

95-09629

REVIEWED
BwW
LEGAL COUNSEL

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

0138-0863

An Ordinance Amending the Deschutes
County Code Title 18, Chapter 18.88,
the Wildlife Habitat Combining Zone
and Declaring an Emergency.

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95 MAR 29 PM 2:31
MARY SUE FENNOLLOTT
COUNTY CLERK

ORDINANCE NO. 95-001

WHEREAS, The Board of County Commissioners has determined that the intention of limiting certain conditional uses in the Wildlife Habitat Combining zone, as amended by Ordinance 92-042 (August 5, 1992), was to restrict the establishment of certain new uses in the zone; and,

WHEREAS, it was not the intention of Ordinance 92-041 to prohibit expansion of uses that were existing and legally established at the time Ordinance 92-042 was adopted; and,

WHEREAS, after notice and hearings as required by law, the Board of County Commissioners has considered the recommendations of the Planning Commission; now therefore

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON ORDAINS as follows:

Section 1. ADOPTION OF AMENDMENTS TO CHAPTER 18.04 OF THE DESCHUTES COUNTY CODE. SECTION 18.04.030,, Definitions, of the Deschutes County Code, as amended, is further amended to add the following definition of "Driveway":

"Driveway. A way created to provide vehicular access from a public or private road to a garage or parking area."

Section 2. ADOPTION OF AMENDMENTS TO CHAPTER 18.04 OF THE DESCHUTES COUNTY CODE. The definition of "Road or Street" in Section 18.04.030, of the Deschutes County Code, as amended, is further amended to delete text as follows (deleted text is in brackets []):

"Road or street. A public or private way created to provide ingress or egress to one or more lots, parcels, areas or tracts of land [excluding a private way created to provide ingress or egress to such land in conjunction with the use of such land for forestry, mining or agricultural purposes]."

Section 3. ADOPTION OF AMENDMENTS TO CHAPTER 18.88 OF THE DESCHUTES COUNTY CODE. Section 18.88.040 of the Deschutes County Code, as amended is further amended as set forth in Exhibit "A".

1 - ORDINANCE NO. 95-001 (March 29, 1995)

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Section 4. SEVERABILITY. The provisions of this ordinance are severable. If any section, sentence, clause, or phrase of this ordinance or any exhibit thereto is adjudged to be invalid by a court of competent jurisdiction that decision shall not affect the validity of the remaining portions of this ordinance or exhibit thereto.

Section 5. CODIFICATION. County Legal Counsel shall have the authority to format the provisions contained herein in a manner that will integrate them into the County Code consistent with the County Legal Counsel form and style for ordinance codification. Such codification shall include the authority to make format changes, to make changes in numbering systems and to make such numbering changes consistent with interrelated code section. In addition, as part of codification of these ordinances, County Legal Counsel may insert appropriate legislative history reference. Any legislative history references included herein are not adopted as part of the substance of this ordinance, but are included for administrative convenience and as a reference. They may be changed to correct errors and to conform to proper style without action of the Board of County Commissioners.

Section 6. EMERGENCY. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

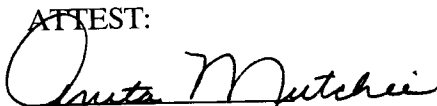
DATED this 29 day of March 1995.

**BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON**


BARRY H. SLAUGHTER, Chair


NANCY POPE SCHLANGEN, Commissioner


ROBERT L. NIPPER, Commissioner

ATTEST:

Anita Mutchie
Recording Secretary

NOTE: Additions are in **bold** and underlined; and deletions are bracketed [].

EXHIBIT "A"

CHAPTER 18.88

WILDLIFE AREA COMBINING WA ZONE

Sections:

- 18.88.010 Purpose**
18.88.020 Application of Provision
18.88.030 Uses Permitted Outright
18.88.040 Uses Permitted Conditionally
18.88.050 Dimensional Standards
18.88.060 Siting Standards
18.88.070 Fencing Standards

In any zone which is a Wildlife Area Combining Zone (WA), the requirements and standards of this chapter shall apply in addition to those specified in this title for such underlying zone. If a conflict in regulations or standards occurs, the provisions of this section shall govern except that the larger minimum lot size shall always apply. (Ord. 93-043 § 13, 13A, 1993)

18.88.010 Purpose

The purpose of the Wildlife Area Combining 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.

18.88.020 Application of Provisions

The provisions of this section shall apply to all areas identified in the Comprehensive Plan as a winter deer range, significant elk habitat, antelope range or deer migration corridor. Rural service centers are exempt from the provisions of this title.

18.88.030 Uses Permitted Outright

In a zone with which the WA Zone is

combined, the uses permitted outright shall be those permitted outright by the underlying zone.

18.88.040 Uses Permitted Conditionally

A. Except as provided in Section B, in a zone with which the WA Zone is combined, the conditional uses permitted shall be those permitted conditionally by the underlying zone subject to the provisions of the Comprehensive Plan, Section 18.128 of this title and other applicable sections of this title.

B. The following uses are not permitted in the WA zone as conditional uses:

1. Golf course, not included in a destination resort;
2. Commercial dog kennel;
3. Church;
4. Public school or private school;
5. Bed and breakfast inn;
6. Dude ranch;
7. Playground, recreation facility or community center owned and operated by a government agency or a non-profit community organization;
8. Timeshare unit;
9. Veterinary clinic; (Ord. 94-053 § 5, 1994)
10. Fishing lodge.

C. Expansion of any use listed in subsection B of this section that was lawfully established prior to August 5, 1992, is allowed, subject to provisions of Title 18 applicable to the establishment of such uses. Expansion of golf courses under this subsection shall be limited to a final size of 18 holes.

[C]D. An application for a destination resort, or any portion thereof, in a Wildlife Area Combining Zone shall not be accepted pending completion of the County's Goal 8 destination resort mapping process.

18.88.050 Dimensional Standards

In a WA Zone, the following dimensional standards shall apply:

A. In the Tumalo, Metolius, North Paulina and Grizzly deer winter ranges designated in the Comprehensive Plan Resource Element, the minimum lot size for new parcels shall be 40 acres except as provided in section "D".

B. In areas designated as significant elk habitat in the Comprehensive Plan Resource Element, the minimum lot size for new parcels shall be 160 acres.

C. In areas designated as antelope range in the Comprehensive Plan Resource Element, the minimum lot size for new parcels shall be 320 acres.

D. Residential land divisions, including partitions, in deer winter range where the underlying zone is RR-10 or MUA-10, shall not be permitted except as a planned development or cluster development conforming to the following standards:

1. The minimum area for a planned or cluster development shall be at least 40 acres.

2. The planned or cluster development shall retain a minimum of 80 percent open space and conform with the provisions of Sections 18.128.040(P) or (Q).

3. Notwithstanding the provisions of Title 18.128.040(P) or (Q), or Title 18.60.060(C), the total number of residences in a cluster development may not exceed the density permitted in the underlying zone.

E. Residential land divisions, including partitions, in the Bend/La Pine Deer Migration Corridor where the underlying zone is RR-10 shall not be permitted except as a cluster development conforming to the following standards:

1. The minimum area for a cluster development shall be at least 20 acres.

2. The cluster development shall retain a minimum of 80 per cent open space and conform with the provisions of Section 18.128.040(P) or (Q).

3. Notwithstanding the provisions of Title 18.128.040(P), or Title 18.60.060(C), the

total number of residences in the cluster development may not exceed the density permitted in the underlying zone.

18.88.060 Siting Standards

A. Setbacks shall be those described in the underlying zone with which the WA Zone is combined.

B. **The footprint, including decks and porches, for [N]new dwellings shall be located entirely within 300 feet of public roads [or easements or], private roads or recorded easements for vehicular access existing as of August 5, 1992 unless it can be found that:**

1. Habitat values (i.e., browse, forage, cover, access to water) and migration corridors are afforded equal or greater protection through a different development pattern; or,

2. The siting within 300 feet of such roads or easements **for vehicular access** would force the dwelling to be located on irrigated land, in which case, the dwelling shall be located to provide the least **possible** impact on wildlife habitat [possible] considering browse, forage, cover, access to water[,] **and** migration corridors, and minimizing length of new access roads[,] **and driveways; or,**

3. **The dwelling is set back no more than 50 feet from the edge of a driveway that existed as of August 5, 1992.**

C. **For purposes of subsection B of this section:**

(1) A private road, easement for vehicular access or driveway will conclusively be regarded as having existed prior to August 5, 1992 if the applicant submits any of the following:

(a) A copy of an easement recorded with the County Clerk prior to August 5, 1992 establishing a right of ingress and egress for vehicular use;

(b) An aerial photograph with proof that it was taken prior to August 5, 1992 on which the road, easement or driveway allowing vehicular access is visible;

(c) A map published prior to August 5, 1992 or assessor's map from prior

to August 5, 1992 showing the road (but not showing a mere trail or footpath).

(2) An applicant may submit any other evidence thought to establish the existence of a private road, easement for vehicular access or driveway as of August 5, 1992 which evidence need not be regarded as conclusive.

18.88.070 Fence Standards

The following fencing provisions shall apply as a condition of approval for any new fences constructed as a part of development of a property in conjunction with a conditional use permit or site plan review.

A. New fences in the Wildlife Area Combining Zone shall be designed to permit wildlife passage. The following standards and guidelines shall apply unless an alternative fence design **which** provides equivalent wildlife passage is approved by the County after consultation with the Oregon Department of Fish and Wildlife:

1. The distance between the ground and the bottom strand or board of the fence shall be at least 15 inches.
2. The height of the fence shall not exceed 48 inches above ground level.
3. Smooth wire and wooden fences that allow passage of wildlife are preferred. Woven wire fences are discouraged.

B. Exemptions:

1. Fences encompassing less than 10,000 square feet which surround or are adjacent to residences or structures are exempt from the above fencing standards.
2. Corrals used for working livestock. (Ord. 92-042 § 1, 1992)