership, and shall be included as part of the bylaws.
    3. In the WA Combining Zone, the applicant shall submit an evaluation of the property with a Wildlife Management Plan for the open space area, prepared by a wildlife biologist that includes the following:
      0. A description of the condition of the property and the current ability of the property to support use of the open space area by wildlife protected by the applicable WA zone during the periods specified in the comprehensive plan; and
        1. A description of the protected species and periods of protection identified by the comprehensive plan and the current use of the open space area; and
        2. A management plan that contains prescriptions that will achieve compliance with the wildlife protection guidelines in the comprehensive plan. In overlay zones that are keyed to seasons or particular times of the year, restrictions or protections may vary based on the time of year. The management plan may also propose protections or enhancements of benefit to other types of wildlife that may be considered in weighing use impacts versus plan benefits.
    4. Photographs and a narrative description of the natural landscape features of the open space areas of the subject property. If the features are to be removed or developed, the applicant shall explain why removal is appropriate.
    5. A description of the forestry or agricultural uses proposed, if any.
  4. Dimensional Standards:

0. Setbacks and height limitations shall be as prescribed in the zone in which the development is proposed unless adequate justification for variation is provided the Planning Director or Hearings Body.
1. Minimum area for a cluster development shall be determined by the zone in which it is proposed.
5. Conditions for phased development shall be specified and performance bonds shall be required by the Planning Director or Hearings Body to assure completion of the project as stipulated, if required improvements are not completed prior to platting.
6. Developments with private roads shall provide bicycle and pedestrian facilities that comply with the private road requirements of Title 17.
7. Bicycle and pedestrian connections shall be provided at the ends of cul-de-sacs, at mid-block, between subdivision plats, etc., in the following situations. Connections shall have a 20-foot right of way, with at least a 10-foot wide useable surface, shall be as straight as possible, and shall not be more than 400 feet long.
  0. Where the addition of a connection would reduce the walking or cycling distance to an existing or planned transit stop, school, shopping center, or neighborhood park by 400 feet and by at least 50 percent over other available routes.
  1. For schools or commercial uses where the addition of a connection would reduce the walking or cycling distance to an existing or planned transit stop, school, shopping center, or neighborhood park by 200 feet or by at least 50 percent over other available routes.
  2. For cul-de-sacs or dead end streets where a street connection is determined by the Hearings Officer or Planning Director to be unfeasible or inappropriate provided that a bicycle or pedestrian connection is not required where the logical extension of the road that terminates in a cul-de-sac or dead end street to the nearest boundary of the development would not create a direct connection to an area street, sidewalk or bikeway.

The County may approve a cluster development without bicycle or pedestrian connections if connections interfere with wildlife passage through the subdivision, harm wildlife habitat or alter landscape approved for protection in its natural state.

8. A Conditions of Approval Agreement for the cluster development shall be recorded prior to or concurrent with the final plat for the development.

[CHAPTER 18.90 SENSITIVE BIRD AND MAMMAL HABITAT COMBINING ZONE:](#)  
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## 18.90.010 Purpose

The purpose of the Sensitive Bird and Mammal Combining Zone is to insure that sensitive habitat areas identified in the County's Goal 5 sensitive bird and mammal inventory as critical for the survival of the northern bald eagle, great blue heron, golden eagle, prairie falcon, osprey, great grey owl, and the Townsend's big-eared bat are protected from the effects of conflicting uses or activities which are not subject to the Forest Practices Act. This objective shall be achieved by implementation of the decision resulting from the economic, social, environmental and energy analysis (ESEE) for each inventoried sensitive habitat area.

## HISTORY

*Adopted by Ord. [92-042 §2](#) on 8/5/1991*

*Amended by Ord. [94-005 §1](#) on 6/15/1994*

*Amended by Ord. [2015-011 §2](#) on 12/11/2015*

## 18.90.020 Definition Of Sensitive Habitat Area

1. The sensitive habitat area is the area identified in the Deschutes County Comprehensive Plan Resource Element inventory and site specific ESEE for each sensitive bird or mammal site. The sensitive habitat area to be protected by the provisions of DCC 18.90 is defined as the area:
  0. Within a radius of 1,320 feet of a golden eagle, bald eagle, prairie falcon nest, or a Townsend's big-eared bat hibernating or nursery site.
    1. Within a radius of 300 feet of a great blue heron rookery or osprey nest.
    2. Within a radius of 900 feet of a great grey owl nest site.
2. Inventoried sensitive bird or mammal sites located on federal land are not subject to the provisions of DCC 18.90 unless the sensitive habitat area identified in DCC 18.90.020(A)(1) extends onto nonfederal land.

## HISTORY

*Adopted by Ord. [92-042 §2](#) on 8/5/1991*

*Amended by Ord. [93-043 §14](#) on 8/25/1993*

*Amended by Ord. [94-005 §1](#) on 6/15/1994*

*Amended by Ord. [2015-011 §1](#) on 12/11/2015*

## 18.90.030 Limitations And Uses Permitted

1. Uses permitted in the underlying zone(s) are permitted or conditionally permitted in the Sensitive Bird and Mammal Combining Zone subject to the additional procedure and requirements of DCC 18.90.040 and the provisions of the ESEE decision. The Sensitive Bird and Mammal Habitat Combining Zone does not regulate or prohibit forest practices subject to ORS 527.610 to 527.770 and the

rules adopted pursuant thereto; or to farm practices as defined by ORS 30.930(2).

2. When there is a conflict between the site specific ESEE analysis and the provisions of DCC Title 18, the site-specific ESEE analysis shall control.

## HISTORY

*Adopted by Ord. [92-042 §2](#) on 8/5/1991*

*Amended by Ord. [94-005 §1](#) on 6/15/1994*

### 18.90.040 Applicability

Review under DCC 18.90 shall be triggered by the following proposals occurring within a sensitive habitat area, as defined in DCC 18.90.020:

1. An application for a building permit for a new structure or addition to an existing structure;
2. Land divisions creating new lots or parcels within the sensitive habitat area;
3. An application for a conditional use permit; or
4. An application for site plan approval.

## HISTORY

*Adopted by Ord. [92-042 §2](#) on 8/5/1991*

*Amended by Ord. [94-005 §1](#) on 6/15/1994*

### 18.90.050 Site Plan Review Requirement

1. For those proposals identified in DCC 18.90.040 to be sited within an inventoried sensitive habitat area, as defined under DCC 18.90.020, a site plan shall be prepared in accordance with the requirements of DCC 18.90.050. The site plan shall be approved prior to issuance of a building permit, land division, conditional use permit or site plan identified in DCC 18.90.040.
2. The site plan application shall provide the following information:
  0. A plot plan showing the location of all development including existing and proposed roads, driveways and structures.
    1. Description of operating characteristics of the proposed use including times when activity within the sensitive habitat area would generate noise, dust, vibration, lights, traffic or be visible from the nest, rookery or hibernation site.
    2. Timing of construction activities including grading or filling land, hauling materials and building.
    3. Description of existing vegetation and vegetation to be removed for the proposed development.
3. The County shall submit a copy of the site plan to the Oregon Department of Fish and Wildlife for comment. ODFW shall have 20 days from the date the site plan is mailed to submit written comments to the County.
4. Based upon the record, and evaluation of the proposal based on the criteria in DCC 18.90.060, and conformance with the ESEE analysis for the site contained in the Resource Element of the Comprehensive Plan, the County shall approve

or reject the site plan. In lieu of rejection of the site plan, the County may allow the applicant to revise the site plan if the applicant has not met the standards for approval. Applicant shall waive the 150-day time limit if it chooses to revise the site plan.

5. Approval of a site plan under DCC 18.90.050 shall be conditioned upon applicant's implementation of the plan.

## HISTORY

*Adopted by Ord. [92-042 §2](#) on 8/5/1991*

*Amended by Ord. [93-043 §14B](#) on 8/25/1993*

*Amended by Ord. [94-005 §1](#) on 6/15/1994*

*Amended by Ord. [95-075 §1](#) on 11/29/1995*

*Amended by Ord. [2015-011 §2](#) on 12/11/2015*

*Amended by Ord. [2020-007 §14](#) on 10/27/2020*

18.90.060 Site Plan Review Criteria

Approval of site plan shall be based on the following criteria:

1. The site plan shall consider the biology of the identified sensitive species, nesting trees, critical nesting periods, roosting sites and buffer areas. Based on the biology of the species and the characteristics of the site, the site plan shall provide protection that will prevent destruction of the subject nesting site, hibernation site or rookery and will, to a reasonable certainty, avoid causing the site to be abandoned.
2. Development activities, including grading and fill, mining, construction, or activities generating noise or dust within the sensitive habitat area shall be prohibited during the nesting, strutting or hibernation season identified in the site specific ESEE analysis and decision for each habitat site. An exception to this standard may be made if the Oregon Department of Fish and Wildlife determines in writing that the nest, or rookery is not active and will not become active during the proposed construction period or if the sensitive birds have fledged. Construction activities within an enclosed structure may be conducted during the nesting, strutting or hibernation season. Construction activities necessary to repair an existing septic system or to replace or repair a structure destroyed or damaged by fire or other natural causes may be conducted during the nesting, strutting or hibernation season.
3. New roads, driveways or public trails shall be located at the greatest distance possible from the nest, rookery or hibernation site unless topographic or vegetation or structural features will provide greater visual and/or noise buffer from the nest, rookery or hibernation site.
4. Existing vegetation or other landscape features which are located on the subject property and which obscure the view of the nest, rookery, or hibernation site from the proposed development, shall be preserved and maintained. A restrictive covenant to preserve and maintain vegetation shall be required when specified in the ESEE for the site.

5. No partitions or subdivisions shall be permitted which would force location of a dwelling or other structure, not otherwise permitted by the site specific ESEE, within the designated sensitive habitat area.
6. All exterior lighting, including security lighting shall be sited and shielded so that the light is directed downward and does not shine on the subject nest, rookery, or hibernation site.
7. The site plan shall conform with the requirements of the ESEE decision for the subject sensitive bird or mammal site contained in the Resource Element of the Deschutes County Comprehensive plan.