



Deschutes County Board of Commissioners  
1300 NW Wall St., Suite 200, Bend, OR 97701-1960  
(541) 388-6570 - Fax (541) 385-3202 - [www.deschutes.org](http://www.deschutes.org)

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## **AGENDA REQUEST & STAFF REPORT**

### **For Board Business Meeting of 3/16/15**

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**DATE:** February 27, 2015

**FROM:** Will Groves                      CDD                      (541) 388-6518

**TITLE OF AGENDA ITEM:**

Deliberation on a modification of conditions application (247-14-000401-MC) to change the wildlife management plan approved for the subject property under County File Nos. CU-00-65 and MA-01-9.

**PUBLIC HEARING ON THIS DATE?** No.

**BACKGROUND AND POLICY IMPLICATIONS:**

On December 18, 2014 staff issued an administrative approval of a modification (247-14-000401-MC) to an existing conditional use decision (CU-00-65/ MA-01-9) that allowed the siting of a farm-related dwelling more than 300 feet from a public or private road in the Wildlife Area Combining Zone (WA). The administrative approval wholly removed the Wildlife Management Plan (WMP) required under the previous decision and replaced it with six conditions of approval designed to protect and enhance deer habitat on the property.

By Order 2014-046, dated December 29, 2014, the Board initiated review of this application under DCC 22.28.050 through a de novo hearing.

On December 30, 2014, Central Oregon Landwatch filed a timely appeal of this application. The notice of appeal identified six objections to the administrative decision. The Board conducted a de novo public hearing on February 2, 2015. The written record closed on February 7, 2015. Staff has developed a decision matrix to help the Board engage with the key decision points in this matter.

**FISCAL IMPLICATIONS:**

None.

**RECOMMENDATION & ACTION REQUESTED:**

Conduct deliberation and give direction to Staff.

**ATTENDANCE:** Will Groves, Laurie Craghead

**DISTRIBUTION OF DOCUMENTS:**

Will Groves, Legal, Parties to 247-14-000401-MC.



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005  
(541)388-6575 FAX (541)385-1764  
<http://www.co.deschutes.or.us/cdd/>

### MEMORANDUM

**DATE:** February 27, 2014  
**TO:** Board of County Commissioners  
**FROM:** Will Groves, Senior Planner  
**RE:** Deliberation on a modification of conditions application (247-14-000401-MC) to change the wildlife management plan approved for the subject property under County File Nos. CU-00-65 and MA-01-9.

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#### Background

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#### Key Issues:

**Is the applicant required to comply with or document past compliance with the 2001 Wildlife Management Plan?**

**Staff:** No, the modified WMP is all that is required to meet DCC 18.88.060 (B)(1). The modified Wildlife Management Plan (WMP) wholly replaces the 2001 WMP.

**Applicant**<sup>1</sup>: The applicants have attempted to follow the existing, ambiguous, WMP. However, the modified WMP would wholly replace the 2001 WMP.

**Appellant**: The applicant did not comply with the prior WMP and the extent of compliance, if any, is undocumented. The new WMP discards several important wildlife habitat protections included in the 2001 WMP.

**Staff Recommendation**: Adopt the staff's findings on this issue.

**Does the modification meet the 22.36.040(B) requirement that there has been a “change of circumstances”?**

**Staff**: A new WMP was cooperatively developed by ODFW and the applicant's biologist. The availability of a new WMP for the property, containing current best habitat mitigation practices and significantly improved clarity of required owner actions represents a change of circumstances. The change in ownership, in itself, is not a change of circumstances.

**Applicant**: The change in ownership of the property, coupled with a need to clarify the poorly written and ambiguous 2001 WMP constitute a change of circumstances.

**Appellant**: The poorly written 2001 WMP and new ownership of the property of the property do not constitute a change of circumstances.

**Staff Recommendation**: Modify staff's findings on this issue to identify the availability of a new WMP for the property, containing current best habitat mitigation practices and significantly improved clarity of required owner actions represents a change of circumstances. The change in ownership, in itself, is not a change of circumstances.

**Is an additional condition required to minimize livestock/wildlife forage competition?**

**Staff**: Under the current staff decision, livestock could eat all of the new forage provided by the habitat mitigation, completely offsetting any wildlife advantage of that mitigation. An additional condition is needed.

**Applicant**: The applicant proposed a condition of approval to address the forage competition.

**Appellant**: Forage competition would offset mitigation measures.

**Staff Recommendation**: Modify staff's findings to revise the final paragraph of the decision to identify forage competition as a relevant concern and impose the following condition: Cattle grazing on the plateau area above the rim rock, including juniper thinning areas, shall be limited to 4 weeks per year and shall only occur between June 1

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<sup>1</sup> “Applicant” and “Appellant” summaries are Staff's effort to summarize the respective party's position. These are generally not direct quotes.

and August 31, to minimize forage competition with deer. Livestock shall be excluded from juniper thinning areas except as specifically allowed in this condition of approval.

#### **Location of juniper thinning area.**

**Staff:** The staff decision required the applicant to provide a map identifying Juniper thinning areas within 30 days of final approval. The staff decision also required the applicant to verify the thinning areas with ODFW prior to thinning.

**Applicant:** The applicant provided a map of completed and future thinning areas on an air photo.

**Appellant:** Concerned mapped thinning areas would not be binding.

**Staff Recommendation:** Recognize applicant's "Google Earth" map presented at the hearing as the map required under condition 4(a) of the staff decision.

#### **Monitoring of the Habitat Mitigation:**

**Staff:** The staff decision requires the applicant to schedule a monitoring visit in year 1 and 3.

**Applicant:** Supports staff approach.

**Appellant:** Concerned that the conditions of 2001 WMP were not completed and that the modified WMP conditions will likely not be followed. Also concerned that that this decision creates an unfunded mandate to monitor the conditions of this decision for both ODFW and the County.

**Staff Recommendation:** Adopt the staff's findings and conditions of approval on this issue.

#### **Ensuring success of the habitat mitigation.**

**Staff:** Staff decision requires the applicant to schedule a monitoring visit in year 1 and 3. Reseeding can be required in year 3 if the initial seeding does not take.

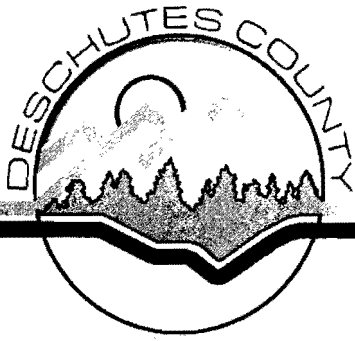
**Applicant:** Supports staff approach.

**Appellant:** Concerned that two seedings may be insufficient to ensure establishment of the mitigation vegetation.

**Staff Recommendation:** Adopt the staff's findings and conditions of approval on this issue.

#### Attachments

1. Administrative approval of 274-14-000401-MC
2. Arguments submitted by parties during the post hearing process.
3. Decision matrix.



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