



**MEMORANDUM**

**TO:** Deschutes County Board of County Commissioners (“Board”)  
**FROM:** Nicole Mardell, Associate Planner  
**DATE:** October 28, 2019  
**SUBJECT:** Religious Institution Amendments – Work Session

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**I. PROPOSAL**

The Board is conducting a work session on November 4, 2019 in preparation for a public hearing tentatively scheduled for November 13, 2019. The Board will consider several amendments to Deschutes County Code Title 18, County Zoning, Title 19, Bend Urban Area Zoning, and Title 23, Comprehensive Plan to address potential conflicts with the Religious Land Use and Institutionalized Persons Act (RLUIPA). The current county code was determined to be noncompliant with RLUIPA in the most-recent *Shepherdsfield Church* LUBA decision <sup>1</sup>and requires an amendment to correct the issue.

The amendments (through file numbers 247-19-000512-PA/513-TA) alter the word “church” to “religious institution” for better inclusivity, add an RLUIPA compliance statement in the code’s basic provisions, add the use to several districts in Sunriver, and remove a prohibition on religious institutions in the Wildlife Area (WA) Combining Zone, among other items. A full list of the changes is found in Attachment 1 – Staff Findings.

**II. BACKGROUND**

RLUIPA was adopted in 2000 by the United States Congress following testimony that land use and zoning regulations often placed a substantial burden on religious groups, thereby inhibiting their ability to express their religious freedom. In many cases, similar secular uses such as assembly halls, fraternal organizations, and museums were not facing the same burden and were receiving favorable treatment. RLUIPA established four general concepts for local governments to comply:

- 1) Bars “substantial burden” on religious exercise
- 2) Requires “equal terms” treatment of religious and secular uses
- 3) Bars discrimination on the basis of religion or type of religious practice
- 4) Bars total or unreasonable exclusion of religious institutions

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<sup>1</sup> LUBA Decision No. 2018-095 Central Oregon LandWatch v. Deschutes County and Shepherd



Many of Deschutes County's regulations were established between 1970-1998, prior to the establishment of RLUIPA. In 2017, Deschutes County attempted to amend its zoning ordinance and comprehensive plan to allow churches in the WA Combining Zone on the basis that first amendment rights were being infringed as described in RLUIPA. Deschutes County found that a risk of lawsuit from a property owner, associated with the infringement of these rights was so imminent that the code should be amended to address RLUIPA property issues at a countywide scale. Those changes were remanded by the Land Use Board of Appeals, due to the need for additional information on the impacts to Goal 5, including the need for an Economic, Social, Environmental, and Energy (ESEE) analysis<sup>2</sup>.

In 2018, through a separate land use decision, the County approved a church on an Exclusive Farm Use zoned property located in the WA Combining Zone, again on the basis that the County was potentially liable for litigation due to noncompliance with RLUIPA. On April 3, 2019, the Oregon Court of Appeals affirmed without opinion on a Land Use Board of Appeals (LUBA) decision<sup>3</sup> allowing a church on the property. Through this case, LUBA agreed with the County that the WA Combining Zone section in the Deschutes County Code (DCC) violates the equal terms clause of RLUIPA. Through this decision, the County also determined the need to audit the remaining chapters of the Deschutes County Code to find other areas of noncompliance with RLUIPA, which resulted in the draft Zoning Text Amendments (Attachment 2) and Comprehensive Plan Amendments (Attachment 3).

### III. PUBLIC COMMENTS

The Deschutes County Planning Commission held three public hearings on August 8, August 22, and September 12, 2019. The following individuals provided oral or written testimony:

- Alvarado
- Antao
- Benson
- Bishop
- Borba
- Brewer
- Brocker
- Caram
- Castelbaum
- Cecchi
- COLW
- Doerfluer
- C. Dunn
- F. Dunn
- Emerson/  
Brayfield
- Elshoff
- Fancher
- Findling
- Frank
- Gould
- D. Harris
- J. Harris
- Humeston
- Kassy
- Kelly
- Kinzer
- Kruse
- Linford
- McCormick
- McKay
- Meeuwsen
- Monte
- Morrison
- ODFW
- Patrick
- Pederson
- Pokorny
- Powell
- Quinlan
- Roche
- Schimmoller
- Spaniol
- Spencer
- Storm
- Warriner
- Vora

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<sup>2</sup> Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces. ESEE required per OAR 660-023-0040

<sup>3</sup> LUBA Decision No. 2018-095 Central Oregon LandWatch v. Deschutes County and Shepherd

All public comments received relate to one component of the proposed amendments; the removal of the prohibition on religious institutions in the WA Combining Zone, specifically in the winter deer range, significant elk habitat, and antelope range.

Approximately thirty-three individuals have supplied written or oral testimony opposing the proposed amendments on the basis that the removal of a prohibition on religious institutions in the WA Combining Zone could negatively impact wildlife due to impacts commonly associated with assemblies – such as traffic, light, noise, and general human presence in habitat areas. Additionally, individuals expressed concerns that this text amendment could serve as a precedent and could potentially allow secular uses in the WA Combining Zone, where they were previously not allowed.

Approximately thirteen individuals supplied oral testimony in support of the proposed amendments as the removal of the prohibition in the WA Zone would allow for greater potential of churches in rural Deschutes County allowing for greater access to these institutions by rural residents. Individuals spoke on the need for small scale, community oriented churches within a close proximity to their homes for reasonable transportation access.

#### **IV. PLANNING COMMISSION RECOMMENDATION**

Following testimony described above, staff proposed two minor edits to the amendment package which could better address protection of wildlife habitat. The options were presented to the Planning Commission prior to deliberations and include:

- Edit the definition of “Religious Institutions and Assemblies” to reduce ambiguity and potential misuse of the term.
- Add a clarification to the WA Zone text stating the County may include conditions of approval limiting duration, frequency, seasonality, and total number of assemblies occurring in the WA Combining Zone, regardless of whether the assembly is public or private, secular or religious. This could address impacts to wildlife habitat associated with light, noise, and traffic, while treating all assemblies equally as required by RLUIPA.

In reviewing these edits during their deliberations, the Planning Commission discussed their interest in pursuing a different potential amendment in which all assemblies in the WA Zone (not only religious) would be audited and reviewed for their environmental impacts. The review could result in the prohibition, or extensive limitation of all assemblies in the WA Combining Zone. The Planning Commission was interested in this approach, as it could ensure secular and non-secular uses are treated fairly per RLUIPA, without reducing existing protections for wildlife (i.e. the current prohibition on churches).

Staff found the more extensive amendment to be out of scope of the current process, and would require new notice to DLCD and a new hearing process. Staff recommended the Planning Commission vote on the amendments before them, as proposed, with staff's minor edits shown above.

The Planning Commission voted to recommend denial of the proposed amendments (5 in support, 1 abstention).

## **V. NEXT STEPS**

The Board will hold a public hearing for the Religious Institution amendments on November 13, 2019.

## **ATTACHMENTS**

1. Staff Findings
2. Proposed Text Amendments
3. Proposed Comprehensive Plan Amendments

## **DRAFT FINDINGS RELIGIOUS INSTITUTION AMENDMENTS**

### **I. PROPOSED AMENDMENTS**

#### **HISTORY**

The Religious Land Use and Institutionalized Persons Act (RLUIPA) was adopted in 2000 by the United States Congress following testimony that land use and zoning regulations often placed a substantial burden on religious groups, thereby inhibiting their ability to express their religious freedom. In many cases, similar secular uses such as assembly halls, fraternal organizations, and museums were not facing the same burden and were receiving favorable treatment. RLUIPA established four general concepts for local governments to comply:

- 1) Bars “substantial burden” on religious exercise
- 2) Requires “equal terms” treatment of religious and secular uses
- 3) Bars discrimination on the basis of religion or type of religious practice
- 4) Bars total or unreasonable exclusion of religious institutions

Many of Deschutes County’s regulations were established between 1970-1998, prior to the establishment of RLUIPA. In 2017, Deschutes County amended its zoning ordinance and comprehensive plan to allow churches in the Wildlife Area Combining Zone on the basis that first amendment rights were being infringed as described in RLUIPA. Deschutes County found that a risk of lawsuit from a property owner, associated with the infringement of these rights was so imminent that the code should be amended to address the issue at a countywide scale. Those changes were remanded by the Land Use Board of Appeals, due to the need for additional information on the impacts to Goal 5 r, including the need for an Economic, Social, Environmental, and Energy (ESEE) analysis<sup>1</sup>.

In 2018, through a separate land use decision, the County approved a church on an Exclusive Farm Use zoned property that is also located in the Wildlife Area Combining Zone, again on the basis that the County was potentially liable for litigation due to noncompliance with RLUIPA. On April 3, 2019, the Oregon Court of Appeals affirmed without opinion on a Land Use Board of Appeals (LUBA) decision allowing a church on the property. Through this case, LUBA agreed with the County that the Wildlife Area Combining Zone section in the Deschutes County Code (DCC) violates the equal terms clause of RLUIPA. Through this decision, the County also determined the need to audit the remaining chapters of the Deschutes County Code to find other areas of noncompliance with RLUIPA, while also analyzing the impact to vulnerable fish and wildlife populations.

#### **PROPOSAL**

The Planning Division determined amendments to DCC Title 18, County Zoning, Title 19, Bend Urban Area Zoning and Title 23, Comprehensive Plan, are necessary to comply with the

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<sup>1</sup> Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces. ESEE required per OAR 660-023-0040

Religious Land Use and Institutionalized Persons Act (RLUIPA). The proposed amendments to the Comprehensive Plan and DCC Title 18 are described in Ordinance Nos. 2019-0xx. Added language is underlined and deleted shown as ~~strikethrough~~.

Deschutes County is amending seventeen chapters of DCC Title 18 and eight chapters in DCC Title 19. A majority of the text amendments replace the word “church” or “churches” with “religious institutions.” DCC Chapter 18.08, Basic Provisions and DCC 19.08, Establishment of Zones and Zoning Maps contain a new section that recognizes compliance with RLUIPA supersedes all other aspects of DCC Titles 18 and 19. Most notably, religious institutions are being added as a use where they were previously prohibited in DCC 18.88, Wildlife Area Combining Zone, DCC 18.100, Rural Industrial and DCC 18.108, Urban Unincorporated Community Zone – Sunriver Town Center, Resort Marina, Golf Course, and Nature Center Districts. The following table summarizes the amendments.

### Summary of Religious Institution Amendments

Code	Description
<b>Comprehensive Plan</b>	
<b>Section 2.6 Resource Management - Wildlife</b>	Text describing the purpose of permitting religious institutions in the Wildlife Area Combining Zone and other areas that may contain Goal 5 resources.
<b>Section 3.5 Natural Resources</b>	Replaces “churches” with “religious institutions”
<b>Section 5.2 Glossary and Acronyms</b>	Replaces “churches” with “religious institutions”
<b>Title 18 - County Zoning</b>	
<b>Chapter 18.04, Title, Purpose and Definitions</b>	Deletes definition of “Church.” Adds definition of “Religious Institutions.”
<b>Chapter 18.08, Basic Provisions</b>	Adds a new section describing compliance with RLUIPA
<b>Chapter 18.16, Exclusive Farm Use Zones</b>	Replaces “churches” with “religious institutions” and “religious activities”
<b>Chapter 18.32, Multiple Use Agricultural Zone</b>	Replaces “churches” with “religious institutions”
<b>Chapter 18.60, Rural Residential Zone</b>	Replaces “church” with “religious institutions”
<b>Chapter 18.65, Rural Service Center – Unincorporated Zone</b>	Replaces “church” with “religious institutions”. Relists from conditional use to use subject to site plan review.
<b>Chapter 18.66, Terrebonne Rural Community Zoning Districts</b>	Replaces “church” with “religious institutions”
<b>Chapter 18.67, Tumalo Rural Community Zoning Districts</b>	Replaces “church” with “religious institutions”
<b>Chapter 18.74, Rural Commercial Zone</b>	Replaces “church” with “religious institutions”.
<b>Chapter 18.80, Airport Safety Combining Zone</b>	Replaces “church” and “churches” with “religious institutions”
<b>Chapter 18.88, Wildlife Area Combining Zone</b>	Removes prohibition of churches. Replaces “church” with “religious institutions”
<b>Chapter 18.108, Unincorporated Community Zone - Sunriver</b>	Replaces “church” with “religious institutions;” add religious institutions as a use permitted outright in Town Center, Resort Marina, Golf Course, and Nature Center Districts. Removes limitations to building or buildings not

	exceeding 5,000 square feet of floor area in the Sunriver Business Park.
<b>Chapter 18.110, Resort Community Zone</b>	Replaces “church” with “religious institutions”
<b>Chapter 18.116, Supplemental Provisions</b>	Replaces “church” with “religious institutions”
<b>Chapter 18.124, Site Plan Review</b>	Replaces “church” with “religious institutions”
<b>Chapter 18.128, Conditional Use</b>	Replaces “church” with “religious institutions”. Relists conditional use criteria for religious institutions from 18.128.080 to 18.128.090 for greater consistency with equal terms provisions.
<b>Bend Urban Area Zoning Ordinance</b>	
<b>Chapter 19.04. Title, Compliance, Applicability, and Definitions</b>	Deletes definition of “Church.” Adds definition of “Religious Institutions.”
<b>Chapter 19.08, Urban Area Reserve Zone</b>	Adds new section describing compliance with RLUIPA.
<b>Chapter 19.12, Urban Area Reserve Zone</b>	Replaces “churches” with “religious institutions”
<b>Chapter 19.20, Suburban Low Density Residential Zone</b>	Replaces “churches” with “religious institutions”
<b>Chapter 19.22, Westside Transect Zone</b>	Replaces “churches” with “religious institutions”
<b>Chapter 19.28, Urban Standard Residential Zone</b>	Replaces “church” with “religious institutions”
<b>Chapter 19.80, Off-Street Parking and Loading</b>	Replaces “church” with “religious institutions”
<b>Chapter 19.92, Interpretations and Exceptions</b>	Replaces “church” with “religious institutions”. Relists criteria for religious institutions from 19.88.040 to 19.88.050 for greater consistency with equal terms provisions.

## **II. REVIEW CRITERIA**

Deschutes County lacks specific criteria in DCC Titles 18, 19, 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.

## **III. FINDINGS**

### **A. CHAPTER 22.12, LEGISLATIVE PROCEDURES**

1. Section 22.12.010.

## ***Hearing Required***

**FINDING:** This criterion will be met because a public hearing will be held before the Deschutes County Planning Commission and Board of County Commissioners.

### 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.***

***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 will be met by notice being published in the Bend Bulletin newspaper.

***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 will be met when notice is posted in the bulletin board in the lobby of the Deschutes County Community Development Department, 117 NW Lafayette, Bend.

***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:** Given the proposed legislative amendments do not apply to any specific property, no individual notices will be sent.

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

**FINDING:** Notice will be provided to the County public information official for wider media distribution. This criterion has been 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 of County Commissioners, and has received a fee waiver. This criterion has been 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.**

**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:** The Deschutes County Planning Commission will hold the initial public hearing and will provide a recommendation to the Board of County Commissioners. The Board will then hold the second set of public hearings. These criteria will be met.

5. Section 22.12.050 Final Decision

**All legislative changes shall be adopted by ordinance**

**FINDING:** The proposed legislative changes included in file no. 247-19-000512-PA/513-TA will be implemented by ordinances upon approval and adoption by the Board. This criterion will be 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 the proposed amendments comply with applicable statewide planning goals and state law.

- **Goal 1, Citizen Involvement**

The adoption process for the proposed amendments will include a public hearing before the Planning Commission and the Board of County Commissioners, consistent with ORS 215.060 and DCC 22.12.010. This goal is met.

- **Goal 2, Land Use Planning**

ORS 197.610 allows local governments to initiate post acknowledgments plan amendments (PAPAs). An Oregon Department of Land Conservation and Development 35-day notice will be initiated on July 3, 2019. This findings document provides the adequate factual basis and documented analysis for this plan and zoning text amendment. This goal is met.

- **Goal 3, Agricultural Lands**

Religious institutions are a use permitted in the EFU zone under ORS 215.283(1). Staff is proposing a minor change to the use name, from "church" to "religious institution", in order to be in compliance with constitution language. This goal is met.

- Goal 4, Forest Lands**

Religious institutions are not allowed in Deschutes County's Forest Use zones, consistent with state law. No changes related to forest lands are proposed as part of the text amendments. This goal does not apply.
- 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.<sup>2</sup> As the SURN, SURA, SURG, and WA zone contain Goal 5 resources, and are being altered to allow the new use, they are being reviewed during the ESEE document. No other changes to the code warrant specific ESEE Analysis as they are not added a new use that conflicts with Goal 5 resources. The ESEE analysis is included in *Appendix A* which is attached to this document.
- Goal 6, Air, Water and Land Resources Quality and Goal 7, Natural Hazards**

Deschutes County has a variety of code provisions pertaining to religious institutions that are designed to protect air, water, and land resources quality. These also assure religious institutions are not approved in areas that are subject to natural resources and natural hazards. These provisions include: 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. This goal is met.
- Goal 8, Recreational Needs**

Religious institutions are defined as community and institutional uses, not a recreational use or need. This goal does not apply.
- Goal 9, Economic Development**

Religious institutions are defined as community and institutional uses, and are not primarily economic in nature. This goal does not apply.
- Goal 10, Housing**

This goal typically pertains to municipalities, who are obligated to fulfill certain housing requirements. As the proposed amendments pertain to unincorporated areas, this goal does not apply.
- Goal 11, Public Facilities**

Religious institutions 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 and would need to be applied on a property specific, needs related basis. Staff finds this goal does not apply.

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<sup>2</sup> OAR 660-023-0250(3)(b)

- **Goal 12, Transportation**

Religious institutions can be embodied in a variety of congregation sizes and shapes. The Institute of Traffic Engineers (ITE) Trip Generation Manual provides data for churches, mosques, and synagogues for weekday and weekend use. Generally, religious buildings have higher usage on the weekends than weekdays by a substantial margin. The County bases its review of land use trips on weekday peak times. While it is difficult to identify the broad traffic impact of allowing religious institutions in the various County zones, the allowance of religious institutions into various zones will not result in any significant effect as defined by the Transportation Planning Rule (TPR) at OAR 660-012-060. The ITE Trip Generation manual notes religious buildings produce the majority of the traffic on weekends when the system volumes are much lower than weekdays and thus the road system has more capacity.

No roads are changing functional classification. The County's access management requirements are unchanged. Any proposed religious institution will have to go through site plan review and will be vetted to see if a traffic study is required based on the thresholds of DCC 18.116.310. The traffic study would identify any adverse effects the religious building would have to mitigate. Regardless if a traffic study is required or not, Board Resolution 2013-020 as amended sets a transportation system development charge (SDC) rate of \$4,448 per peak hour trip. The resulting SDC assessed on the religious building, would provide funds for future transportation projects on the County's adopted Capital Improvement Plan (CIP). staff finds that compliance with Goal 12 and the Transportation Planning Rule can be verified at the individual land use review process through existing code provisions. This goal is met.

- **Goal 13, Energy Conservation**

The proposed text amendments alter the provisions surrounding religious institutions at a countywide level and are not property specific. Any future site-specific applications will be required to demonstrate consistency with Goal 13. Therefore, this goal does not apply.

- **Goal 14, Urbanization**

The purpose of Goal 14 is to direct urban uses to areas inside urban growth boundaries. As proposed amendments do not seek to allow urban uses on rural land, nor do they seek to expand an existing urban growth boundary, this goal does not apply.

- **Goals 15 through 19**

Deschutes County does not contain any of the relevant land types included in Goals 15-19. Therefore these goals do not apply.

## 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:** As previously noted, Deschutes County concluded that DCC 18.88.040(B)(3)'s prohibition on a "church" in the Wildlife Area Combining Zone violates RLUIPA's Equal Terms provision because it allows nonreligious assemblies and institutions as conditional uses in the combining zone. LUBA agreed. Deschutes County cannot treat religious assemblies in the Wildlife Area Combining Zone on less favorable terms than non-religious assemblies with similar impacts on wildlife. The proposed code amendments are required to comply with RLUIPA and therefore, keep Deschutes County's Goal 5 wildlife inventories and habitat protections up-to-date.

# **Religious Institutions Text Amendment**

**Appendix A: ESEE Analysis Document to  
File Nos. 247-19-000512-PA / 513-TA**

Deschutes County Community Development  
June 28, 2019

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## References

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Attachment 2 – Deschutes County Goal 5 Inventory Summary Table

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# Chapter 1: Overview of Goal 5 and ESEE Analyses

## Introduction

This appendix report was prepared as part of the findings document associated with File Nos. 247-19-000512-PA / 513-TA. Deschutes County is amending the Comprehensive Plan and several chapters of the Deschutes County Code (DCC) to treat religious institutions (formally referred to as churches) and similar secular uses equally, consistent with the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA).

In 2018, the Land Use Board of Appeals (LUBA) issued a decision<sup>1</sup> affirming approval of a church within the Wildlife Area (WA) Combining Zone, which was affirmed without opinion by the Oregon Court of Appeals. In that decision, LUBA found the County's WA Combining Zone (Chapter 18.88) did not treat religious institutions and similar, secular uses equally. The zone conditionally allowed for certain uses such as wineries, agri-tourism and other commercial events and activities, and a living history museum, but prohibited religious institution. This unequal treatment was found to be in violation of RLUIPA, which was adopted in 2000, eight years after the adoption of the WA Combining Zone and other zoning sections. From this decision, staff is proposing to amend several sections of the DCC and Comprehensive Plan to comply with RLUIPA and ensure equal treatment of religious institutions and secular uses.

Staff is proposing to amend several zoning code chapters to allow for religious institutions where other secular uses are currently allowed. DCC Chapter 18.88 is the WA combining zone, which recognizes three Goal 5 inventories: Deer Range (Migration and Winter Range Corridors), Elk Habitat and Antelope Range. Staff is also amending several districts in the Sunriver Urban Unincorporated Community (UUC) Zone (18.108) that contain Goal 5 riparian resources and their associated fish, furbearer, waterfowl, and upland game habitat. Recognizing that a religious institution is a new conflicting use in the WA combining zone and in some districts in the Sunriver UUC, Deschutes County is required to apply Goal 5 in consideration of this PAPA. The full findings document provides additional detail and background information regarding the intent of the amendments and compliance with other applicable state and local regulations outside of Statewide Land Use Planning Goal 5 – *Natural Resources, Scenic and Historic Areas, and Open Spaces*.

## Deschutes County Goal 5 Program

The purpose of Goal 5 is “to protect natural resources and conserve scenic and historic areas and open spaces”. Local governments, as part of the Comprehensive Planning process are required to inventory the extent, location, quality, and quantity of significant natural resources within its jurisdictional boundaries. Following this inventory, local governments then conduct an economic, social, environmental, and energy (ESEE) analysis to determine the extent to which land uses should be limited in order to adequately protect significant

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<sup>1</sup> LUBA Decision No. 2018-095 Central Oregon LandWatch v. Deschutes County and Shepherd

resources. Following an ESEE analysis, governments then establish a program to protect significant natural resources. Deschutes County established its initial Goal 5 natural resource inventory, ESEE analyses, and protection programs between the years of 1988-1994, as part of periodic review.

In reviewing this document, it's important to remember there are six policies within the Deschutes County Code and the Deschutes County Comprehensive Plan that were established through ESEEs over time and that could still limit the development of religious institutions and similar uses near inventoried Goal 5 resources. Staff finds it is important to note that the proposed amendments do not alter the following existing protections.

- 1) Setback Protections - 100-foot structural setback from the ordinary high water mark of rivers or streams.
- 2) Scenic Protections – development near rivers in the Landscape Management Combining Zone must be reviewed for aesthetic compatibility.
- 3) Wetland Protections – prohibition of fill or removal of any material or wetland vegetation, regardless of the amount, within the bed and banks of any stream or river or in any wetland unless approved as a conditional use.
- 4) Mitigation Protections - Impacts to any wetland or riverbank impacts to be fully mitigated, as evaluated by Oregon Department of Fish and Wildlife (ODFW).
- 5) Flood Plain Protections - All new construction, expansion or substantial improvement of an existing dwelling, an agricultural related structure, a commercial, industrial or other non-residential structure, or an accessory building in a designated Flood Plain obtain a conditional use permit.
- 6) Combining Zone Requirements: Winter Deer Range, Antelope Range, Elk Habitat, Deer Migration Corridors, Sage Grouse Habitat Area, and Sensitive Bird and Mammal Habitat have site specific requirements including development setbacks and larger minimum lot sizes to prevent impact to sensitive species and habitat.

### **Required Steps and Discretionary Review**

Local governments are required to comply with Goal 5 when a Post Acknowledge Plan Amendment (PAPA) 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.<sup>2</sup> Deschutes County is amending several chapters of the Deschutes County Code (DCC) to treat religious institutions and secular uses equally, consistent with the Religious Land Use and Institutionalized Persons Act (RLUIPA).

Religious institutions, like community centers or fraternal organizations, have the potential to generate high levels of public activity, noise, and habitat alteration. As this new use could potentially impact Goal 5 resources, staff is conducting an ESEE analysis exercise to identify potential consequences and protections related to the amendments. Religious institutions

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<sup>2</sup> OAR 660-023-0250(3)(b)

will be added as a new permitted use in five zoning chapters. As shown below, only four of those zones contain Goal 5 resources and are being reviewed as part of this ESEE analysis.

Contain Goal 5 Resources	Do Not Contain Goal 5 Resources
18.88 WA - Wildlife Area Combining Zone	18.108.055 SUTC – Sunriver Town Center
18.108.070 SURA – Sunriver Resort Marina	
18.108.080 SURG – Sunriver Resort Golf Course	
18.108.100 SURN – Sunriver Resort Nature Center	

ESEEs are meant to be analytical tools. The content of the ESEE is discretionary and is intended to be conducted by planning staff using existing information. In utilizing this tool, there are a few steps jurisdictions must include and address in accordance with OAR 660-023 – *Procedures and Requirements for Complying with Goal 5*:

1. Identify Conflicting Uses – Does the land use or activity negatively impact natural resources?
2. Determine Impact Area – What is the geographic extent to which land uses or activities adjacent to natural resources could negatively impact those resources?
3. Analyze ESEE Consequences – What are the positive and negative consequences (both for development and natural resources) of a decision to fully protect natural resources, fully allow conflicting uses, or limit conflicting uses?
4. Develop a program – How and to what extent will the natural resources be protected based on the ESEE analysis?

Staff provides a response to each of these steps throughout this report. The relevant page and chapter can be found in the table of contents.

## Chapter 2: Deschutes County Goal 5 Inventory and Methodology

### 660-23-0030 – Inventory Goal 5 Resources

Stemming from periodic review, Deschutes County has adopted inventories for a variety of Goal 5 natural resources<sup>3</sup>. Some of these resources have mapped geographic boundaries such as Deer Winter Range, whereas others are described as being located in general areas – such as furbearer habitat in riparian corridors. The inventories were produced at a countywide scale, with additional detail for the Deschutes River and its tributaries through the Deschutes County/City of Bend River Study. For this document, staff utilized Geographic Information Systems (GIS) data to map a conservative location of inventoried sites based on previous ordinances using the best available data for the following inventoried habitat that spatially overlaps with the zones impacted by the proposed text amendments: riparian areas, antelope habitat, elk habitat, deer habitat, and deer winter range. Staff utilized the County's WA combining zone layers to determine the general extent of habitat for big game species as the Combining Zone was designed to cover a larger area than the habitat itself (Ordinance 92-046). Inventoried streams and rivers are shown on the map, as well as wetland and riparian areas. The Riparian Area associated with these water bodies is also the habitat area for fish, furbearers, waterfowl, and upland game birds (Ordinance 92-041, 94-007). As the proposed text amendments are legislative and do not impact any specific properties, staff did not review Goal 5 impacts on an individual parcel level basis. Instead staff identified the following potential resources sites in which the allowance of a new religious institution could potentially intersect with Goal 5 resources:

Sunriver Riparian Corridor<sup>4</sup>: Staff is proposing to add religious institutions as an allowed use in the SURA, SURG, and SURN districts in the Urban Unincorporated Community of Sunriver. Ordinance 92-041, which established the County's Goal 5 inventory states *“the planned community of Sunriver is located in the migration corridor. The Mule Deer Track County Study found that the frequency of deer migration in the Sunriver area was low<sup>5</sup>”*. The area of Sunriver was not included in the associated maps for big game in Deschutes County, nor in the WA combining zone, as the likelihood of big game traveling through this urbanized area is highly unlikely. Properties in these zoning districts are located in relative proximity to the Deschutes River and its associated Goal 5 Riparian Area - consisting of land within 100 feet of the Deschutes River's Ordinary High Water Mark (OHWM), land within a wetland as depicted on the National Wetland Inventory Map, and land that is within the Flood Plain boundary associated with the Deschutes River. These properties also contain the following inventoried Goal 5 resources that depend on Riparian Areas for habitat: fish, furbearer, waterfowl, and upland game bird habitat.

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<sup>3</sup> Attachment 2

<sup>4</sup> Attachment 1 Maps 1-3

<sup>5</sup> Ordinance 92-041, Page 26

Wildlife Area Combining Zone<sup>6</sup>: The WA combining zone was adopted as a protection measure for deer, elk, and antelope in Deschutes County. As an overlay zone, the mapped area conservatively identified typical habitat and migration areas and provides additional development requirements to ensure impacts to wildlife are properly mitigated alongside the underlying base zone (such as Rural Residential or Exclusive Farm Use) regulations. The zone encompasses all of the big game inventoried sites in Deschutes County, of which many overlap – such as Deer Winter Range and Antelope Range.

The Deschutes Goal 5 inventory also includes scenic and open space sites such as Landscape Management Rivers and Streams, State Scenic Waterway and Federal Wild and Scenic Rivers, and Ecologically and Scientifically Significant Natural Areas –Little Deschutes River / Deschutes Confluence. As these are resources associated with mitigating visual impacts and do not impact development potential, they are not impacted by the proposed amendments and therefore are not reviewed in this document.

Maps of these corridors are found in Attachment 1 – Inventory Site Maps.

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<sup>6</sup> Attachment 1 Map 4

### Chapter 3: Conflicting Use Analysis

**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.**

Staff is proposing to add religious institutions as an allowed use in the SURA, SURG, and SURN districts in the Urban Unincorporated Community of Sunriver, as well as in the WA combining zone. Religious institutions could be a conflicting use to significant Goal 5 resources as they generally concentrate groups of people to a specific area for a shared activity, and can generate traffic, and noise. Other uses that are allowed in the zoning districts are shown below:

**Table 1: Allowed Uses**

District	Outright Uses	Conditional Uses
SURA	<ul style="list-style-type: none"> <li>• Marina</li> <li>• Park, playground and picnic and barbecue area</li> <li>• Recreational path</li> <li>• Restaurant, bar and cocktail lounge existing as of March 31, 1998</li> </ul>	No conditional uses.
SURG	<ul style="list-style-type: none"> <li>• Golf course</li> <li>• Golf course accessory uses</li> <li>• Recreational path</li> </ul>	No conditional uses.
SURN	<ul style="list-style-type: none"> <li>• Nature center</li> <li>• Recreational path</li> <li>• Observatory</li> <li>• A building or buildings each not exceeding 8,000 square feet of floor space which conform with the height regulations and lot requirements of the RN district and house any combination of:               <ul style="list-style-type: none"> <li>○ Restaurant and food service commonly associated with and customarily appurtenant to the uses permitted outright in the RN district.</li> </ul> </li> </ul>	No conditional uses.

	<ul style="list-style-type: none"> <li>○ Retail sales, rental and repair services commonly associated with uses permitted outright in the RN district.</li> </ul>	
WA	<p>Uses permitted outright in underlying zone also permitted outright in WA Zone.</p>	<p>Uses conditionally permitted in underlying zone also permitted conditionally in WA zone <u>excluding</u> the following</p> <p>For those in deer winter range, elk, antelope habitat:</p> <ul style="list-style-type: none"> <li>• Golf course, not included in destination resort</li> <li>• Commercial Dog Kennel</li> <li>• Public/Private school</li> <li>• B&amp;B</li> <li>• Dude Ranch</li> <li>• Playground, recreation facility or community center owned and operated by a government agency or a nonprofit community organization</li> <li>• Timeshare unit</li> <li>• Vet clinic</li> <li>• Fishing lodge</li> </ul> <p>Uses permitted in the Bend/La Pine Deer Migration Corridor only:</p> <ul style="list-style-type: none"> <li>• Church</li> <li>• Public/Private school</li> <li>• Bed and breakfast inn</li> <li>• Playground recreation facility, or community center owned and operated by a government agency or a nonprofit community organization.</li> </ul>

**General Impacts of Conflicting Uses**

The proposed amendments would add religious institutions where they have previously not been allowed, potentially adjacent to inventoried Goal 5 resources. In reviewing the proposed amendments, staff finds that the impacts from religious institutions fall into two categories:

- *Concentration of Public Activity, Noise, and Light*  
 Religious institutions vary in the extent of their program, activity, and number of individuals participating. A common characteristic of religious institutions is the assembly of members or participants during designated times. This concentration of

individuals near Goal 5 resources cause distress to inventoried wildlife, as they seek to avoid noise and light from these activities – dependent on the hours of operation.

- *Habitat Alteration and Fragmentation*

Development of religious institutions would likely require removal of upland vegetation, grading, and soil compaction that could alter drainage and runoff patterns. This could increase peak runoff, cause bank erosion, flooding, or increase the flow of sediment into water bodies. The removal of upland vegetation could also reduce tree canopy and understory vegetation which could be utilized by fish and wildlife species, outside of their primary habitat.

Staff provides greater detail on these potential conflicts and their consequences below.

## Chapter 4: Impact Areas

**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.**

This step is discretionary and allows for the local jurisdiction and staff to define which areas are the most vulnerable and/or most likely to be affected by the proposed amendments. The impact area for this ESEE analysis are properties that are within the WA, SURA, SURN, and/or SURG zones and that also contain an inventoried Goal 5 resource as described above, within its property boundaries. As this ESEE is not for any specific property, but reflecting changes to the code generally, there is no individual property specific data.

Properties in this impact area can be found in Attachment 2 – *Impact Area Maps*

### Impact Area Methodology

To understand the impact of the proposed amendments, staff has provided a rough estimate of the number of parcels and acres, shown in Table 2 below.

As a disclaimer, staff notes the WA combining zone number relates to all properties including federal land, that are partially or entirely within the WA combining zone. As the WA zone is a combining zone, the underlying designation of each individual property will determine if religious institutions are allowed. The proposed changes only remove the prohibition of religious institutions for properties in the WA zone. For instance, many Forest Use zoned properties are also within the combining zone. As the underlying zone does not allow for a religious institution, the use will still not be allowed following the proposed text changes.

**Table 2: Zoning of Properties in Impact Area**

<b>Zone</b>	<b># of Properties</b>
SURA	1
SURN	1
SURG	1
WA	15,158
<b>TOTAL</b>	<b>15,161</b>

## Chapter 5: ESEE Analysis

***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.***

### Background

Staff is choosing to conduct a single analysis for all resource sites as the impacts from allowance of religious institutions could have very similar impacts to both riparian areas and fish and wildlife that depend on the riparian for their habitat, and for big game including deer, elk, and antelope.

As described above, the potential impacts fall into two areas:

- *Concentration of Public Activity, Noise, and Light*  
Religious institutions vary in the extent of their program, activity, and number of individuals participating. A common characteristic of religious institutions is the assembly of members or participants during designated times. This concentration of individuals near Goal 5 resources cause distress to inventoried wildlife, as they seek to avoid noise from these activities and light – dependent on the hours of operation.
- *Habitat Alteration and Fragmentation*  
Development of religious institutions would likely require removal of upland vegetation, grading, and soil compaction that could alter drainage and runoff patterns. This could increase peak runoff, cause bank erosion, flooding, or increase the flow of sediment into water bodies. The removal of upland vegetation could also reduce tree canopy and understory vegetation which could be utilized by fish and wildlife species, outside of their primary habitat.

This step is discretionary. The purpose of an ESEE analysis is to provide a qualitative exercise for local governments to weigh the positive and negative consequences of three scenarios in order to determine a preferred outcome. Governments may choose to use quantitative data as necessary, but are not required to gather new information or hire wildlife biologists, economists, sociologists, or energy consultants.

## **ESEE Scenario Descriptions**

### *Scenario (A) – Allow the Conflicting Use*

In this scenario, the local government may decide that a conflicting use should be allowed fully, without any restrictions, no matter the potential impacts on the inventory site(s). In this instance, the Goal 5 rule would require the government to determine the conflicting use is of such importance compared to the site that the use should be allowed without any protections or limitations. In choosing this scenario, the local government could still use other tools to protect the inventory that are currently in place.

### *Scenario (B) – Prohibit the Conflicting Use*

In this scenario, the local government may decide that the inventory site is of such importance or the conflicting use has the potential to be so detrimental to the inventory site(s), that the conflicting use should be entirely prohibited.

### *Scenario (C) – Limit the Conflicting Use*

In this scenario, the local government may decide that the inventory site and the conflicting use are both important when compared to each other, and the use should be allowed with limitations to balance the impacts to the inventory site(s).

## **Religious Institution ESEE Analysis**

### Scenario (A) Allow the Conflicting Use

In this scenario, Deschutes County would allow religious institutions in the proposed zoning districts, without any additional requirements to protect the inventoried resources.

#### ***Economic Consequences:***

Permitting religious institutions would have positive consequences by allowing religious institutions, which are non-profits, to establish a presence in certain areas of the rural county, where they presently are not allowed, and to use land and buildings for religious purposes. Religious institutions also provide valuable contributions to communities in the areas of direct economic contributions, social services and community volunteering, education and civic skills training.

Permitting religious institutions also alleviates the substantial risk that the County will be required to expend resources defending an unnecessary RLUIPA lawsuit. In a previous land use decision, Deschutes County concluded that DCC 18.88.040(B)(3)'s prohibition on "religious institutions" in the WA combining zone violates RLUIPA's Equal Terms provision because it allows nonreligious assemblies and institutions as conditional uses in the

combining zone<sup>7</sup>. LUBA and the Oregon Court of Appeals agreed. Deschutes County cannot treat religious assemblies in the WA combining zone on less favorable terms than non-religious assemblies with similar impacts on wildlife. Therefore, by not changing the code and remaining noncompliant with RLUIPA, the County could face litigation from parties seeking to establish a religious institution in the WA and Sunriver UUC zones.

Allowing religious institutions could also have negative consequences based on previous testimony from the Oregon Department of Fish and Wildlife (ODFW)<sup>8</sup>. ODFW estimates that hunting and wildlife viewing contributed more than \$50 million to the Deschutes County economy annually. Staff is proposing to allow religious institutions in areas of the Sunriver UUC that contain riparian areas and species that rely on the riparian area for habitat including fish, furbearers, upland game birds, and waterfowl. Allowing for religious institutions in these zones could lead to disturbance of fish and wildlife populations, which in turn could reduce income associated with wildlife viewing and hunting of these species.

The WA zone contains deer migration and deer winter range habitat areas, as well as elk and antelope habitat. In some parts of the county, mule deer populations may have declined up to 70% since 2000. As a result, the Department made adjustments to hunting seasons so as not to cause additional declines through harvest. Their testimony identified other elements contributing to reductions in mule deer populations tied to human caused habitat reduction, fragmentation, and disturbance on winter range. By allowing for religious institutions in the WA combining zone, there is the potential for greater disturbance of deer populations that could continue to result in a loss of hunting and viewing revenues.

### ***Social Consequences:***

Permitting religious institutions, consistent with RLUIPA, would have positive consequences by preventing discrimination on the face of zoning codes and also in the highly individualized and discretionary processes of land use regulation. It is also recognized that religious institutions of all forms have long been recognized as central institutions within American life, helping to provide a sense of community and moral foundation. Quoting RLUIPA's co-sponsors, Senators Orrin Hatch and Edward Kennedy: "[t]he right to assembly for worship is at the very core of the free exercise of religion. Religious institutions and synagogues cannot function without a physical space adequate to their needs and consistent with their theological requirements. The right to build, buy, or rent such a shape is an indispensable adjunct of the core First Amendment right to assemble for religious purposes." Those foundational values have been codified in numerous areas of both federal and state law, including the 1st Amendment of the U.S. Constitution (U.S. Const. amend. 1), the aforementioned Religious Land Use and Institutionalized Persons Act of 2000 (42 U.S.C. § 2000cc et seq.), ORS 215.441, and ORS 215.283 (as interpreted by *Brentmar v. Jackson*, 321

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<sup>7</sup> RLUIPA at 42 USC section 2000cc(b)(1) provides that: ""No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution."

<sup>8</sup> Attachment 3

Or 481 900 P2d 1030 (1995), Lane County v. Land Conservation & Dev. Comm'n, 325 Or 569, 942 P2d 278 (1997), and Young and James vs. Jackson County, 58 Or LUBA 64 (2008)) "subsection 1" uses – including "religious institutions" – are generally allowed "as of right" even in an Exclusive Farm Use zone.

It could also have negative consequences based on previous testimony from ODFW due to the potential loss of wildlife habitat. Many residents, advocacy organizations, and wildlife agencies continue to express concerns regarding the loss of fish and wildlife habitat due to the region's rapid growth and development. There is a recognition that increases in human activity, especially in rural areas, displace habitat and diminish, incrementally, Deschutes County's rural character and quality of life. The proposed amendments could have negative consequences due to increased human presence and infrastructure near the inventoried Goal 5 resources, which could lead to a reduced level of access and enjoyment for recreationalists.

***Environmental Consequences:***

In this scenario, religious institutions would be allowed without additional requirements or regulations. As stated previously, the addition of religious institutions where they previously were not allowed could present negative impacts as they have the potential to concentrate groups of people which could increase noise and light near fish and wildlife habitats, and in turn cause distress to inventoried Goal 5 species. The term religious institution is intended to be inclusive of all types of assembly and worship, so it is difficult to provide data related to average size of assemblies, traffic counts, and the extent of their activity.

Development of any religious institution would likely require removal of upland vegetation, grading, and soil compaction that could alter drainage and runoff patterns. This could increase peak runoff, cause bank erosion, flooding, or increase the flow of sediment into water bodies. The removal of upland vegetation could also reduce tree canopy and understory vegetation which could be utilized by fish and wildlife species, outside of their primary habitat. Permitting religious institutions could result in further negative impacts to designated habitat for deer winter range, elk habitat and antelope range in WA combining zones. Based on testimony from ODFW, mule deer populations have declined up to 70% since 2000. Their testimony identified other elements contributing to reductions in mule deer populations tied to human caused habitat reduction, fragmentation, and disturbance on winter range

As previously stated, the following Goal 5 protections established during the creation of the initial inventory would remain in place:

- 1) Setback Protections - 100-foot structural setback from the ordinary high water mark of rivers or streams.
- 2) Scenic Protections – development near rivers in the Landscape Management Combining Zone must be reviewed for aesthetic compatibility.

- 3) Wetland Protections – prohibition of fill or removal of any material or wetland vegetation, regardless of the amount, within the bed and banks of any stream or river or in any wetland unless approved as a conditional use.
- 4) Mitigation Protections - Impacts to any wetland or riverbank impacts to be fully mitigated, as evaluated by Oregon Department of Fish and Wildlife (ODFW).
- 5) Flood Plain Protections - All new construction, expansion or substantial improvement of an existing dwelling, an agricultural related structure, a commercial, industrial or other non-residential structure, or an accessory building in a designated Flood Plain obtain a conditional use permit.
- 6) Additional Combining Zone Requirements: Winter Deer Range, Antelope Range, Elk Habitat, Deer Migration Corridors, Sage Grouse Habitat Area, and Sensitive Bird and Mammal Habitat have site specific requirements including development setbacks and larger minimum lot sizes to prevent impact to sensitive species and habitat.

Staff notes that the existing protections would prevent sensitive areas from being developed when religious institutions are established in the Sunriver UUC and WA zones. Although any development where it previously did not exist will inherently alter fish and wildlife habitat, development within the Sunriver UUC is urban in nature. As the existing Goal 5 measures in place today protect riparian areas and the fish and wildlife within that habitat area, the addition of religious institutions to these zone will be neutral.

***Energy Consequences:***

As the Sunriver UUC is urban and contains community operated utility services (sewer and water), access to existing electric and natural gas connections, and a maintained road system – the addition of a religious institution use is unlikely to cause any major energy consequences. Depending on the extent and reach of the religious institution’s participants, there could be additional Vehicle Miles Travelled and greater congestion on county owned roads from individuals travelling to the area from other regions of Deschutes County.

A potential negative consequence of the proposed amendments in the WA combining zone would be additional development in rural Deschutes County. Depending on the size of the religious institution and the scale of their activity, the institution would require additional infrastructure such as a septic tank and drainfield, road access or a driveway, electricity, and a well, in addition to energy to develop and operate. Depending on the location of the structure and the radius in which participants travel for religious institution activities, the addition of this use could lead to additional Vehicle Miles Traveled and greater congestion on county owned roads.

Scenario (B) Prohibit the Conflicting Use

In this scenario, Deschutes County would not change any of the current regulations surrounding religious institutions in the WA, SURA, SURN, and SURG zones Existing regulations would continue to prohibit the use.

***Economic Consequences:***

Prohibiting religious institutions would have negative economic consequences, as it prevents religious institutions from using their land and building for religious purposes. This would place additional cost on individuals seeking to establish religious institutions as they would continue to be limited in the area in which the use allowed. Additionally, it could place cost on individuals seeking to become a member of a religious institution as they may need to travel further to attend services and activities outside of a reasonable radius.

Additionally, continuing to prohibit the use could subject Deschutes County to substantial risk of losing a federal lawsuit for violating RLUIPA. The cost of the lawsuit would include legal fees and the potential need to pay for damages resulting from the violation.

It could also have neutral consequences based on testimony from ODFW. Prohibiting religious institutions could contribute to stabilizing mule deer populations, thereby maintaining economic benefits from wildlife viewing or hunting. Wildlife viewing, hunting, and fishing experiences in Deschutes County is a major economic asset to the region. Continuing with the current regulations would prevent further habitat fragmentation and help maintain wildlife viewing, hunting, and fishing revenues in Deschutes County.

***Social Consequences:***

Prohibiting religious institutions would have negative consequences because it could be viewed as discriminating against religious institutions or other religious assemblies compared to similar secular uses. The core purpose of RLUIPA is to ensure that individuals maintain the right to religious expression by requiring jurisdictions to treat religious and secular institutions on equal terms during the land use review process. This would impact individuals and entire religious communities who feel they are not being fairly treated and are limited in their religious practice. It could also impact the quality of life for rural residents as they may have to travel greater distances or practice their religious rights outside of an organized assembly.

It could also have positive consequences. Many residents express their appreciation for undisturbed landscapes because they contribute to Deschutes County's rural character and quality of life. Prohibiting religious institutions, which often can be intensive uses involving concentration of public activity, noise, and light would continue to limit disturbance to existing fish and wildlife habitats and maintain the existing quality of life in these areas.

***Environmental Consequences:***

Within the Sunriver UUC – there are a few properties that contain Goal 5 Riparian Area which is also the habitat for the Goal 5 inventoried waterfowl, upland game bird, furbearers, and fish. The WA combining zone contains Goal 5 big game elk, antelope, and deer habitat. By prohibiting religious institutions and maintaining the current status quo, these species will continue to be protected against habitat fragmentation and distress from concentrations of public activity. The environmental consequences are therefore neutral.

**Energy Consequences:**

Energy consumption will have neutral consequences as this scenario maintains the status quo. Development associated with religious institutions may be displaced to other areas of rural Deschutes County, which will still have demands on utilities.

**Scenario (C) Limit the Conflicting Use**

In this scenario, Deschutes County would allow religious institutions in the proposed zoning districts, with additional limitations to protect the inventoried resources, outside of existing protections.

**Economic Consequences:**

Permitting religious institutions would have positive consequences by allowing religious institutions, which are non-profits, to establish a presence in certain areas of the rural county, where they presently are not allowed, and to use land and buildings for religious purposes. Religious institutions also provide valuable contributions to communities in the areas of direct economic contributions, social services and community volunteering, education and civic skills training. Lastly, permitting religious institutions alleviates the substantial risk that the County will be required to expend resources defending an unnecessary RLUIPA lawsuit.

In a previous land use decision, Deschutes County concluded that DCC 18.88.040(B)(3)'s prohibition on "religious institutions" in the WA combining zone violates RLUIPA's Equal Terms provision because it allows nonreligious assemblies and institutions as conditional uses in the combining zone<sup>9</sup>. LUBA and the Oregon Court of Appeals agreed. Deschutes County cannot treat religious assemblies in the WA combining zone on less favorable terms than non-religious assemblies with similar impacts on wildlife. Therefore, by not changing the code and remaining noncompliance with RLUIPA, the County could face litigation from parties seeking to establish a religious institution in the WA and Sunriver UUC zones.

Compared to scenario (a) in which the use would be allowed outright, the addition of limitations for the use could lessen the impact on fish and wildlife habitats by only allowing a certain square footage, limiting hours or operation, or by requiring habitat restoration measures. This could positively impact the hunting and wildlife viewing economy in central Oregon, valued at \$50 million to the Deschutes County economy annually. While it could lessen impacts, the addition of any intensive use such as a religious institution could impact wildlife through the concentration of members of the public and associated noise and light impacts, which could lower the income from the recreation economy in central Oregon.

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<sup>9</sup> RLUIPA at 42 USC section 2000cc(b)(1) provides that: ""No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution."

In comparison to scenario (a), which would allow the use outright, staff finds that this scenario would provide a set of limitation to reduce the amount of impacts, even if those impacts still exist.

***Social Consequences:***

The positive social consequences in this scenario are very similar to scenario (a). Permitting religious institutions, consistent with RLUIPA, would have positive consequences by preventing discrimination on the face of zoning codes and also in the highly individualized and discretionary processes of land use regulation. It is also recognized that religious institutions of all forms have long been recognized as important social organizations, helping to provide a sense of community and moral foundation.

This scenario would add additional limitations for the establishment of a religious institution by only allowing a certain square footage, limiting hours of operation, or by requiring habitat restoration measures. By adding these limitations, there is still the potential that some religious institutions may be treated unfairly compared to secular uses. The limitations could prevent religious institutions and their members from being able to fully express their religious rights. Thus, a negative consequence of this scenario would be the continued unequal treatment of religious and secular uses.

It could also have negative consequences based on previous testimony from ODFW due to the potential loss of wildlife habitat stemming from the possible removal of habitat areas and construction of structures and their associated human presence. Many residents, advocacy organizations, and wildlife agencies continue to express concerns regarding the loss of fish and wildlife habitat due to the region's rapid growth and development. There is a recognition that increases in human activity, especially in rural areas, displace habitat and diminish, incrementally, Deschutes County's rural character and quality of life. The proposed amendments could have negative consequences due to increased human presence and infrastructure near the inventoried Goal 5 resources, which could lead to a reduced level of access and enjoyment for recreationalists.

***Environmental Consequences:***

The addition of religious institutions where they previously were not allowed could present negative consequences as they have the potential to concentrate groups of people which could increase noise and light near fish and wildlife habitats, and in turn cause distress to inventoried Goal 5 species. The term religious institution is intended to be inclusive of all types of assembly and worship, so it is difficult to provide data related to average size of assemblies, traffic counts, and the extent of their activity.

Development of any religious institution would likely require removal of upland vegetation, grading, and soil compaction that could alter drainage and runoff patterns. This could increase peak runoff, cause bank erosion, flooding, or increase the flow of sediment into water bodies. The removal of upland vegetation could also reduce tree canopy and

understory vegetation which could be utilized by fish and wildlife species, outside of their primary habitat. Permitting religious institutions could result in further negative impacts to designated habitat for deer winter range, elk habitat and antelope range in WA combining zones. Based on testimony from ODFW, mule deer populations have declined up to 70% since 2000. Their testimony identified other elements contributing to reductions in mule deer populations tied to human caused habitat reduction, fragmentation, and disturbance on winter range

Staff notes that the existing protections in place today (shown above) would prevent sensitive areas from being developed when religious institutions are established in the Sunriver UUC and WA zones. Although any development where it previously did not exist will inherently alter fish and wildlife habitat, development within the Sunriver UUC is urban in nature and the establishment of religious institutions would likely be neutral.

By limiting the use and only allowing a certain square footage, limiting hours of operation, or by requiring habitat restoration measures, the negative environmental consequences associated with religious institutions could be mitigated to a certain extent. A caveat in this scenario, would be any limitations for religious institutions would need to be objective as to not further discriminate on specific types of religious institutions and types of assemblies. In implementing a “one-size-fits-all” approach, an opportunity could be missed to protect site specific Goal 5 resources.

***Energy Consequences:***

The energy consequences in this scenario are the same as in scenario (a), although a limitation on the square footage of a building and the hours of operation could decrease the amount of energy used as part of the operation of the religious institution.

## Chapter 6: ESEE Decision

**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:**

**(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.**

As stated in the ESEE analysis, there are a variety of positive, negative, and neutral consequences associated with each scenario. Staff finds that the issue of preserving one's right to religious practices in accordance with RLUIPA is both a social and economic issue that outweighs the other ESEE consequences. Staff considered allowing the use with limitations such as hours of operation, square footage maximums, or requiring restoration measures, but this practice could still be seen as discrimination or unequal treatment of religious institutions when compared to other uses allowed in the zoning districts. Therefore the County is choosing scenario (c) which will allow the use fully notwithstanding the possible impacts on the resource sites.

<b>ESEE Factors</b>	<b>Support habitat functions (Environmental, economic, social)</b>	<b>Preserves Right to religious practice (Social, economic)</b>	<b>Support Recreational Economy (Economic, Social)</b>	<b>Consistency of Land Use Regulations (Social)</b>	<b>Preserves Rural Character (Social)</b>	<b>Transportation (Energy)</b>
<b>Prohibit conflict</b> (No change to code)	<b>0</b>	<b>-</b>	<b>0</b>	<b>-</b>	<b>0</b>	<b>0</b>
<b>Allow conflict</b> Allow religious institutions with no additional requirements.	<b>-</b>	<b>+</b>	<b>-</b>	<b>+</b>	<b>-</b>	<b>-</b>
<b>Limit conflict</b> Allow religious institutions with additional limitations.	<b>-</b>	<b>0</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>0</b>

## **Chapter 7: Program to Achieve Goal 5**

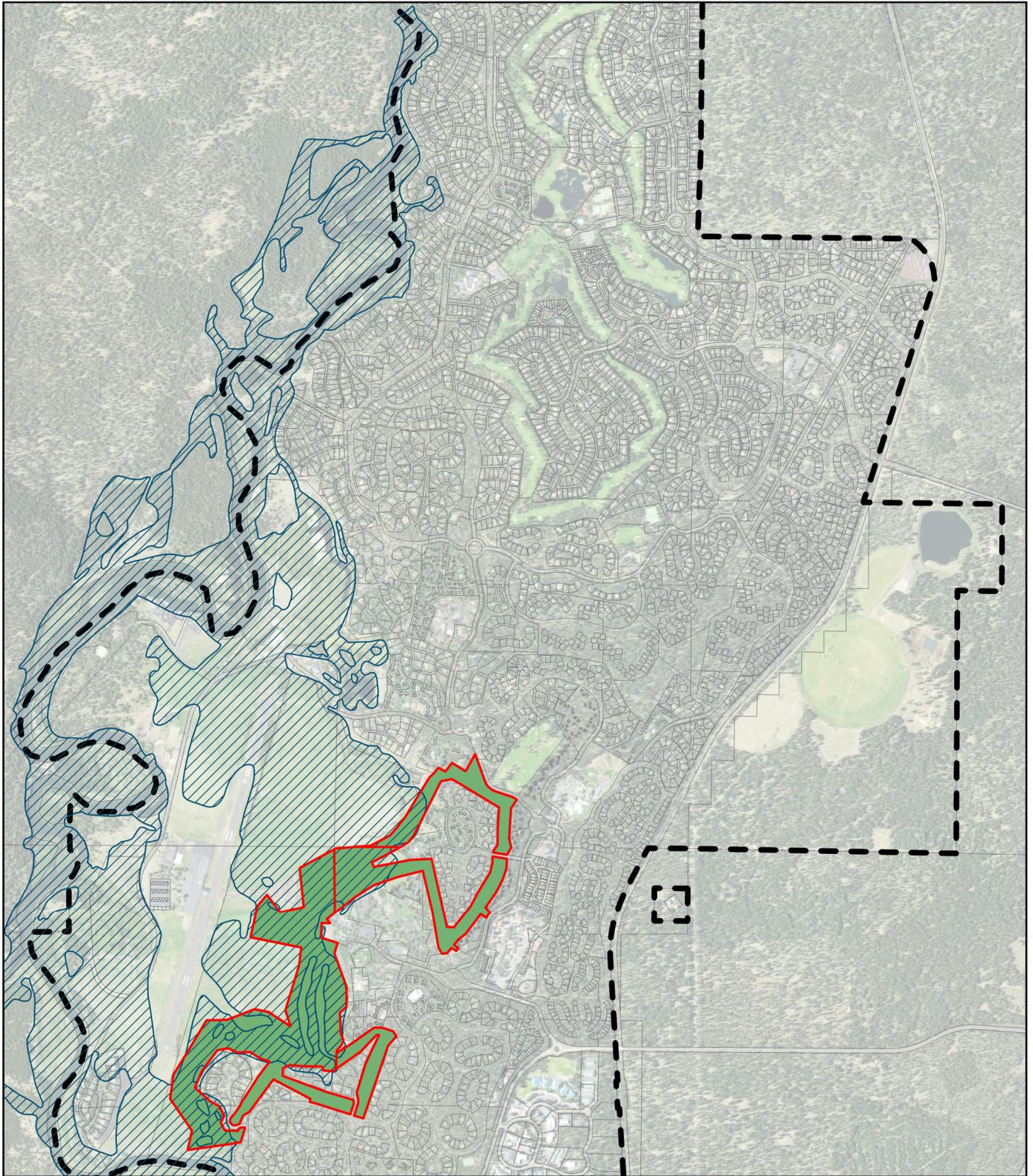
***660-023-0050(1): For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-023-0040(5). The plan shall describe the degree of protection intended for each significant resource site. The plan and 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)).***

***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;***

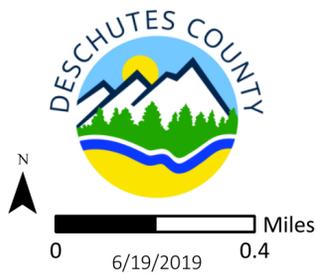
***(b) It is a nondiscretionary requirement, such as a requirement that grading not occur beneath the dripline of a protected tree; or ...***

Deschutes County has determined that allowing religious institutions within the SURA, SURN and SURG zones in the Urban Unincorporated Community of Sunriver, and within the Wildlife Area Combining Zone should be allowed fully, notwithstanding the possible impacts on the inventoried resources. The implementing measures do not include alternative, discretionary procedures for compliance.



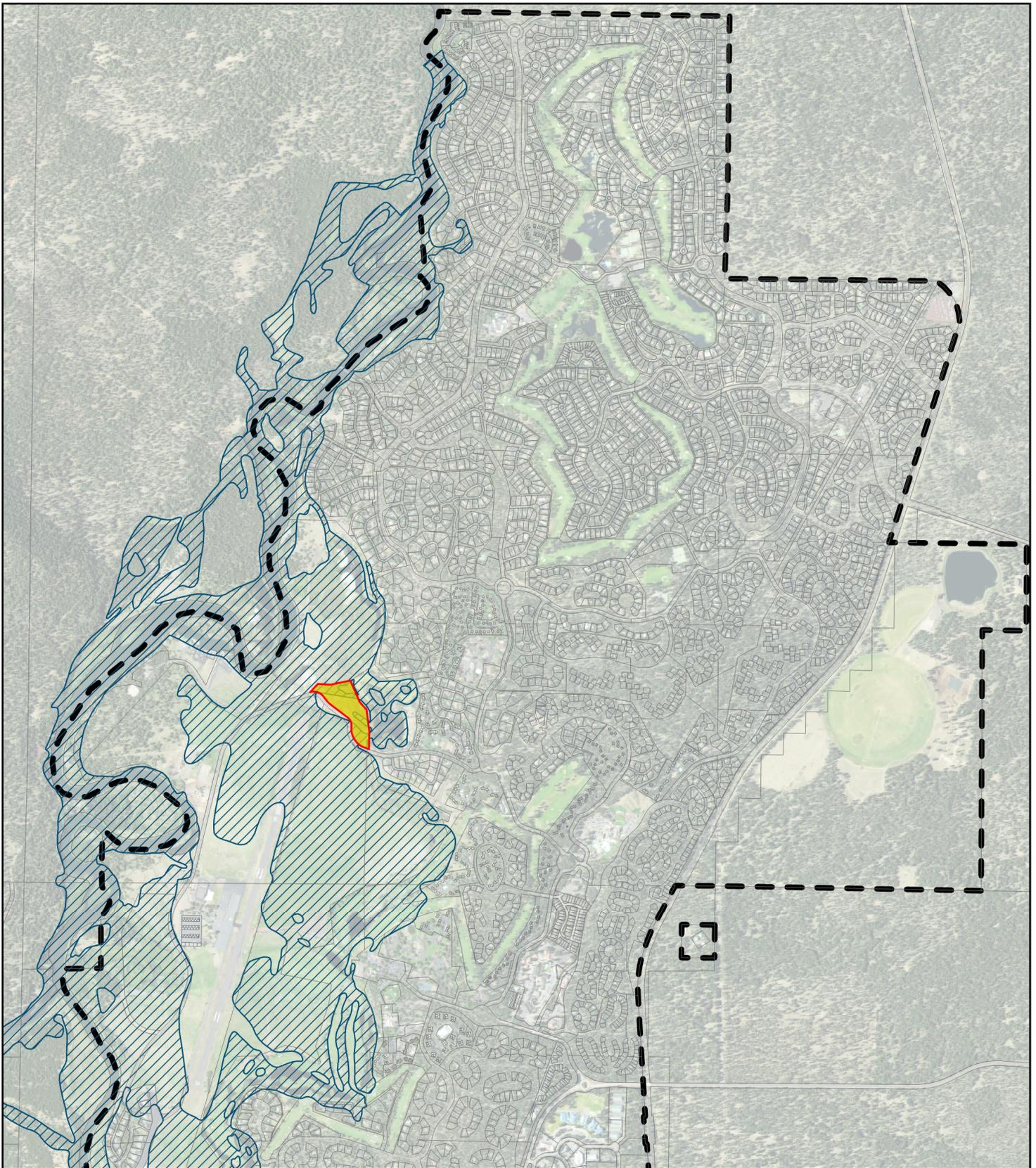
-  Floodplain
-  Sunriver Resort Golf Course
-  Potentially Impacted Taxlots
-  Sunriver Community

**Attachment 1, Map 1**



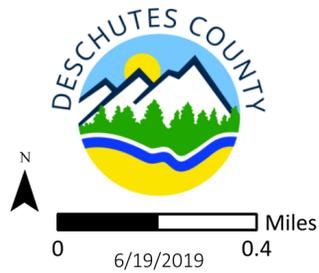
**Religious Institutions Review  
SURG - Zoning**

The SURG Zoning in the Sunriver Community would be impacted by the Floodplain Zoning of the Goal 5 Resource.



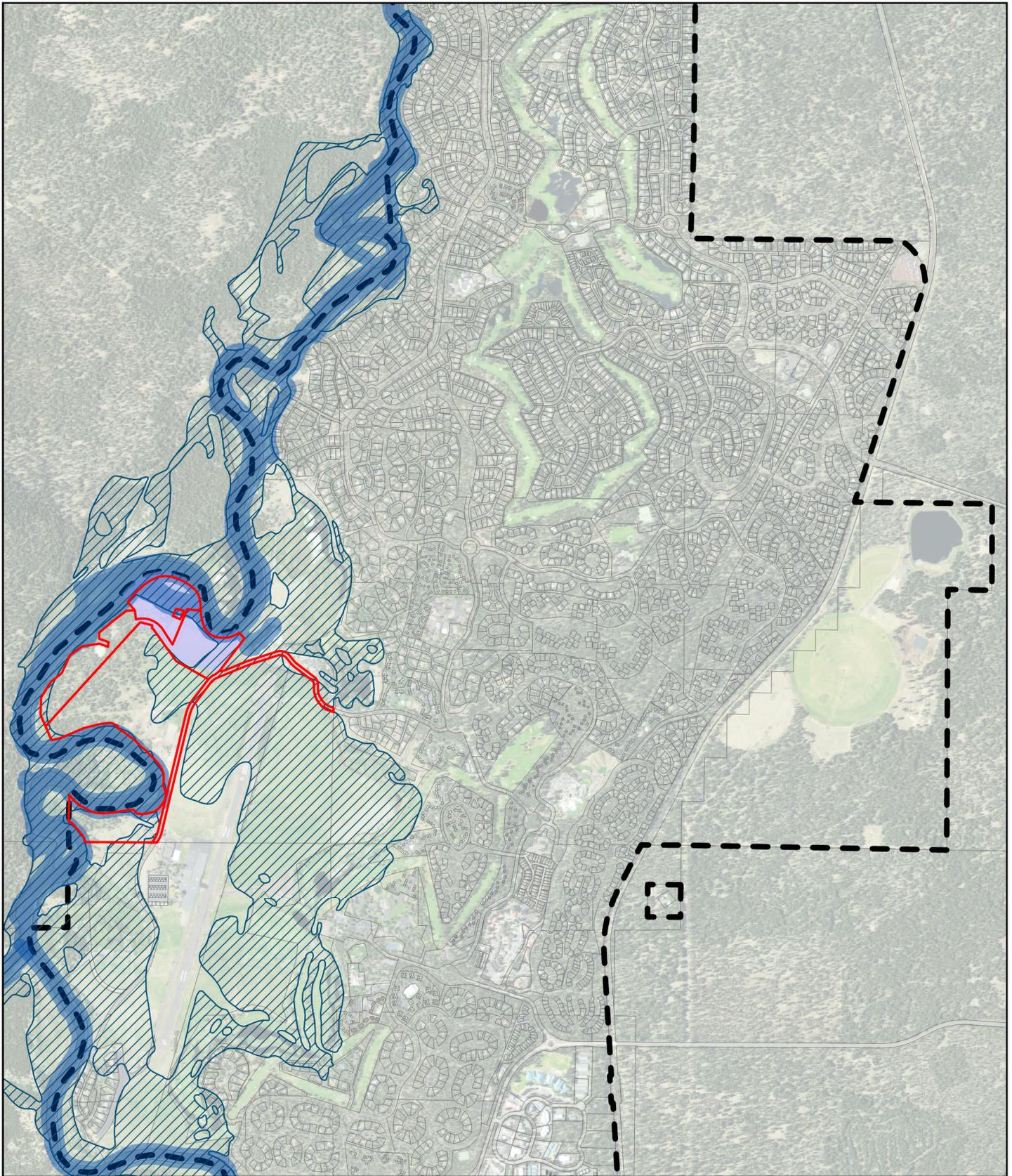
-  Floodplain
-  Sunriver Resort Nature Center
-  Potentially Impacted Taxlots
-  Sunriver Community

**Attachment 1, Map 2**

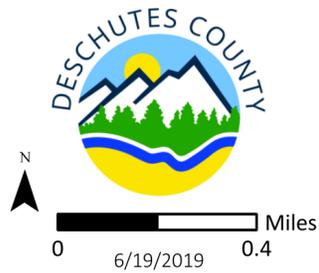


**Religious Institutions Review  
SURN - Zoning**

The SURN Zoning in the Sunriver Community would be impacted by the Floodplain Zoning of the Goal 5 Resource.

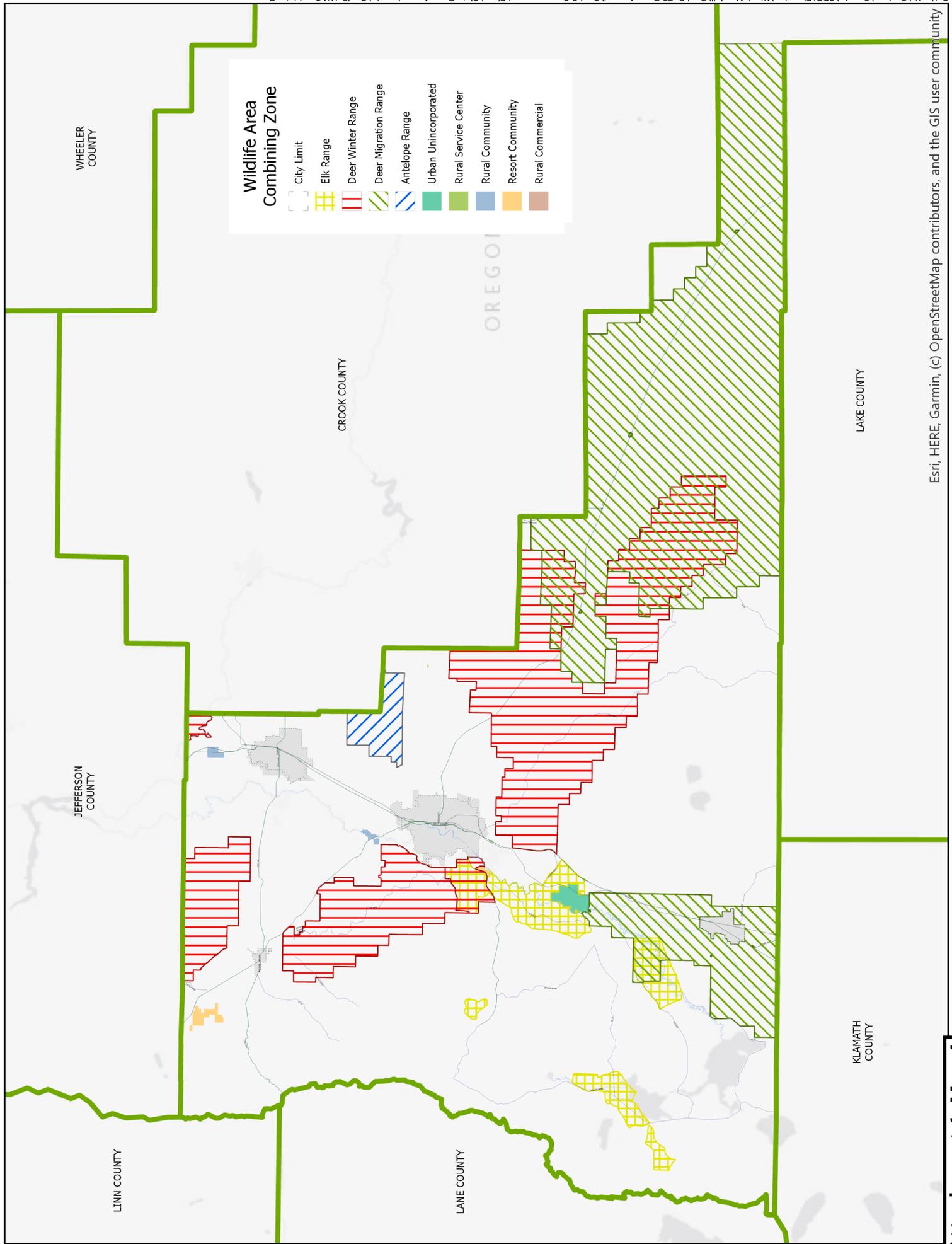


-  Floodplain
-  Wetland Riparian
-  Sunriver Resort Marina
-  Potentially Impacted Taxlots
-  Sunriver Community



**Religious Institutions Review  
SURA - Zoning**

The SURA Zoning in the Sunriver Community would be impacted by the Floodplain Zoning of the Goal 5 Resource.



Attachment 2 - Goal 5 Matrix

**Deschutes County Significant Goal 5 Resources (Excluding Historic/Aggregate Resources)**

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<p><b>Fish Habitat</b> (Inventory – Ord. No. 92-041, page 18; creeks, rivers and lakes)</p>	<p><b>Yes</b></p>	<ul style="list-style-type: none"> <li>• Removal of riparian vegetation</li> <li>• Fill and removal activities within the bed and banks of streams or wetlands</li> <li>• Hydroelectric facilities</li> <li>• Water regulation</li> <li>• Rural residential development               <ul style="list-style-type: none"> <li>○ Impermeable surfaces</li> <li>○ Sewage runoff</li> <li>○ Disruption of natural hydroelectric patterns</li> <li>○ Depletion of water table</li> <li>○ Erosion.</li> </ul> </li> </ul>	<p>Flood Plain zone recognized as program to achieve the goal to conserve fish habitat (Ordinance Nos. 88-030, 88-031, 89-009).</p> <p>Others include: fill and removal permits, wetland removal regulations, hydro prohibitions, rimrock setbacks, 100’ setback from OHW, conservation easements and restrictions on boats and docks.</p>	<p>Ordinance Nos. 86-018, 86-053,86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041</p>
<p><b>Deer Winter Range</b> (Inventory – Ord. No. 92-041, page 22; Metolius, Tumalo, North Paulina, and Grizzly ranges identified by ODFW)</p>	<p><b>Yes</b></p>	<ul style="list-style-type: none"> <li>• Dwellings</li> <li>• Roads</li> <li>• Dogs</li> <li>• Activities that cause deterioration of forage quality and quantity or cover.</li> <li>• Fences which impede safe passage</li> <li>• Destination Resorts</li> </ul>	<p>Flood Plain zone recognized as a program to achieve the goal to protect deer winter range.</p> <p>Others include Wildlife Area Combining Zone. Requires 40-acre minimum lot size for all new residential land divisions. Underlying zoning in most of the deer winter range is: EFU, Forest Use and Flood plain. These zones provide for large lot sizes and limit uses that are not compatible with farm or forest zones.</p>	<p>Ordinance Nos. 88-030, 88-031, 89-009, 92-040, 92-041, 92-042, 92-046</p>

<p><b>Furbearer Habitat</b> (Inventory – Ord. No. 92-041 – page 65; ODFW has not identified any specific habitat sites other than riparian and wetland areas that are critical for the listed species. Chapter 6.7-6.8 of County/City of Bend River Study notes fisher, wolverine, kit fox, sea otter, and ringtailed cat are protected wildlife although most common are mink, beaver, river otter, and bobcat.)</p>	<p><b>Yes.</b></p>	<ul style="list-style-type: none"> <li>• Conflicts between furbearers and other land uses are minimal in the county.</li> <li>• Activities or development that degrade or destroy habitat or disturb animals causing them to relocate</li> <li>• Habitat includes brushy streams, rivers, lakes, wetlands, forest, and open sagebrush/grassland areas. Most sensitive area is riparian habitat.</li> </ul>	<p>Furbearer habitat is adequately protected by the existing EFU and forest zoning and the provisions to protect farm use and forest zoning and the provisions to protect wetlands and riparian areas to achieve the goal to protect furbearers.</p> <p>The farm and forest zones require large minimum lot sizes and many uses are permitted only as conditional uses. The measures to protect riparian and wetland habitat are detailed in this plan in the Riparian and Wetland Habitat section.</p>	<p>Ordinance Nos. 86-018, 86-053,86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041</p>
<p><b>Elk Habitat</b> (Inventory – Ord. No. 92-041 – page 32; identified by USFS and ODFW)</p>	<p><b>Yes.</b></p>	<ul style="list-style-type: none"> <li>• Increased residential densities in habitat areas</li> <li>• Increased human disturbance such as: new roads, dogs, xc skiing and snowmobiling.</li> <li>• Land use that necessitates removal of large amount of vegetative cover.</li> </ul>	<p>Wildlife Area Combining Zone was recognized as the only program to achieve the goal to protect the elk habitat.</p> <p>It was amended to require a 160 acre minimum lot size for areas identified as significant elk habitat. Siting standards are required to minimize conflicts of residences with habitat protection. Underlying zoning in the elk habitat areas is either flood plain, forest, or open space and conservation.(Some lands are zoned RR10, including lots that are split zoned with flood plain. They are already parcelized, preventing future land divisions).</p> <p>These resource zones restrict high density residential development and prohibit industrial and commercial uses.</p>	<p>Ordinance Nos. 88-030, 88-031, 89-009, 92-040, 92-041, 92-042, 92-046</p>

<p><b>Waterfowl Habitat</b> (Inventory – Ord. No. 92-041 – page 56; includes all rivers, streams, lakes and perennial wetlands and ponds identified on the 1990 US Fish and Wildlife Wetland Inventory Maps; ODFW provided lists of all bird species; ; Chapter 6.6 of County/City of Bend River Study notes swan, ducks, and geese as important waterfowl)</p>	<p><b>Yes.</b></p>	<ul style="list-style-type: none"> <li>• Resort and vacation home development</li> <li>• Human activity associated with recreation along rivers and lakes</li> <li>• Timber-cutting around sensitive habitat</li> <li>• Fill and removal of material in wetlands and within the bed and banks of rivers and streams.</li> <li>• Removal of riparian vegetation.</li> </ul>	<p>Floodplain zone recognized as program to achieve the goal to conserve waterfowl habitat (Ordinance Nos. 88-030, 88-031, 89-009).</p> <p>Others include: fill and removal permits, wetland removal regulations, rimrock setbacks, 100’ setback from OHW, conservation easements, restrictions on boats and docks, landscape management, State and federal scenic water regulations. In addition, the forest and EFU zones require large minimum lot size which limits the potential density of development in the areas adjacent many of the rivers, streams wetlands and ponds used for waterfowl habitat.</p>	<p>Ordinance Nos. 86-018, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041, 92-042- 92-045, 92-046</p>
<p><b>Upland Game Bird Habitat</b> (Inventory – Ord. No. 92-041 – page 60; ODFW did not identify critical habitat for any of the upland game species except for the sage grouse; habitat for upland game birds is dispersed throughout the county in riparian, forest, agricultural and rangeland areas. Chapter 6.5 of County/City of Bend River Study identifies protected game.)</p>	<p><b>Yes.</b></p>	<ul style="list-style-type: none"> <li>• Removal of riparian vegetation</li> <li>• Removal of agricultural fence row and woodlots.</li> <li>• Housing development that removes seed-producing plants in brushy areas.</li> <li>• Removal of agricultural land from production (pheasant and quail impacted)</li> <li>• Urban sprawl</li> <li>• Road construction</li> <li>• Industrial development</li> <li>• Other land clearing activities.</li> </ul>	<p>For all of the upland game birds except sage grouse, the habitat is adequately protected by the existing EFU and forest zoning and the provisions to protect wetlands and riparian areas to achieve the goal of protecting upland game birds.</p> <p>County provisions to protect riparian areas and wetlands protect one of the most significant components of upland game habitat.</p> <p>Note: conflicts with sage grouse are limited by EFU zoning with a 320 acre minimum parcel size. Sensitive Bird and Mammal Combining Zone pertaining to sage grouse and leks have been repealed due to LCDDC enacted rules in OAR 660, Division 23.</p>	<p>Ordinance Nos. 86-018, 86-053,86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041, 92-042, 92-046</p>

<p><b>UPDATED</b> - Inventory – Ord. No. 94-004 –pages 156-201.</p>	<p><b>No.</b></p>	<p>See above.</p>	<p>Habitat areas for Upland Game Bird Habitat, adopted in No. 92-041 is repealed and replaced and further amended in Exhibit 4 with the ESEE Analysis and inventory for upland game bird habitat.</p> <p>Conflicts with sage grouse are reduced by the limitations on uses in the EFU and flood Plain zone, by the 320 acre minimum lot size and predominance of BLM.</p> <p>Note above still applies.</p>	<p>Ordinance Nos. 94-004 and 94-021</p>
<p><b>Wetlands and Riparian Areas</b> (Inventory – Ord. No. 92-041 – page 73; identified on USFWS NWI)</p>	<p><b>Yes.</b></p>	<ul style="list-style-type: none"> <li>• Fill and removal of material <ul style="list-style-type: none"> <li>○ Specifically that which could cause reduction in size or quality or function of a wetland, or cause destruction or degradation of riparian habitat/vegetation.</li> </ul> </li> <li>• Structural development in wetlands/riparian areas that reduce habitat and use of structure from harassment or disturbance of wildlife.</li> <li>• Cutting of riparian vegetation that: <ul style="list-style-type: none"> <li>○ Removes shade for streams, eliminates habitat for waterfowl, furbearers, and nongame birds or causes erosion.</li> </ul> </li> </ul>	<p>Floodplain zone recognized as program to achieve the goal to conserve wetland and riparian habitat (Ordinance Nos. 88-030, 88-031, 89-009).</p> <p>Others include: fill and removal permits, wetland removal regulations, hydro prohibitions, 100’ setback from OHW, conservation easements, restrictions on boats and docks, and landscape management</p>	<p>Ordinance Nos. 86-018, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041, 92-045</p>

<p><b>UPDATED – Riparian inventory</b> – Ord. No. 94-007; Significant riparian habitat is located in three areas:</p> <p>Area within 100’ of OHW of an inventoried stream or river;</p> <p>Area adjacent to an inventoried river or stream and located within a flood plain mapped by FEMA and zoned flood plain by the county (Deschutes River, Little Deschutes River, Paulina Creek, Fall River, Indian Ford Creek, Tumalo Creek, Squaw (Whychus) Creek, and Crooked River</p> <p>Area adjacent to a river or stream and inventoried as a wetland on the NWI</p>	<p><b>Yes.</b></p>	<ul style="list-style-type: none"> <li>• Location of septic systems – pollution of ground and surface water (dependent on soil characteristics).</li> <li>• Structural development in riparian areas causing harassment or disturbance of wildlife.</li> <li>• Recreational use of riparian area that destruct vegetation and soil composition including: <ul style="list-style-type: none"> <li>○ Boat landing areas</li> <li>○ Formal/informal trails</li> <li>○ Camping areas.</li> </ul> </li> </ul>	<p>Riparian Areas inventory and ESEE analysis adopted by Ordinance No. 92-041 is deleted and replaced by an inventory and ESEE contained in Exhibit A.</p> <p>New parcels meeting the minimum lot size in the resource zones (EFU, Forest, non-exception flood plain) will not cause an increase in residential density that would conflict with riparian habitat values.</p> <p>In RR10, MUA-10, and Flood Plain zone found adjacent to inventoried riparian areas, the creation of new 10 acre parcels would not significantly increase the overall density of residential use adjacent to riparian areas because the areas where new parcels could be created, with the exception of Tumalo Creek, are already divided into lots considerably smaller than 10 acres.</p> <p>Program to achieve Goal 5 for Riparian Habitat: fill and removal regulations to protect wetlands, 100’ setback from OHW, Flood plain zone (regulates docks too), Landscape Management zone, Conservation easements, State Scenic Waterway</p>	<p>Ordinance Nos. 94-007</p>
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<p><b>UPDATED – Wetland Inventory</b> – Ord. No. 94-007, Exhibit B – inventory is NWI (Ord. No. 92-045)</p>	<p><b>Yes.</b></p>	<ul style="list-style-type: none"> <li>• Increased residential density in or adjacent to riparian areas.</li> <li>• Fill and removal of material and vegetation which could cause reduction in size, quality, or function of a wetland.</li> <li>• Structural development in wetlands that cause reduction in habitat, or use of structure that could cause conflicts such as harassment/disturbance of wildlife dependent on the habitat.</li> <li>• Draining wetlands for agriculture/other purpose that destroys the hydrological function of the wetland and alters wildlife habitat.</li> <li>• Cutting wetland vegetation adjacent to streams which could remove important shade for streams, eliminate habitat for various waterfowl, furbearers, and nongame bird species and can also increase the potential for erosion or bank instability in riparian areas.</li> </ul>	<p>Wetlands Inventory and ESEE analysis adopted by Ordinance No. 92-041 is deleted and replaced by an inventory and ESEE contained in Exhibit B, Wetlands.</p> <p>Program to achieve Goal 5 for Wetland Habitat:</p> <ul style="list-style-type: none"> <li>• Fill and removal regulations to protect wetlands</li> <li>• 100’ setback from OHW</li> <li>• Flood plain zone (regulates docks too)</li> </ul> <p>DSL Removal / Fill law</p>	<p>Ordinance Nos. 94-007</p>
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<p><b>Ecologically and Scientifically Significant Natural Areas * Little Deschutes River / Deschutes River Confluence</b> (Inventory – Ord. No. 92-052, Exhibit B, Page 1; identified by Oregon Natural Heritage Program); Analysis of Pringle Falls and Horse Ridge Research Areas, West Hampton Butte and Davis Lakes excluded b/c they're on federal land and/or not related to flood plains.</p>	<p><b>Yes.</b></p>	<ul style="list-style-type: none"> <li>• Resort and vacation home development</li> <li>• Recreational uses</li> <li>• Livestock grazing</li> <li>• Fill and removal in wetlands.</li> </ul>	<p>Programs for resource protection include the zoning of the property, the provisions of the flood plain, wetlands and the river corridor.</p> <p>The implementing measures which protect and regulate development in the confluence area are: EFU zoning, Flood Plain zoning, conservation easements, and fill and removal.</p> <p>The confluence area is located in the undeveloped open space area of the Sunriver development (Crosswater). 80% of the property is retained as open space.</p> <p>Today, zoning is Flood Plain and Forest Use</p>	<p>Ordinance Nos. 86-018, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041, 92-045</p>
<p><b>Landscape Management Rivers and Streams</b> (Inventory – Ord. No. 92-052, Exhibit C, Page 3; identified by state and federal wild and scenic corridors; and within 660' of OHW of portions of Deschutes River, Little Deschutes River, Paulina Creek, Fall River, Spring river, Tumalo Creek, Squaw (Whychus) Creek, and Crooked River not on the state or federal scenic designations)</p>	<p><b>Yes.</b></p>	<ul style="list-style-type: none"> <li>• Land management activities that result in habitat loss or development within river or stream corridors which would excessively interfere with the scenic or natural appearance of the landscape as seen from the river or stream or alteration of existing natural landscape by removal of vegetative cover.</li> </ul>	<p>Program for resource protection includes: floodplain zone and restrictions, fill and removal permits, wetland removal regulations, hydro prohibitions, rimrock setbacks, , conservation easements, restrictions on boats and docks, and landscape management</p>	<p>Ordinance Nos. 86-018, 86-053, 86-054, 86-056, 88-030, 88-031, 89-009, 92-033, 93-034</p>

<p><b>State Scenic Waterways and Federal Wild and Scenic Rivers</b> (Inventory – Ord. No. 92-052, Exhibit E, Page 1;</p>	<p><b>Yes.</b></p>	<ul style="list-style-type: none"> <li>• See County / City of Bend River Study and 1986 River Study Staff Report. Both referenced in Ord. 92-005, Exhibit E.</li> </ul>	<p>Program for resource protection includes: floodplain zone and restrictions, fill and removal permits, wetland removal regulations, hydro prohibitions, rimrock setbacks, , conservation easements, restrictions on boats and docks, and landscape management</p>	<p>Ordinance Nos. 86-018, 86-053, 86-054, 86-056, 88-030, 88-031, 89-009, 92-033, 93-034</p>
<p><b>Deer Migration Corridor</b> (Inventory – Ord. No. 92-041, page 26; Bend-La Pine migration corridor identified by ODFW)</p>	<p><b>No.</b></p>	<ul style="list-style-type: none"> <li>• Dwellings</li> <li>• Roads</li> <li>• Dogs</li> <li>• Fences which impede safe passage</li> </ul>	<p>Wildlife Area Combining Zone was recognized as the only program to achieve the goal to protect the deer migration corridor. It was amended to require cluster development for all land divisions in the RR-10 zone in the Bend/La Pine migration corridor (92-042). A 20 acre parcel is the minimum size required for a cluster development. Siting and fencing standards also apply in the deer migration corridor.</p> <p>Flood Plain Zone not an identified program, but described as a beneficial in limiting impacts due to development requirements.</p>	<p>Ordinance Nos. 92-040, 92-041, 92-042, 92-046</p>
<p><b>Antelope Habitat</b> (Inventory – Ord. No. 92-041 – page 38; identified by ODFW)</p>	<p><b>No.</b></p>	<ul style="list-style-type: none"> <li>• Land use or development activities associated with human activity which would result in the loss of habitat, and animal harassment and disturbance</li> </ul>	<p>To achieve the goal to conserve antelope habitat, uses conflicting with antelope habitat are limited to the Wildlife Area Combining Zone. In antelope range, the minimum lot size is 320 acres. Except for rural service centers, the antelope habitat is zoned EFU or F1.</p>	<p>Ordinance Nos. 92-040, 92-041, 92-042, 92-046</p>

<p><b>Habitat for Sensitive Birds</b> (Inventory – Ord. No. 92-041 – page 41 and Table 5; identified by ODFW, ODF, OSU, Oregon Natural Heritage Data Bases).</p> <p>The area required for each nest site varies between species.</p>	<p><b>No.</b></p>	<ul style="list-style-type: none"> <li>• Surface mining</li> <li>• Logging operations</li> <li>• Air strips</li> <li>• Residential use,</li> <li>• Recreation facilities,</li> <li>• Roads</li> <li>• Any other activity which would disturb the nesting birds (i.e. intensive recreational use or removal of trees or vegetation)</li> </ul>	<p>Nest sites are found in forest, EFU and Open Space and Conservation zones. The Sensitive Bird and Mammal Combining Zone achieves the goal to protect sensitive bird sites.</p>	<p>Ordinance Nos. 92-040, 92-041, 92-042, 92-046</p>
<p>(<b>UPDATED</b> - Inventory – Ord. No. 94-004 –pages 3 to 140 Site specific ESEE analysis and decisions follow each site.</p>	<p><b>No.</b></p>	<p>See above.</p>	<p>Habitat areas for sensitive birds of the Fish and Wildlife Element, adopted in No. 92-041 is repealed and replaced by inventories in Exhibit 1. Area required around each nest site needed to protect the nest from conflict varies between species. It’s called “sensitive habitat area.”</p> <p>Note: Northern bald eagle, osprey, golden eagle, prairie falcon and great blue heron rookeries are located on federal land. Classified as “2A” Goal 5 Resources. Great Grey owl site no longer exists. Some bald eagle, golden eagle sites are controlled by the Sensitive Bird and Mammal Combining Zone.</p>	<p>Ordinance Nos. 94-004 and 94-021</p>

<p><b>Habitat Areas for Townsend’s Big-Eared Bats</b> (Inventory – Ord. No. 92-041 – page 69; identified by ODFW, ODF, OSU, Oregon Natural Heritage Data Bases)</p>	<p><b>No.</b></p>	<ul style="list-style-type: none"> <li>• Surface mining</li> <li>• Logging operations</li> <li>• Air strips</li> <li>• Recreation facilities including golf courses and destination resorts</li> <li>• Roads</li> </ul>	<p>Caves located in EFU zones. Program to achieve the goal is Sensitive Bird and Mammal Combining Zone</p>	<p>Ordinance No. 92-041 and 042</p>
<p><b>UPDATED</b> - Inventory – Ord. No. 94-004 –pages 140 to 155 Site specific ESEE analysis and decisions follow each site.</p>	<p><b>No.</b></p>	<p>See above.</p>	<p>Habitat areas for Townsend Bats, adopted in No. 92-041 is repealed and replaced and further amended in Exhibit 2. The ESEE for Townsend’s big-eared bats is amended for additional bat sites in Exhibit 3.</p>	<p>Ordinance Nos. 94-004 and 94-021</p>
<p><b>Lakes and Reservoirs</b> (Inventory – Ord. No. 92-052, Exhibit C, Page 10; includes Upper Tumalo Reservoir; remaining are on federal land</p>	<p><b>No.</b></p>	<ul style="list-style-type: none"> <li>• Development which would cause a loss of open space or a decrease in the aesthetic and scenic resources</li> <li>• land management activities, resulting in the removal of natural vegetation which provides wildlife habitat and scenic value.</li> </ul>	<p>Conflicting uses around Tumalo Reservoir are specifically limited by Title 18.48, Open Space Conservation Zone and a 100’ setback for any structure from OHW</p>	<p>Ordinance No. 91-020</p>

<p><b>Wilderness Areas, Areas of Special Concern, Energy Sources (Ord. No 92-005), and Groundwater Resources (Ord. No. 94-003)</b> not analyzed because they're on federal land or don't relate to flood plans.</p>	<p>No.</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>
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# Oregon

Kate Brown, Governor

Department of Fish and Wildlife

East Region  
61374 Parrell Road  
Bend, Oregon 97702  
(541) 388-6363  
FAX (541) 388-6281

## Attachment 3 - Oregon Department of Fish and Wildlife 2017 Testimony

September 22, 2017

Deschutes County Community Development Department  
P.O. Box 6005  
117 NW Lafayette Ave  
Bend, OR 97708

Re: Planning Division File 247-17-000702-TA/247-17-000703-PA

The purpose of this letter is to provide Oregon Department of Fish and Wildlife (Department) comments on the proposed Deschutes County Community Development Department (CDD) amendment to the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, to permit churches in the Wildlife Area Combining Zone (WA Zone).

According to Deschutes County Code 18.88, the purpose of the WA 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.” Much of the WA Zone is meant to conserve winter ranges for deer, elk and pronghorn. These are areas where wildlife congregate to conserve energy when food resources are scarce and temperatures are often below freezing making them particularly vulnerable to human disturbance.

The Department is mandated by State Statute to manage fish and wildlife resources to prevent serious depletion of indigenous species and to provide optimum recreational and aesthetic benefits for present and future generations of the citizens of Oregon (ORS 496.012). This objective can only be realized in concert with land use provisions that benefit wildlife resources such as the Goal 5 planning process that created the WA Zone. The maintenance of adequate winter range is crucial to the persistence of big game populations which provide local ecological and economic value. The winter range protected under the WA Zone in Deschutes County is coming under increasing pressure from a growing human population. Recent census data established the Bend-Redmond area as the fastest growing metropolitan area on the west coast. That coupled with mule deer population estimates that are 40-50% of Department management objectives highlights the importance of maintaining WA Zone protections.

It is outside of the Department’s purview to comment on whether permitting churches in the WA Zone complies with the Religious Land Use and Institutionalized Persons Act (RLUIPA). More broadly, the proposed amendment would allow a use that the Department, the U.S. Forest Service, Bureau of Land Management, and U.S. Fish and Wildlife Service have deemed in an “Interagency Report” to be in conflict with wildlife habitat values because it “generate[s] a high level of public activity, noise, and habitat alterations, which in turn can impact large geographic spaces and alter many acres of valuable wildlife habitat” (see p21 of the 2009 “Updated Wildlife Information and Recommendations for the Deschutes County Comprehensive Plan Update”).

The CDD states that mitigation for impacts associated with this amendment will be achieved by prohibiting outdoor activities during the time of year when animals are using the WA Zone. That prohibition may address animals' exposure in winter to the "high levels of public activity" and "noise" listed above. However, it does not adequately mitigate for the "habitat alterations, which in turn can impact large geographic spaces and alter many acres of valuable wildlife habitat" that will likely occur under this amendment. The habitat in the WA Zone must be conserved throughout the year so that it is available and functioning for wildlife during the winter.

As mentioned above, the Department has previously agreed that churches (as well as golf courses, commercial dog kennels, schools, bed and breakfast inns, dude ranches, playgrounds, recreation facilities, community centers, timeshare units, veterinary clinics, and fishing lodges) should be among the uses not permitted in the WA Zone. Additionally, from a wildlife conservation stand point, winter range is already at risk from currently permitted uses. Therefore, it would be counter to the Department's statutory responsibility to support this amendment. We recommend that the Planning Commission reject this amendment and the CDD develop an alternative to comply with RLUIPA that will preserve the intent of the Goal 5 planning process.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Sara Gregory".

Sara Gregory  
Wildlife Habitat Biologist  
[sara.c.gregory@state.or.us](mailto:sara.c.gregory@state.or.us)  
541-388-6147

cc: Bruce Eddy, East Region Manager, ODFW  
Brett Hodgson, Acting Deschutes Watershed Manager, ODFW  
Corey Heath, Deschutes District Wildlife Biologist, ODFW



# Oregon

Kate Brown, Governor

Department of Fish and Wildlife

East Region

61374 Parrell Road

Bend, Oregon 97702

(541) 388-6363

FAX (541) 388-6281

November 14, 2017

Deschutes County Community Development Department  
P.O. Box 6005  
117 NW Lafayette Ave  
Bend, OR 97708

Re: Planning Division File 247-17-000702-TA/247-17-000703-PA

The purpose of this letter is to provide additional Oregon Department of Fish and Wildlife (Department) comments on the revised proposed Deschutes County Community Development Department (CDD) text amendment to the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, to permit churches in the Wildlife Area Combining Zone (WA Zone). The Department submitted comments objecting to the first draft of the text amendment in a letter dated September 22, 2017. As the Department does not appear in the Planning Manager's October 31, 2017 memorandum listing those who submitted written testimony, we are resubmitting our original letter with this correspondence. Please add them both to the record.

As we discussed during the November 6<sup>th</sup> public hearing and our previous letter, the Department continues to object to the proposed text amendments according to our statutory responsibility. Mule deer are the only type of deer found in Deschutes County and their populations have been in decline for decades. In some parts of the County there have been declines of up to 70% since 2000. As a result, the Department has made the necessary adjustments to hunting seasons so as not to cause additional declines through harvest. Unfortunately, there are other elements contributing to reductions in mule deer populations. Among the many factors contributing to their decline, many can be tied to human caused habitat reduction, fragmentation, and disturbance on winter range.

Unlike other deer species, mule deer are more specific in their habitat needs and more sensitive to humans. Commonly mule deer exhibit migratory behavior whereby they take advantage of the variety of plants available in the mountains during the summer and then move to areas such as those in the WA Zone for the winter to escape deep snow at higher elevations. This means traveling many miles each spring and fall. Mule deer also show a strong fidelity to their migration corridors and their summer and winter ranges. They will return to the same winter range year after year. This winter range is where deer typically interact with people and associated land use. Department studies of hundreds of collared mule deer in central Oregon showed that migratory deer had a better chance of surviving than deer that did not migrate. Therefore, maintaining migratory herds is among the Department's priorities.

Maintaining winter range areas that are relatively free from human disturbance is one way to improve mule deer populations. It is difficult for people to interpret stress induced behavior in mule deer because they will often remain motionless when face to face with a human instead of

fleeing. However, Department studies showed a strong avoidance of people during the winter. When deer are disturbed by people, their stress levels rise, they increase their movements, and use valuable energy reserves that could make them vulnerable to increased mortality from vehicles, predators and disease among other things. In addition, other research has shown that as residential development increases, survival of mule deer fawns decreases. Low fawn survival equates to slow or negative population growth. Therefore, relying on urban development to support our mule deer populations is not a sustainable or desirable option.

Through the creation for the WA Zone, Deschutes County recognized the need to preserve traditional winter habitat for mule deer. This in turn preserves open space and habitat for a variety of other species. Indeed, in protecting winter range the Goal 5 planning process has also helped to protect the scenic views and recreational opportunities that makes Deschutes County a desirable place to live and visit.

The Department is concerned that the CDD's Economic, Social, Environmental, and Energy (ESEE) analysis of the proposed text amendment failed to adequately examine the value of mule deer and other wildlife. At last estimate, hunting and wildlife viewing contributed more than \$50 million to the Deschutes County economy annually. There is also a social and environmental component to prioritizing wildlife habitat values that should be considered. The long term consequences of these proposed text amendments could contribute to permanent removal of hundreds of acres of wildlife habitat as the WA Zone would be vulnerable to the construction of very large structures and their associated human presence. This could further compromise the future of healthy functioning mule deer herds in Deschutes County. The Department requests a revised ESEE analysis that recognizes the wildlife values that could be impacted by these text amendments.

Finally, the Department would like the language on Packet Page 22 revised to remove the statement that these text amendments were developed in coordination with the Oregon Department of Fish and Wildlife. While Department staff appreciate the positive working relationship we have with CDD staff and hope to collaborate on future projects, in this case, we were not able to come to an agreement.

Thank you for considering these comments. If you have any questions please contact me.

Sincerely,

A handwritten signature in black ink that reads "Sara Gregory". The signature is written in a cursive, flowing style.

Sara Gregory  
Wildlife Habitat Biologist  
[sara.c.gregory@state.or.us](mailto:sara.c.gregory@state.or.us)  
541-388-6147

cc: Bruce Eddy, East Region Manager, ODFW  
Michael Harrington, Deschutes Watershed Manager, ODFW  
Corey Heath, Deschutes District Wildlife Biologist, ODFW

# **Religious Institutions Text Amendment**

**Appendix A: ESEE Analysis Document to  
File Nos. 247-19-000512-PA / 513-TA**

Deschutes County Community Development  
October 28, 2019

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Attachment 1 – Inventory Site Maps

Attachment 2 – Deschutes County Goal 5 Inventory Summary Table

Attachment 3 – Oregon Department of Fish and Wildlife Testimony 2017

# Chapter 1: Overview of Goal 5 and ESEE Analyses

## Introduction

This appendix report was prepared as part of the findings document associated with File Nos. 247-19-000512-PA / 513-TA. Deschutes County is amending the Comprehensive Plan and several chapters of the Deschutes County Code (DCC) to treat religious institutions (formally referred to as churches) and similar secular uses equally, consistent with the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA).

In 2018, the Land Use Board of Appeals (LUBA) issued a decision<sup>1</sup> affirming approval of a church within the Wildlife Area (WA) Combining Zone, which was affirmed without opinion by the Oregon Court of Appeals. In that decision, LUBA found the County's WA Combining Zone (Chapter 18.88) did not treat religious institutions and similar secular uses equally. The zone conditionally allowed for certain uses such as wineries, living history museums, and agri-tourism and other commercial events and activities, but prohibited religious institutions. This unequal treatment was found to be in violation of RLUIPA, likely as RLUIPA was adopted more than eight years after the adoption of the WA Combining Zone and other zoning sections. From this decision, staff is proposing to amend several sections of the DCC and Comprehensive Plan to comply with RLUIPA and ensure equal treatment of religious institutions and secular uses.

Staff is proposing to amend several zoning code chapters to allow for religious institutions where other secular uses are currently allowed. DCC Chapter 18.88 is the WA combining zone, which recognizes three Goal 5 inventories: Deer Winter Range, Elk Habitat and Antelope Range. The Deer Migration Range portion of the WA Zone currently allows religious institutions and will not be altered by the proposed amendments. Staff is also amending several districts in the Sunriver Urban Unincorporated Community (UUC) Zone (18.108) that contain Goal 5 riparian resources and their associated fish, furbearer, waterfowl, and upland game habitat. Recognizing that a religious institution is a new conflicting use in portions of the WA combining zone and in some districts in the Sunriver UUC, Deschutes County is required to apply Goal 5 in consideration of this PAPA. The full findings document provides additional detail and background information regarding the intent of the amendments and compliance with other applicable state and local regulations outside of Statewide Land Use Planning Goal 5 – *Natural Resources, Scenic and Historic Areas, and Open Spaces*.

## Deschutes County Goal 5 Program

The purpose of Goal 5 is “to protect natural resources and conserve scenic and historic areas and open spaces”. Local governments, as part of the Comprehensive Planning process are required to inventory the extent, location, quality, and quantity of significant natural resources within its jurisdictional boundaries. Following this inventory, local governments then conduct an economic, social, environmental, and energy (ESEE) analysis to determine

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<sup>1</sup> LUBA Decision No. 2018-095 Central Oregon LandWatch v. Deschutes County and Shepherd

the extent to which land uses should be limited in order to adequately protect significant resources. Following an ESEE analysis, governments then establish a program to protect significant natural resources. Deschutes County established its initial Goal 5 natural resource inventory, ESEE analyses, and protection programs between the years of 1988-1994, as part of periodic review.

In reviewing this document, it's important to remember there are six policies within the Deschutes County Code and the Deschutes County Comprehensive Plan that were established through ESEEs over time and that could still limit the development of religious institutions and similar uses near inventoried Goal 5 resources. Staff finds it is important to note that the proposed amendments do not alter the following existing protections.

- 1) Setback Protections - 100-foot structural setback from the ordinary high water mark of rivers or streams.
- 2) Scenic Protections - development near rivers in the Landscape Management Combining Zone must be reviewed for aesthetic compatibility.
- 3) Wetland Protections - prohibition of fill or removal of any material or wetland vegetation, regardless of the amount, within the bed and banks of any stream or river or in any wetland unless approved as a conditional use.
- 4) Mitigation Protections - Impacts to any wetland or riverbank impacts to be fully mitigated, as evaluated by Oregon Department of Fish and Wildlife (ODFW).
- 5) Flood Plain Protections - All new construction, expansion or substantial improvement of an existing dwelling, an agricultural related structure, a commercial, industrial or other non-residential structure, or an accessory building in a designated Flood Plain obtain a conditional use permit.
- 6) Combining Zone Requirements: Winter Deer Range, Antelope Range, Elk Habitat, Deer Migration Corridors, Sage Grouse Habitat Area, and Sensitive Bird and Mammal Habitat have site specific requirements including development setbacks and larger minimum lot sizes to prevent impact to sensitive species and habitat.

### **Required Steps and Discretionary Review**

Local governments are required to comply with Goal 5 when a Post Acknowledge Plan Amendment (PAPA) 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.<sup>2</sup> Deschutes County is amending several chapters of the Deschutes County Code (DCC) to treat religious institutions and secular uses equally, consistent with the Religious Land Use and Institutionalized Persons Act (RLUIPA).

Religious institutions, like community centers or fraternal organizations, have the potential to generate high levels of public activity, noise, and habitat alteration. As this new use could potentially impact Goal 5 resources, staff is conducting an ESEE analysis exercise to identify

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<sup>2</sup> OAR 660-023-0250(3)(b)

potential consequences and protections related to the amendments. Religious institutions will be added as a new permitted use in five zoning chapters. As shown below, only four of those zones contain Goal 5 resources and are being reviewed as part of this ESEE analysis.

Contain Goal 5 Resources	Do Not Contain Goal 5 Resources
18.88 WA - Wildlife Area Combining Zone	18.108.055 SUTC – Sunriver Town Center
18.108.070 SURA – Sunriver Resort Marina	
18.108.080 SURG – Sunriver Resort Golf Course	
18.108.100 SURN – Sunriver Resort Nature Center	

ESEEs are meant to be analytical tools. The content of the ESEE is discretionary and is intended to be conducted by planning staff using existing information. The ESEE is not meant to be a full environmental review such as an Environmental Impact Statement (EIS) or National Environmental Policy Act (NEPA), rather Goal 5 explains “the ESEE analysis need not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected”<sup>3</sup>. In utilizing this analytical tool, there are a few steps jurisdictions must include and address in accordance with OAR 660-023 – *Procedures and Requirements for Complying with Goal 5*:

1. Identify Conflicting Uses – Does the land use or activity negatively impact natural resources?
2. Determine Impact Area – What is the geographic extent to which land uses or activities adjacent to natural resources could negatively impact those resources?
3. Analyze ESEE Consequences – What are the positive and negative consequences (both for development and natural resources) of a decision to fully protect natural resources, fully allow conflicting uses, or limit conflicting uses?
4. Develop a program – How and to what extent will the natural resources be protected based on the ESEE analysis?

Staff provides a response to each of these steps throughout this report. The relevant page and chapter can be found in the table of contents.

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<sup>3</sup> OAR 660-023-0040(1)

## Chapter 2: Deschutes County Goal 5 Inventory and Methodology

### 660-23-0030 – Inventory Goal 5 Resources

Stemming from periodic review, Deschutes County has adopted inventories for a variety of Goal 5 natural resources<sup>4</sup>. Some of these resources have mapped geographic boundaries such as Deer Winter Range, whereas others are described as being located in general areas – such as furbearer habitat in riparian corridors. The inventories were produced at a countywide scale, with additional detail for the Deschutes River and its tributaries through the Deschutes County/City of Bend River Study. County staff had previously digitized these habitat boundaries into Geographic Information Systems (GIS) shapefiles. The shapefiles were created from hard copy maps and descriptions found in the ordinances establishing the County's Goal 5 program, in consultation with Oregon Department of Fish and Wildlife. Maps provided in this document include inventoried habitat that spatially overlaps with the zones impacted by the proposed text amendments. The habitat areas include: riparian areas, antelope habitat, elk habitat, deer habitat, and deer winter range. Staff utilized the County's WA combining zone layers to determine the general extent of habitat for big game species as the Combining Zone was designed to cover a larger area than the habitat itself (Ordinance 92-046). Inventoried streams and rivers are shown on the map, as well as wetland and riparian areas. The Riparian Area associated with these water bodies is also the habitat area for fish, furbearers, waterfowl, and upland game birds (Ordinance 92-041, 94-007). As the proposed text amendments are legislative and do not impact any specific properties, staff did not review Goal 5 impacts on an individual parcel level basis. Instead staff identified the following potential resources sites in which the allowance of a new religious institution could potentially intersect with Goal 5 resources:

Sunriver Riparian Corridor<sup>5</sup>: Staff is proposing to add religious institutions as an allowed use in the SURA, SURG, and SURN districts in the Urban Unincorporated Community of Sunriver. Ordinance 92-041, which established the County's Goal 5 inventory states *“the planned community of Sunriver is located in the migration corridor. The Mule Deer Track County Study found that the frequency of deer migration in the Sunriver area was low*<sup>6</sup>”. The area of Sunriver was not included in the associated maps for big game in Deschutes County, nor in the WA combining zone, as the likelihood of big game traveling through this urbanized area is highly unlikely. Properties in these zoning districts are located in relative proximity to the Deschutes River and its associated Goal 5 Riparian Area - consisting of land within 100 feet of the Deschutes River's Ordinary High Water Mark (OHWM), land within a wetland as depicted on the National Wetland Inventory Map, and land that is within the Flood Plain boundary associated with the Deschutes River. Ordinance 92-041 stated the following additional Goal 5 resources depend on riparian corridors for habitat: furbearer, waterfowl, and upland game bird habitat. As the extent

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<sup>4</sup> Attachment 2

<sup>5</sup> Attachment 1 Maps 1-3

<sup>6</sup> Ordinance 92-041, Page 26

of the habitat locations for these species are not detailed in a boundary description or on a map, staff assumes the species habitat is found entirely inside the Riparian Area boundary shown on the attached GIS maps.

Wildlife Area Combining Zone<sup>7</sup>: The WA combining zone was adopted as a protection measure for deer, elk, and antelope in Deschutes County. As an overlay zone, the mapped area conservatively identified typical habitat and migration areas and provides additional development requirements to ensure impacts to wildlife are properly mitigated alongside the underlying base zone (such as Rural Residential or Exclusive Farm Use) regulations. The zone encompasses the previously inventoried area for Deer Winter Range, Significant Elk Habitat, and Antelope Range. As the proposed amendments remove a prohibition on only three subzones of this Combining Zone area (deer winter range, significant elk habitat, and antelope range), only these subzones are shown on the attached map. Deer migration range has been excluded, as religious institutions are already currently allowed in these areas.

The Deschutes County Goal 5 inventory also includes scenic and open space sites such as Landscape Management Rivers and Streams, State Scenic Waterway and Federal Wild and Scenic Rivers, and Ecologically and Scientifically Significant Natural Areas –Little Deschutes River / Deschutes Confluence. As these are resources associated with mitigating visual impacts and do not impact development potential, they are not impacted by the proposed amendments and therefore are not reviewed in this document.

Maps of these corridors are found in Attachment 1 – Inventory Site Maps.

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<sup>7</sup> Attachment 1 Map 4

### Chapter 3: Conflicting Use Analysis

**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.**

Staff is proposing to add religious institutions as an allowed use in the SURA, SURG, and SURN districts in the Urban Unincorporated Community of Sunriver, as well as in the WA combining zone. Religious institutions could be a conflicting use to significant Goal 5 resources as they generally concentrate groups of people to a specific area for a shared activity, and can generate traffic, and noise. Other uses that are allowed in the zoning districts are shown below:

**Table 1: Allowed Uses**

District	Outright Uses	Conditional Uses
SURA	<ul style="list-style-type: none"> <li>• Marina</li> <li>• Park, playground and picnic and barbecue area</li> <li>• Recreational path</li> <li>• Restaurant, bar and cocktail lounge existing as of March 31, 1998</li> </ul>	No conditional uses.
SURG	<ul style="list-style-type: none"> <li>• Golf course</li> <li>• Golf course accessory uses</li> <li>• Recreational path</li> </ul>	No conditional uses.
SURN	<ul style="list-style-type: none"> <li>• Nature center</li> <li>• Recreational path</li> <li>• Observatory</li> <li>• A building or buildings each not exceeding 8,000 square feet of floor space which conform with the height regulations and lot requirements of the RN district and house any combination of:               <ul style="list-style-type: none"> <li>○ Restaurant and food service commonly associated with and customarily appurtenant to the uses permitted outright in the RN district.</li> </ul> </li> </ul>	No conditional uses.

	<ul style="list-style-type: none"> <li>o Retail sales, rental and repair services commonly associated with uses permitted outright in the RN district.</li> </ul>	
WA	<p>Uses permitted outright in underlying zone also permitted outright in WA Zone.</p>	<p>Uses conditionally permitted in underlying zone also permitted conditionally in WA zone <u>excluding</u> the following</p> <p>For those in deer winter range, elk, antelope habitat:</p> <ul style="list-style-type: none"> <li>• Golf course, not included in destination resort</li> <li>• Commercial Dog Kennel</li> <li>• Public/Private school</li> <li>• B&amp;B</li> <li>• Dude Ranch</li> <li>• Playground, recreation facility or community center owned and operated by a government agency or a nonprofit community organization</li> <li>• Timeshare unit</li> <li>• Vet clinic</li> <li>• Fishing lodge</li> </ul> <p>Uses permitted in the Bend/La Pine Deer Migration Corridor only:</p> <ul style="list-style-type: none"> <li>• Church</li> <li>• Public/Private school</li> <li>• Bed and breakfast inn</li> <li>• Playground recreation facility, or community center owned and operated by a government agency or a nonprofit community organization.</li> </ul>

**General Impacts of Conflicting Uses**

The proposed amendments would add religious institutions where they have previously not been allowed, potentially adjacent to inventoried Goal 5 resources. As part of the ESEE review “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”<sup>8</sup>. In reviewing the proposed amendments, staff finds that the impacts for religious institutions in the Sunriver UUC and WA Zone are of such a similar nature that the impacts for the two areas may be reviewed together via the general impacts described below.

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<sup>8</sup> OAR 660-023-0040(4)

- *Concentration of Public Activity, Noise, and Light*  
Religious institutions vary in the extent of their program, activity, and number of individuals participating. A common characteristic of religious institutions is the assembly of members or participants during designated times. This concentration of individuals near Goal 5 resources causes distress to inventoried wildlife, as they seek to avoid noise and light from these activities – dependent on the hours of operation.
- *Habitat Removal*  
Development of religious institutions would likely require removal of upland vegetation, grading, and soil compaction that could alter drainage and runoff patterns. This could increase peak runoff, cause bank erosion, flooding, or increase the flow of sediment into water bodies. The removal of upland vegetation could also reduce tree canopy and understory vegetation which could be utilized by fish and wildlife species, outside of their primary habitat.
- *Introduction of Invasive, Nonnative Plants*  
In response to the application, Oregon Department of Fish and Wildlife submitted concerns regarding the spread of invasive, nonnative plants. ODFW staff finds that any ground disturbance would likely result in the spread of invasive, nonnative plants that could replace and degrade native vegetation of which many species depend.
- *Habitat Fragmentation*  
Additional human development will likely result in fences, roads, traffic and other barriers to the movement of terrestrial wildlife that is critical to their survival.

Staff provides greater detail on these potential conflicts and their consequences below.

## Chapter 4: Impact Areas

**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.**

This step is discretionary and allows for the local jurisdiction and staff to define which areas are the most vulnerable and/or most likely to be affected by the proposed amendments. The impact area for this ESEE analysis are properties that are within the WA, SURA, SURN, and/or SURG zones and that also contain an inventoried Goal 5 resource as described above, within its property boundaries. As this ESEE is not for any specific property, but reflecting changes to the code generally, there is no individual property specific data.

Properties in this impact area can be found in Attachment 2 – *Impact Area Maps*

### Impact Area Methodology

To understand the impact of the proposed amendments, staff has provided a rough estimate of the number of parcels and acres, shown in Table 2 below.

As a disclaimer, staff notes the WA combining zone number relates to all properties including federal land, that are partially or entirely within the WA combining zone. As the WA zone is a combining zone, the underlying designation of each individual property will determine if religious institutions are allowed. The proposed changes only remove the prohibition of religious institutions for properties in the WA zone. For instance, many Forest Use zoned properties are also within the combining zone. As the underlying zone does not allow for a religious institution, the use will still not be allowed following the proposed text changes.

**Table 2: Zoning of Properties in Impact Area**

<b>Zone</b>	<b># of Private Properties</b>
SURA	1
SURN	1
SURG	1
WA	3,213
<b>TOTAL</b>	<b>3,216</b>

## Chapter 5: ESEE Analysis

***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.***

### Background

Staff is choosing to conduct a single analysis for all resource sites as the impacts from allowance of religious institutions could have very similar impacts to both riparian areas and fish and wildlife that depend on the riparian for their habitat, and for big game including deer, elk, and antelope.

As described above, the potential impacts fall into four general areas:

- *Concentration of Public Activity, Noise, and Light*  
Religious institutions vary in the extent of their program, activity, and number of individuals participating. A common characteristic of religious institutions is the assembly of members or participants during designated times. This concentration of individuals near Goal 5 resources causes distress to inventoried wildlife, as they seek to avoid noise and light from these activities – dependent on the hours of operation.
- *Habitat Removal*  
Development of religious institutions would likely require removal of upland vegetation, grading, and soil compaction that could alter drainage and runoff patterns. This could increase peak runoff, cause bank erosion, flooding, or increase the flow of sediment into water bodies. The removal of upland vegetation could also reduce tree canopy and understory vegetation which could be utilized by fish and wildlife species, outside of their primary habitat.
- *Introduction of Invasive, Nonnative Plants*  
In response to the application, Oregon Department of Fish and Wildlife submitted concerns regarding the spread of invasive, nonnative plants. ODFW staff finds that nays ground disturbance would likely result in the spread of invasive, nonnative plants that could replace and degrade native vegetation of which many species depend.

- *Habitat Fragmentation*  
Additional human development will likely result in fences, roads, traffic and other barriers to the movement of terrestrial wildlife that is critical to their survival.

This step is discretionary. The purpose of an ESEE analysis is to provide a qualitative exercise for local governments to weigh the positive and negative consequences of three scenarios in order to determine a preferred outcome. Governments may choose to use quantitative data as necessary, but are not required to gather new information or hire wildlife biologists, economists, sociologists, or energy consultants.

## **ESEE Scenario Descriptions**

### *Scenario (A) – Allow the Conflicting Use*

In this scenario, the local government may decide that a conflicting use should be allowed fully, without any restrictions, no matter the potential impacts on the inventory site(s). In this instance, the Goal 5 rule would require the government to determine the conflicting use is of such importance compared to the site that the use should be allowed without any protections or limitations. In choosing this scenario, the local government could still use other tools to protect the inventory that are currently in place.

### *Scenario (B) – Prohibit the Conflicting Use*

In this scenario, the local government may decide that the inventory site is of such importance or the conflicting use has the potential to be so detrimental to the inventory site(s), that the conflicting use should be entirely prohibited.

### *Scenario (C) – Limit the Conflicting Use*

In this scenario, the local government may decide that the inventory site and the conflicting use are both important when compared to each other, and the use should be allowed with limitations to balance the impacts to the inventory site(s).

## **Religious Institution ESEE Analysis**

### Scenario (A) Allow the Conflicting Use

In this scenario, Deschutes County would allow religious institutions in the proposed zoning districts, without any additional requirements to protect the inventoried resources.

### ***Economic Consequences:***

Permitting religious institutions would have positive consequences by allowing religious institutions, which are non-profits, to establish a presence in certain areas of the rural county, where they presently are not allowed, and to use land and buildings for religious purposes. Religious institutions also provide valuable contributions to communities in the

areas of direct economic contributions, social services and community volunteering, education and civic skills training.

Permitting religious institutions also alleviates the substantial risk that the County will be required to expend resources defending an unnecessary RLUIPA lawsuit. In a previous land use decision, Deschutes County concluded that DCC 18.88.040(B)(3)'s prohibition on "religious institutions" in the WA combining zone violates RLUIPA's Equal Terms provision because it allows nonreligious assemblies and institutions as conditional uses in the combining zone<sup>9</sup>. LUBA and the Oregon Court of Appeals agreed. Deschutes County cannot treat religious assemblies in the WA combining zone on less favorable terms than non-religious assemblies with similar impacts on wildlife. Therefore, by not changing the code and remaining noncompliant with RLUIPA, the County could face litigation from parties seeking to establish a religious institution in the WA and Sunriver UUC zones.

Allowing religious institutions could also have negative consequences based on previous testimony from the Oregon Department of Fish and Wildlife (ODFW)<sup>10</sup>. ODFW estimates that hunting and wildlife viewing contributed more than \$50 million to the Deschutes County economy annually. Staff is proposing to allow religious institutions in areas of the Sunriver UUC that contain riparian areas and species that rely on the riparian area for habitat including fish, furbearers, upland game birds, and waterfowl. Allowing for religious institutions in these zones could lead to disturbance of fish and wildlife populations, which in turn could reduce income associated with wildlife viewing and hunting of these species.

The WA zone contains deer migration and deer winter range habitat areas, as well as elk and antelope habitat. In some parts of the county, mule deer populations may have declined up to 70% since 2000. As a result, the Department made adjustments to hunting seasons so as not to cause additional declines through harvest. Their testimony identified other elements contributing to reductions in mule deer populations tied to human caused habitat reduction, fragmentation, and disturbance on winter range. By allowing for religious institutions in the WA combining zone, there is the potential for greater disturbance of deer populations that could continue to result in a loss of hunting and viewing revenues.

***Social Consequences:***

Permitting religious institutions, consistent with RLUIPA, would have positive consequences by preventing discrimination on the face of zoning codes and also in the highly individualized and discretionary processes of land use regulation. It is also recognized that religious institutions of all forms have long been recognized as central institutions within American life, helping to provide a sense of community and moral foundation. Quoting RLUIPA's co-sponsors, Senators Orrin Hatch and Edward Kennedy: "[t]he right to assembly for worship is

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<sup>9</sup> RLUIPA at 42 USC section 2000cc(b)(1) provides that: ""No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution."

<sup>10</sup> Attachment 3

at the very core of the free exercise of religion. Religious institutions and synagogues cannot function without a physical space adequate to their needs and consistent with their theological requirements. The right to build, buy, or rent such a shape is an indispensable adjunct of the core First Amendment right to assemble for religious purposes.” Those foundational values have been codified in numerous areas of both federal and state law, including the 1st Amendment of the U.S. Constitution (U.S. Const. amend. I), the aforementioned Religious Land Use and Institutionalized Persons Act of 2000 (42 U.S.C. § 2000cc et seq.), ORS 215.441, and ORS 215.283 (as interpreted by *Brentmar v. Jackson*, 321 Or 481 900 P2d 1030 (1995), *Lane County v. Land Conservation & Dev. Comm’n*, 325 Or 569, 942 P2d 278 (1997), and *Young and James vs. Jackson County*, 58 Or LUBA 64 (2008)) “subsection 1” uses – including “religious institutions” – are generally allowed “as of right” even in an Exclusive Farm Use zone.

It could also have negative consequences based on previous testimony from ODFW due to the potential loss of wildlife habitat. Many residents, advocacy organizations, and wildlife agencies continue to express concerns regarding the loss of fish and wildlife habitat due to the region’s rapid growth and development. There is a recognition that increases in human activity, especially in rural areas, displace habitat and diminish, incrementally, Deschutes County’s rural character and quality of life. The proposed amendments could have negative consequences due to increased human presence and infrastructure near the inventoried Goal 5 resources, which could lead to a reduced level of access and enjoyment for recreationalists.

***Environmental Consequences:***

In this scenario, religious institutions would be allowed without additional requirements or regulations. As stated previously, the addition of religious institutions where they previously were not allowed could present negative impacts as they have the potential to concentrate groups of people which could increase noise and light near fish and wildlife habitats, and in turn cause distress to inventoried Goal 5 species. The term religious institution is intended to be inclusive of all types of assembly and worship, so it is difficult to provide data related to average size of assemblies, traffic counts, and the extent of their activity.

Development of any religious institution would likely require removal of upland vegetation, grading, and soil compaction that could alter drainage and runoff patterns. This could increase peak runoff, cause bank erosion, flooding, or increase the flow of sediment into water bodies. The removal of upland vegetation could also reduce tree canopy and understory vegetation which could be utilized by fish and wildlife species, outside of their primary habitat. Permitting religious institutions could result in further negative impacts to designated habitat for deer winter range, elk habitat and antelope range in WA combining zones. Based on testimony from ODFW, mule deer populations have declined up to 70% since 2000. Their testimony identified other elements contributing to reductions in mule deer populations tied to human caused habitat reduction, fragmentation, and disturbance on winter range

As previously stated, the following Goal 5 protections established during the creation of the initial inventory would remain in place:

- 1) Setback Protections - 100-foot structural setback from the ordinary high water mark of rivers or streams.
- 2) Scenic Protections - development near rivers in the Landscape Management Combining Zone must be reviewed for aesthetic compatibility.
- 3) Wetland Protections - prohibition of fill or removal of any material or wetland vegetation, regardless of the amount, within the bed and banks of any stream or river or in any wetland unless approved as a conditional use.
- 4) Mitigation Protections - Impacts to any wetland or riverbank impacts to be fully mitigated, as evaluated by Oregon Department of Fish and Wildlife (ODFW).
- 5) Flood Plain Protections - All new construction, expansion or substantial improvement of an existing dwelling, an agricultural related structure, a commercial, industrial or other non-residential structure, or an accessory building in a designated Flood Plain obtain a conditional use permit.
- 6) Additional Combining Zone Requirements: Winter Deer Range, Antelope Range, Elk Habitat, Deer Migration Corridors, Sage Grouse Habitat Area, and Sensitive Bird and Mammal Habitat have site specific requirements including development setbacks and larger minimum lot sizes to prevent impact to sensitive species and habitat.

Staff notes that the existing protections would prevent sensitive areas from being developed when religious institutions are established in the Sunriver UUC and WA zones. Although any development where it previously did not exist will inherently alter fish and wildlife habitat, development within the Sunriver UUC is urban in nature. As the existing Goal 5 measures in place today protect riparian areas and the fish and wildlife within that habitat area, the addition of religious institutions to these zone will be neutral.

***Energy Consequences:***

As the Sunriver UUC is urban and contains community operated utility services (sewer and water), access to existing electric and natural gas connections, and a maintained road system - the addition of a religious institution use is unlikely to cause any major energy consequences. Depending on the extent and reach of the religious institution's participants, there could be additional Vehicle Miles Travelled and greater congestion on county owned roads from individuals travelling to the area from other regions of Deschutes County.

A potential negative consequence of the proposed amendments in the WA combining zone would be additional development in rural Deschutes County. Depending on the size of the religious institution and the scale of their activity, the institution would require additional infrastructure such as a septic tank and drainfield, road access or a driveway, electricity, and a well, in addition to energy to develop and operate. Depending on the location of the structure and the radius in which participants travel for religious institution activities, the

addition of this use could lead to additional Vehicle Miles Traveled and greater congestion on county owned roads.

### Scenario (B) Prohibit the Conflicting Use

In this scenario, Deschutes County would not change any of the current regulations surrounding religious institutions in the WA, SURA, SURN, and SURG zones Existing regulations would continue to prohibit the use.

#### ***Economic Consequences:***

Prohibiting religious institutions would have negative economic consequences, as it prevents religious institutions from using their land and building for religious purposes. This would place additional cost on individuals seeking to establish religious institutions as they would continue to be limited in the area in which the use allowed. Additionally, it could place cost on individuals seeking to become a member of a religious institution as they may need to travel further to attend services and activities outside of a reasonable radius.

Additionally, continuing to prohibit the use could subject Deschutes County to substantial risk of losing a federal lawsuit for violating RLUIPA. The cost of the lawsuit would include legal fees and the potential need to pay for damages resulting from the violation.

It could also have neutral consequences based on testimony from ODFW. Prohibiting religious institutions could contribute to stabilizing mule deer populations, thereby maintaining economic benefits from wildlife viewing or hunting. Wildlife viewing, hunting, and fishing experiences in Deschutes County is a major economic asset to the region. Continuing with the current regulations would prevent further habitat fragmentation and help maintain wildlife viewing, hunting, and fishing revenues in Deschutes County.

#### ***Social Consequences:***

Prohibiting religious institutions would have negative consequences because it could be viewed as discriminating against religious institutions or other religious assemblies compared to similar secular uses. The core purpose of RLUIPA is to ensure that individuals maintain the right to religious expression by requiring jurisdictions to treat religious and secular institutions on equal terms during the land use review process. This would impact individuals and entire religious communities who feel they are not being fairly treated and are limited in their religious practice. It could also impact the quality of life for rural residents as they may have to travel greater distances or practice their religious rights outside of an organized assembly.

It could also have positive consequences. Many residents express their appreciation for undisturbed landscapes because they contribute to Deschutes County's rural character and quality of life. Prohibiting religious institutions, which often can be intensive uses involving

concentration of public activity, noise, and light would continue to limit disturbance to existing fish and wildlife habitats and maintain the existing quality of life in these areas.

***Environmental Consequences:***

Within the Sunriver UUC – there are a few properties that contain Goal 5 Riparian Area which is also the habitat for the Goal 5 inventoried waterfowl, upland game bird, furbearers, and fish. The WA combining zone contains Goal 5 big game elk, antelope, and deer habitat. By prohibiting religious institutions and maintaining the current status quo, these species will continue to be protected against habitat fragmentation and distress from concentrations of public activity. The environmental consequences are therefore neutral.

***Energy Consequences:***

Energy consumption will have neutral consequences as this scenario maintains the status quo. Development associated with religious institutions may be displaced to other areas of rural Deschutes County, which will still have demands on utilities.

Scenario (C) Limit the Conflicting Use

In this scenario, Deschutes County would allow religious institutions in the proposed zoning districts, with additional limitations to protect the inventoried resources, outside of existing protections.

***Economic Consequences:***

Permitting religious institutions would have positive consequences by allowing religious institutions, which are non-profits, to establish a presence in certain areas of the rural county, where they presently are not allowed, and to use land and buildings for religious purposes. Religious institutions also provide valuable contributions to communities in the areas of direct economic contributions, social services and community volunteering, education and civic skills training. Lastly, permitting religious institutions alleviates the substantial risk that the County will be required to expend resources defending an unnecessary RLUIPA lawsuit.

In a previous land use decision, Deschutes County concluded that DCC 18.88.040(B)(3)'s prohibition on “religious institutions” in the WA combining zone violates RLUIPA’s Equal Terms provision because it allows nonreligious assemblies and institutions as conditional uses in the combining zone<sup>11</sup>. LUBA and the Oregon Court of Appeals agreed. Deschutes County cannot treat religious assemblies in the WA combining zone on less favorable terms than non-religious assemblies with similar impacts on wildlife. Therefore, by not changing the code and remaining noncompliance with RLUIPA, the County could face litigation from parties seeking to establish a religious institution in the WA and Sunriver UUC zones.

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<sup>11</sup> RLUIPA at 42 USC section 2000cc(b)(1) provides that: “No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.”

Compared to scenario (a) in which the use would be allowed outright, the addition of limitations for the use could lessen the impact on fish and wildlife habitats by only allowing a certain square footage, limiting hours of operation, or by requiring habitat restoration measures. This could positively impact the hunting and wildlife viewing economy in central Oregon, valued at \$50 million to the Deschutes County economy annually. While it could lessen impacts, the addition of any intensive use such as a religious institution could impact wildlife through the concentration of members of the public and associated noise and light impacts, which could lower the income from the recreation economy in central Oregon.

In comparison to scenario (a), which would allow the use outright, staff finds that this scenario would provide a set of limitation to reduce the amount of impacts, even if those impacts still exist.

***Social Consequences:***

The positive social consequences in this scenario are very similar to scenario (a). Permitting religious institutions, consistent with RLUIPA, would have positive consequences by preventing discrimination on the face of zoning codes and also in the highly individualized and discretionary processes of land use regulation. It is also recognized that religious institutions of all forms have long been recognized as important social organizations, helping to provide a sense of community and moral foundation.

This scenario would add additional limitations for the establishment of a religious institution by only allowing a certain square footage, limiting hours of operation, or by requiring habitat restoration measures. By adding these limitations, there is still the potential that some religious institutions may be treated unfairly compared to secular uses. The limitations could prevent religious institutions and their members from being able to fully express their religious rights. Thus, a negative consequence of this scenario would be the continued unequal treatment of religious and secular uses.

It could also have negative consequences based on previous testimony from ODFW due to the potential loss of wildlife habitat stemming from the possible removal of habitat areas and construction of structures and their associated human presence. Many residents, advocacy organizations, and wildlife agencies continue to express concerns regarding the loss of fish and wildlife habitat due to the region's rapid growth and development. There is a recognition that increases in human activity, especially in rural areas, displace habitat and diminish, incrementally, Deschutes County's rural character and quality of life. The proposed amendments could have negative consequences due to increased human presence and infrastructure near the inventoried Goal 5 resources, which could lead to a reduced level of access and enjoyment for recreationalists.

***Environmental Consequences:***

The addition of religious institutions where they previously were not allowed could present negative consequences as they have the potential to concentrate groups of people which

could increase noise and light near fish and wildlife habitats, and in turn cause distress to inventoried Goal 5 species. The term religious institution is intended to be inclusive of all types of assembly and worship, so it is difficult to provide data related to average size of assemblies, traffic counts, and the extent of their activity.

Development of any religious institution would likely require removal of upland vegetation, grading, and soil compaction that could alter drainage and runoff patterns. This could increase peak runoff, cause bank erosion, flooding, or increase the flow of sediment into water bodies. The removal of upland vegetation could also reduce tree canopy and understory vegetation which could be utilized by fish and wildlife species, outside of their primary habitat. Permitting religious institutions could result in further negative impacts to designated habitat for deer winter range, elk habitat and antelope range in WA combining zones. Based on testimony from ODFW, mule deer populations have declined up to 70% since 2000. Their testimony identified other elements contributing to reductions in mule deer populations tied to human caused habitat reduction, fragmentation, and disturbance on winter range

Staff notes that the existing protections in place today (shown above) would prevent sensitive areas from being developed when religious institutions are established in the Sunriver UUC and WA zones. Although any development where it previously did not exist will inherently alter fish and wildlife habitat, development within the Sunriver UUC is urban in nature and the establishment of religious institutions would likely be neutral.

By limiting the use and only allowing a certain square footage, limiting hours of operation, or by requiring habitat restoration measures, the negative environmental consequences associated with religious institutions could be mitigated to a certain extent. A caveat in this scenario, would be any limitations for religious institutions would need to be objective as to not further discriminate on specific types of religious institutions and types of assemblies. In implementing a “one-size-fits-all” approach, an opportunity could be missed to protect site specific Goal 5 resources.

***Energy Consequences:***

The energy consequences in this scenario are the same as in scenario (a), although a limitation on the square footage of a building and the hours of operation could decrease the amount of energy used as part of the operation of the religious institution.

## Chapter 6: ESEE Decision

**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:**

**(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.**

The graphic below is meant to be a simplified graphic representation of staff's attempt to balance each of the ESEE factors. As stated in the ESEE analysis, there are a variety of positive, negative, and neutral consequences associated with each scenario. Staff finds that the issue of preserving one's right to religious practices in accordance with RLUIPA is both a social and economic issue that outweighs the other ESEE consequences. Staff considered allowing the use with limitations such as hours of operation, square footage maximums, or requiring restoration measures, but this practice could still be seen as discrimination or unequal treatment of religious institutions when compared to other uses allowed in the zoning districts. Therefore the County is choosing scenario (c) which will allow the use fully notwithstanding the possible impacts on the resource sites.

ESEE Factors	Support habitat functions (Environmental, economic, social)	Preserves Right to religious practice (Social, economic)	Support Recreational Economy (Economic, Social)	Consistency of Land Use Regulations (Social)	Preserves Rural Character (Social)	Transportation (Energy)
<b>Prohibit conflict</b> (No change to code)	0	-	0	-	0	0
<b>Allow conflict</b> Allow religious institutions with no additional requirements.	-	+	-	+	-	-
<b>Limit conflict</b> Allow religious institutions with additional limitations.	-	0	-	-	-	0

## **Chapter 7: Program to Achieve Goal 5**

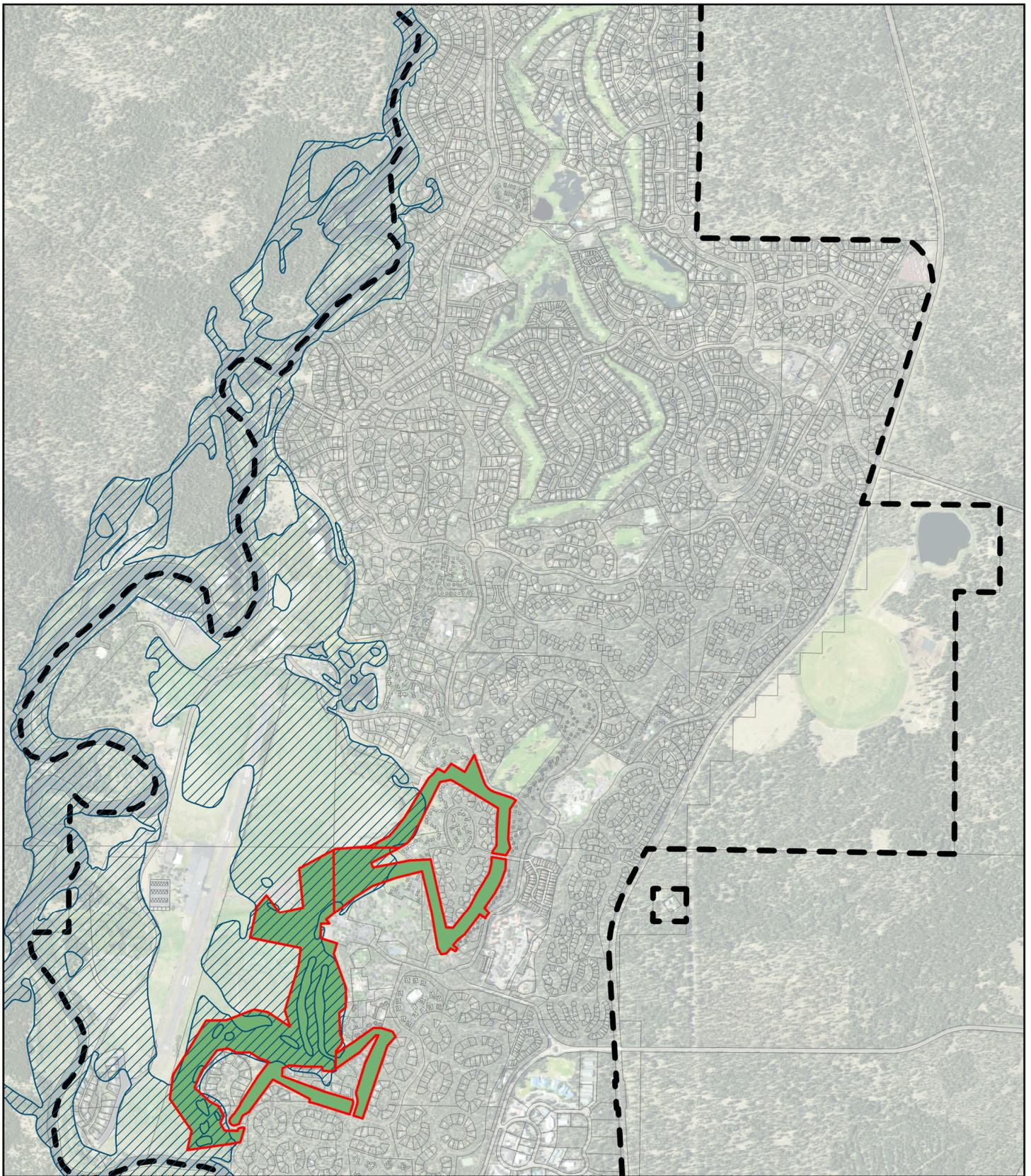
***660-023-0050(1): For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-023-0040(5). The plan shall describe the degree of protection intended for each significant resource site. The plan and 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)).***

***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;***

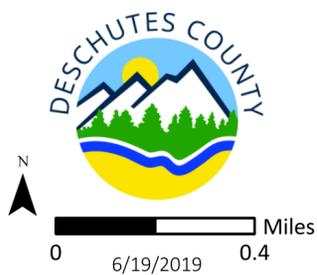
***(b) It is a nondiscretionary requirement, such as a requirement that grading not occur beneath the dripline of a protected tree; or ...***

Deschutes County has determined that allowing religious institutions within the SURA, SURN and SURG zones in the Urban Unincorporated Community of Sunriver, and within the Wildlife Area Combining Zone should be allowed fully, notwithstanding the possible impacts on the inventoried resources. The implementing measures do not include alternative, discretionary procedures for compliance.



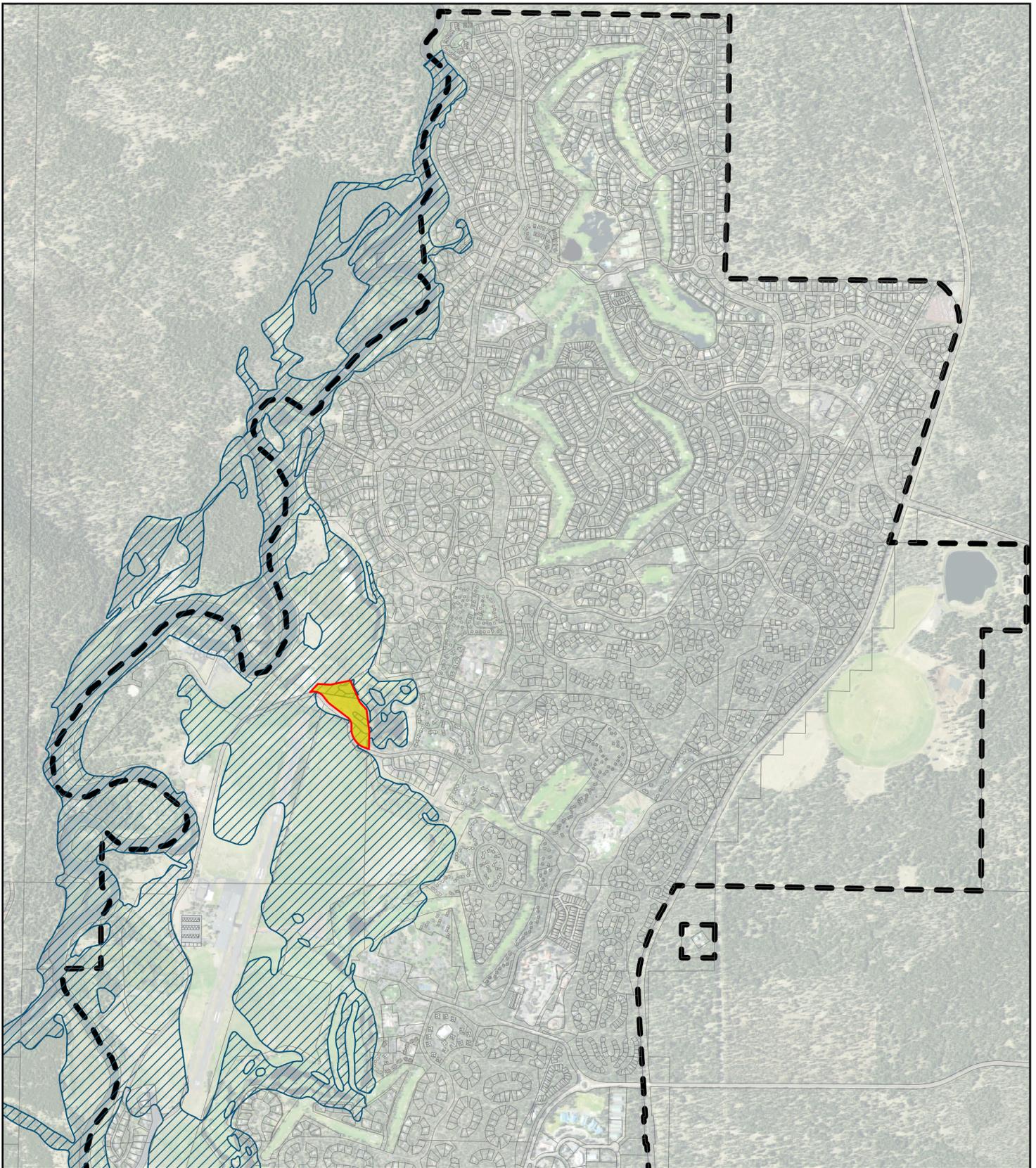
-  Floodplain
-  Sunriver Resort Golf Course
-  Potentially Impacted Taxlots
-  Sunriver Community

**Attachment 1, Map 1**



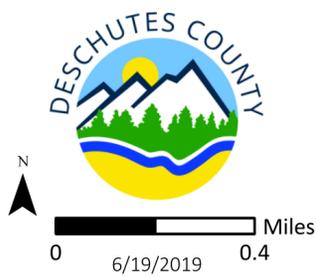
**Religious Institutions Review  
SURG - Zoning**

The SURG Zoning in the Sunriver Community would be impacted by the Floodplain Zoning of the Goal 5 Resource.



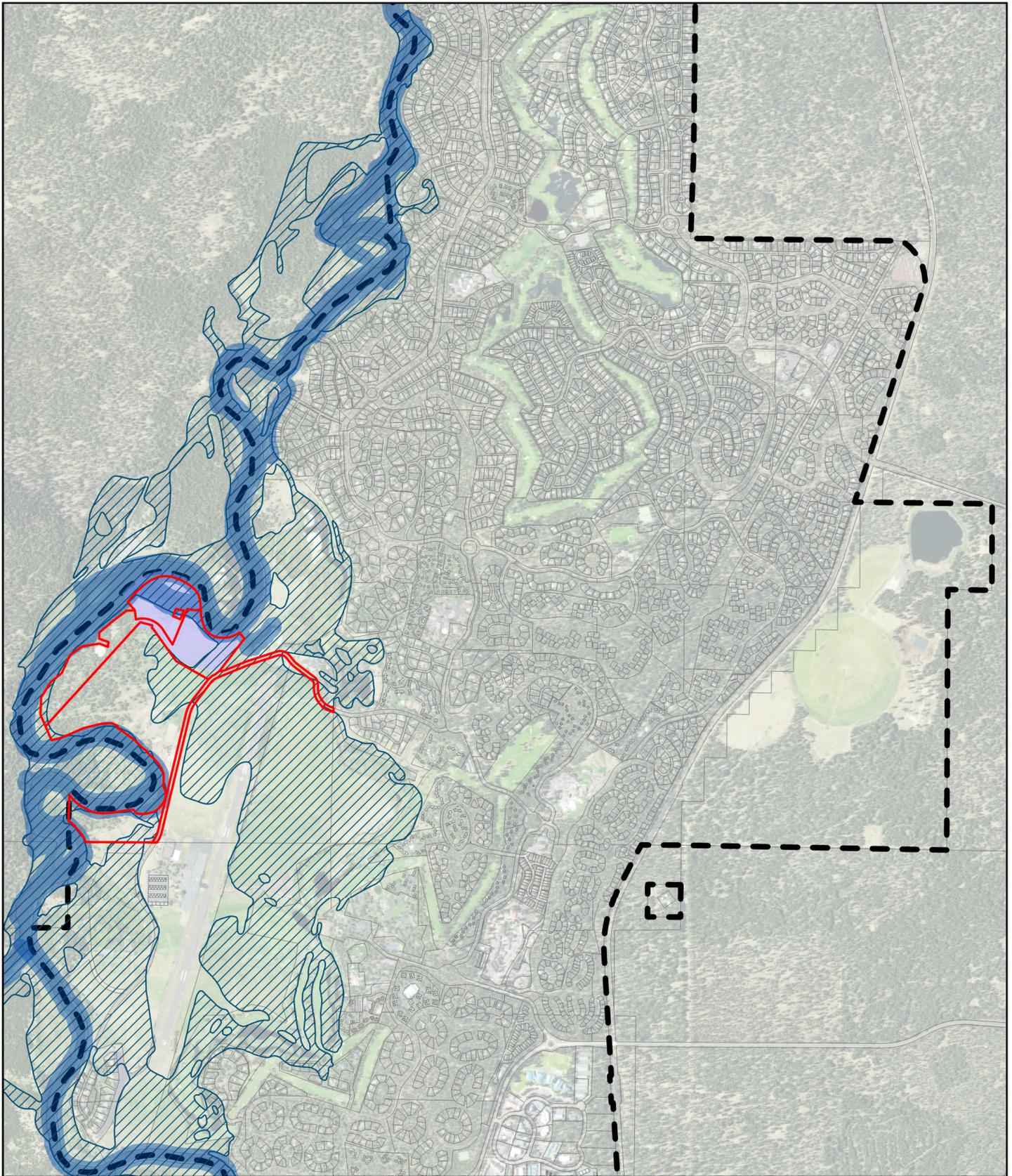
-  Floodplain
-  Sunriver Resort Nature Center
-  Potentially Impacted Taxlots
-  Sunriver Community

**Attachment 1, Map 2**

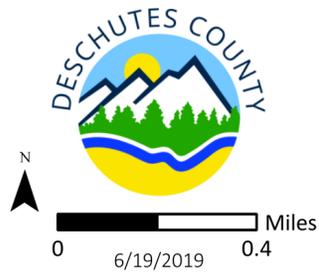


**Religious Institutions Review  
SURN - Zoning**

The SURN Zoning in the Sunriver Community would be impacted by the Floodplain Zoning of the Goal 5 Resource.

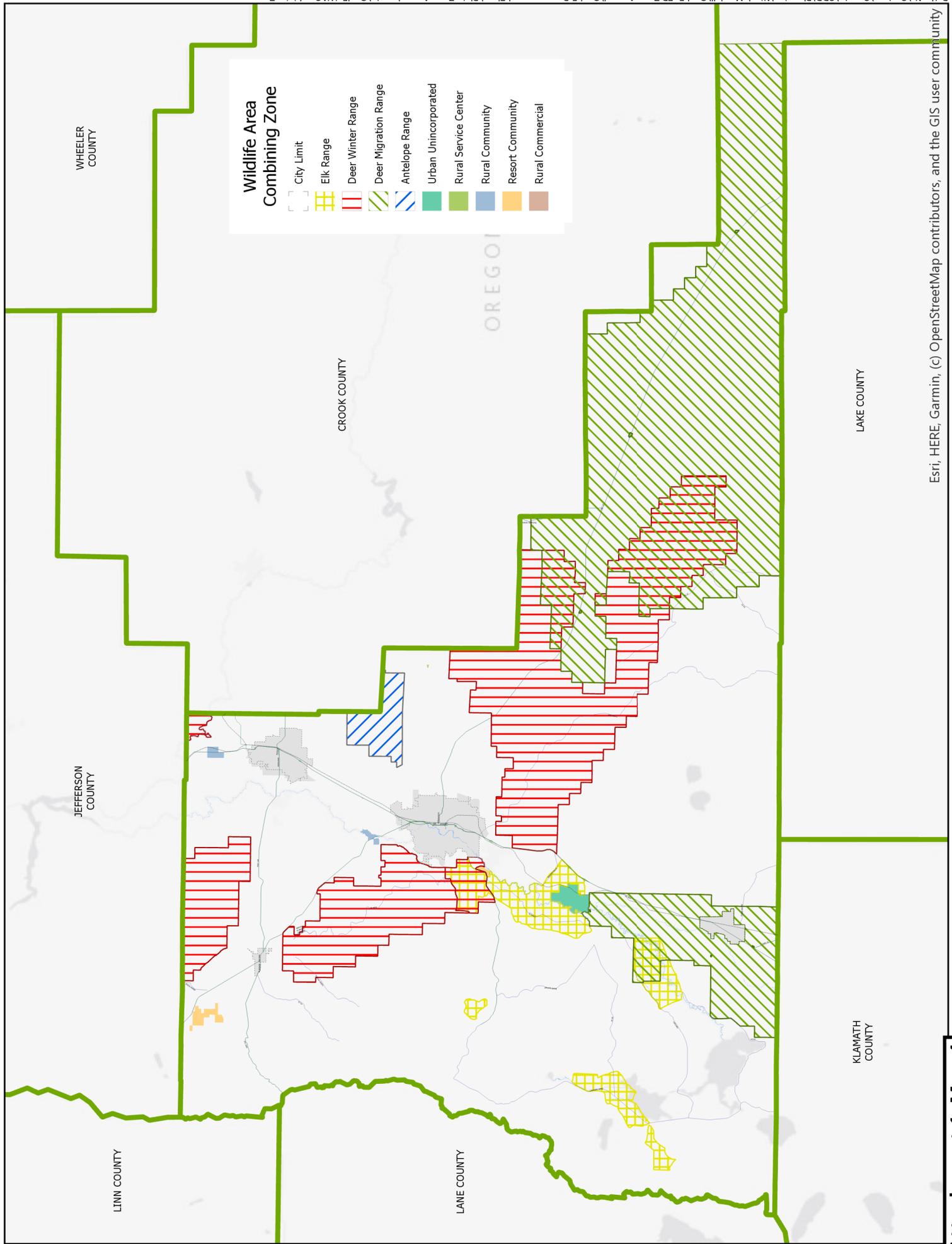


-  Floodplain
-  Wetland Riparian
-  Sunriver Resort Marina
-  Potentially Impacted Taxlots
-  Sunriver Community



**Religious Institutions Review  
SURA - Zoning**

The SURA Zoning in the Sunriver Community would be impacted by the Floodplain Zoning of the Goal 5 Resource.



Attachment 2 - Goal 5 Matrix

**Deschutes County Significant Goal 5 Resources (Excluding Historic/Aggregate Resources)**

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<p><b>Fish Habitat</b> (Inventory – Ord. No. 92-041, page 18; creeks, rivers and lakes)</p>	<p><b>Yes</b></p>	<ul style="list-style-type: none"> <li>• Removal of riparian vegetation</li> <li>• Fill and removal activities within the bed and banks of streams or wetlands</li> <li>• Hydroelectric facilities</li> <li>• Water regulation</li> <li>• Rural residential development               <ul style="list-style-type: none"> <li>○ Impermeable surfaces</li> <li>○ Sewage runoff</li> <li>○ Disruption of natural hydroelectric patterns</li> <li>○ Depletion of water table</li> <li>○ Erosion.</li> </ul> </li> </ul>	<p>Flood Plain zone recognized as program to achieve the goal to conserve fish habitat (Ordinance Nos. 88-030, 88-031, 89-009).</p> <p>Others include: fill and removal permits, wetland removal regulations, hydro prohibitions, rimrock setbacks, 100’ setback from OHW, conservation easements and restrictions on boats and docks.</p>	<p>Ordinance Nos. 86-018, 86-053,86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041</p>
<p><b>Deer Winter Range</b> (Inventory – Ord. No. 92-041, page 22; Metolius, Tumalo, North Paulina, and Grizzly ranges identified by ODFW)</p>	<p><b>Yes</b></p>	<ul style="list-style-type: none"> <li>• Dwellings</li> <li>• Roads</li> <li>• Dogs</li> <li>• Activities that cause deterioration of forage quality and quantity or cover.</li> <li>• Fences which impede safe passage</li> <li>• Destination Resorts</li> </ul>	<p>Flood Plain zone recognized as a program to achieve the goal to protect deer winter range.</p> <p>Others include Wildlife Area Combining Zone. Requires 40-acre minimum lot size for all new residential land divisions. Underlying zoning in most of the deer winter range is: EFU, Forest Use and Flood plain. These zones provide for large lot sizes and limit uses that are not compatible with farm or forest zones.</p>	<p>Ordinance Nos. 88-030, 88-031, 89-009, 92-040, 92-041, 92-042, 92-046</p>

<p><b>Furbearer Habitat</b> (Inventory – Ord. No. 92-041 – page 65; ODFW has not identified any specific habitat sites other than riparian and wetland areas that are critical for the listed species. Chapter 6.7-6.8 of County/City of Bend River Study notes fisher, wolverine, kit fox, sea otter, and ringtailed cat are protected wildlife although most common are mink, beaver, river otter, and bobcat.)</p>	<p><b>Yes.</b></p>	<ul style="list-style-type: none"> <li>• Conflicts between furbearers and other land uses are minimal in the county.</li> <li>• Activities or development that degrade or destroy habitat or disturb animals causing them to relocate</li> <li>• Habitat includes brushy streams, rivers, lakes, wetlands, forest, and open sagebrush/grassland areas. Most sensitive area is riparian habitat.</li> </ul>	<p>Furbearer habitat is adequately protected by the existing EFU and forest zoning and the provisions to protect farm use and forest zoning and the provisions to protect wetlands and riparian areas to achieve the goal to protect furbearers.</p> <p>The farm and forest zones require large minimum lot sizes and many uses are permitted only as conditional uses. The measures to protect riparian and wetland habitat are detailed in this plan in the Riparian and Wetland Habitat section.</p>	<p>Ordinance Nos. 86-018, 86-053,86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041</p>
<p><b>Elk Habitat</b> (Inventory – Ord. No. 92-041 – page 32; identified by USFS and ODFW)</p>	<p><b>Yes.</b></p>	<ul style="list-style-type: none"> <li>• Increased residential densities in habitat areas</li> <li>• Increased human disturbance such as: new roads, dogs, xc skiing and snowmobiling.</li> <li>• Land use that necessitates removal of large amount of vegetative cover.</li> </ul>	<p>Wildlife Area Combining Zone was recognized as the only program to achieve the goal to protect the elk habitat.</p> <p>It was amended to require a 160 acre minimum lot size for areas identified as significant elk habitat. Siting standards are required to minimize conflicts of residences with habitat protection. Underlying zoning in the elk habitat areas is either flood plain, forest, or open space and conservation.(Some lands are zoned RR10, including lots that are split zoned with flood plain. They are already parcelized, preventing future land divisions).</p> <p>These resource zones restrict high density residential development and prohibit industrial and commercial uses.</p>	<p>Ordinance Nos. 88-030, 88-031, 89-009, 92-040, 92-041, 92-042, 92-046</p>

<p><b>Waterfowl Habitat</b> (Inventory – Ord. No. 92-041 – page 56; includes all rivers, streams, lakes and perennial wetlands and ponds identified on the 1990 US Fish and Wildlife Wetland Inventory Maps; ODFW provided lists of all bird species; ; Chapter 6.6 of County/City of Bend River Study notes swan, ducks, and geese as important waterfowl)</p>	<p><b>Yes.</b></p>	<ul style="list-style-type: none"> <li>• Resort and vacation home development</li> <li>• Human activity associated with recreation along rivers and lakes</li> <li>• Timber-cutting around sensitive habitat</li> <li>• Fill and removal of material in wetlands and within the bed and banks of rivers and streams.</li> <li>• Removal of riparian vegetation.</li> </ul>	<p>Floodplain zone recognized as program to achieve the goal to conserve waterfowl habitat (Ordinance Nos. 88-030, 88-031, 89-009).</p> <p>Others include: fill and removal permits, wetland removal regulations, rimrock setbacks, 100’ setback from OHW, conservation easements, restrictions on boats and docks, landscape management, State and federal scenic water regulations. In addition, the forest and EFU zones require large minimum lot size which limits the potential density of development in the areas adjacent many of the rivers, streams wetlands and ponds used for waterfowl habitat.</p>	<p>Ordinance Nos. 86-018, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041, 92-042- 92-045, 92-046</p>
<p><b>Upland Game Bird Habitat</b> (Inventory – Ord. No. 92-041 – page 60; ODFW did not identify critical habitat for any of the upland game species except for the sage grouse; habitat for upland game birds is dispersed throughout the county in riparian, forest, agricultural and rangeland areas. Chapter 6.5 of County/City of Bend River Study identifies protected game.)</p>	<p><b>Yes.</b></p>	<ul style="list-style-type: none"> <li>• Removal of riparian vegetation</li> <li>• Removal of agricultural fence row and woodlots.</li> <li>• Housing development that removes seed-producing plants in brushy areas.</li> <li>• Removal of agricultural land from production (pheasant and quail impacted)</li> <li>• Urban sprawl</li> <li>• Road construction</li> <li>• Industrial development</li> <li>• Other land clearing activities.</li> </ul>	<p>For all of the upland game birds except sage grouse, the habitat is adequately protected by the existing EFU and forest zoning and the provisions to protect wetlands and riparian areas to achieve the goal of protecting upland game birds.</p> <p>County provisions to protect riparian areas and wetlands protect one of the most significant components of upland game habitat.</p> <p>Note: conflicts with sage grouse are limited by EFU zoning with a 320 acre minimum parcel size. Sensitive Bird and Mammal Combining Zone pertaining to sage grouse and leks have been repealed due to LCDRC enacted rules in OAR 660, Division 23.</p>	<p>Ordinance Nos. 86-018, 86-053,86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041, 92-042, 92-046</p>

<p><b>UPDATED</b> - Inventory – Ord. No. 94-004 –pages 156-201.</p>	<p><b>No.</b></p>	<p>See above.</p>	<p>Habitat areas for Upland Game Bird Habitat, adopted in No. 92-041 is repealed and replaced and further amended in Exhibit 4 with the ESEE Analysis and inventory for upland game bird habitat.</p> <p>Conflicts with sage grouse are reduced by the limitations on uses in the EFU and flood Plain zone, by the 320 acre minimum lot size and predominance of BLM.</p> <p>Note above still applies.</p>	<p>Ordinance Nos. 94-004 and 94-021</p>
<p><b>Wetlands and Riparian Areas</b> (Inventory – Ord. No. 92-041 – page 73; identified on USFWS NWI)</p>	<p><b>Yes.</b></p>	<ul style="list-style-type: none"> <li>• Fill and removal of material <ul style="list-style-type: none"> <li>○ Specifically that which could cause reduction in size or quality or function of a wetland, or cause destruction or degradation of riparian habitat/vegetation.</li> </ul> </li> <li>• Structural development in wetlands/riparian areas that reduce habitat and use of structure from harassment or disturbance of wildlife.</li> <li>• Cutting of riparian vegetation that: <ul style="list-style-type: none"> <li>○ Removes shade for streams, eliminates habitat for waterfowl, furbearers, and nongame birds or causes erosion.</li> </ul> </li> </ul>	<p>Floodplain zone recognized as program to achieve the goal to conserve wetland and riparian habitat (Ordinance Nos. 88-030, 88-031, 89-009).</p> <p>Others include: fill and removal permits, wetland removal regulations, hydro prohibitions, 100’ setback from OHW, conservation easements, restrictions on boats and docks, and landscape management</p>	<p>Ordinance Nos. 86-018, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041, 92-045</p>

<p><b>UPDATED – Riparian inventory</b> – Ord. No. 94-007; Significant riparian habitat is located in three areas:</p> <p>Area within 100’ of OHW of an inventoried stream or river;</p> <p>Area adjacent to an inventoried river or stream and located within a flood plain mapped by FEMA and zoned flood plain by the county (Deschutes River, Little Deschutes River, Paulina Creek, Fall River, Indian Ford Creek, Tumalo Creek, Squaw (Whychus) Creek, and Crooked River</p> <p>Area adjacent to a river or stream and inventoried as a wetland on the NWI</p>	<p><b>Yes.</b></p>	<ul style="list-style-type: none"> <li>• Location of septic systems – pollution of ground and surface water (dependent on soil characteristics).</li> <li>• Structural development in riparian areas causing harassment or disturbance of wildlife.</li> <li>• Recreational use of riparian area that destruct vegetation and soil composition including: <ul style="list-style-type: none"> <li>○ Boat landing areas</li> <li>○ Formal/informal trails</li> <li>○ Camping areas.</li> </ul> </li> </ul>	<p>Riparian Areas inventory and ESEE analysis adopted by Ordinance No. 92-041 is deleted and replaced by an inventory and ESEE contained in Exhibit A.</p> <p>New parcels meeting the minimum lot size in the resource zones (EFU, Forest, non-exception flood plain) will not cause an increase in residential density that would conflict with riparian habitat values.</p> <p>In RR10, MUA-10, and Flood Plain zone found adjacent to inventoried riparian areas, the creation of new 10 acre parcels would not significantly increase the overall density of residential use adjacent to riparian areas because the areas where new parcels could be created, with the exception of Tumalo Creek, are already divided into lots considerably smaller than 10 acres.</p> <p>Program to achieve Goal 5 for Riparian Habitat: fill and removal regulations to protect wetlands, 100’ setback from OHW, Flood plain zone (regulates docks too), Landscape Management zone, Conservation easements, State Scenic Waterway</p>	<p>Ordinance Nos. 94-007</p>
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<p><b>UPDATED – Wetland Inventory</b> – Ord. No. 94-007, Exhibit B – inventory is NWI (Ord. No. 92-045)</p>	<p><b>Yes.</b></p>	<ul style="list-style-type: none"> <li>• Increased residential density in or adjacent to riparian areas.</li> <li>• Fill and removal of material and vegetation which could cause reduction in size, quality, or function of a wetland.</li> <li>• Structural development in wetlands that cause reduction in habitat, or use of structure that could cause conflicts such as harassment/disturbance of wildlife dependent on the habitat.</li> <li>• Draining wetlands for agriculture/other purpose that destroys the hydrological function of the wetland and alters wildlife habitat.</li> <li>• Cutting wetland vegetation adjacent to streams which could remove important shade for streams, eliminate habitat for various waterfowl, furbearers, and nongame bird species and can also increase the potential for erosion or bank instability in riparian areas.</li> </ul>	<p>Wetlands Inventory and ESEE analysis adopted by Ordinance No. 92-041 is deleted and replaced by an inventory and ESEE contained in Exhibit B, Wetlands.</p> <p>Program to achieve Goal 5 for Wetland Habitat:</p> <ul style="list-style-type: none"> <li>• Fill and removal regulations to protect wetlands</li> <li>• 100’ setback from OHW</li> <li>• Flood plain zone (regulates docks too)</li> </ul> <p>DSL Removal / Fill law</p>	<p>Ordinance Nos. 94-007</p>
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<p><b>Ecologically and Scientifically Significant Natural Areas * Little Deschutes River / Deschutes River Confluence</b> (Inventory – Ord. No. 92-052, Exhibit B, Page 1; identified by Oregon Natural Heritage Program); Analysis of Pringle Falls and Horse Ridge Research Areas, West Hampton Butte and Davis Lakes excluded b/c they're on federal land and/or not related to flood plains.</p>	<p><b>Yes.</b></p>	<ul style="list-style-type: none"> <li>• Resort and vacation home development</li> <li>• Recreational uses</li> <li>• Livestock grazing</li> <li>• Fill and removal in wetlands.</li> </ul>	<p>Programs for resource protection include the zoning of the property, the provisions of the flood plain, wetlands and the river corridor.</p> <p>The implementing measures which protect and regulate development in the confluence area are: EFU zoning, Flood Plain zoning, conservation easements, and fill and removal.</p> <p>The confluence area is located in the undeveloped open space area of the Sunriver development (Crosswater). 80% of the property is retained as open space.</p> <p>Today, zoning is Flood Plain and Forest Use</p>	<p>Ordinance Nos. 86-018, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041, 92-045</p>
<p><b>Landscape Management Rivers and Streams</b> (Inventory – Ord. No. 92-052, Exhibit C, Page 3; identified by state and federal wild and scenic corridors; and within 660' of OHW of portions of Deschutes River, Little Deschutes River, Paulina Creek, Fall River, Spring river, Tumalo Creek, Squaw (Whychus) Creek, and Crooked River not on the state or federal scenic designations)</p>	<p><b>Yes.</b></p>	<ul style="list-style-type: none"> <li>• Land management activities that result in habitat loss or development within river or stream corridors which would excessively interfere with the scenic or natural appearance of the landscape as seen from the river or stream or alteration of existing natural landscape by removal of vegetative cover.</li> </ul>	<p>Program for resource protection includes: floodplain zone and restrictions, fill and removal permits, wetland removal regulations, hydro prohibitions, rimrock setbacks, , conservation easements, restrictions on boats and docks, and landscape management</p>	<p>Ordinance Nos. 86-018, 86-053, 86-054, 86-056, 88-030, 88-031, 89-009, 92-033, 93-034</p>

<p><b>State Scenic Waterways and Federal Wild and Scenic Rivers</b> (Inventory – Ord. No. 92-052, Exhibit E, Page 1;</p>	<p><b>Yes.</b></p>	<ul style="list-style-type: none"> <li>• See County / City of Bend River Study and 1986 River Study Staff Report. Both referenced in Ord. 92-005, Exhibit E.</li> </ul>	<p>Program for resource protection includes: floodplain zone and restrictions, fill and removal permits, wetland removal regulations, hydro prohibitions, rimrock setbacks, , conservation easements, restrictions on boats and docks, and landscape management</p>	<p>Ordinance Nos. 86-018, 86-053, 86-054, 86-056, 88-030, 88-031, 89-009, 92-033, 93-034</p>
<p><b>Deer Migration Corridor</b> (Inventory – Ord. No. 92-041, page 26; Bend-La Pine migration corridor identified by ODFW)</p>	<p><b>No.</b></p>	<ul style="list-style-type: none"> <li>• Dwellings</li> <li>• Roads</li> <li>• Dogs</li> <li>• Fences which impede safe passage</li> </ul>	<p>Wildlife Area Combining Zone was recognized as the only program to achieve the goal to protect the deer migration corridor. It was amended to require cluster development for all land divisions in the RR-10 zone in the Bend/La Pine migration corridor (92-042). A 20 acre parcel is the minimum size required for a cluster development. Siting and fencing standards also apply in the deer migration corridor.</p> <p>Flood Plain Zone not an identified program, but described as a beneficial in limiting impacts due to development requirements.</p>	<p>Ordinance Nos. 92-040, 92-041, 92-042, 92-046</p>
<p><b>Antelope Habitat</b> (Inventory – Ord. No. 92-041 – page 38; identified by ODFW)</p>	<p><b>No.</b></p>	<ul style="list-style-type: none"> <li>• Land use or development activities associated with human activity which would result in the loss of habitat, and animal harassment and disturbance</li> </ul>	<p>To achieve the goal to conserve antelope habitat, uses conflicting with antelope habitat are limited to the Wildlife Area Combining Zone. In antelope range, the minimum lot size is 320 acres. Except for rural service centers, the antelope habitat is zoned EFU or F1.</p>	<p>Ordinance Nos. 92-040, 92-041, 92-042, 92-046</p>

<p><b>Habitat for Sensitive Birds</b> (Inventory – Ord. No. 92-041 – page 41 and Table 5; identified by ODFW, ODF, OSU, Oregon Natural Heritage Data Bases).</p> <p>The area required for each nest site varies between species.</p>	<p><b>No.</b></p>	<ul style="list-style-type: none"> <li>• Surface mining</li> <li>• Logging operations</li> <li>• Air strips</li> <li>• Residential use,</li> <li>• Recreation facilities,</li> <li>• Roads</li> <li>• Any other activity which would disturb the nesting birds (i.e. intensive recreational use or removal of trees or vegetation)</li> </ul>	<p>Nest sites are found in forest, EFU and Open Space and Conservation zones. The Sensitive Bird and Mammal Combining Zone achieves the goal to protect sensitive bird sites.</p>	<p>Ordinance Nos. 92-040, 92-041, 92-042, 92-046</p>
<p>(<b>UPDATED</b> - Inventory – Ord. No. 94-004 –pages 3 to 140 Site specific ESEE analysis and decisions follow each site.</p>	<p><b>No.</b></p>	<p>See above.</p>	<p>Habitat areas for sensitive birds of the Fish and Wildlife Element, adopted in No. 92-041 is repealed and replaced by inventories in Exhibit 1. Area required around each nest site needed to protect the nest from conflict varies between species. It’s called “sensitive habitat area.”</p> <p>Note: Northern bald eagle, osprey, golden eagle, prairie falcon and great blue heron rookeries are located on federal land. Classified as “2A” Goal 5 Resources. Great Grey owl site no longer exists. Some bald eagle, golden eagle sites are controlled by the Sensitive Bird and Mammal Combining Zone.</p>	<p>Ordinance Nos. 94-004 and 94-021</p>

<p><b>Habitat Areas for Townsend’s Big-Eared Bats</b> (Inventory – Ord. No. 92-041 – page 69; identified by ODFW, ODF, OSU, Oregon Natural Heritage Data Bases)</p>	<p><b>No.</b></p>	<ul style="list-style-type: none"> <li>• Surface mining</li> <li>• Logging operations</li> <li>• Air strips</li> <li>• Recreation facilities including golf courses and destination resorts</li> <li>• Roads</li> </ul>	<p>Caves located in EFU zones. Program to achieve the goal is Sensitive Bird and Mammal Combining Zone</p>	<p>Ordinance No. 92-041 and 042</p>
<p><b>UPDATED</b> - Inventory – Ord. No. 94-004 –pages 140 to 155 Site specific ESEE analysis and decisions follow each site.</p>	<p><b>No.</b></p>	<p>See above.</p>	<p>Habitat areas for Townsend Bats, adopted in No. 92-041 is repealed and replaced and further amended in Exhibit 2. The ESEE for Townsend’s big-eared bats is amended for additional bat sites in Exhibit 3.</p>	<p>Ordinance Nos. 94-004 and 94-021</p>
<p><b>Lakes and Reservoirs</b> (Inventory – Ord. No. 92-052, Exhibit C, Page 10; includes Upper Tumalo Reservoir; remaining are on federal land</p>	<p><b>No.</b></p>	<ul style="list-style-type: none"> <li>• Development which would cause a loss of open space or a decrease in the aesthetic and scenic resources</li> <li>• land management activities, resulting in the removal of natural vegetation which provides wildlife habitat and scenic value.</li> </ul>	<p>Conflicting uses around Tumalo Reservoir are specifically limited by Title 18.48, Open Space Conservation Zone and a 100’ setback for any structure from OHW</p>	<p>Ordinance No. 91-020</p>

<p><b>Wilderness Areas, Areas of Special Concern, Energy Sources (Ord. No 92-005), and Groundwater Resources (Ord. No. 94-003)</b> not analyzed because they're on federal land or don't relate to flood plans.</p>	<p>No.</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>
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# Oregon

Kate Brown, Governor

Department of Fish and Wildlife

East Region

61374 Parrell Road

Bend, Oregon 97702

(541) 388-6363

FAX (541) 388-6281

## Attachment 3 - Oregon Department of Fish and Wildlife 2017 Testimony

September 22, 2017

Deschutes County Community Development Department  
P.O. Box 6005  
117 NW Lafayette Ave  
Bend, OR 97708

Re: Planning Division File 247-17-000702-TA/247-17-000703-PA

The purpose of this letter is to provide Oregon Department of Fish and Wildlife (Department) comments on the proposed Deschutes County Community Development Department (CDD) amendment to the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, to permit churches in the Wildlife Area Combining Zone (WA Zone).

According to Deschutes County Code 18.88, the purpose of the WA 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.” Much of the WA Zone is meant to conserve winter ranges for deer, elk and pronghorn. These are areas where wildlife congregate to conserve energy when food resources are scarce and temperatures are often below freezing making them particularly vulnerable to human disturbance.

The Department is mandated by State Statute to manage fish and wildlife resources to prevent serious depletion of indigenous species and to provide optimum recreational and aesthetic benefits for present and future generations of the citizens of Oregon (ORS 496.012). This objective can only be realized in concert with land use provisions that benefit wildlife resources such as the Goal 5 planning process that created the WA Zone. The maintenance of adequate winter range is crucial to the persistence of big game populations which provide local ecological and economic value. The winter range protected under the WA Zone in Deschutes County is coming under increasing pressure from a growing human population. Recent census data established the Bend-Redmond area as the fastest growing metropolitan area on the west coast. That coupled with mule deer population estimates that are 40-50% of Department management objectives highlights the importance of maintaining WA Zone protections.

It is outside of the Department’s purview to comment on whether permitting churches in the WA Zone complies with the Religious Land Use and Institutionalized Persons Act (RLUIPA). More broadly, the proposed amendment would allow a use that the Department, the U.S. Forest Service, Bureau of Land Management, and U.S. Fish and Wildlife Service have deemed in an “Interagency Report” to be in conflict with wildlife habitat values because it “generate[s] a high level of public activity, noise, and habitat alterations, which in turn can impact large geographic spaces and alter many acres of valuable wildlife habitat” (see p21 of the 2009 “Updated Wildlife Information and Recommendations for the Deschutes County Comprehensive Plan Update”).

The CDD states that mitigation for impacts associated with this amendment will be achieved by prohibiting outdoor activities during the time of year when animals are using the WA Zone. That prohibition may address animals' exposure in winter to the "high levels of public activity" and "noise" listed above. However, it does not adequately mitigate for the "habitat alterations, which in turn can impact large geographic spaces and alter many acres of valuable wildlife habitat" that will likely occur under this amendment. The habitat in the WA Zone must be conserved throughout the year so that it is available and functioning for wildlife during the winter.

As mentioned above, the Department has previously agreed that churches (as well as golf courses, commercial dog kennels, schools, bed and breakfast inns, dude ranches, playgrounds, recreation facilities, community centers, timeshare units, veterinary clinics, and fishing lodges) should be among the uses not permitted in the WA Zone. Additionally, from a wildlife conservation stand point, winter range is already at risk from currently permitted uses. Therefore, it would be counter to the Department's statutory responsibility to support this amendment. We recommend that the Planning Commission reject this amendment and the CDD develop an alternative to comply with RLUIPA that will preserve the intent of the Goal 5 planning process.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Sara Gregory". The signature is written in a cursive, flowing style.

Sara Gregory  
Wildlife Habitat Biologist  
[sara.c.gregory@state.or.us](mailto:sara.c.gregory@state.or.us)  
541-388-6147

cc: Bruce Eddy, East Region Manager, ODFW  
Brett Hodgson, Acting Deschutes Watershed Manager, ODFW  
Corey Heath, Deschutes District Wildlife Biologist, ODFW



# Oregon

Kate Brown, Governor

Department of Fish and Wildlife

East Region

61374 Parrell Road

Bend, Oregon 97702

(541) 388-6363

FAX (541) 388-6281

November 14, 2017

Deschutes County Community Development Department  
P.O. Box 6005  
117 NW Lafayette Ave  
Bend, OR 97708

Re: Planning Division File 247-17-000702-TA/247-17-000703-PA

The purpose of this letter is to provide additional Oregon Department of Fish and Wildlife (Department) comments on the revised proposed Deschutes County Community Development Department (CDD) text amendment to the Deschutes County Comprehensive Plan, Chapter 2, Resource Management, to permit churches in the Wildlife Area Combining Zone (WA Zone). The Department submitted comments objecting to the first draft of the text amendment in a letter dated September 22, 2017. As the Department does not appear in the Planning Manager's October 31, 2017 memorandum listing those who submitted written testimony, we are resubmitting our original letter with this correspondence. Please add them both to the record.

As we discussed during the November 6<sup>th</sup> public hearing and our previous letter, the Department continues to object to the proposed text amendments according to our statutory responsibility. Mule deer are the only type of deer found in Deschutes County and their populations have been in decline for decades. In some parts of the County there have been declines of up to 70% since 2000. As a result, the Department has made the necessary adjustments to hunting seasons so as not to cause additional declines through harvest. Unfortunately, there are other elements contributing to reductions in mule deer populations. Among the many factors contributing to their decline, many can be tied to human caused habitat reduction, fragmentation, and disturbance on winter range.

Unlike other deer species, mule deer are more specific in their habitat needs and more sensitive to humans. Commonly mule deer exhibit migratory behavior whereby they take advantage of the variety of plants available in the mountains during the summer and then move to areas such as those in the WA Zone for the winter to escape deep snow at higher elevations. This means traveling many miles each spring and fall. Mule deer also show a strong fidelity to their migration corridors and their summer and winter ranges. They will return to the same winter range year after year. This winter range is where deer typically interact with people and associated land use. Department studies of hundreds of collared mule deer in central Oregon showed that migratory deer had a better chance of surviving than deer that did not migrate. Therefore, maintaining migratory herds is among the Department's priorities.

Maintaining winter range areas that are relatively free from human disturbance is one way to improve mule deer populations. It is difficult for people to interpret stress induced behavior in mule deer because they will often remain motionless when face to face with a human instead of

fleeing. However, Department studies showed a strong avoidance of people during the winter. When deer are disturbed by people, their stress levels rise, they increase their movements, and use valuable energy reserves that could make them vulnerable to increased mortality from vehicles, predators and disease among other things. In addition, other research has shown that as residential development increases, survival of mule deer fawns decreases. Low fawn survival equates to slow or negative population growth. Therefore, relying on urban development to support our mule deer populations is not a sustainable or desirable option.

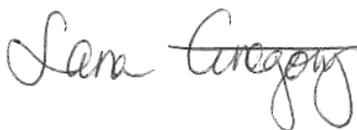
Through the creation for the WA Zone, Deschutes County recognized the need to preserve traditional winter habitat for mule deer. This in turn preserves open space and habitat for a variety of other species. Indeed, in protecting winter range the Goal 5 planning process has also helped to protect the scenic views and recreational opportunities that makes Deschutes County a desirable place to live and visit.

The Department is concerned that the CDD's Economic, Social, Environmental, and Energy (ESEE) analysis of the proposed text amendment failed to adequately examine the value of mule deer and other wildlife. At last estimate, hunting and wildlife viewing contributed more than \$50 million to the Deschutes County economy annually. There is also a social and environmental component to prioritizing wildlife habitat values that should be considered. The long term consequences of these proposed text amendments could contribute to permanent removal of hundreds of acres of wildlife habitat as the WA Zone would be vulnerable to the construction of very large structures and their associated human presence. This could further compromise the future of healthy functioning mule deer herds in Deschutes County. The Department requests a revised ESEE analysis that recognizes the wildlife values that could be impacted by these text amendments.

Finally, the Department would like the language on Packet Page 22 revised to remove the statement that these text amendments were developed in coordination with the Oregon Department of Fish and Wildlife. While Department staff appreciate the positive working relationship we have with CDD staff and hope to collaborate on future projects, in this case, we were not able to come to an agreement.

Thank you for considering these comments. If you have any questions please contact me.

Sincerely,

A handwritten signature in black ink that reads "Sara Gregory". The signature is written in a cursive, flowing style.

Sara Gregory  
Wildlife Habitat Biologist  
[sara.c.gregory@state.or.us](mailto:sara.c.gregory@state.or.us)  
541-388-6147

cc: Bruce Eddy, East Region Manager, ODFW  
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Corey Heath, Deschutes District Wildlife Biologist, ODFW