



MEMORANDUM

TO: Deschutes County Planning Commission
FROM: Tanya Saltzman, AICP, Senior Planner
DATE: March 16, 2023
SUBJECT: Preparation for Public Hearing – Mule Deer Winter Range Inventory Update

Staff will present proposed amendments to the Planning Commission on March 23, 2023, in preparation for an April 13 public hearing concerning the mule deer inventory update. Staff submitted a Post-Acknowledgement Plan Amendment (PAPA) notice to the Department of Land Conservation and Development (DLCD) on March 8, 2023 and established a project website, www.deschutes.org/muledeer, wherein the record and supporting documents are published. Further background is provided below. The proposed text amendments, findings, and maps are provided as attachments to this memorandum.

I. BACKGROUND

The first phase of this project took place in 2020-2021, in which Deschutes County initiated the process of considering updates to three of its Goal 5 wildlife inventories. Utilizing an Interagency Working Group (IWG) of wildlife biologists from state agencies as well as an independent wildlife biologist consultant, the IWG collected and vetted new data to define these new inventories. For a detailed history and documents relating to Phase 1, visit [Wildlife Inventory Update - Phase 1](#).

The current phase of this project follows the procedures in [Oregon Administrative Rules \(OAR\) Chapter 660, Division 23](#) to update or designate a new Goal 5 resource—in this case, the mule deer winter range. This proposal creates a new mule deer combining (or overlay) zone and corresponding new code chapters to address uses in that zone.

Project Timeline and Structure

This project was postponed in July 2022 to allow Long Range Planning staff to address other matters by the end of the calendar year. In January 2023, staff received Board direction to re-initiate this project.

The April 13 hearing date was chosen for several reasons: public testimony over the last two years has voiced a consistent desire to undertake this project once again after a pause, and recognition that once initiated, the legislative process will take a significant amount of time. Additionally, staff notes that two of the seven members of the Planning Commission are scheduled to end their terms on June 30, 2023,

and that extending the Planning Commission portion of the legislative process to span two different commissioner rosters would result in a compromised process that is potentially procedurally problematic. To that end, staff has selected the hearing date to provide adequate time for the Planning Commission to hold several public hearings if necessary, and several deliberation sessions if necessary, in order to ensure that it will be possible for the Commission to issue a recommendation to the Board prior to June 30, 2023.

The following components support the legislative process:

Website

As noted above, to coincide with the 35-day notice staff created a project website that provides relevant maps, draft amendments and findings, and information on the public process. The website includes a digital searchable map (similar to the StoryMap utilized in Phase 1 of this project) as well as downloadable/printable maps in PDF format, which are provided as attachments to this memorandum. The website also includes public information session information (and links to recordings, once complete), instructions for how to submit to the record, and an FAQ document that seeks to distill the amendments into a simple question-and-answer format. The website provides a link back to the first phase of this project and all related documents, including the Interagency Working Group and Public Outreach Reports. Lastly, the website will include the written record, as is standard throughout the Planning Division.

Measure 56 mailings

Ballot Measure 56 requires counties to provide notice to landowners between 20 and 40 days prior to the first public hearing when a land use change limits or prohibits previously allowed uses. Measure 56 notices with the required statutory language were mailed on March 15 to property owners in the new 2023 Mule Deer Winter Range Combining Zone, totaling approximately 7,000 property addresses.

Public Information Sessions – April 4, 6, and 10 (to be confirmed)

Given the high visibility and complexity of this project, staff believes it will be helpful to conduct several public information sessions to provide an overview of the inventory update. This will enable members of the public as well as stakeholders to more fully digest the proposed amendments in advance of the formal public process and will allow staff to explain the project and answer questions. Representatives from Oregon Department of Fish and Wildlife (ODFW) will be present to discuss and answer questions about the methodology behind the data collection and inventory boundary development. Staff anticipates that verbal comments provided at these sessions would not be part of the official record and will make that clear during all sessions. However, given that these sessions will occur after 35-day notice has been provided to DLCD, any written comments received would be a part of the record. Staff aims to conduct three information sessions: one hybrid online/in-person meeting in Bend, one in person in Sisters, and one in-person in Redmond.

II. PROPOSAL

This is a legislative text amendment to Deschutes County Code (DCC), Title 18, County Zoning, and the Comprehensive Plan. This proposal creates a new mule deer combining (or overlay) zone and a corresponding new code chapter to address uses in that zone. The purpose of the 2023 Mule Deer Winter Range Combining Zone is to conserve important mule deer winter range habitat 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 mule deer resource. This zone and its regulations will be separate from the existing Wildlife Area (WA) Combining Zone, which remains unchanged.

A brief summary of the amendments are as follows, with further description following:

- DCC 18.91 – Mule Deer Winter Range Combining Zone - WA-MD. Creates a new combining zone, the 2023 Mule Deer Winter Range Combining Zone (WA-MD) and corresponding code chapter (DCC 18.91). This combining zone is entirely separate from the existing WA Combining Zone (DCC 18.88), in terms of its physical boundaries and the zoning regulations governing them. There will be no changes proposed to the boundaries or regulations of the existing WA Combining Zone.

Per the OAR cited above, the WA-MD Combining Zone regulations contain criteria for a set of uses deemed “conflicting” because they could adversely affect mule deer winter range habitat. These draft criteria represent a starting point for the community conversations to follow during the hearings process.

- DCC 18.12: Adds WA-MD to list of combining zones.
- Deschutes County Comprehensive Plan, Chapter 2, Resource Management, Section 2.6, Wildlife: adds language describing the mule deer winter range update.
- Deschutes County Comprehensive Plan Chapter 5.12 and DCC 23.01: updates the legislative history of the Comprehensive Plan.

III. REGULATORY CONCEPT

As noted above, the process and associated findings follow the procedures in [Oregon Administrative Rules \(OAR\) Chapter 660, Division 23, Procedures and Requirements for Complying with Goal 5](#), for updating or designating a new Goal 5 resource. Detailed explanations and supporting documentation for this process may be found in the draft findings document.

Mapping an Overlay Zone

The proposed 2023 mule deer winter range combining zone covers 188,132 acres, of which 81,728 acres are nonfederal and therefore under the jurisdiction of Deschutes County zoning. The new WA-MD zone corresponds to the boundaries determined by the Interagency Working Group (including ODFW and a wildlife biologist consultant) during the first phase of the project. The methodology for determining these boundaries was described in the Interagency Report and the Public Outreach Report provided to the

Planning Commission previously and have been added to the record. As in the existing WA Combining Zone, unincorporated communities (Tumalo and Terrebonne, as well as areas within urban growth boundaries and areas regulated pursuant to Title 19), remain exempt from the provisions of the combining zone's regulations due to their dense development pattern and mixture of residential, commercial, industrial and/or public uses.

Of the proposed 188,132 acres subject to the new WA-MD Combining Zone:

- 106,404 acres (56.5%) are on federal land
- 81,728 acres (43.4%) are on nonfederal land

Disaggregating the 81,728 acres on nonfederal land subject to Deschutes County's land use authority:

- 61,126 acres (3,573 tax lots) zoned Exclusive Farm Use
- 1,205 acres (9 tax lots) zoned Forest Use
- 9,368 acres (1,608 tax lots) zoned RR-10
- 7,603 acres (1,494 tax lots) zoned MUA-10
- 141 acres (3 tax lots) zoned OS&C
- 1,018 acres (26 tax lots) zoned Surface Mining
- 715 acres (39 tax lots) zoned Flood Plain

Conflicting Uses

The term "conflicting use" is used to refer to a land use or other activity reasonably and customarily subject to land use regulations that could adversely affect mule deer winter range, which is a significant Goal 5 resource.¹ The findings to support the amendments examine a number of conflicting uses identified by ODFW to the mule deer winter range, and utilize an ESEE (Economic, Social, Environmental and Energy) analysis to consider potential scenarios for those conflicting uses to inform the proposed amendments. In the ESEE, conflicting use impacts to mule deer habitat are evaluated based on the expected level of public activity, noise, and habitat alteration generated by the uses, as these habitat impacts can result in direct loss of habitat, interference with migration routes, increase in stress on animals through harassment, increase game-caused damage, reduction in overall mule deer population levels, and curtailment of recreational hunting opportunities.

ESEE Analysis and Proposed Amendments

OAR 660-023-0040 – ESEE Decision Process, outlines the decision-making process for how a County shapes its amendments, stating:

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

¹ OAR 660-023-0010. <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=175709>

not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected.”²

The ESEE analysis for the proposed amendments appear as Appendix A of the findings document.

Deschutes County has determined that for the purposes of the draft proposal, all of the conflicting uses under consideration shall be limited in various ways, notwithstanding the possible impacts on the deer winter range. Conflicts between deer winter range habitat and conflicting uses are balanced by regulating conflicting uses in different ways.

It is important to emphasize that the limitations and criteria set forth in the proposed amendments represent a starting point. Staff has created the amendments to provide the public, public agencies, the Planning Commission, and ultimately the Board of County Commissioners with a set of options that are based on the structure and process described in the OAR. Those options may ultimately shift based on input provided—for instance, stronger conservation measures may be desired for certain uses, or certain uses may be prioritized as needing fewer limitations.

Table 1 provides a general summary of proposed limitations to conflicting uses. Detailed limitations appear in DCC 18.91 – 2023 Mule Deer Winter Range Combining Zone (attached).

Table 1 – Summary of Use Limitations in Proposed Amendments

Conflicting Use	Limitation
<ul style="list-style-type: none"> • Golf course, not included in a destination resort; • Kennel; • Public or private school; • Bed and breakfast inn, room and board arrangement, or guest lodge; • Dude ranch; • Playground, recreation facility, or community center owned and operated by a government agency or a nonprofit community organization; • Timeshare unit, as defined in ORS 94.803; • Veterinary clinic; • Fishing lodge; • Guest ranch; • Outdoor sporting and recreation uses, including but not limited to paintball park, shooting range, off-highway motor vehicle course, model airplane park, or bicycle courses. This use category excludes equestrian uses, pedestrian trail uses, and uses subject to DCC 18.16.042. 	<ul style="list-style-type: none"> • Seasonal limitations: prohibited December - March • Siting standards for buildings associated with the use • Locational and acreage standards for the use, all structures, and use areas • Fencing standards

² https://secure.sos.state.or.us/oard/viewSingleRule.action;JSESSIONID_OARD=8lLsH9oRveYT8xaCqHxuP-6tqHGVDgiBqpkjVUHMmQsrVpXpS7Y!739320507?ruleVrsnRsn=175713

<ul style="list-style-type: none"> • Recreational vehicle parks • Campgrounds 	<ul style="list-style-type: none"> • Fencing standards
<ul style="list-style-type: none"> • Photovoltaic solar power generation facility, as defined in OAR 660-033-0130. • Wind power generation facility, as defined in OAR 660-033-0130. 	<ul style="list-style-type: none"> • Locational standards: all buildings associated with these uses shall be located entirely within 1,320 feet of a County road designated as an arterial on the TSP. • Government Entities, including but not limited to quasi-municipal corporations, are exempt from locational standards
<p>For all uses, the above limitations may be waived by the County upon a determination that habitat values (i.e., browse, forage, cover, access to water) and migration corridors are afforded equal or greater protection through a different development pattern, after consultation with the Oregon Department of Fish and Wildlife.</p>	
<p>Single Family Dwellings are proposed to be limited by siting standards requiring development near existing roads or alternative siting that provides equivalent habitat protection. Residential land divisions are proposed to be limited by partition/subdivision configuration requirements or alternative configurations that will provide equivalent habitat protections.</p>	

IV. NEXT STEPS

The Planning Commission will conduct a public hearing on April 13, at 5:30 p.m. Due to anticipated public interest in the project, staff anticipates the Planning Commission may continue the public hearing to subsequent meetings. As noted above, staff has built in time in anticipation of several hearing and deliberation dates in order for the Planning Commission to be able to issue a recommendation to the Board prior to the terms of two commissioners ending at the end of June.

Once the Planning Commission process has concluded, staff will then commence the legislative process with the Board of County Commissioners.

Attachments

1. Draft Text Amendments
2. Draft Findings
3. 2023 Mule Deer Winter Range Map Series