

REVIEWED AS TO FORM
DL
CODE REVIEW COMM.

98-04047

0163-2091

REVIEWED
BW
LEGAL COUNSEL

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Chapter 18.88,
Wildlife Area Combining Zone, and
Chapter 18.128, Conditional Use, of Title
18 of the Deschutes County Code, and
Declaring an Emergency. *

98 JAN 30 PM 2:15
MARY SUE PENHOLLOW
COUNTY CLERK

ORDINANCE NO. 98-013

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

Section 1. AMENDMENT. Section 18.88.040, Uses permitted conditionally, is amended to read as described in Exhibit "A," attached hereto and incorporated herein, with new language underlined and language to be deleted in ~~strike through~~.

Section 2. AMENDMENT. Subsection 18.128.040(D), Church, hospital, nursing home, convalescent home, retirement home, is amended to read as described in Exhibit "B," attached hereto and incorporated herein, with new language underlined and language to be deleted in ~~strike through~~.

Section 3. AMENDMENT. Subsection 18.128.040(E), Medical clinic, veterinary clinic, club, lodge, fraternal organization, community center, grange hall, golf course, horse stable and horse events requiring conditional uses, grounds and buildings for games or sports, country club, swimming, boating, tennis clubs and similar uses, government structures and land uses, parks, playgrounds, is amended to read as described in Exhibit "C," attached hereto and incorporated herein, with new language underlined and language to be deleted in ~~strike through~~.

Section 4. AMENDMENT. Subsection 18.128.040(O), Schools, is amended to read as described in Exhibit "D," attached hereto and incorporated herein, with new language underlined and language to be deleted in ~~strike through~~.

Section 5. AMENDMENT. Subsection 18.128.040(AA), Bed and breakfast inn, is amended to read as described in Exhibit "E," attached hereto and incorporated herein, with new language underlined.

Section 6. FINDINGS. Findings to support this ordinance are set forth in the staff report attached hereto as Exhibit "F," incorporated herein by this reference.

KEYPUNCHED

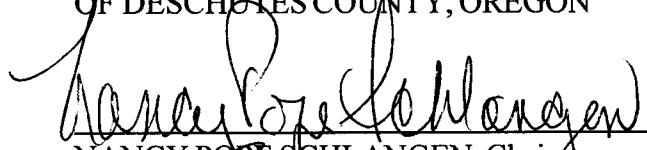
FEB 02 1998

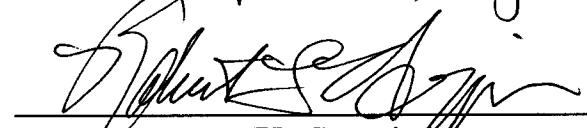
MICROFILMED
FEB 04 1998

Section 7. 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 28th day of January, 1998.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON


NANCY POPE SCHLANGEN, Chair


ROBERT L. NIPPER, Commissioner


LINDA L. SWEARINGEN, Commissioner

ATTEST:


Recording Secretary

18.88.040. Uses permitted conditionally.

A. Except as provided in subsection (B) of this section, 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, chapter section 18.128 of this title and other applicable sections of this title.

B. The following uses are not permitted in that portion of the WA Zone designated as deer winter ranges, significant elk habitat or antelope range: as conditional uses:

1. Golf course, not included in a destination resort;
2. Commercial dog kennel;
3. Church;
4. Public 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 nonprofit community organization;
8. Timeshare unit;
9. Veterinary clinic;
10. Fishing lodge.

C. The following uses are permitted in that portion of the WA zone designated as the Bend/La Pine Deer Migration Corridor as conditional uses:

1. Church;
2. Public or private school;
3. Bed and breakfast inn;
4. Playground, recreation facility or community center owned and operated by a government agency or a nonprofit community organization;

D. Use limitations. The uses listed in subsection (C) of this section are subject to the applicable provisions of chapters 18.116 and 18.124 of this title and the following criteria:

1. The parcel shall be zoned RR-10;
2. The parcel shall be located within one-quarter mile of a rural service center and be located adjacent to a rural collector or a rural arterial identified on the Deschutes County Transportation Plan;
3. The parcel shall be no less than one acre and no more than 5 acres in size;
4. The parcel shall be farther than 100 feet from identified wetlands, floodplains or riparian areas.

5. The property shall be outside areas designated as "Existing High Use Migration Areas" or "Important Connective Areas Through Existing Developed Areas" on the 1997 ODFW map submitted to the South County Regional Problem Solving Group.

6. Fences developed as part of the conditional uses listed in subsection (C) of this section shall be built from posts and poles or smooth wire and shall have a minimum bottom pole or wire height of 18 inches from the ground and a maximum top pole or wire height of 40 inches from the ground. Fences exempted from these standards shall be constructed in accordance with the provisions of subsection 18.88.070(B) of this chapter.

EE. 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.

FD. 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. (Ord. 98-013 § 1, 1998; Ord. 95-075 § 1, 1995; Ord. 95-001 § 3, 1995; Ord. 92-042 § 1, 1992)

D. Church, hospital, nursing home, convalescent home, retirement home:

1. Such a use shall be authorized as a conditional use only upon finding that sufficient area is provided for the building, required yards and off-street parking. Related structures and uses such as a manse, parochial school or parish house are considered separate uses and additional lot areas shall be required therefore.

2. The applicant shall address the following issues in the application:

a. Location of the site relative to the service area.

b. Probable growth and needs thereof.

c. Site location relative to land uses in the vicinity.

d. Conformity with Deschutes County ~~Road Public Works~~ Department standards for proposed access to and from principal streets and the probable effect of the proposal on the traffic volume of adjoining and nearby streets.

3. Such uses or related buildings shall be at least 30 feet from a side or rear lot line.

4. Except in an A-H zone, such uses may be built to exceed the height limitations of the zone in which it is located to a maximum height of 50 feet if the total floor area of the building does not exceed the area of the site and if the yard dimensions in each case are equal to at least two-thirds of the height of the principal structure.

5. Churches in the Wildlife Area Combining Zone are subject to the provisions of chapter 18.88 of this title. (Ord. 98-013 § 2, 1998)

E. Medical clinic, veterinary clinic, club, lodge, fraternal organization, community center, grange hall, golf course, horse stable and horse events requiring conditional uses, grounds and buildings for games or sports, country club, swimming, boating, tennis clubs and similar activities, government structures and land uses, parks, playgrounds. In considering the above, the Planning Director or Hearings Body may authorize the conditional use after it has been determined that the following will be provided:

1. Access from principal streets subject to Deschutes County Road Public Works Department standards.

2. Off-street parking subject to section 18.116.030 of this title.

3. Building and site design provisions, including landscaping, that will effectively screen neighboring uses from noise, glare, odor and other adverse impacts.

4. Playgrounds, recreation facilities and community centers in the Wildlife Area Combining Zone are subject to the provisions of chapter 18.88 of this title. (Ord. 98-013 § 3, 1998)

O. Schools.

1. Nursery schools shall provide and maintain at least 100 square feet of outdoor play area per child. A sight-obscuring fence at least four feet but not more than six feet high shall separate the play area from adjoining lots.

2. Secondary schools shall provide a site area of 10 acres plus one additional acre for each 100 pupils of predicted ultimate enrollment.

3. Notwithstanding paragraph subsection (2) of this subsection, private academic secondary schools with an enrollment of fewer than 50 students shall provide a minimum site area of one acre for every 10 students of predicted ultimate enrollment, with a minimum site area of not less than two acres.

4. Schools in the Wildlife Area Combining Zone are subject to the provisions of chapter 18.88 of this title. (Ord. 98-013 § 4, 1998; Ord. 97-022 § 1, 1997)

AA. Bed and breakfast inn.

1. Bed and breakfast inns shall be restricted to owner-occupied single-family residences.

2. Bed and breakfast inns located in farm or forest zones shall utilize existing dwellings or dwellings conforming to the requirements of those zones relating to single-family dwellings.

3. No more than three sleeping rooms shall be available for the accommodation of inn visitors.

4. No more than eight guests shall be accommodated at any one time.

5. Occupancies shall be limited to not more than 30 consecutive days.

6. Breakfast shall be the only meal provided to inn guests.

7. The exterior of the building shall maintain a residential appearance.

8. The bed and breakfast inn shall be operated in a way that will prevent unreasonable disturbance to area residents.

9. One off-street parking space shall be provided for each guest room in addition to parking required for the residence.

10. Approval shall be conditional upon compliance with all applicable state building code requirements and state sanitation requirements.

11. Bed and breakfast inns in the Wildlife Area Combining Zone are subject to the provisions of chapter 18.88 of this title. (Ord. 98-013 § 5, 1998)

DESCHUTES COUNTY PLANNING DIVISION
STAFF REPORT

FILE NUMBER: TA-97-6

APPLICANT: Cascade Bible Church
P. O. Box 580
La Pine, OR 97739

REQUEST: A text amendment to Chapter 18.88, Wildlife Area Combining Zone, of Title 18 of the Deschutes County Code to allow a use that is currently prohibited.

STAFF CONTACT: Barbara J. Rich, Assistant Planner

I. APPLICABLE CRITERIA:

- A. Title 18 of the Deschutes County Code, the County Zoning Ordinance.
1. Chapter 18.88, Wildlife Area (WA) Combining Zone
 2. Chapter 18.60, Rural Residential (RR-10) Zone
 3. Chapter 18.128, Conditional Use
- B. Title 22 of the Deschutes County Code, Development Procedures Ordinance.
- C. The Deschutes County Comprehensive Plan and Resource Element
- D. OAR 660.23.040.110

II. FINDINGS OF FACT:

- A. **PROPOSAL:** The applicant proposes to amend the text of Title 18 of the Deschutes County Code, Chapter 18.88.040 to allow churches under specific circumstances in the Bend/La Pine Deer Migration Corridor. The applicant proposes to limit church sites to:
1. parcels no smaller than one acre and no larger than five acres in size;
 2. parcels adjacent to a rural collector or arterial;
 3. parcels zoned RR-10; and
 4. properties not in the areas designated as corridors on the 1997 South Co. Regional Problem Solving map

The applicant further proposes to limit future uses of properties developed as church sites so that commercial or other non-permitted uses can be established on a former church site.

FINDING: The only arterial in the south county area is Highway 97. None of the properties adjacent to Highway 97 meet the other criteria proposed by the applicant. Therefore, the reference to arterials will be dropped.

The requirement that future development of the property be limited so that commercial or other non-permitted uses can be established on the former church site is a function of the site plan review process and the day to day screening process performed at the public counter. It is not appropriate to make this requirement a condition of approval for a church or other permitted uses.

- B. **LOCATION:** Areas designated as being within the Bend-La Pine Deer Migration Corridor. The areas affected by this amendment are located between Sunriver and La Pine and are to the west of and roughly parallel to Highway 97.
- C. **PUBLIC AGENCY COMMENTS:** The Planning Division sent notice of the application to the Oregon Department of Fish and Wildlife. The full extent of the comments are attached hereto and incorporated by reference herein. An important element introduced by these comments is the expansion of the proposal outlined by the applicants to include all of the other prohibited uses listed in 18.88.040(B). ODFW does not feel they can justify continuing the prohibition on the other listed uses while opening specific areas to the development of churches. ODFW recommends that these other uses also be allowed under specific circumstances. Verbal comments from ODFW indicate that the Department is willing to consider the expansion of the uses in specific areas, i.e. along collectors, because those corridors are already adversely impacted and are of questionable use for migrating deer. Significant differences between the applicant's proposal and comments from ODFW are as follows:

- Properties within 100 feet of identified wetlands or riparian areas or identified floodplains should be excluded for these uses under the text amendment;

FINDING: The areas proposed for this text amendment do not include any areas zoned Flood Plain or areas adjacent to the Deschutes or Little Deschutes River except possibly in the Spring River area.

- Expansion of golf courses falling under section B shall be limited to actual course necessary for expansion of playing field. Individual dwellings should be prohibited as part of golf course expansions within the mule deer migration overlay.

FINDING: The definition of golf course and accessory uses to golf courses do not include dwellings, individual or otherwise. Therefore, an expansion of an existing lawfully established golf course could not include dwellings as part of the expansion.

- Fences built in association with any of the listed uses shall exceed the requirements of section 18.88.070 by being built from posts and poles or smooth wire and will have a minimum bottom pole or wire height of 18 inches from the ground and a maximum top pole or wire height of 40 inches from the ground. These fence requirements will be applicable from the time of application of any use on the property until such time they are deemed by Deschutes County to be unwarranted.

FINDING: The applicant expressed concern that the exemption provisions found in section 18.88.070 be retained in this area because the new permitted uses could have a play area for children as an accessory use. - These areas need to be securely fenced

because of the requirement that such uses locate adjacent to roads classified as collectors..

III. CONCLUSIONARY FINDINGS:

A. **Conformance with state statute and administrative rules:**

FINDING: Goal 5 refers to fish and wildlife management plans adopted by the Oregon Wildlife Commission. The Goal 5 program is implemented by the specific ESEE process (see: OAR 660-23-040 and 110). Therefore, the critical element in reviewing this proposal is the Fish and Wildlife Inventory ESEE analysis for the Deschutes County Comprehensive Plan. The discussion of the ESEE analysis follows below.

B. **Conformance with the Deschutes County Comprehensive Plan:**

Fish and Wildlife Policies (page 157):

The following policies pertain specifically to the deer migration corridor:

- (3) **In the Bend/La Pine deer migration corridor identified in the comprehensive plan resource element, new land division, where the underlying zone is Rural Residential - 10, shall be cluster developments.**

FINDING: The proposed amendment limits proposed uses to existing (as of August 5, 1992) parcels that are between one and five acres in size. Because of the minimum lot size of the RR-10 zone and the proposed restrictions on parcel sizes (1-5 acres) for the proposed uses, the amendment will not impact or be impacted by this policy.

- (14) **The county shall maintain an inventory of county-owned property in the Bend/La Pine deer migration corridor. Prior to sale or exchange of county owned property in the corridor, the county shall consult the Oregon Department of Fish and Wildlife to determine the value of the land for deer migration and make reasonable efforts to consolidate properties to maintain habitat characteristics important to preserving the migration corridor.**

FINDING: The proposed amendment pertains to privately owned property that will be used for a church site. This policy does not prohibit specific uses in the deer migration corridor. Therefore, this policy does not apply to this proposal.

Resource Element - Big Game (page 62):

FINDING: The Resource Element states, in general terms, the need to protect wildlife habitat. Specific recommendations are found in the Goal 5 ESEE analysis adopted as Exhibit A to Ordinance 92-041.

The ESEE analysis identifies the conflicting uses specific to the deer migration corridor. These include dwellings, roads and dogs. Supporting documentation for the ESEE, ODFW Central Region Administrative Reports Nos. 86-2 and 92-1, illustrate the negative impacts of development on the use of an area by deer. These studies use the presence of dog tracks as an indicator of development and so compared the incidence of dog tracks with the incidence of deer tracks. The study found a strong correlation between the two in that as dog tracks increased in frequency, deer tracks decreased.

The areas specified by the applicant and ODFW for the expansion of uses are limited to areas immediately adjacent to rural collectors (as stated above, arterials are left out of the discussion in this staff report because the only arterial in South County is Highway 97) that are heavily parcelized and zoned for rural residential (RR-10) development. Based on the existing and potential development in these areas (which is in turn based on the uses permitted outright in the RR-10 zone) and the amount of traffic supported by the collectors, these areas are of questionable value as deer habitat. The intent of the proposed restrictions on the uses listed in 18.88.040(B) is to provide some flexibility in the types of land uses permitted while limiting such development to areas already adversely impacted by development.

In addition, the Program to Achieve the Goal for the deer migration corridor does not specifically prohibit any uses. The recommendation made in the ESEE is to protect deer migration corridor(s) by applying the siting and fencing standards. A specific recommendation to prohibit certain uses can be found in the Antelope Habitat and Deer Winter Range portions of the ESEE. The Program to Achieve the Goal to conserve antelope habitat states that "the uses conflicting with antelope habitat should be specifically limited by the application of the Wildlife Area Combining Zone. ...This zone limits specific conflicting uses including schools, golf courses and churches."

Based on these findings, the proposal as described by the applicant and ODFW does not conflict with the ESEE analysis for fish and wildlife resources in Deschutes County.

C. Conformance with Title 18:

1. Chapter 18.60, Rural Residential (RR10) Zone

FINDING: This proposal will amend an overlay zone. The overlay zones serve to increase the restrictions on uses permitted in the base zone. Chapter 18.88, Wildlife Area (WA) Combining Zone currently prohibits the following uses:

1. Golf course, not included in a destination resort;
2. Commercial dog kennel;
3. Church;
4. Public 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 nonprofit community organization;
8. Timeshare unit;
9. Veterinary clinic;
10. Fishing lodge.

These uses are prohibited in the WA zone regardless of what the underlying zone is or what uses that underlying zone permits.

The applicant proposes that eligible properties must be located in the RR10 zone. A review of the uses permitted in the RR10 zone, either outright or conditionally shows that, of the uses listed above, commercial dog kennels, veterinary clinics, and fishing lodges are not listed. These three uses are permitted in other zones that underlie the WA zone. Fishing lodges are listed in the Forest Use zones (F1 and F2) as a conditional use. Dog kennels are permitted as a conditional use in the Multiple Use Agricultural (MUA) Zone and on non-high value farmland in the Exclusive Farm Use (EFU) Zone.

Veterinary clinics are listed as a conditional use in the MUA zone. Typical interpretation of the zoning code specifies that if a use is listed, either as permitted outright or conditionally, in one zone but not the other then that use is not permitted in the zone where it is not listed. Following this reasoning, fishing lodges, dog kennels and veterinary clinics are not permitted in the RR10 zone. Therefore, the scope of conditional uses that could be permitted in the Bend/La Pine Deer Winter Range cannot include these three uses.

2. Chapter 18.128, Conditional Uses

FINDING: Section 18.128.040 of the Conditional Use chapter provides the specific use standards for the following:

- (D) Church, hospital, nursing home, convalescent home, retirement home.
- (E) Medical clinic, veterinary clinic, club, lodge, fraternal organization, community center, grange hall, golf course, horse stable and horse events requiring conditional uses, grounds and buildings for games or sports, county club, swimming, boating, tennis clubs and similar activities, government structures and land uses, parks, playgrounds.
- (O) Schools.
- (S) Dude ranches.
- (AA) Bed and breakfast inn.

A review of the specific use standards for dude ranches shows that a 40-acre minimum lot size is required in order to site this use. Therefore, it is not appropriate to include dude ranches in the list of conditional uses permitted in the Bend/La Pine Deer Migration Corridor. The specific use standards for schools state that a 10-acre minimum lot size is required for secondary schools, however an elementary or nursery school would still be feasible on a 1-5 acre parcel.

Staff recommends that, in order to facilitate administration and enforcement of the proposed amendment by the Planning Division, subsections (D), (E), (O) and (AA) be amended to refer to the standards for the deer migration corridor in the Wildlife Area Combining Zone chapter.

Section 18.128.080 provides specific use standards for time-share units. Paragraph 18.128.080(B)(1) requires that new time-share units be developed on a minimum of 10 acres. Because the applicant has proposed to limit parcel sizes for new churches in the deer migration corridor to a maximum of five acres, it does not make sense to include time-share units on the list of conditional uses permitted. No amendments to this section would then be required.

D. Administration/Enforcement:

FINDING: The proposed limitations will provide clear and objective standards with which to administer and/or enforce these provisions. The recommended changes to Chapter 18.128, Conditional Use, will serve to alert Planning Division staff and the development community to the increased restrictions in the WA zone for the listed uses.

IV. CONCLUSIONS:

The proposed text amendment will provide added flexibility in land use in an area that is already impacted by parcelization and existing and potential residential development. The proposed amendment will limit the added uses to areas adjacent to roads designated as collectors on the County Transportation Plan. These areas are adversely impacted by development and traffic currently. Therefore, staff believes that increasing the scope of uses permitted conditionally in these areas will have marginal impacts.

V. RECOMMENDATION:

Adoption of a text amendment to Chapter 18.88, Wildlife Area Combining Zone, and Chapter 18.128, Conditional Use, as shown in the proposed amendments.

Respectfully submitted,

DESCHUTES COUNTY PLANNING DIVISION

Barbara J. Rich, Assistant Planner

BJR:bjr