MEMORANDUM

TO: Deschutes County Planning Commission
FROM: Nicole Mardell, Associate Planner
DATE: September 5, 2019
SUBJECT: Flood Plain Cluster and Planned Unit Development Amendments (247-19-000531-TA) – Continued Public Hearing

The Deschutes County Planning Commission held a public hearing on August 8, 2019. As there was extensive public testimony provided, the Commission chose to continue both the oral and written components of the public hearing until September 12, 2019.

I. PROPOSAL
Deschutes County, through File No. 247-19-000531-TA, is amending the Deschutes County Comprehensive Plan and Zoning Ordinance to add provisions for cluster and planned unit developments on property that contains partial Flood Plain zoning.

Many properties in Deschutes County are split-zoned, meaning they contain more than one base zone. Each base zone has a specific set of development standards including allowed and conditional uses. In calculating the allowed density and open space requirements for cluster and planned unit developments in Deschutes County, staff has relied on nine Hearings Officer’s interpretations of the code, which have allowed Flood Plain zoned land to be used in the acreage calculation as long as the Flood Plain land is used as open space. Recently, one Hearings Officer disagreed\(^1\) with this precedent and found that Flood Plain zoned land is not developable, cannot be included in this density and open space calculation, and instead should be seen as an additional riparian protection area.

This inconsistency causes uncertainty for property owners when determining the divisibility of their property. The purpose of the proposed amendments is to codify past practices to allow Flood Plain Zoned land to be used in the acreage calculation as long as the Flood Plain land is used as open space. The open space area will be managed by a Homeowners’ Association subject to a Riparian Area Management Plan (RAMP). The amendments do not alter the mapped Federal Emergency Management Agency (FEMA) Flood Plain Zone

\(^1\) File Nos. 247-15-000194-CU / 195-TP
boundary or the standards applicable to development within the Special Flood Hazard Area, also known as the 100-year Flood Plain Extensive background is provided in the July 25, 2019 work session packet and on the project website: https://www.deschutes.org/cd/page/flood-
plain-information-and-text-amendments.

II. PUBLIC COMMENTS
Staff received written comments from the following individuals as of 10 am on September 5, 2019 (Attachment 1). Many of the comments received were generally opposed to any amendments involving the Flood Plain Zone due to impacts to wildlife from additional development near sensitive riparian areas. Others expressed concern regarding a specific cluster development proposal in the Lower Bridge area, which is currently under review by a Hearings Officer. Additionally, a few individuals spoke regarding a lack of need for the proposed amendments at this time and concern regarding mismanagement of a RAMP.

- Alvarado
- Beard/Foster
- Benson
- Brewer
- Caram
- Castelbaum
- Central Oregon Land Watch
- DLCD – Punton
- Elshoff
- Emerson/Brayfield
- Frank
- Gould
- Harris
- Kassy
- Kruse
- Lozito
- McKay
- Monte
- ODFW - Vaughn
- Pederson
- Pokorny
- Quinlan
- Resto-Spotts
- Storm
- Taylor
- Warriner
- Williams

III. ODFW TESTIMONY
The comments submitted by ODFW in their August 8, 2019 letter requested additional time to work with County staff on the proposed amendments among other edits. Staff has engaged ODFW to review the draft RAMP and offer specific feedback on the requirements to reduce impact to wildlife from a cluster or planned unit development. An updated draft of the RAMP, including ODFW feedback is found in Attachment 2. To provide greater context on the history of Deschutes County's Goal 5 inventory, staff is including a more thoroughly detailed index and full text of previous, relevant ordinances (Attachment 3).

2 http://deschutescountyor.igm2.com/Citizens/FileOpen.aspx?Type=1&ID=2126&Inline=True
3 File No: 247-19-000405-CU, 406-TP, 407-SMA
IV. NEXT STEPS
The public hearing to take testimony on the proposed amendments will be held on Thursday, September 12, 2019 at 5:30 pm, in the Barnes and Sawyer Room, 1300 NW Wall Street, Bend, OR. At the conclusion of the public hearing, the Planning Commission can:

1) Continue the hearing to a date certain;
2) Close the hearing and leave the written record open to a date certain; or
3) Close the hearing, and commence deliberations.

ATTACHMENTS
1) Public Comments – General Comments and Comments Specific to 247-19-000531-TA
2) Updated Draft RAMP with ODFW Feedback
3) Deschutes County Goal 5 Index and Ordinances
Hello Nicole,

Thank you for the recent coordination and the opportunity for ODFW to provide input and technical assistance on the draft language for the Riparian Area Management Plan (RAMP). ODFW has reviewed the draft revised RAMP (dated 8/22/19) and offers the attached suggested comments and edits for the county’s consideration. While ODFW continues to have concerns with the proposed floodplain zone revisions (247-19-000530/533-PA; 247-19-000531-TA; 247-19-000532-TA) as stated in our letter dated 8/7/19, we appreciate the county’s efforts to coordinate with us regarding some of the fish and wildlife habitat concerns raised, and we hope to continue this collaboration. Since ODFW has limited regulatory authority regarding land use decisions that affect fish and wildlife habitat, there is a strong reliance on local comprehensive plans, especially Goal 5, to ensure the protection and enhancement of Oregon's fish, wildlife and their habitats for use and enjoyment by present and future generations.

Due to workload constraints and our limited capacity, we have not had the opportunity to provide substantive comments on the ESEE analysis. As stated in our previous comments from 8/7/19, we believe the ESEE analysis does not adequately address the conflicting uses to Goal 5 resources. Therefore, we plan to submit additional comments regarding the ESEE and other proposed elements of this plan amendment prior to the hearing next week. This includes a recommendation that the county consider removing those properties within the Wildlife Area Combining Zone (deer winter range/deer migration overlay) as eligible parcels to further avoid/minimize the conflicting uses to Goal 5 resources.

If you have any questions or need clarification on our attached comments related to the RAMP, please let me know. Thank you and ODFW looks forward to continued collaboration on this proposal.

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Check out the Oregon Conservation Strategy! http://www.oregonconservationstrategy.org/
15. For Cluster Developments containing or adjacent to rivers, lakes or streams, in addition to compliance with other applicable zone development restrictions, uses and activities must be consistent with a required Riparian Area Management Plan (RAMP). The intended purpose of a RAMP is to preserve, enhance and protect riparian resources, as a supplement to the Open Space Management Plan and Wildlife Management Plans, where those plans are required. For the purpose of a RAMP, the Riparian Area for the purposes of this plan shall be as shall be designated consistent with the definition in Ordinance 1994-007, the boundary of the Riparian Area shall include: the area that encompasses an inventoried wetland, Flood Plain zoned area, and 100 feet from the Ordinary High Water Mark of an inventoried river, lake, or stream. The RAMP shall be prepared by a qualified wildlife biologist and shall include the following information:

a. Landowner and Responsible Party: Identification of landowner and responsible party to implement and monitor the RAMP.

b. Location and Site Plan: A description and map identifying the location and site plan. The map shall include:
   i. Township, Range, Section, Tax Lot(s) and latitude/longitude of the property to which a RAMP is required,
   ii. Site plan for the Cluster Development and the identification of the Riparian Area acreage subject to the RAMP.

c. Consultation with the Oregon Department of Fish and Wildlife: Documentation of coordination with the Oregon Department of Fish and Wildlife.

d. Inventoried Goal 5 Resources: A description, photo documentation and map of the Riparian Area, including the inventoried Goal 5 inventoried resources associated within or adjacent to the wetland, river, lake, or stream. The map shall include:
   i. A map that identifies the location of the Goal 5 resources subject to the Riparian Area Management Plan. This area shall include:
      ii. Additional mapping supported by property specific surveys, for inventoried Goal 5 inventoried resources associated within or adjacent to the wetland, river, lake or stream (e.g., wetland delineations), where adopted maps are not available.

e. Evaluation of Inventoried Goal 5 Resources: An assessment of riparian resources within or adjacent to the Cluster Development, which are identified as an inventoried Goal 5 resource in the County’s Comprehensive Plan. This includes a description of the quantity and quality of the inventoried Goal 5 inventoried resources associated within or adjacent to the wetland, river, lake, or stream.

f. Potential Impacts to the Riparian Area: A description of potential site-specific impacts to the inventoried Goal 5 inventoried resources associated within or adjacent to the wetland, river, lake or stream from the proposed development.

G. Management Objectives and Measures: A description of the management objectives to preserve, enhance and protect riparian resources subject to the RAMP. This includes any avoidance, minimization, or mitigation measures intended to implement the management objectives to preserve, enhance and protect the inventoried Goal 5 inventoried resources associated within or adjacent to the wetland, river, lake, or stream from potential impacts as a result of from the proposed Cluster Development.
4. Prohibitions in the Riparian Area Subject to the RAMP: A prohibition on the development of structures, recreational trails, earthmoving, and habitat/vegetation modifications, with the following exceptions:
   i. Fish and wildlife habitat restoration and enhancement projects, approved reviewed and concurred by or sponsored by the Oregon Department of Fish and Wildlife, and
   ii. Outside of wetlands, wildlife viewing areas and single track recreational trails for non-motorized use.

j. Long-Term Protection Instrument (*Is there a way to incorporate this into the requirements of (16) below?)

k. RAMP Compliance and Monitoring: The Landowner or Responsible Party must comply with the approved RAMP and shall submit a monitoring report to the County demonstrating compliance with the management objectives to preserve, enhance or protect the riparian resources. The monitoring shall include photo documentation of the Riparian Area subject to the RAMP.

l. RAMP Modifications: Any proposed modification to the RAMP must be submitted in writing and approved by the County. If the proposed modifications have the potential to impact inventoried Goal 5 resources, or modify the Management Objectives intended to preserve, enhance or protect the riparian resources, consultation with ODFW is required.

m. Ownership Modification: Any modification to the Landowner or Responsible Party must be submitted in writing to the county. The new Landowner or Responsible Party must provide a signed acknowledgement for RAMP implementation and monitoring.

n. Documentation of coordination with the Oregon Department of Fish and Wildlife

16. For those Cluster Developments that include a Riparian Area Management Plan, the area requiring a Riparian Area Management Plan shall be contained in one or more lots designated as open space on the plat of the subdivision and held in common ownership of a homeowner’s association of the development. This open space shall count towards any open space requirements for Cluster Developments.

Commented [JRV6]: If the intent is to incorporate the RAMPs to address the conflicting uses as a result of the Cluster Development, then ODFW recommends that all uses, other than habitat restoration, are prohibited, which supports the intent for addressing Goal 5.

If the county considers (ii), ODFW recommends that the language include additional clear and objective standards, a requirement for ODFW review/concurrence and a requirement that habitat enhancement/restoration is a component of the eligibility for the exception. The clear and objective standards should be developed that provides more clarity in the type/size/materials/etc for the wildlife viewing and single track recreational trail development.

Commented [JRV7]: Recommend that the RAMP require a long-term protection instrument, such as a deed restriction, as currently required for Cluster and Planned Unit Development. This would also help to alleviate the issues of tracking land ownership or modifications in responsible parties since the RAMP would run with the land.

Commented [JRV8]: Need to flush out need/details here. But ideally, there would be a template that the landowner/responsible party can provide to the county on how the RAMP is being implemented/status of the protection/enhancement areas.

Commented [JRV9]: What happens if the plan is out of compliance? Is there a county code enforcement to reference here? It would be a concern if the county is not able to adequately monitor and enforce the RAMPs, but using them as a tool to obtain consistency and compliance to permit the Cluster Development. ODFW acknowledges some of the challenges with county compliance and capacity, but recommend that the compliance process should be more clearly defined.

Commented [JRV10]: The intent of this recommendation is to address the ownership issues/changes to HOA leadership associated with transferring the RAMP implementation/monitoring. This raises questions as to how the RAMP will be recoded. Recommend the RAMP be recoded in the deed (such as with the Open Space Designation) and therefore the RAMP would stay with the land, rather than landowner? This would help to prevent some of the monitoring/compliance issues.