Deschutes County

Your notice of a proposed change to a comprehensive plan or land use regulation has been received by the Oregon Department of Land Conservation and Development.

Local File #: 247-17-000702-TA/247-17-000703-PA
DLCD File #: 005-17
Proposal Received: 8/23/2017
First Evidentiary Hearing: 9/28/2017
Final Hearing Date: 12/20/2017
Submitted by: mmartin

If you have any questions about this notice, please reply or send an email to plan.amendments@state.or.us.
BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Comprehensive Plan to recognize churches are permitted in the Wildlife Area Combining Zone in order to comply with the Religious Land Use and Institutionalized Persons Act and its equal terms clause and Declaring an Emergency.

ORDINANCE NO. 2017-016

WHEREAS, the Deschutes County Community Development Department (CDD) initiated an amendment (Planning Division File No. 247-17-000703-PA) to the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, to permit churches in the Wildlife Area Combining Zone; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on July 13, 2017, and forwarded to the Deschutes County Board of County Commissioners ("Board"), a unanimous recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on [date], and concluded that the public will benefit from the proposed changes to the Deschutes County Comprehensive Plan; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC 23.01.010, Introduction, is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in strikethrough.

Section 2. AMENDMENT. Deschutes County Comprehensive Plan Chapter 2, Resource Management, is amended to read as described in Exhibit "B," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in strikethrough.

Section 3. AMENDMENT. Deschutes County Comprehensive Plan Chapter 5, Supplementary Sections, is amended to read as described in Exhibit "C," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in strikethrough.

Section 4. FINDINGS. The Board adopts as its findings Exhibit "D", and incorporated by reference herein.

///
Section 5. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

Dated this ______ of __________, 2017

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

TAMMY BANEY, Chair

ANTHONY DeBONE, Vice Chair

ATTEST:

Recording Secretary

PHILIP G. HENDERSON, Commissioner

Date of 1st Reading: _____ day of __________, 2017.

Date of 2nd Reading: _____ day of __________, 2017.

Record of Adoption Vote

<table>
<thead>
<tr>
<th>Commissioner</th>
<th>Yes</th>
<th>No</th>
<th>Abstained</th>
<th>Excused</th>
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<tr>
<td>Tammy Baney</td>
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<tr>
<td>Anthony DeBone</td>
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<tr>
<td>Philip Henderson</td>
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</tbody>
</table>

Effective date: _____ day of __________, 2017.

ATTEST:

Recording Secretary
Chapter 23.01 COMPREHENSIVE PLAN

23.01.010. Introduction.

A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.
B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.
C. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-005, are incorporated by reference herein.
D. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.
E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.
F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.
G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.
H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.
I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.
J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.
K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.
L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.
M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.
N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.
O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.
P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-029, are incorporated by reference herein.
Q. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-018, are incorporated by reference herein.
R. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-010, are incorporated by reference herein.
S. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-001, are incorporated by reference herein.
T. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-022, are incorporated by reference herein.
U. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-005, are incorporated by reference herein.
V. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-027, are incorporated by reference herein.
W. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-029, are incorporated by reference herein.
X. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2017-016, are incorporated by reference herein.


Click here to be directed to the Comprehensive Plan (http://www.deschutes.org/compplan)
Section 2.6 Wildlife

Background

Wildlife diversity is a major attraction of Deschutes County. It was mentioned in many Comprehensive Plan meetings in 2008 and 2009 as important to the community. Healthy wildlife populations are often a sign of a healthy environment for humans as well as other species. The key to protecting wildlife is protecting the habitats each species needs for food, water, shelter and reproduction. Also important is retaining or enhancing connectivity between habitats, in order to protect migration routes and avoid isolated populations.

Wildlife is tied to land use planning because human development impacts habitats in complex ways. Wildlife protections are provided by federal, state and local governments. Oregon land use planning protects wildlife with Statewide Planning Goal 5, Open Spaces, Scenic and Historical Areas and Natural Resources and the associated Oregon Administrative Rule (OAR) 660-023 (this Rule replaced 660-016 in 1996). Statewide Goal 5 includes a list of resources which each local government must inventory, including wildlife habitat.

The process requires local governments to inventory wildlife habitat and determine which items on the inventory are significant. For sites identified as significant, an Economic, Social, Environmental and Energy (ESEE) analysis is required. The analysis leads to one of three choices: preserve the resource, allow proposed uses that conflict with the resource or strike a balance between the resource and the conflicting uses. A program must be provided to protect the resources as determined by the ESEE analysis.

In considering wildlife habitat, counties rely on the expertise of the Oregon Department of Fish and Wildlife (ODFW) and U.S. Fish and Wildlife Service (USFWS). Those agencies provide information for the required wildlife inventory and recommendations on how to protect wildlife habitat on private lands. Note that this section focuses on wildlife, while fish are covered in the Water Resources section of this Plan.

Wildlife Designations

Comprehensive Planning for Wildlife

Plan 2000, the Comprehensive Plan adopted in 1979, included a Fish and Wildlife Chapter with policies aimed at protecting wildlife. That Plan also noted the controversial nature of wildlife protections. To implement the Plan policies, the Wildlife Area Combining Zone was adopted. This overlay zone was intended to protect identified big game habitat through zoning tools such as appropriate lot sizes and setbacks. In 1986 a River Study was completed and adopted into the Resource Element. Goals and policies from that study, including wildlife goals, were added to Plan 2000.

As part of State mandated Periodic Review, the County took another look at wildlife protections to further comply with the requirements of Goal 5 and the then prevailing OAR 660-16. The County worked with the ODFW to obtain the most recent inventory information on fish and wildlife resources in the county and to identify uses conflicting with those resources. This information was used to update the inventories and amend the ESEE analyses.
In addition, ODFW provided information to support zoning ordinance provisions to resolve conflicts between fish and wildlife resource protection and development. The County adopted a Sensitive Bird and Mammal Combining Zone which identified and protected specific bird nests or leks and bat hibernating or nursery sites.

Ordinances for Compliance with Goal 5

During periodic review in 1992, Deschutes County met the requirements of Goal 5 by:

- The adoption of Goals and Policies in Ordinance 92-040 reflecting Goal 5 requirements, including a Sensitive Bird and Mammal Combining Zone to identify and protect specific bird nests or leks and bat hibernating or nursery sites;
- The adoption of Ordinance 92-041 amended the comprehensive plan to inventory each Goal 5 resource, analyze conflicting uses, and analyze the ESEE consequences of protecting or not protecting inventoried fish and wildlife resources;
- The adoption of zoning ordinance provisions in Ordinance 92-042, as applied to inventoried sites by the map adopted by Ordinance 92-046.

In 2015, the Land Conservation and Development Commission (LCDC) adopted rules to Oregon Administrative Rule (OAR) chapter 660, division 23, to establish procedures for considering development proposals on lands identified as Greater Sage-Grouse Area Habitat. Deschutes County met the requirements by:

- Adopting the 2015 Goal 5 Greater Sage Grouse habitat Area Inventory Map into its Comprehensive Plan and amending the Sensitive Bird and Mammal Habitat Inventory to remove 1990 sage grouse lek and range data by Ordinance 2015-010 (Those maps are incorporated by reference herein); and,
- Adopting sage grouse regulations as a Greater Sage Grouse Area Combining Zone by Ordinance 2015-011.

Wildlife Snapshot 2008-2009

Source: County GIS data

- There are 816,649 acres in Deschutes County’s Wildlife Area Combining Zone.
- There are 40 sites protected by the Sensitive Bird and Mammal Habitat Combining Zone.
- 76% of County land is owned and managed by the Federal government through the U.S. Forest Service and Bureau of Land Management.


- Nearly $70 million was spent in Deschutes County on travel generated expenditures on wildlife viewing, fishing and hunting by people from over 50 miles away.
- Over 60% of the $70 million noted above was spent for wildlife viewing, with fishing second with nearly 30% and nearly 10% on hunting.
- Over $8 million in revenue from fishing, hunting and wildlife viewing came from people who live in the County or within 50 miles of the County.
- Over 60% of the $8 million noted above was spent on fishing, over 20% was spent on hunting and under 20% was spent on wildlife viewing.
- All total, over $78 million was spent in Deschutes County on fishing, hunting and wildlife viewing.
Deer Migration Corridor

The Bend/La Pine migration corridor is approximately 56 miles long and 3 to 4 miles wide and parallels the Deschutes and Little Deschutes Rivers. The corridor is used by deer migrating from summer range in the forest along the east slope of the Cascades to the North Paulina deer winter range. Deschutes County adopted a “Deer Migration Priority Area” based on a 1999 ODFW map submitted to the South County Regional Problem Solving Group. This specific sub-area is precluded from destination resorts.

Deer Winter Range

The ODFW identified the Metolius, Tumalo and North Paulina deer winter ranges during Deschutes County’s initial comprehensive plan. The boundaries of these winter ranges are shown on the Big Game Sensitive Area map in the 1978 Comprehensive Plan and have been zoned with the Wildlife Combining Zone since 1979. The winter ranges support a population of approximately 15,000 deer.

In 1992, ODFW recommended deer winter range in the northeast corner of the county, in the Smith Rock State Park area, be included in the Deschutes County inventory and protected with the same measures applied to other deer winter range. This area was officially included and mapped on the Wildlife Combining Map when Ordinance 92-040 was adopted by the Board of County Commissioners.

Elk Habitat

The Land and Resource Management Plan for the Deschutes National Forest identifies 6 key elk habitat areas in Deschutes County. The ODFW also recognizes these areas as critical elk habitat for calving, winter or summer range. The following areas are mapped on the Big Game Habitat Area map and in the Deschutes National Forest Land and Resource Management Plan:

- Tumalo Mountain
- Kiwa
- Ryan
- Crane Prairie
- Fall River
- Clover Meadow

Antelope Habitat

The Bend and Ochoco District offices of the ODFW provided maps of the antelope range and winter range. The available information is adequate to indicate that the resource is significant. The antelope habitat is mapped on Deschutes County’s Big Game Habitat-Wildlife Area Combining Zone Map.

Sensitive Birds

Nest sites for the northern bald eagle, osprey, golden eagle, prairie falcon, great grey owl, and great blue heron rookeries are inventoried in Ordinance No. 92-041. The area required for each nest site varies between species. The minimum area required for protection of nest sites has been identified by the ODFW in their management guidelines for protecting colony nesting birds, osprey, eagles and raptor nests.
Federal and State Wildlife Protections

Federal Protections

The primary federal protection for wildlife is the Endangered Species Act (ESA), which sets the preservation of biodiversity as its highest priority. Under ESA, National Oceanic Atmospheric Administration (NOAA) Fisheries or the U.S. Fish and Wildlife Service (USFWS) list species as threatened or endangered. ESA prohibits both federal actions that jeopardize listed species and private actions that result in the “taking” of listed species. Court rulings have explicitly determined that habitat modification can lead to a “taking,” even if the modification does not affect a specific individual member of the species. ESA authorizes civil and criminal suits be brought against entities that violate its substantive or procedural provisions.

There are two fish species and one bird species listed as federally threatened or endangered in Deschutes County. Fish are discussed under the Water Resources section of this chapter and the bird, the Northern Spotted Owl, has not been found on private lands.

State Protections

It is Oregon’s policy “to prevent the serious depletion of any indigenous species” (ORS 496.012). The Oregon Department of Fish and Wildlife maintains a list of fish and wildlife species determined to be either threatened or endangered according to OAR 635. When a species population is seriously depleted, recovery can be difficult and expensive as well as socially and economically divisive. To provide a positive approach to species conservation, a “sensitive” species classification was created under Oregon’s Sensitive Specie Rule (OAR 635-100-040). Table 2.7.1 lists species in Deschutes County that are listed by either federal or state wildlife agencies under the above mentioned laws.

Besides the listings of endangered or threatened, species can be federally listed as candidate species or species of concern. State listings include threatened, critical and vulnerable. Each status has a definition specifying different actions.
Table 2.6.1 - Special Status of Select Mammals, Birds, Amphibians, and Reptiles in Deschutes County 2009

<table>
<thead>
<tr>
<th>Species</th>
<th>State Status</th>
<th>Federal Status</th>
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</thead>
<tbody>
<tr>
<td>California Wolverine</td>
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<td>Species of Concern</td>
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<tr>
<td>Fisher</td>
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<tr>
<td>Fringed Myotis</td>
<td>Vulnerable</td>
<td>--</td>
</tr>
<tr>
<td>Long-eared Myotis</td>
<td>--</td>
<td>Species of Concern</td>
</tr>
<tr>
<td>Long-legged Myotis</td>
<td>Vulnerable</td>
<td>Species of Concern</td>
</tr>
<tr>
<td>Pallid Bat</td>
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<td>--</td>
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<tr>
<td>Preble’s Shrew</td>
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<tr>
<td>Pygmy Rabbit</td>
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<td>Species of Concern</td>
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<tr>
<td>Silver-haried bat</td>
<td>Vulnerable</td>
<td>Species of Concern</td>
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<tr>
<td>Small-footed Myotis</td>
<td>--</td>
<td>Species of Concern</td>
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<tr>
<td>Spotted bat</td>
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<td>--</td>
</tr>
<tr>
<td>Townsend’s western big-eared bat</td>
<td>Critical</td>
<td>Species of Concern</td>
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<tr>
<td>Yuma Myotis</td>
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<td>Species of Concern</td>
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<tr>
<td>American Peregrine Falcon</td>
<td>Vulnerable</td>
<td>Delisted</td>
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<tr>
<td>Bald Eagle</td>
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<td>Delisted</td>
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<td>Black Tern</td>
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<tr>
<td>Black-backed Woodpecker</td>
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<tr>
<td>Ferruginous Hawk</td>
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<td>Flammulated Owl</td>
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<tr>
<td>Great Gray Owl</td>
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<tr>
<td>Greater Sage Grouse</td>
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<tr>
<td>Lewis’ Woodpecker</td>
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<td>Loggerhead Shrike</td>
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<td>Long-billed Curlew</td>
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<td>Mountain Quail</td>
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<td>Northern Goshawk</td>
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<td>Northern Spotted Owl</td>
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<td>Swainson’s Hawk</td>
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<td>Western Burrowing Owl</td>
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<td>Coastal tailed frog</td>
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<td>Species of Concern</td>
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<td>Northern Sagebrush Lizard</td>
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<td>Species of Concern</td>
</tr>
<tr>
<td>Oregon slender salamander</td>
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<td>Oregon Spotted Frog</td>
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<td>Western Pond Turtle</td>
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<tr>
<td>Western Toad</td>
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* listed only for the Basin and Range Ecoregion

Source: 2009 Interagency Report and ODFW
Oregon Department of Fish and Wildlife

Oregon Conservation Strategy

In 2006 the Oregon Conservation Strategy (OCS) was adopted by Oregon’s Fish and Wildlife Commission for the state of Oregon. Wildlife and habitat issues are often crisis-driven and focused on individual species. The OSC is intended to provide a long-term, big-picture look, using the best available science, on how best to maintain and improve Oregon’s species, habitats and ecosystems.

This document is not intended to be a set of regulations, but rather it presents issues, opportunities and recommended actions that can serve as the basis for regional collaborative actions. The recommendations within the OCS can be used to address species and habitat conservation needs, to expand existing partnerships and develop new ones, and to provide a context for balancing Oregon’s conservation and development priorities. The future of many species will depend on landowners’ and land managers’ willingness to voluntarily take action on their own to improve fish and wildlife habitat.

The OCS works by defining ecoregions and offering an overview of each region that covers a variety of ecological, land use and economic issues. Parts of Deschutes County fall into three of the ecoregions; East Cascade, Blue Mountains and Northern Basin and Range. For Deschutes County this document offers a wealth of knowledge that can be used to inform fish and wildlife habitat policies and protect and enhance ecosystems.

Fish and Wildlife Habitat Mitigation Policy

The ODFW’s Fish and Wildlife Habitat Mitigation Policy provides direction for their staff to review and comment on projects that may impact fish and wildlife habitat. This policy recognizes six distinct categories of wildlife habitat ranging from Category 1 – essential, limited, and irreplaceable habitat, to Category 6 – low value habitat. The policy goal for Category 1 habitat is no loss of habitat quantity or quality through avoidance of impacts by using development action if impacts cannot be avoided. The ODFW recommends avoidance of Category 1 habitats as they are irreplaceable, and thus mitigation is not a viable option. Categories 2-4 are for essential or important, but not irreplaceable habitats. Category 5 habitat is not essential or important, but has high restoration potential.

Interagency Report

In 2009 the USFW, ODFW, U.S. Forest Service and the Bureau of Land Management collaborated to provide a report on Wildlife in Deschutes County, Updated Wildlife Information and Recommendations for the Deschutes County Comprehensive Plan Update (Interagency Report). This report provided updated information to be used in revising the County Goal 5 inventory. This update will be done as part of the Goal 5 review as described in Section 2.4 of this Plan. The report also outlined numerous issues that the agencies believe are important for the County to address. The Interagency Report generated debate over how best to protect wildlife while also protecting the rights of property owners. Key issues from the report are touched on below.

Economic benefits of fish and wildlife: The report notes the ODFW report by Dean Runyan regarding the economic benefits of fishing, hunting and wildlife viewing, including that Deschutes County generated more freshwater fishing revenue than any other county in Oregon.
Oregon Conservation Strategy: The report discusses the Oregon Conservation Strategy described above and recommends that the County use it as a guide and reference for the maintenance and enhancement of wildlife resources.

Threatened and Endangered Species and Species of Concern: The report recommends developing and adopting measures to protect federal and state listed threatened and endangered species to limit conflicting use.

Riparian and wetland areas for wildlife and fish: The report recommends completing and adopting a Local Wetland Inventory. The current National Wetland Inventory was done at a scale so that wetlands under 5 acres are not identified. Yet, those wetlands provide significant habitat. Deschutes County adopted a Local Wetland Inventory for South County in 2011.

Oregon Spotted Frog: The report recommends adding an Oregon Spotted Frog habitat area to the wildlife area combining zone and provides some specific ideas for protecting those areas. The Oregon Spotted Frog can be found in the floodplains and wetlands along the Deschutes River and Little Deschutes River, south of Bend. Riverine oxbows are particularly key habitat. This frog is listed as a Federal Candidate and State Critical Species.

Shrub-Steppe Habitat: The report recommends the County consider impacts to wildlife and habitat when development will degrade shrub-steppe habitat. Shrub-steppe habitat provides needed resources for numerous birds and mammals, including 12 Oregon listed sensitive species, and one threatened species. Large blocks of un-fragmented habitat with low human disturbance are needed to support shrub-steppe wildlife. If avoidance of these areas is not possible, providing for “no net loss” and a “net benefit” (restoration) of shrub-steppe habitat should be a vital component of any conservation plan.

Greater Sage Grouse: The report provides recommendations for limiting conflicting uses near sage grouse leks and habitat. The population management objective for sage-grouse in this region (Prineville District), which includes portions of Deschutes and Crook counties, is to restore sage grouse numbers and distribution near the 1980 spring breeding population level, approximately 3,000 birds. Many aspects of human development have impacted sage grouse populations and can be considered conflicting uses. Conservation efforts focused on maintaining large expanses of sagebrush habitat, enhancing the quality of existing habitat, and increasing connections between suitable habitat patches would be most beneficial to maintaining healthy sage-grouse populations. Breeding and nesting habitat is particularly important because it is essential, limited and irreplaceable.

Critical Bird and Mammal Sites: The report does not recommend additional or modification of existing protections for site specific sensitive bird and mammal sites, except for additional protections for sage grouse. The report does provide a new inventory and site specific recommendations that will be used to update the list of Goal 5 wildlife resources.

Game Species: The report does not recommend changes to the existing big game winter range or migration corridor maps. It does recommend that the County revise the uses allowed in those areas to prohibit the following uses that generate activity, noise and habitat alteration:
- Guest ranch
- Outdoor commercial events (i.e. Wedding Venues, Farmers Market)
- OHV course
- Paintball course
In 2017, stemming from a Land Use Board of Appeals decision, Deschutes County amended its Wildlife Area Combining Zone, in coordination with the Oregon Department of Fish and Wildlife, to allow churches in deer winter range, elk habitat and antelope range. The reason for the amendment stemmed from the Religious Land Use and Institutionalized Persons Act of 2000 and its equal terms clause, which protects individuals, houses of worship, and other religious institutions from discrimination in zoning laws. Deschutes County adopted time, place, and manner restrictions so religious assembly or institution is on equal terms with nonreligious assembly or institution. The purpose was to be consistent with land use regulations applying to agri-tourism and other commercial events and activities and clarify ambiguous terms in County Code. Five years earlier, Deschutes County adopted rules permitting agri-tourism and commercial events and activities in the Exclusive Farm Use zone with a Wildlife Area Combining Zone, subject to time, place, and manner regulations.

The 2017 amendments mitigate for impacts associated with churches and other similar uses like agri-tourism and other commercial events, which can generate high levels of public activity, noise and habitat alteration. Outdoor events and activities are prohibited during the time of year when deer, elk, and antelope rely on their habitat for calving or winter or summer range.

**Sensitive Species:** Table 2.7.2 shows species considered sensitive to human disturbance. Mule deer are the only species in decline.

**Table 2.7.2 - Big Game Population Estimates, Deschutes County (2009)**

<table>
<thead>
<tr>
<th>Species</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mule Deer</td>
<td>9,337*</td>
</tr>
<tr>
<td>Elk</td>
<td>1,500</td>
</tr>
<tr>
<td>Pronghorn</td>
<td>1,000</td>
</tr>
<tr>
<td>Cougar</td>
<td>~150</td>
</tr>
<tr>
<td>Black Bear</td>
<td>~150</td>
</tr>
<tr>
<td>Silver Grey Squirrel</td>
<td>~800</td>
</tr>
</tbody>
</table>

* The management objective for the Paulina and Upper Deschutes Wildlife Management Units, primarily in Deschutes County, is an April adult population of 18,700 mule deer.

**Source:** Interagency Report

**Fish and Wildlife Habitat Mitigation Policy:** The Interagency Report includes one recommendation that is only from the ODFW. They recommend that the County require impact avoidance for development that will impact Category 1 habitat and require a wildlife mitigation plan for development that will impact habitat Categories 2-5, to limit conflicting uses.

The Interagency Report recommendations will be considered more closely when the Goal 5 review is undertaken.
Future of Wildlife and Habitat in Deschutes County

Coordination

Much of the wildlife habitat in Deschutes County is located on public lands. Federal lands make up 76% of County lands with another 3% State or County owned. Federal lands are not subject to County regulation but as noted in the Forest section of this Plan, they are important economic generators that also contribute to the community’s quality of life, providing ample opportunities for wildlife viewing, fishing and hunting. It should be noted that not all federal lands are managed for wildlife habitat.

Regarding public lands the County’s role is to coordinate with the land management agencies to ensure development approved by the County does not impact wildlife.

Another area for coordination is with the Trust for Public Lands (TPL). In 2009 this non-profit group initiated a Greenprint effort that will identify specific areas needing protection, including wildlife habitat. A survey done by this organization identified protecting wildlife habitat as important to County residents.

Rural Development

The loss of wildlife species and habitat may lead to declining recreational opportunities, tourist dollars and quality of life. Yet, many species are sensitive to human development, with some species benefiting and some harmed by land disturbance. New structures or infrastructure can fragment habitats. Barriers such as roads, dams or housing can interfere with migration routes and connectivity leading to isolated and unhealthy populations. Development can also increase non-native and invasive species. Most Deschutes County residents consider the local wildlife as one of the benefits of living in this region. With careful planning, many of the impacts to wildlife habitat can be mitigated.
Section 2.6 Wildlife Policies

Goals and Policies

Goal 1 Maintain and enhance a diversity of wildlife and habitats.

Policy 2.6.1 Goal 5 wildlife inventories, ESEEs and programs are retained and not repealed.

Policy 2.6.2 Promote stewardship of wildlife habitats and corridors, particularly those with significant biological, ecological, aesthetic and recreational value.

Policy 2.6.3 Ensure Goal 5 wildlife inventories and habitat protection programs are up-to-date through public processes and expert sources, such as the 2009 Interagency Report.

Policy 2.6.4 Support incentives for restoring and/or preserving significant wildlife habitat by traditional means such as zoning or innovative means, including land swaps, conservation easements, transfer of development rights, tax incentives or purchase by public or non-profit agencies.

Policy 2.6.5 Assist in providing information and education on wildlife and habitat protection.

Policy 2.6.6 Review the Oregon Conservation Strategy when amending the Wildlife section of this Plan.

Policy 2.6.7 Use a combination of incentives, regulations and education to promote stewardship of wildlife habitat and address the impacts of development.

Policy 2.6.8 Balance protection of wildlife with wildland fire mitigation on private lands in the designated Wildland Urban Interface.

Goal 2 Promote the economic and recreational benefits of wildlife and habitat.

Policy 2.6.9 Encourage wildlife related tourism.

Policy 2.6.10 Coordinate with stakeholders to ensure access to significant wildlife and riparian habitat through public or non-profit ownership.

Goal 3 Support retaining populations of Federal and State protected endangered species.

Policy 2.6.11 Develop local approaches, in coordination with Federal and State agencies, for protecting Federal or State Threatened or Endangered Species or Species of Concern.

Policy 2.6.12 Address potential conflicts between large-scale development and sage grouse habitat using Ordinances Nos. 2010-010 and 2010-011, which are consistent with OAR 660-023-0115.
## Section 5.12 Legislative History

### Background
This section contains the legislative history of this Comprehensive Plan.

### Table 5.11.1 Comprehensive Plan Ordinance History

<table>
<thead>
<tr>
<th>Ordinance</th>
<th>Date Adopted/ Effective</th>
<th>Chapter/Section</th>
<th>Amendment</th>
</tr>
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<tbody>
<tr>
<td>2011-027</td>
<td>10-31-11/11-9-11</td>
<td>2.5, 2.6, 3.4, 3.10, 3.5, 4.6, 5.3, 5.8, 5.11, 23.40A, 23.40B, 23.40.065, 23.01.010</td>
<td>Housekeeping amendments to ensure a smooth transition to the updated Plan</td>
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<td>2012-005</td>
<td>8-20-12/11-19-12</td>
<td>23.60, 23.64 (repealed), 3.7 (revised), Appendix C (added)</td>
<td>Updated Transportation System Plan</td>
</tr>
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<td>2012-012</td>
<td>8-20-12/8-20-12</td>
<td>4.1, 4.2</td>
<td>La Pine Urban Growth Boundary</td>
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<tr>
<td>2012-016</td>
<td>12-3-12/3-4-13</td>
<td>3.9</td>
<td>Housekeeping amendments to Destination Resort Chapter</td>
</tr>
<tr>
<td>2013-002</td>
<td>1-7-13/1-7-13</td>
<td>4.2</td>
<td>Central Oregon Regional Large-lot Employment Land Need Analysis</td>
</tr>
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<td>2013-009</td>
<td>2-6-13/5-8-13</td>
<td>1.3</td>
<td>Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area</td>
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<tr>
<td>2013-012</td>
<td>5-8-13/8-6-13</td>
<td>23.01.010</td>
<td>Comprehensive Plan Map Amendment, including certain property within City of Bend Urban Growth Boundary</td>
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<tr>
<td>2013-007</td>
<td>5-29-13/8-27-13</td>
<td>3.10, 3.11</td>
<td>Newberry Country: A Plan for Southern Deschutes County</td>
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<tr>
<td>Ordinance</td>
<td>Date Range</td>
<td>Code(s)</td>
<td>Description</td>
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<td>2013-016</td>
<td>10-21-13/10-21-13</td>
<td>23.01.010</td>
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<tr>
<td>2014-012</td>
<td>4-2-14/7-1-14</td>
<td>3.10, 3.11</td>
<td>Housekeeping amendments to Title 23.</td>
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<td>8-27-14/11-25-14</td>
<td>23.01.010, 5.10</td>
<td>Comprehensive Plan Map Amendment, changing designation of certain property from Sunriver Urban Unincorporated Community Forest to Sunriver Urban Unincorporated Community Utility</td>
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<td>23.01.010, 5.10</td>
<td>Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Industrial</td>
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<td>2015-021</td>
<td>11-9-15/2-22-16</td>
<td>23.01.010</td>
<td>Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Surface Mining.</td>
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<td>11-23-15/11-30-15</td>
<td>23.01.010</td>
<td>Comprehensive Plan Map Amendment, changing designation of certain property from Tumalo Residential 5-Acre Minimum to Tumalo Industrial</td>
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<td>2015-018</td>
<td>12-9-15/3-27-16</td>
<td>23.01.010, 2.2, 4.3</td>
<td>Housekeeping Amendments to Title 23.</td>
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<tr>
<td>Code</td>
<td>Dates</td>
<td>Section Numbers</td>
<td>Description</td>
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<td>2015-010</td>
<td>12-2-15/12-2-15</td>
<td>2.6</td>
<td>Comprehensive Plan Text and Map Amendment recognizing Greater Sage-Grouse Habitat Inventories</td>
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<td>2016-001</td>
<td>12-21-15/04-5-16</td>
<td>23.01.010; 5.10</td>
<td>Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial (exception area)</td>
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<td>2016-007</td>
<td>2-10-16/5-10-16</td>
<td>23.01.010; 5.10</td>
<td>Comprehensive Plan Amendment to add an exception to Statewide Planning Goal 11 to allow sewers in unincorporated lands in Southern Deschutes County</td>
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<td>2016-005</td>
<td>11-28-16/2-16-17</td>
<td>23.01.010, 2.2, 3.3</td>
<td>Comprehensive Plan Amendment recognizing non-resource lands process allowed under State law to change EFU zoning</td>
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<td>2016-022</td>
<td>9-28-16/11-14-16</td>
<td>23.01.010, 1.3, 4.2</td>
<td>Comprehensive plan Amendment, including certain property within City of Bend Urban Growth Boundary</td>
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<td>2016-029</td>
<td>12-14-16/12/28/16</td>
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<td>2017-016</td>
<td>TBD</td>
<td>23.01, 2.6</td>
<td>Comprehensive Plan Amendment permitting churches in the Wildlife Area Combining Zone</td>
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</table>
FINDINGS

I. SUMMARY

Ordinance No. 2012-004 allows agri-tourism and commercial events and activities on parcels zoned Exclusive Farm Use (EFU), with a Wildlife Area Combining Zone, subject to time, place, and manner regulations. Staff, through Ordinances Nos. 2017-016 and 2017-017, is amending the Comprehensive Plan and Deschutes County Code (DCC) Chapter 18.88 to permit churches in the Wildlife Area Combining Zone in order to comply with the Religious Land Use and Institutionalized Persons Act and its equal terms clause.

II. BACKGROUND

A. Wildlife Area Combining Zone / Churches

During periodic review, to address wildlife protection, Deschutes County adopted Ordinance Nos. 92-041 and 92-042 concurrently. These ordinances amended the Wildlife Chapter of the Comprehensive Plan, and DCC 18.88, Wildlife Area Combining Zone. Ordinance 92-041 adopted deer winter range, antelope and elk habitat boundaries based on an Economic, Social, Environmental and Energy (ESEE) analysis. The conclusions, noted in Ordinance 92-041, Exhibit A, Pages 24, 34, and 40 found that the identified deer winter range, elk and antelope habitat and other conflicting uses within their ranges are important relative to each other, and that the conflicts should be balanced by restricting or regulating certain uses and prohibiting others. The following are relevant excerpts:

- **Program to Achieve the Goal (Conserve Deer Winter Range):** The Wildlife Combining Zone, Title 18.88, (WA) is applied to all areas designated as deer winter range on the Big Game Habitat Wildlife Area Combining Zone Map. The WA zone requires a 40 acre minimum lot size for all new land divisions, prohibits certain conflicting uses (i.e. golf course, churches, schools etc.), establishes siting and fencing standards, and requires that all land divisions in the Rural Residential (RR-10) or Multiple Use Agricultural (MUA-10) Zone be cluster or planned development.

- **Program to Achieve the Goal (Conserve Significant Elk Habitat):** The WA Zone, Title 18.88, will be applied to all areas identified as significant elk habitat. The county WA Zone has been amended to require a 160 acre minimum lot size for areas identified as significant elk habitat. Certain uses normally allowed in the underlying zones are also prohibited in the WA zone, and siting standards to minimize the conflict of residences with habitat protection are required.

- **Program to Achieve the Goal (Conserve Antelope Habitat):** Based on the ESEE analysis the county finds that the uses conflicting with antelope habitat should be specifically limited by the application of the WA Zone. This zone limits specific
conflicting uses including schools, golf course and churches. In the antelope range the minimum lot size is 320 acres.

Ordinance No. 92-042, amended DCC 18.88 by not permitting churches as a conditional use in that portion of the Wildlife Area Combining Zone designated as deer winter ranges, significant elk habitat or antelope range.¹

B. Wildlife Area Combining Zone / Agri-tourism and Commercial Events

In 2011, the Oregon Legislature approved Senate Bill (SB) 960 allowing counties to establish agri-tourism and other commercial events and activities that are related to and supportive of agriculture. In 2012, the Board of County Commissioners adopted Ordinance 2012-004 providing an opportunity for agricultural enterprises to apply for a Limited Use Permit for agri-tourism and other commercial events and activities under SB 960 on properties zoned EFU. The ordinance also permitted these opportunities in EFU with a Wildlife Area Combining Zone, subject to time, place and manner regulations. DCC 18.16.042(C)(13) states:

Agri-Tourism and other Commercial Events or Activities shall not be allowed:

a. Within the County adopted big game winter ranges during the months of December through March.

b. Within the County adopted big game migration corridors during the month of April and during the months of October and November.

c. Within the County adopted sensitive bird and mammal habitat areas as defined in DCC 18.90.020, unless a site has had no nesting attempt or the nest has failed, as determined by a professional wildlife biologist in May of the calendar year in which the application is approved unless a site has had no nesting attempt or the nest has failed which could be determined in May by a professional wildlife biologist.²

C. Religious Land Use and Institutionalized Persons Act (RLUIPA)

RLUIPA is a law designed to protect religious assemblies and institutions from zoning and historic landmark laws that substantially interfere with the assemblies' and institutions' religious exercise. It also protects individuals and religious institutions, including churches, mosques, and synagogues, in their use of land and buildings for religious purposes. RLUIPA was passed unanimously by Congress on July 27, 2000 and signed into law by President Clinton on September 22, 2000.

In a recent Land Use Board of Appeals (LUBA) opinion reversing a Deschutes County Hearings Officer decision approving a church on a parcel zoned for EFU and within a Wildlife Area Combining Zone, LUBA ruled that the uses listed in DCC 18.88.040(B) are

¹ Ordinance No. 92-042, Exhibit A. Page 2. DCC 18.88.040(B). Uses Permitted Conditionally. The following uses are not permitted in that portion of the Wildlife Area Combining Zone designated as deer winter ranges, significant elk habitat or antelope range as conditional uses: 3) Church.

² Ordinance 2012-004, Exhibit B. Pages 7-8.
deemed to be inherently incompatible with winter range and are uniformly prohibited on winter range in all cases. LUBA also determined that the intervenor (applicant) did not establish a violation of RLUIPA’s equal terms clause. RLUIPA prohibits a government from imposing a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a non-religious assembly or institution.

III. PROPOSED PLAN AMENDMENT

Recognizing that Ordinance No. 2012-004 allows agri-tourism and commercial events and activities in EFU with a Wildlife Area Combining Zone, subject to time, place, and manner regulations, staff are amending the Comprehensive Plan and Title 18 to allow churches in the Wildlife Area Combining Zone. The purpose is to comply with RLUIPA. The proposed amendments to the Comprehensive Plan and DCC 18.88 are described in Ordinance Nos. 2017-016, Exhibit B and Ordinance 2017-017, Exhibit A, respectively. Added language is underlined and deleted shown as strikethrough.

IV. REVIEW CRITERIA

Deschutes County lacks specific criteria in DCC Titles 18, 22, or 23 for reviewing a legislative plan and text amendment. Nonetheless, because this is a Deschutes County initiated amendment, the County bears the responsibility for justifying that the amendments are consistent with the Statewide Planning Goals and its Comprehensive Plan.

V. FINDINGS

A. CHAPTER 22.12, LEGISLATIVE PROCEDURES

1. Section 22.12.010.

   Hearing Required

   FINDING: The Planning Commission held a public hearing on September 28, 2017. The Board held a public hearing [date]. This criterion is met.

2. Section 22.12.020, Notice

   Notice

   A. Published Notice

   1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.

   ___________________________

5 42 USC section 2000cc(b)(10).
2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.

**FINDING:** This criterion is met as notice was published in the Bend Bulletin newspaper on August 27, 2017.

**B. Posted Notice.** Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.

**FINDING:** This criterion is met as notice was posted in the bulletin board in the lobby of the Deschutes County Community Development Department, 117 NW Lafayette, Bend as well as on the Planning Division website.

C. Individual notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.

**FINDING:** Individual notice was not initiated.

D. Media notice. Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.

**FINDING:** Notice was provided to the County public information official for wider media distribution. This criterion is met.

3. **Section 22.12.030 Initiation of Legislative Changes.**

   A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of County Commissioners.

**FINDING:** The application was initiated by the Deschutes County Planning Division at the direction of the Board. This criterion is met.

4. **Section 22.12.040. Hearings Body**

   A. The following shall serve as hearings or review body for legislative changes in this order:
   1. The Planning Commission.
   2. The Board of County Commissioners.

**FINDING:** This criterion is met as the Planning Commission held an initial public hearing on September 28, 2017 followed by deliberations on [date]. The Board held its public hearing on [date].
B. Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.

FINDING: This criterion is met as the Planning Commission public hearing preceded the Board public hearing.

5. Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: Land use applications 247-17-000702-TA and 247-17-000703-PA are implemented by Ordinances Nos. 2017-016 and 2017-017. This criterion is met.

B. Statewide Planning Goals

The parameters for evaluating these specific amendments are based on an adequate factual base and supportive evidence demonstrating consistency with Statewide Planning Goals. The following findings demonstrate that Ordinances Nos. 2017-016 and 2017-017 comply with applicable statewide planning goals and state law.

- **Goal 1, Citizen Involvement**, is met through this adoption process because these amendments will receive a public hearing before the Planning Commission and the Board of County Commissioners, consistent with ORS 215.060 and DCC 22.12.010.

- **Goal 2, Land Use Planning**, is met because ORS 197.610 allows local governments to initiate post acknowledgments plan amendments (PAPA). An Oregon Department of Land Conservation and Development 35-day notice was initiated on August 23, 2017. This FINDINGS document provides the adequate factual basis and documented analysis for this plan and zoning text amendment.

- **Goal 3, Agricultural Lands**, is met because churches are a use permitted in the EFU zone under ORS 215.283(1).

- **Goal 4, Forest Lands**, is not applicable because churches are not allowed in Deschutes County’s Forest Use zones, consistent with state law.

- **Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces**: Local governments are required to apply Goal 5 to a PAPA when the amendment allows a new use and the new use “could be” a conflicting use with a particular Goal 5 resource site on an acknowledged resource list.  

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6 Deschutes County completed period review on January 23, 2003.
7 OAR 660-023-0250(3)(b)
Economic, Social, Environmental, and Energy Analysis

660-23-0030 – Inventory Goal 5 Resources

Finding: During periodic review, to address wildlife protection, Deschutes County adopted Ordinance Nos. 92-041 and 92-042 concurrently. These ordinances amended the Wildlife Chapter of the Comprehensive Plan, and DCC 18.88, Wildlife Area Combining Zone. Ordinance 92-041 adopted deer winter range, antelope and elk habitat boundaries based on an Economic, Social, Environmental and Energy (ESEE) analysis.

660-023-0250 – Applicability

(2) The requirements of this division are applicable to PAPAs initiated on or after September 1, 1996. OAR 660, Division 16 applies to PAPAs initiated prior to September 1, 1996. For purposes of this section "initiated" means that the local government has deemed the PAPA application to be complete.

Finding: Deschutes County initiated a PAPA in 2017. This rule applies.

(3) Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:

(b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list;

Finding: Deschutes County is amending the Comprehensive Plan and Deschutes County Code (DCC) Chapter 18.88 to permit churches in the Wildlife Area Combining Zone in order to comply with RLUPIA and its equal terms clause. Deschutes County is therefore required to apply Goal 5 in consideration of this PAPA.

660-23-0040 – ESEE Decision Process

(1) Local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use.

(a) Identify the conflicting uses;
(b) Determine the impact area;
(c) Analyze the ESEE consequences;

Finding: Deschutes County has developed a program to achieve Goal 5 for significant sites related to deer winter range, elk habitat, and antelope range. Through the findings below, Deschutes County has demonstrated that the
requirements of each step listed in the Oregon Administrative Rule have been met.

660-023-0040(2)

Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and in its impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site.

Finding: The conflicting use is allowing churches in the Wildlife Area Combining Zone. Specifically, churches and other similar uses like agri-tourism and other commercial events, can generate high levels of public activity, noise and habitat alteration.

660-023-0040(3)

Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site.

Finding: The impact areas are the following designated Goal 5 inventories: winter deer range, elk habitat, and antelope range.

660-023-0040(4)

Analyze the ESEE consequences. Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation.

(a) Allow the conflicting use.
**Finding:** Under this scenario, Deschutes County would permit churches and outdoor events and activities that remove vegetation and disturb mule deer, elk, and antelope habitat without limitations.

**Economic consequences:** Permitting churches, consistent with RLUIPA, would have positive consequences by allowing a religious institution, which is a non-profit to establish a presence in certain areas of the rural county, where it presently is not allowed, to use land and buildings for religious purposes.

**Social consequences:** Permitting churches, consistent with RLUIPA, would have positive consequences by preventing discrimination against on the face of zoning codes and also in the highly individualized and discretionary processes of land use regulation.

**Environmental consequences:** This scenario would result in further impacts to designated habitat for deer winter range, elk habitat and antelope range.

**Energy consequences:** Energy consumption is unlikely to be affected by this scenario.

**(b) Prohibit conflicting uses.**

**Finding:** In this scenario, Deschutes County would continue to prohibit churches within designated winter deer range, elk habitat, and antelope range.

**Economic consequences:** Prohibiting churches would have negative consequences, not only because it prevents religious institutions from using their land and building for religious purposes, but it could also subject Deschutes County to a federal lawsuit for violating RLUPIA and the equal terms clause.

**Social consequences:** Prohibiting churches would have negative consequences because it could be viewed as discriminating against religious exercise of churches or other religious assemblies or institutions in violation of RLUPIA due to treating them on less equal terms with nonreligious institutions.

**Environmental consequences:** This scenario would continue to prohibit churches, thereby preventing a use that can generate high levels of public activity, noise and habitat alteration.

**Energy consequences:** Energy consumption is unlikely to be affected by this scenario.

**(c) Limit conflicting uses.**

**Finding:** In this scenario, habitat needs of mule deer, elk, and antelope would be balanced with the requirements of RLUPIA for allowing churches in the WA Zone.
Economic consequences: Permitting churches subject to certain limitations, consistent with RLUIPA, would have positive consequences by allowing a religious institution, which is a non-profit to establish a presence in certain areas of the rural county, where it presently is not allowed, to use land and buildings for religious purposes.

Social consequences: Permitting churches subject to certain limitations, consistent with RLUIPA, would have positive consequences by preventing discrimination against on the face of zoning codes and also in the highly individualized and discretionary processes of land use regulation.

Environmental consequences: This scenario, while allowing churches in the deer winter range, elk habitat, and antelope range, would mitigate for impacts associated with churches and other similar uses like agri-tourism and other commercial events, which can generate high levels of public activity, noise and habitat alteration.

Energy consequences: Energy consumption is unlikely to be affected by this scenario.

660-023-0040(5)

Develop a program to achieve Goal 5. Local governments shall determine whether to allow, limit, or prohibit identified conflicting uses for significant resource sites. This decision shall be based upon and supported by the ESEE analysis. A decision to prohibit or limit conflicting uses protects a resource site. A decision to allow some or all conflicting uses for a particular site may also be consistent with Goal 5, provided it is supported by the ESEE analysis. One of the following determinations shall be reached with regard to conflicting uses for a significant resource site:

(a) A local government may decide that a significant resource site is of such importance compared to the conflicting uses, and the ESEE consequences of allowing the conflicting uses are so detrimental to the resource, that the conflicting uses should be prohibited.

(b) A local government may decide that both the resource site and the conflicting uses are important compared to each other, and, based on the ESEE analysis, the conflicting uses should be allowed in a limited way that protects the resource site to a desired extent.

(c) A local government may decide that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site, and must indicate why measures to protect the resource to some extent should not be provided, as per subsection (b) of this section.
**Finding:** Deschutes County has determined, consistent with subsection (b), that both resource sites (deer winter range, elk habitat, and antelope range) and the conflicting use (churches) are important in comparison to each other. Based on the ESEE analysis, the conflicting use should be allowed in a limited ways, such that the resource site is protected to the desired extent, while recognizing RLUPIA.

The program to protect the resource will be to prohibit outdoor events and activities associated with churches and other similar uses like agri-tourism and other commercial events, during the time of year when deer, elk, and antelope rely on their habitat for calving or winter or summer range.

660-023-0050(1)

For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-023-0040(5). The plan shall describe the degree of protection intended for each significant resource site. The plan and implementing ordinances shall clearly identify those conflicting uses that are allowed and the specific standards or limitations that apply to the allowed uses. A program to achieve Goal 5 may include zoning measures that partially or fully allow conflicting uses (see OAR 660-023-0040(5)(b) and (c)).

**Finding:** The proposed Comprehensive Plan and zoning code amendments, together with this ESEE document, establish the program described above. Deer winter range, elk habitat, and antelope range will be protected to the same degree as it pertains to permitting churches; namely, that the conflicting use will be allowed in a limited way as described above. This use and standard that limits churches and comparable uses are in the proposed zoning code amendments.

660-023-0050(2)

When a local government has decided to protect a resource site under OAR 660-023-0040(5)(b), implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards. For purposes of this division, a standard shall be considered clear and objective if it meets any one of the following criteria:

(a) It is a fixed numerical standard, such as a height limitation of 35 feet or a setback of 50 feet;

(b) It is a nondiscretionary requirement, such as a requirement that grading not occur beneath the dripline of a protected tree; or …

**Finding:** The proposed amendments in the zoning code consist of clear and objective standards. The code prohibits outdoor events and activities associated with churches and other similar uses like agri-tourism and other commercial
events, during the time of year when deer, elk, and antelope rely on their habitat for calving or winter or summer range.

660-023-0050(3)

In addition to the clear and objective regulations required by section (2) of this rule, except for aggregate resources, local governments may adopt an alternative approval process that includes land use regulations that are not clear and objective (such as a planned unit development ordinance with discretionary performance standards), provided such regulations:

(a) Specify that landowners have the choice of proceeding under either the clear and objective approval process or the alternative regulations; and

(b) Require a level of protection for the resource that meets or exceeds the intended level determined under OAR 660-023-0040(5) and 660-023-0050(1).

Finding: The implementing measures do not include alternative, discretionary procedures for compliance.

• **Goal 6, Air, Water and Land Resources Quality and Goal 7, Natura Hazards** are met because the County has other code provisions pertaining to churches, DCC 18.16.025, Uses Permitted Subject to Special Provisions; 18.116, Supplementary Provisions; 18.124, Site Plan Review; and DCC 18.128 Conditional Use that are designed to protect air, water and land resources quality and to assure that they are not approved in areas subject to natural resources and natural hazards.

• **Goal 8, Recreational Needs**, is not applicable because churches are institutional uses, not a recreational use or need.

• **Goal 9, Economic Development**, is not applicable because while a church can lead to new construction, it is an institutional use, not a source of economic development by providing a multitude of jobs.

• **Goal 10, Housing** is not applicable because, unlike municipalities, unincorporated areas are not obligated to fulfill certain housing requirements.

• **Goal 11, Public Facilities** is not applicable because churches in the rural county typically rely on domestic wells and onsite wastewater treatment systems. A Goal 11 exception would be required for a centralized sewer system.

• **Goal 12, Transportation**, is addressed during land use review for a church proposal. The County has a code provision that pertains to Traffic Impact Studies, DCC 18.116.310 and a Board Resolution, 2013-020, which sets a transportation system development charge rate of $3,937 per peak hour trip.
• **Goal 13, Energy Conservation**, is addressed during land use review for a church proposal through Deschutes County’s Solar Height Restrictions, DCC 18.116.170 and the Uniform Building Code.

• **Goal 14, Urbanization**, is not applicable because no expansion of an urban area is proposed with these amendments.

• **Goals 15 through 19** are not applicable to any amendments to the County’s comprehensive plan because the county has none of those types of lands.

C. **Deschutes County Comprehensive Plan**

Chapter 2, Resource Management

Section 2.6, Wildlife Policies

2.6.3 *Ensure Goal 5 wildlife inventories and habitat protection programs are up-to-date through public processes and expert sources, such as the 2009 Interagency Report.*

**FINDING:**

In a recent LUBA opinion reversing a Deschutes County Hearings Officer decision approving a church on a parcel zoned for EFU and with a Wildlife Area Combining Zone, LUBA ruled that the uses listed in DCC 18.88.040(B) are deemed to be inherently incompatible with winter range and are uniformly prohibited on winter range in all cases. LUBA also determined that the intervenor (applicant) did not establish a violation of RLUIPA’s equal terms clause. RLUIPA prohibits a government from imposing a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a non-religious assembly or institution. Based on staff analysis, the following code amendments are required to comply with RLUIPA and therefore, keep Deschutes County’s Goal 5 wildlife inventories and habitat protections up-to-date.
BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code Title 18, Chapter 18.88, to permit churches in the Wildlife Area Combining Zone in order to comply with the Religious Land Use and Institutionalized Persons Act and its equal terms clause and Declaring an Emergency.

ORDINANCE NO. 2017-017

WHEREAS, the Deschutes County Community Development Department (CDD) initiated an amendment (Planning Division File No. 247-17-000702-TA) to the Deschutes County Code (DCC) Title 18, Chapter 18.88, Wildlife Area Combining Zone; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on July 13, 2017, and forwarded to the Deschutes County Board of County Commissioners (“Board”), a unanimous recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on [date], and concluded that the public will benefit from the proposed changes to the Deschutes County Code; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC 18.88.040, Uses Permitted Conditionally, is amended to read as described in Exhibit “A,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in strikethrough.

Section 2. AMENDMENT. DCC 18.88.080, Additional Standards for Churches, is amended to read as described in Exhibit “A,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in strikethrough.

Section 3. FINDINGS. The Board adopts as its findings Exhibit “D,” attached to Ordinance 2017-016 and incorporated by reference herein.

///
Section 3. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

Dated this ______ of ____________, 2017

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

________________________________________
TAMMY BANEY, Chair

________________________________________
ANTHONY DeBONE, Vice Chair

ATTEST:

________________________________________
Recording Secretary

________________________________________
PHILIP G. HENDERSON, Commissioner

Date of 1st Reading: _____ day of ____________, 2017.

Date of 2nd Reading: _____ day of ____________, 2017.

Record of Adoption Vote

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<td>Philip Henderson</td>
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Effective date: _____ day of ____________, 2017.

ATTEST:

________________________________________
Recording Secretary

PAGE 2 OF 2 - ORDINANCE NO. 2017-017
Chapter 18.88. WILDLIFE AREA COMBINING ZONE - WA

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.

(Ord. 93-043 §§13 and 13A, 1993)


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.

(Ord. 2004-013 §9, 2004; Ord. 96-003 §6, 1996; Ord. 92-042 §1, 1992)

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.

(Ord. 92-042 §1, 1992; Ord. 91-020 §1, 1991)

18.88.040. Uses Permitted Conditionally.

A. 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.

B. The following uses are not permitted in that portion of the WA Zone designated as deer winter ranges, significant elk habitat or antelope range:
   1. Golf course, not included in a destination resort;
   2. Commercial dog kennel;
   3. Church;
   4. Public or private school;
   5. Bed and breakfast inn;
   6. Dude ranch;
   7. Playground, recreation facility or community center owned and operated by a government agency or a nonprofit community organization;
   8. Timeshare unit;
   9. Veterinary clinic;
   10. Fishing lodge.

C. 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:
1. Church;
2. Public or private school;
3. Bed and breakfast inn;
4. Playground, recreation facility or community center owned and operated by a government agency or a nonprofit community organization;

D. 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.

E. Use limitations.
   1. Churches, agri-tourism and other commercial events, and wineries are subject to applicable provisions of DCC 18.116 and 18.124 and the following criteria:
      i. Outdoor events and activities incidental and subordinate to the uses noted above shall not be allowed during the time of year when deer, elk, and antelope rely on their habitat for calving or winter or summer range.

   2. 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:
      1i. The parcel shall be zoned RR-10;
      2ii. 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;
      3iii. The parcel shall be no less than one acre and no more than five acres in size;
      4iv. The parcel shall be farther than 100 feet from identified wetlands, floodplains or riparian areas.
      5v. 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.
      6vi. 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).

F. 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.

(Ord. 2017-017 §1, 2017; Ord. 2001-19 §1, 2001; Ord. 98-013 §1, 1998; Ord. 95-075 §1, 1995; Ord. 95-001 §3, 1995; Ord. 92-042 §1, 1992)

18.88.050. Dimensional Standards.

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

A. 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).

B. In areas designated as significant elk habitat in the Comprehensive Plan Resource Element, the minimum lot size for new parcels shall be 160 acres.

C. In areas designated as antelope range in the Comprehensive Plan Resource Element, the minimum lot size for new parcels shall be 320 acres.

D. 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:
1. The minimum area for a planned or cluster development shall be at least 40 acres.
2. 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.
3. 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.

E. 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:
1. The minimum area for a cluster development shall be at least 20 acres.
2. The cluster development shall retain a minimum of 80 percent open space and conform with the provisions of DCC 18.128.200 or 210.
3. 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.

18.88.060. Siting Standards.
A. Setbacks shall be those described in the underlying zone with which the WA Zone is combined.
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,
2. 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,
3. The dwelling is set back no more than 50 feet from the edge of a driveway that existed as of August 5, 1992.
C. For purposes of DCC 18.88.060(B):
1. 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:
   a. 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;
   b. 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;
   c. 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).
2. 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.

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.
A. 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:
1. The distance between the ground and the bottom strand or board of the fence shall be at least 15 inches.
2. The height of the fence shall not exceed 48 inches above ground level.
3. Smooth wire and wooden fences that allow passage of wildlife are preferred. Woven wire fences are discouraged.

B. Exemptions:
1. Fences encompassing less than 10,000 square feet which surround or are adjacent to residences or structures are exempt from the above fencing standards.
2. Corrals used for working livestock.

(Ord. 92-042 §1, 1992)