



Deschutes County Board of Commissioners  
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## **AGENDA REQUEST & STAFF REPORT**

**For Board Business Meeting of April 22, 2015**

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**DATE:** April 15, 2015

**FROM:** Will Groves                      CDD                      541-617-4739

**TITLE OF AGENDA ITEM:**

Board of County Commissioners (Board) signature and approval of Board decision (Doc No. 2015-250) to approve modification of conditions 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 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 Approval. The Board conducted a de novo public hearing on February 2, 2015. The written record closed on February 7, 2015. Board deliberations occurred on March 16, 2015. The Board directed Staff to prepare a written decision taking into account the Board's statements at the deliberations for their decision..

**FISCAL IMPLICATIONS:**

None.

**RECOMMENDATION & ACTION REQUESTED:**

Approve and sign Decision of Board of County Commissioners on land use file numbers 247-14-000401-MC and 247-14-000454-A.

**ATTENDANCE:** Will Groves and Legal Counsel

**DISTRIBUTION OF DOCUMENTS:**

Will Groves, CDD  
Legal Counsel

REVIEWED  

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LEGAL COUNSEL

For Recording Stamp Only

**DECISION OF THE BOARD OF COUNTY COMMISSIONERS  
FOR DESCHUTES COUNTY**

**FILE NUMBER:** 247-14-000401-MC and 247-14-000454-A

**APPLICANTS/OWNERS:** John and Stephanie Shepherd  
71120 Holmes Road  
Sisters, OR 97759

**APPLICANT'S  
ATTORNEY:** Dave Hunnicut  
Oregonians in Action  
P.O. Box 230637  
Tigard, OR 97281

**REQUEST:** Modification of conditions to change the wildlife management plan approved for the subject property under County File Nos. CU-00-65 and MA-01-9.

**LOCATION:** The subject property is located at 71120 Holmes Road, Sisters, and is further identified as Tax Lot 103 on Deschutes County Assessor's Map 14-11.

**STAFF CONTACT:** Will Groves, Senior Planner

**ADMINISTRATIVE  
APPROVAL DATE:** December 18, 2014

**HEARING DATE:** February 2, 2015

**I. SUMMARY OF DECISION:**

In this decision, the Board of County Commissioners ("Board") was asked to decide on an appeal of County Staff's Findings and Decision ("Administrative Approval") that approved a

modification of conditions to change the wildlife management plan approved for the subject property under County File Nos. CU-00-65 and MA-01-9.

This case comes to the Board on the appeal by Central Oregon Landwatch of the Administrative Approval and a Board initiated review of this application under DCC 22.28.050. The appeal was heard *de novo*.

In this decision, the Board upholds and adopts the Administrative Approval except as modified herein.

On the issues presented by this appeal, the Board decides as follows:

- The modified Wildlife Management Plan (WMP) wholly replaces the 2001 WMP and is sufficient to meet the requirements of DCC 18.88.060 (B)(1). The applicant is not required to document past compliance with the 2001 WMP or comply with its provisions as part of this modification.
- This modification meets the DCC 22.36.040(B) requirement that there has been a “change of circumstances” because 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.
- Under the Administrative Approval, livestock could eat all of the new forage provided for wildlife by the habitat mitigation. The Board modifies staff’s findings under DCC 18.88.060 (B)(1) to revise the final paragraph of the Administrative Approval to identify forage competition as a relevant concern and imposes 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 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.
- The Administrative Approval required the applicant to provide a map identifying Juniper thinning areas within 30 days of final approval. The Board recognizes applicant’s “Google Earth” map presented at the hearing as the map required under condition 4(a) of the staff decision.
- The Board adopts the findings and conditions of approval from the Administrative Approval regarding monitoring and enforcement of the habitat mitigation proposed under the modified WMP.

## **II. APPLICABLE CRITERIA:**

The Board adopts Staff's findings in Section I of the Administrative Approval and incorporates them herein as its own findings, except as modified below.

**Chapter 22.28. LAND USE ACTION DECISIONS**

22.28.050. Review by Board.

**Chapter 22.32. APPEALS**

22.32.010. Who May Appeal.

22.32.015. Filing Appeals.

22.32.020. Notice of Appeal.

22.32.027. Scope of Review.

**III. BASIC FINDINGS:**

The Board adopts the findings that were made by Staff, in Sections II (A) through (I) and adds the following information.

**F. PUBLIC NOTICE AND COMMENTS:** The Planning Division mailed individual written notice of the February 2, 2015 Board hearing to parties to the application. In addition, notice of the public hearing was published in the "Bend Bulletin" newspaper.

**J. PROCEDURAL HISTORY:** 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 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 Approval. The Board conducted a de novo public hearing on February 2, 2015. The written record closed on February 7, 2015. Board deliberations occurred on March 16, 2015. The Board directed Staff to prepare a written decision taking into account the Board's statements at the deliberations for their decision.

**IV. CONCLUSIONARY FINDINGS:**

**Adoption of the Administrative Approval Conclusions of Law**

**FINDINGS:** The Board adopts and incorporates herein by reference the conclusions of law made in the Administrative Approval dated December 18, 2014, as supplemented herein.

**TITLE 22 OF THE DESCHUTES COUNTY CODE, THE DEVELOPMENT PROCEDURES ORDINANCE**

**Chapter 22.28. LAND USE ACTION DECISIONS**

Section 22.28.050. Review by Board.

- A. *Review of an administrative action or a Hearings Body's decision may be initiated by the Board of County Commissioners. The Board shall consider calling up for review any administrative decision that a majority of the Planning Commission recommends be reviewed.*
- B. *Review by the Board shall be initiated by board order within 12 days of the date of the mailing of the final written decision of the Planning Director or lower Hearings Body.*

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

**Chapter 22.32. APPEALS**

Section 22.32.010. Who may appeal.

- A. *The following may file an appeal:*
  - I. *A party;*
  - ...

**FINDINGS:** On December 30, 2014, Central Oregon Landwatch filed a timely appeal of this application. Central Oregon Landwatch is a party to this application.

Section 22.32.015. Filing appeals.

- A. *To file an appeal, an appellant must file a completed notice of appeal on a form prescribed by the Planning Division and an appeal fee.*
- B. *Unless a request for reconsideration has been filed, the notice of appeal and appeal fee must be received at the offices of the Deschutes County Community Development Department no later than 5:00 PM on the twelfth day following mailing of the decision. If a decision has been modified on reconsideration, an appeal must be filed no later than 5:00 PM on the twelfth day following mailing of the decision as modified. Notices of Appeals may not be received by facsimile machine.*
- ...

**FINDINGS:** On December 30, 2014, Central Oregon Landwatch filed a timely appeal of this application on the form prescribed by the Planning Division and included the appeal fee.

Section 22.32.020. Notice of Appeal.

*Every notice of appeal shall include:*

- A. *A statement raising any issue relied upon for appeal with sufficient specificity to afford the Hearings Body an adequate opportunity to respond to and resolve each issue in dispute.*
- B. *If the Board of County Commissioners is the Hearings Body, a request for review by the Board stating the reasons why the Board should review the lower Hearings Body's decision.*
- C. *If the Board of County Commissioners is the Hearings Body and de novo review is desired, a request for de novo review by the Board stating the reasons why the Board should provide de novo review as provided in DCC 22.32.030.*

**FINDINGS:** On December 30, 2014, Central Oregon Landwatch filed a timely appeal of this application including the information required by these criteria. Staff notes that the fee for this appeal was refunded.

Section 22.32.027. Scope of Review.

*Every notice of appeal shall include:*

- B. *Before the Board.*
  1. *Review before the Board, if accepted, shall be on the record except as otherwise provided for in DCC 22.32.027.*
  2. *The Board may grant an appellant's request for a de novo review at its discretion after consideration of the following factors:*
    - a. *Whether hearing the application de novo could cause the 150-day time limit to be exceeded; and*
    - b. *If the magnetic tape of the hearing below, or a portion thereof, is unavailable due to a malfunctioning of the recording device during that hearing, whether review on the record would be hampered by the absence of a transcript of all or a portion of the hearing below; or*
    - c. *Whether the substantial rights of the parties would be significantly prejudiced without de novo review and it does not appear that the request is necessitated by failure of the appellant to present evidence that was available at the time of the previous review; or*
    - d. *Whether in its sole judgment a de novo hearing is necessary to fully and properly evaluate a significant policy issue relevant to the proposed land use action.*  
*For the purposes of DCC 22.32.027, if an applicant is an appellant, factor DCC 22.32.027(B)(2)(a) shall not weigh against the appellant's request if the applicant has*

*submitted with its notice of appeal written consent on a form approved by the County to restart the 150-day time clock as of the date of the acceptance of applicant's appeal.*

3. *Notwithstanding DCC 22.32.027(B)(2), the Board may decide on its own to hear a timely filed appeal de novo.*
4. *The Board may, at its discretion, determine that it will limit the issues on appeal to those listed in an appellant's notice of appeal or to one or more specific issues from among those listed on an applicant's notice of appeal.*

**FINDINGS:** By Order 2014-046, dated December 29, 2014, the Board initiated a timely review of this application under DCC 22.28.050 through a de novo hearing. This complies with DCC 22.32.027(3).

## **Chapter 22.36            LIMITATIONS ON APPROVALS**

### Section 22.36.040. Modification of Approval

...

- B.** *Unless otherwise specified in a particular zoning ordinance provision, the grounds for filing a modification shall be that a change of circumstances since the issuance of the approval makes it desirable to make changes to the proposal, as approved. A modification shall not be filed as a substitute for an appeal or to apply for a substantially new proposal or one that would have significant additional impacts on surrounding properties.*

**FINDINGS:** The Board adds to the Administrative Approval the following findings.

This modification meets the 22.36.040(B) requirement that there has been a “change of circumstances” because 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.

## **TITLE 18 OF THE DESCHUTES COUNTY CODE, COUNTY ZONING.**

### **Chapter 18.88            WILDLIFE AREA COMBINING ZONE**

#### Section 18.88.060. Siting Standards.

...

- B.** *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:*

1. *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,*

...

**FINDINGS:** The Board adds to the Administrative Approval the following findings.

The modified Wildlife Management Plan (WMP) wholly replaces the 2001 WMP and is sufficient to meet the requirements of DCC 18.88.060 (B)(1). The applicant is not required to document past compliance with the 2001 WMP or comply with its provisions as part of this modification.

Under the Administrative Approval, livestock could eat all of the new forage provided for wildlife by the habitat mitigation. The Board modifies the final paragraph of the Administrative Approval related to this code section to identify forage competition as a relevant concern and impose a condition of approval limiting cattle grazing on the plateau area above the rim rock, including juniper thinning areas, to 4 weeks per year and only between June 1 and August 31, to minimize forage competition with deer. Livestock shall be excluded from juniper thinning areas except during the specified weeks.

**VII. DECISION:**

Based on the findings of fact and conclusions of law set out above, the Board concludes that the applicant has demonstrated that all applicable approval criteria have been met or can be with the compliance with conditions of approval. As stated above, the Board finds that the applicant has complied with Condition 4(a) in the Administrative Decision and that condition is no longer applicable. With the exception of Condition 4(a), the Board upholds and adopts the Conditions of Approval in the Administrative Approval and adds the following conditions.

9. 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 and August 31 each year to minimize forage competition with deer.
10. Livestock shall be excluded from juniper thinning areas except as specifically allowed in Condition 9.

DATED this \_\_\_\_ day of April, 2015.

MAILED this \_\_\_\_ day of April, 2015.

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

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ANTHONY DEBONE, CHAIR

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ALAN UNGER, VICE CHAIR

ATTEST:

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Recording Secretary

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TAMMY BANEY, COMMISSIONER

THIS DECISION BECOMES FINAL UPON MAILING. PARTIES MAY APPEAL THIS DECISION TO THE LAND USE BOARD OF APPEALS WITHIN 21 DAYS OF THE DATE ON WHICH THIS DECISION IS FINAL.