



MEMORANDUM

TO: Deschutes County Board of Commissioners
FROM: Tanya Saltzman, AICP, Senior Planner
DATE: September 23, 2021
SUBJECT: Wildlife Inventory Update – Discussion of Options

Staff is providing the Board of County Commissioners (Board) with a “roadmap” of potential options pertaining to a wildlife inventory update. On August 30, 2021, the Board received a summary of the public outreach effort for the first phase of the wildlife inventory update project, which was funded by a Department of Land Conservation and Development (DLCD) Technical Assistance Grant.¹ A subsequent phase could potentially take several different forms, which are outlined in this memorandum for Board consideration.

Desired outcomes:

1. Select Option 1, 2, or 3 (see Section III below) for wildlife inventory next steps.
2. Determine potential use restrictions (see Section IV below).

Staff recognizes that this memorandum presents a large amount of information; if the Board chooses, staff can return in October to allow the Board ample time to review the options more thoroughly.

I. Wildlife Inventory Update – Overview

The majority of the County’s Goal 5 wildlife inventories were last updated in the early 1990s and no longer reflect the best available data for wildlife habitat. As Deschutes County’s population grows and with it, development pressure increases, it is important for these inventories to be based on the best available data for avoidance and minimization to wildlife and their habitats, recognizing that wildlife protection and rural development expectations do not have to be mutually exclusive.

For the initial phase of the project, the County engaged the public to present updated state and federal biological data and then gauge general interest in updating three inventories into the Comprehensive Plan that were selected by a team of wildlife biologists with experience in the

¹ <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-12>

County: mule deer winter range, elk winter range, and sensitive birds (golden and bald eagles). The process of updating wildlife inventories are governed by Oregon Administrative Rules (OARs) Chapter 660, Division 23.

II. Proposed Inventory Data Summary

Below is a brief summary of each proposed inventory,² including a breakdown of federal versus non-federal lands, which illustrates land that the County has jurisdiction over, as well as a breakdown of land by zone. Selected illustrative maps are presented as appendices.

A. Mule Deer Winter Range

- Existing mule deer winter range covers approximately 315,947 acres
- Proposed additional area covers 188,132 acres, resulting in a potential total of 503,979 acres
- Oregon Department of Fish and Wildlife (ODFW) is very concerned because the Central Oregon population is declining at a rate of 10 percent a year
- Mule deer populations are at 55 percent of their management objective

Additional proposed area covers 188,132 acres:

- 113,262 acres (61%) are on federal land
- 74,870 acres (39%) are on non-federal land

Non-federal Land

- 54,474 acres (3,619 tax lots) zoned Exclusive Farm Use
- 915 acres (12 tax lots) zoned Forest Use
- 9,358 acres (1,635 tax lots) zoned Rural Residential
- 7,597 acres (1,529 tax lots) zoned Multiple Use Agriculture

B. Elk Winter Range

- Existing elk winter range covers approximately 51,717 acres
- Proposed additional area covers 359,493 acres, resulting in a potential total of 411,190 acres
- According to ODFW, elk populations in Central Oregon have grown slightly the last 10 to 20 years.

Additional proposed area covers 359,493 acres:

- 225,171 acres (63%) are on federal land
- 134,322 acres (37%) are on non-federal land

Non-federal Land

- 59,793 acres (3,801 tax lots) zoned Exclusive Farm Use

² <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=3073>

- 31,164 acres (1,128 tax lots) zoned Forest Use
- 29,976 acres (13,365 tax lots) zoned Rural Residential
- 7,554 acres (1,540 of tax lots) zoned Multiple Use Agriculture

C. Sensitive Bird Habitat (Golden and Bald Eagles)

- Existing inventory of consists of 5 bald eagle nests and 25 golden eagle nests
- Proposed inventory totals 116 bald eagle nest and 103 golden eagle nest locations
- According to U.S. Fish and Wildlife Service, the increased numbers of nests “do not necessarily correspond to increased eagle success or upward population trends.”
- Survey methods and survey efforts have greatly increased over the past several decades, resulting in several alternative nest sites per territory
- Recommended “awareness” buffer for golden eagle nests is now 2 miles (previously ¼ mile); it is important to note that this represents a different way of illustrating inventory area than that of mule deer and elk, which are not based on individual data points

Additional proposed area covers 344,777 acres:

- 213,296 acres (62%) are on federal land
- 131,481 acres (38%) are on non-federal land

Non-federal Land

- 83,575 acres (4,649 tax lots) zoned Exclusive Farm Use
- 4,368 acres (161 tax lots) zoned Forest Use
- 10,435 acres (1,969 tax lots) zoned Rural Residential
- 13,325 acres (3,385 tax lots) zoned Multiple Use Agriculture

D. Composite of Total Acreage

The following data combines all three existing and proposed inventories together, first separated by federal versus non-federal land, and then within the non-federal land, the associated zones. Note that areas of the three inventories frequently overlap, so the composite is not necessarily the same as the sum of each of the three individual inventories.

- 630,926 acres (70%) are on federal land
- 267,603 acres (30%) are on non-federal land

Non-federal Land

- 119,796 acres (5,494 tax lots) zoned Exclusive Farm Use
- 56,647 acres (1,264 tax lots) zoned Forest Use
- 34,494 acres (14,518 tax lots) zoned Rural Residential
- 16,264 acres (3,806 tax lots) zoned Multiple Use Agriculture

Conversely, the below numbers indicate the amount of land in unincorporated Deschutes County (non-federal land) that does **not** contain Goal 5 wildlife inventories and as such has no additional wildlife-related development criteria, either presently or with adoption of proposed new inventories.

95,737 acres (10,318 tax lots) on non-federal land do not contain Goal 5 wildlife inventories:

- 65,314 acres (2,241 tax lots) zoned Exclusive Farm Use
- 7,193 acres (54 tax lots) zoned Forest Use
- 8,174 acres (3,334 tax lots) zoned Rural Residential
- 9,956 acres (2,406 tax lots) zoned Multiple Use Agriculture

As noted above, the methodology for calculating sensitive bird inventory area varies compared to the other two inventories; the methodology for the new sensitive bird inventories includes a two-mile buffer, which may not reflect actual future development constraints.

III. Wildlife Inventory Roadmap - Options

As stated previously, the process for updating a Goal 5 wildlife inventory is prescribed by OARs. In addition, Oregon counties rarely, if ever, undergo the process to update existing wildlife inventories because, unlike cities, they are not required to comply with periodic review.³ By choosing to undertake a Goal 5 wildlife inventory update, Deschutes County will be moving forward with a rarely-utilized and admittedly, complex process that, while a significant effort, can hopefully provide an example of best practices for other jurisdictions as well as the County for future efforts.

Given the newness of the process cited above as well as further details noted below, staff offers three options to move forward, with further details and discussion on each option below:

Option 1

Select one of the three inventories to update the Comprehensive Plan and Zoning Code as a pilot project as a model for future inventory updates following the completion of the Comprehensive Plan Update.

Option 2

Select two of the three inventories to update as a pilot project.

Option 3

Initiate the wildlife inventory updates following the completion of the Comprehensive Plan Update.

A. Option 1: Select one of the three inventories to update now

Due to the complexity and relative novelty of the process, the potential interaction with other high-priority planning efforts (such as implementation of SB 391 for rural accessory dwelling units), and a desire to establish and vet a process both with the state and with the public, the Board could

³ Periodic Review is a term used in Oregon law to describe the periodic evaluation and revision of a local comprehensive plan. Prior to 2003, state law (ORS 197.628 – 636) called for counties to review their comprehensive plans according to a periodic schedule established by the Land Conservation and Development Commission (LCDC). The Oregon Legislature eliminated periodic review requirements for counties in 2003 (SB 920).

direct staff to begin an update of one of the three inventories. This would enable staff to proceed in a manner that perfects the process as much as possible before embarking on other updates, which in turn would be likely to be more efficient after the first effort is successfully completed.

If this option is selected, staff suggests updating the mule deer inventory due to the species' visibility in the county, the noted decline in population, and the most robust new data.

Associated Tasks

- Amend Deschutes County Comprehensive Plan and Zoning Code to update the mule deer winter range
- Conduct 2 to 3 open houses (virtual) with the Planning Commission
- Initiate 4- to 6-month legislative amendment process

B. Option 2: Select two of the three inventories to update now

Elk winter range data, while not quite to the same level of detail as mule deer, are extensive and represent another highly visible population within Deschutes County. Staff has the capacity to perform this task and presumes that the process for updating the elk winter range would be similar to that of the mule deer; nevertheless, updating these two inventories would extend the timeline necessary to complete an update.

It is important to note that staff anticipates the process for updating sensitive bird inventories would be significantly more complex than that of the ungulates, due to the number of individual nesting sites that need to be evaluated (over 200 in total). For this reason, staff offers for Board consideration that the sensitive bird inventory update be reserved until a process is vetted and deemed successful by the completion of a "simpler" inventory update.

Associated Tasks

- Amend Deschutes County Comprehensive Plan and Zoning Code to update the mule deer and elk winter ranges
- Conduct 4 to 6 open houses (virtual) with the Planning Commission
- Initiate 6- to 8-month legislative amendment process

C. Option 3: Initiate the wildlife inventories following the completion of the Comprehensive Plan Update, expected in FY 2024/2025

Deferring the inventory updates until after the Comprehensive Plan update is complete would potentially allow the Board to more fully analyze land development patterns, opportunities and constraints prior to the inventory updates. The Comprehensive Plan update would likely address general goals and policies pertaining to wildlife resources, but the specific inventory update process would take place after those goals and policies are adopted, likely in FY 2024/2025.

IV. Considerations for all options – use restrictions

One aspect of a wildlife inventory update of any scale would involve determining what uses, if any, might be conflicting and considered as a prohibited use in the proposed new areas. It is important to underscore that just because a use is “conflicting” does not require it to be prohibited in a wildlife inventory. Local governments get to choose, consistent with OAR Chapter 660 Division 23. The current Wildlife Area (WA) Combining Zone does not permit the following uses in those portions designated as deer winter ranges, significant elk habitat, and antelope range:⁴

Existing Prohibited Land uses in Deer and Elk Winter Ranges

1. Golf course, not included in a destination resort;
2. Commercial dog kennel;
3. Public or private school;
4. Bed and breakfast inn;
5. Dude ranch;
6. Playground, recreation facility or community center owned and operated by a government agency or a nonprofit community organization;
7. Timeshare unit;
8. Veterinary clinic;
9. Fishing lodge.

In 2009, the Oregon Department and Fish and Wildlife (ODFW), U.S. Fish and Wildlife Service, Bureau of Land Management, and the U.S. Forest Service, collaborated to provide a report on wildlife in Deschutes County titled, “Updated Wildlife Information and Recommendations for the Deschutes County Comprehensive Plan Update” (Interagency Report). It provided updated information to be used in revising County Goal 5 wildlife inventories. Staff coordinated with ODFW and they reconfirmed that those uses listed in the Interagency Report be prohibited in mule deer and elk winter ranges because of their high human use and disturbance levels:

ODFW Proposed Land Uses to be Prohibited in Deer and Elk Winter Ranges

- Guest ranch
- Outdoor commercial events (i.e. wedding venues)
- Off-Highway Motor Vehicle (OHV) course
- Paintball course
- Shooting range
- Model airplane park
- BMX courses (ODFW notes that this category could potentially include other types of bikes, i.e. mountain bike courses)

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The following additional uses, not cited in the Interagency Report, are subsequent recommendations from ODFW to preclude in deer and elk winter ranges:

- Solar farms
- Commercial camping areas
- RV park areas
- Wind farm development

A. Consideration of Conflicting Uses

For any chosen inventory update process, the Board should consider if it would like to:

1. Carry over existing WA Combining Zone prohibited uses to the new proposed mule deer and/or elk winter ranges;
2. Prohibit any or all of ODFW's recommended prohibited uses in the new proposed mule deer and/or elk inventory area(s);
3. Add any or all of ODFW's recommended prohibited uses to the existing WA Combining Zone related to mule deer and/or elk winter ranges.

Board recommendations on the above items can serve as a starting point for legislative amendments and any use prohibitions can ultimately be revisited during the legislative public hearing process. Staff will prepare findings for the subsequent legislative amendments to support the Board's chosen strategy.

V. Residential Uses

Recognizing the Board's commitment to housing needs in the unincorporated County, residential uses in rural Deschutes County would not change and continue to be permitted outright or conditionally, including:

- Single family dwelling or manufactured home
- Medical hardship dwelling
- Guest house
- Land division (clustered / planned unit development)
- Rural accessory dwelling unit (ADUs) per SB 391 (in progress)
- Destination resort

If the Board wanted to limit residential uses, it is important to recognize Measure 49 (ORS 195.300-336), which states "If a public entity enacts one or more land use regulations that restrict the residential use of private real property...and that reduce the fair market value of the property, then the owner of the property shall be entitled to just compensation from the public entity that enacted the land use regulation."

VI. Next Steps

Staff seeks Board direction, either now or at a subsequent meeting, about its preferred option concerning a wildlife inventory update. As noted at the beginning of this memo, the Board can:

1. Select Option 1, 2, or 3 for wildlife inventory next steps.
2. Determine potential use restrictions.

Attachments:

1. Mule Deer Winter Range Map - Existing and Proposed
2. Elk Winter Range Map - Existing and Proposed
3. Non-federal County Land Outside of Wildlife Inventory