



STAFF REPORT

TO: Deschutes County Planning Commission

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DATE: May 4, 2023

SUBJECT: Deliberations – Mule Deer Inventory Update Amendments

On May 11, 2023 the Deschutes County Planning Commission will conduct deliberations to consider legislative text amendments to update the mule deer inventory (File No. 247-23-000144-TA).

I. BACKGROUND

Staff submitted a 35-day 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. Staff presented the proposed amendments and project history and background to the Planning Commission at a work session on March 23, 2023.¹ Staff also conducted three public information sessions on April 4, 6, and 10th. The Planning Commission held public hearings on April 13² and April 27.³ The written record was held open until May 1, 2023 at 5:00 p.m.

The record, which contains all memoranda, notices, and written testimony received, is available at the following website: www.deschutes.org/muledeer

Attached to this memorandum are the proposed text amendments and findings for reference. Within the proposed amendments, added language is shown underlined and deleted shown as ~~strike through~~.

II. OVERVIEW OF TESTIMONY

A summary of testimony received is as follows. Note that many people provided both written testimony and verbal testimony; both are captured in the below counts and as such the total number of individuals providing testimony is likely slightly less than the sum of the written and verbal testimony.

¹ <https://www.deschutes.org/bc-pc/page/planning-commission-28>

² <https://www.deschutes.org/bc-pc/page/planning-commission-35>

³ <https://www.deschutes.org/bc-pc/page/planning-commission-36>

- Written testimony (received between March 8 and May 1): 226 individuals
- Public hearing verbal testimony (April 13): 40 individuals
- Public hearing verbal testimony (April 27): 46 individuals

A. Dominant Themes from Opponents

Many were opposed to the proposed mule deer amendments. Dominant themes included:

- **Other reasons for mule deer population decline are more significant.** Many opponents cited other significant causes of mule deer mortality noted by Oregon Department of Fish and Wildlife (ODFW), notably predation (cougars and wolves), poaching, and vehicle strikes, and stated that these other causes pose greater threats to the population. Predation by cougars and issues with cougar management was highlighted by many individuals as a significant reason for the mule deer population decline. Some expressed a desire for a holistic plan that addresses all of these causes rather than just land use/zoning; for instance, there are tools such as anti-poaching initiatives, improvements in cougar management, and wildlife crossings.
- **Burden on private property owners versus public landowners.** Given that so much of the proposed inventory area is on federally owned land, many opponents desired prioritizing protections on publicly owned land first, before placing land use restrictions on private landowners. They also noted the inherent conflicts when private property that could be subject to these regulations is directly adjacent to public land, including areas that are used by homeless populations that cause active disturbance to deer.
- **Science and data.** Some opponents were dissatisfied with the data presented by ODFW and stated that there is not sufficient biological evidence to support the amendments. Others cited a lack of measurable data to assess exactly how much this proposal would help the deer and questioned why the boundaries were drawn in certain areas and not others. The balance of urban/non-migratory deer and rural migratory deer was highlighted by some as skewing the data that provides the basis for the proposal's boundaries.
- **Private property rights/government overreach.** Many opponents viewed this proposal as a direct threat to private property rights, an example of government overreach, and a possible "taking." They were concerned with a loss of property value and about being compensated for this loss.
- **Desire for incentives.** Some commenters expressed a desire for incentives for individual landowners to provide mule deer habitat rather than regulations requiring siting or fencing standards or other measures.
- **Burden on farmers.** Some opponents felt that an undue burden would be placed on farmers, whose land already provides benefits to mule deer in various ways.
- **General opposition.**

B. Dominant Themes from Proponents

Many were in support of the proposal. Dominant themes included:

- **Stronger standards.** A significant number of proponents wanted the proposal to be stronger than currently proposed, to match the existing Wildlife Area Combining Zone. Specifically, they requested a 40-acre minimum parcel size for land divisions and ODFW agreement and concurrence with an alternative habitat mitigation plan (not just consultation).
- **Multi-pronged approach.** Supporters of the amendments stated that this is just one part of a more holistic approach to helping the deer population, which is in decline for many reasons. While there are other tools (better poaching management; wildlife crossings; cougar management) that are being addressed by ODFW and at by other state agencies, they stated that the current proposal represents the land use tool, of which the Planning Commission and Board of County Commissioners (Board) has purview over.
- **Doing nothing is not an option.** To that end, supporters of the amendments stated that it is necessary to take some action rather than none at all, noting that some aspects of a more holistic approach could take years to establish, and the current proposal is a tool that could be utilized now.
- **General support.**

C. Other Themes

Additional testimony received by individuals during the open record period addressed the following:

- Studies about mule deer habitat; cougar management; other deer management approaches
- Confusion/disagreement with ESEE analysis
- Requests for exceptions: for specific properties; for properties within established subdivisions; for properties within a certain distance of the urban growth boundary; for split-zoned properties; for existing properties (regulations should apply to new owners only)
- Clarification on language for "bicycle course" and related uses
- Requests for prohibition of solar farms
- Concerns that destination resorts are not addressed in this proposal
- Concerns about canal piping
- Concerns about duration of written record period
- Planning Commissioners' potential conflicts of interest and/or activity outside of Planning Commission meetings⁴

⁴ The Planning Commission does not have procedural authority to address conflict of interest objections.

III. AGENCY / SPECIAL DISTRICT / QUASI-MUNICIPAL TESTIMONY

Several agencies provided testimony. Highlights of more extensive agency testimony are noted below.

A. ODFW

Staff has recognized throughout the process that ODFW has two roles in this process: first, to provide the data that provides the factual basis for the amendments; second, the agency also provided testimony pertaining to the land use regulations.

- General support for the process of updating the mule deer winter range and the WA-MD combining zone
- ODFW recommends the WA-MD Zone standards and criteria are at least as protective as the existing WA-Zone in DCC 18.88, which support existing County policies in Ordinance Nos. 92-041 and 92-042 to protect deer winter range.
- ODFW recommends the County retain the 40-acre minimum lot size to minimize habitat fragmentation. This is consistent with the guidance and recommendations from ODFW's Land Use Planning Guide, which includes the dwelling density recommendations as part of ODFW's State Agency Coordination Agreement with DLCD.
- ODFW recommends retaining the requirement for cluster developments with 80% open space, as currently required in the WA-Zone. An alternative could be a tiered approach where an 80% open space is preferred with the development of clear and objective standards that preserves, protects and enhances wildlife habitat, and a lower threshold (e.g., 65-70%) may be considered with the development of a wildlife management plan.
- ODFW recommends a wildlife management plan be required, similar to the language in DCC 18.128.200(B)(3), or DCC 18.128.200 be amended to comply with the WA-MD Zone in addition to the WA-Zone.
- ODFW recommends retaining the 300' siting standards, which is consistent with the language in DCC 18.88.060.
- Recommends the ESEE analysis further consider the duration, frequency, seasonality and size of campgrounds and RV parks
- ODFW recommends the ESEE analysis include information about various other regulations (Oregon Administrative Rule and Oregon Revised Statutes concerning solar facilities of various size thresholds) for solar facilities for clarity and transparency on how the conflicting uses with solar developments may be addressed during local land use reviews.
- ODFW recommends the ESEE analysis further evaluate the conflicting uses as a result of land divisions and emphasize the potential for significant negative environmental consequences of allowing the use, especially if the loss of habitat function is not being adequately considered.

B. Bend Park and Recreation District (BPRD)

BPRD noted that the proposed regulations could have an impact on future park sites within the county.

- Requests that playground, recreation facility, community center, outdoor sporting and recreation uses, and multi-use pedestrian and bike trails, when owned and operated by a government agency, are exempt from the use limitations in 18.91.040(E)(1)-(3).
- BPRD supports the prohibition of some uses from December through March: sports fields, sports courts, disc golf and archery ranges. BPRD also suggests that drone (and similar) flying parks are subject to the limitations proposed, and that dog parks are prohibited.
- Requests that park and recreation uses owned and operated by a government entity are exempt from siting standards
- Requests that fencing standards have exemptions for certain types of uses (such as sports courts), or a progressive exemption, allowing larger properties a larger exemption

C. Tumalo Irrigation District (TID)

TID provided four pieces of testimony, noting that it has “significant concerns with respect to the use and valuation of TID’s properties, operation of TID’s irrigation facilities, and burdens on TID’s patrons and their right to farm.”

- The mule deer population decline is not a land use problem, but rather a deer management problem and the solution should be addressed at the federal/state level, not via local land use
- The regulations would devalue TID’s 540-acre property, its most valuable fungible asset, through the land division requirements
- Regulations should preserve at least some path for property owners to achieve the maximum density presently allowed on MUA-10 and RR-10 properties such as the 540-acre property
- Concern about the imposition of additional local criteria for agricultural buildings. Instead of a discretionary exception, agricultural buildings need to be outright excepted and such outright exception should also include buildings associated with other ORS 215.283(1) uses, such as irrigation facilities and utility facilities.
- Request for Commissioner Hovekamp to recuse himself due to his prior affiliation with Central Oregon LandWatch
- Objection to boundaries of proposed zone including certain areas of Tumalo
- Concern for increase of staff time/resources and legal budget if the amendments are adopted; costs to homeowners

IV. DELIBERATION

Based on testimony received throughout the public process and in coordination with Planning Commissioner Chair Kieras, staff highlighted several issues for the Planning Commission to consider, ordered from a general/wider scope and increasing in specificity. Staff anticipates deliberation of these items may span more than one meeting.

Staff also notes that the Planning Commission does not need to address the specifics of the ESEE analysis during deliberations; the ESEE will be revisited after the Board’s public hearing and deliberation to reflect the final product.

Issue #1

Staff recommends the Planning Commission first consider a formal motion for Issue #1 before proceeding with Issue #2, if applicable.

Does the Planning Commission *generally* support adopting the mule deer inventory into the Comprehensive Plan and creating a separate Wildlife Area Combining Zone in Deschutes County Code, Title 18 (County Zoning)?

- If yes, proceed to the next items to determine what changes, if any, the Planning Commission may recommend.
- If no, additional issues associated with the below list are unnecessary, and staff will forward a “no” recommendation to the Board.

Issue #2

The Planning Commission may choose to provide a general recommendation to the Board or provide detailed and specific recommendations, or a hybrid of these approaches. A general recommendation might include one or more of the following elements:

- Recommendation of adoption of the amendments as proposed by staff and the documents provided for the public hearings
- Recommendation of adoption of the amendments with the modifications proposed by ODFW
- Recommendation that the Board adopt the amendments following consideration of modifications to address concerns raised by BPRD and/or TID
- Recommendation that the Board pause County legislative action to await comprehensive, multi-agency action to address threats to mule deer
- Recommendation that the Board direct staff to investigate voluntary and/or incentive-based habitat protections

Does the Planning Commission support a general recommendation to the Board?

Does the Planning Commission support specific revisions to the limitations as proposed by staff in the draft amendments provided for the hearing?

- If yes, proceed to the matrix shown in Table 1 to determine what changes, if any, the Planning Commission may recommend.
- If no, additional issues associated with the matrix are unnecessary, and staff will forward the general recommendation to the Board.

Issue #3

Does the Planning Commission want to revisit other exemption requests?⁵

- If yes, consider deliberating these requests on May 25. Staff can prepare additional materials to assist in the discussion.
- If no, staff will forward the recommendations from the above deliberations to the Board.

⁵ Requests for exceptions: for specific properties; for properties within established subdivisions; for properties within a certain distance of the urban growth boundary; for split-zoned properties; for existing properties (regulations should apply to new owners only); for bicycle courses.

Table 1 – Conflicting Uses in Proposed Amendments

User Guide: This guide is intended to distill the proposed code language in DCC 18.91 into a table for easier reference. The table groups conflicting uses as proposed by the different sets of proposed regulations in the code; provides explanation/context to those conflicting uses; and summarizes the proposed amendments. The Planning Commission can choose whether to consider each listed use or discuss only those uses that it deems necessary given the testimony received. For each use under consideration, the Planning Commission may decide whether to change the proposed limitations in some manner, prohibit the use, or allow the use fully.

Conflicting Use List	Conflicting Use Explanation	Proposed Amendments ⁶
<ol style="list-style-type: none"> 1. Bed and breakfast inn, room and board arrangement, or guest lodge; 2. Kennel; 3. Dude ranch; 4. Fishing lodge; 5. Golf course, not included in a destination resort; 6. Playground, recreation facility, or community center owned and operated by a government agency or a nonprofit community organization; 7. Public or private school; 8. Timeshare unit, as defined in ORS 94.803; 9. Veterinary clinic; 10. 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. 11. Guest ranch 	<ul style="list-style-type: none"> • Land uses 1-9 are identified as conflicting uses. They are prohibited in the existing mule deer winter range (WA) combining zone. • Land uses 10-11 identified in 2009 Interagency Report are recommended as conflicting uses by ODFW 	<ul style="list-style-type: none"> • Seasonal limitations: outdoor activities associated with the use are prohibited December - March • Siting standards (300') for buildings associated with the use • Locational and acreage standards for the use, all structures, and use areas: shall be located entirely within 1,320 feet of a County arterial; 5 acre minimum lot/parcel; 2-acre envelope except golf courses • Fencing standards: 15-inch space between ground and bottom strand; 48 inches maximum height; smooth wire/wooden materials
<ol style="list-style-type: none"> 12. Photovoltaic solar power generation facility, as defined in OAR 660-033-0130. 13. Wind power generation facility, as defined in OAR 660-033-0130. 	<ul style="list-style-type: none"> • Land uses 12-15 are identified as conflicting uses by ODFW and/or Deschutes County 	<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

⁶ 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 ODFW.

		corporations, are exempt from locational standards
14. Recreational vehicle parks 15. Campgrounds		<ul style="list-style-type: none"> Fencing standards: 15-inch space between ground and bottom strand; 48 inches maximum height; smooth wire/wooden materials
16. Single Family Dwellings	<ul style="list-style-type: none"> Land uses 16-17 are identified as conflicting uses by ODFW and/or Deschutes County. Single family dwellings and accessory structures permitted outright located in existing mule deer wildlife area (WA) combining zone require being sited within 300 feet of a road. 	<ul style="list-style-type: none"> Proposed to be limited by siting standards (within 300' of public road, private road, or recorded easement) or alternative siting that provides equivalent habitat protection.
17. Residential land divisions	<ul style="list-style-type: none"> Land divisions located in existing mule deer wildlife area (WA) combining zone require clustering or a planned unit development with 80% open space. Minimum area (lot or parcel size) for cluster or planned development is 40 acres. 	<ul style="list-style-type: none"> Proposed to be limited by cluster requirements with no minimum area (lot or parcel size). Requires 65% open space.

V. NEXT STEPS

At the conclusion of the meeting, the Commission can:

- Continue deliberations to May 25;
- Close deliberations and propose a recommendation during this meeting.

Ultimately, the Planning Commission will provide a recommendation to the Board. Options include:

- Recommend approval of amendments as drafted;
- Recommend approval of amendments with suggested edits or recommendations;
- Recommend denial of amendments;
- Other.

Attachments:

1. Proposed Text Amendments and Findings