

IN THE COUNTY COURT OF THE STATE OF OREGON

FILED  
WASCO COUNTY

IN AND FOR THE COUNTY OF WASCO

2004 DEC 16 A 8:50

KAREN LEBRETON COATS  
COUNTY CLERK

IN THE MATTER OF THE WASCO COUNTY COURT'S DECISION ON THE  
 WASCO COUNTY PLANNING COMMISSION'S RECOMMENDATION TO  
 APPROVE THE PROPOSED TEXT AND MAP AMENDMENTS TO THE  
 COMPREHENSIVE PLAN TO ADD INVENTORY INFORMATION OF SENSITIVE  
 BIRD SITES TO THE GOAL 5, WILDLIFE BACKGROUND SECTION AND; TO  
 AMEND THE ZONING ORDINANCE TEXT AND MAP TO INCLUDE  
 PROVISIONS FOR PROTECTION IN THE NEW EPD-12 SECTION OF THE  
 ORDINANCE; AND THE PROPOSED TEXT AND MAP AMENDMENTS TO THE  
 COMPREHENSIVE PLAN TO ADD INVENTORY INFORMATION OF THE  
 WESTERN POND TURTLE TO THE GOAL 5, WILDLIFE BACKGROUND  
 SECTION AND; TO AMEND THE ZONING ORDINANCE TEXT AND MAP TO  
 INCLUDE PROVISIONS FOR PROTECTION IN THE NEW EPD-13 SECTION OF  
 THE ORDINANCE. (FILE NUMBERS CPA-04-101/LUA-04-101/ZNC-04-  
 101/REC-04-101 AND CPA-04-102/LUA-04-102/ZNC-04-102/REC-04-101)

1           NOW ON THIS DAY, the above-entitled matter having come on regularly for consideration, said day  
 2 being one duly set in term for the transaction of public business and a majority of the Court being present;  
 3 and

4  
 5           IT APPEARING TO THE COURT: That pursuant to the Land Conservation and Development  
 6 Commission Periodic Review Task Number #4 for Wasco County, Wasco County's Comprehensive Plan and  
 7 Zoning Ordinances are not consistent with State Land Use Goal 5 and are required to be updated; and  
 8 pursuant to Measure 56, Wasco County sent notification to all affected landowners on September, 14th 2004;  
 9 and

10  
 11           IT FURTHER APPEARING TO THE COURT: That on Tuesday, October 5, 2004, the Wasco  
 12 County Planning Commission met to conduct a legally notified public hearing on the above matter. Following  
 13 receipt and review of evidence, the Commission deliberated and, on a unanimous vote of 7 to 0, voted to  
 14 recommend approval of the request by the Wasco County Planning Department, for text and map  
 15 amendments to the comprehensive plan to add inventory information of sensitive bird sites to the goal 5,

*P2004-0434 (79)*

1 wildlife background section and; to amend the zoning ordinance text and map to include provisions for  
2 protection in the new EPD-12 section of the ordinance; and for text and map amendments to the  
3 comprehensive plan to add inventory information of the western pond turtle to the goal 5, wildlife background  
4 section and; to amend the zoning ordinance text and map to include provisions for protection in the new EPD-  
5 13 section of the ordinance via Recommendation 04-101; and  
6

7 IT FURTHER APPEARING TO THE COURT: That the Wasco County Planning  
8 Commission recommends, to the Wasco County Court, approval of the request by the Wasco County  
9 Planning Department, for text and map amendments to the comprehensive plan to add inventory information  
10 of sensitive bird sites to the goal 5, wildlife background section and; to amend the zoning ordinance text and  
11 map to include provisions for protection in the new EPD-12 section of the ordinance; and for text and map  
12 amendments to the comprehensive plan to add inventory information of the western pond turtle to the goal 5,  
13 wildlife background section and; to amend the zoning ordinance text and map to include provisions for  
14 protection in the new EPD-13 section of the ordinance via Recommendation 04-101; and  
15

16 IT FURTHER APPEARING TO THE COURT: That the Wasco County Court met at the hour of  
17 10:00 a.m. on Wednesday, December 8, 2004, in the Wasco County Courtroom, Room 202, of the Wasco  
18 County Courthouse, in The Dalles, Oregon, to review the Wasco County Planning Commission's  
19 Recommendation to approve the request by the Wasco County Planning Department, for text and map  
20 amendments to the comprehensive plan to add inventory information of sensitive bird sites to the goal 5,  
21 wildlife background section and; to amend the zoning ordinance text and map to include provisions for  
22 protection in the new EPD-12 section of the ordinance; and for text and map amendments to the  
23 comprehensive plan to add inventory information of the western pond turtle to the goal 5, wildlife background  
24 section and; to amend the zoning ordinance text and map to include provisions for protection in the new EPD-  
25 13 section of the ordinance; and  
26

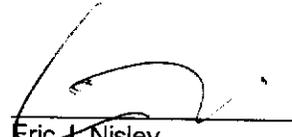
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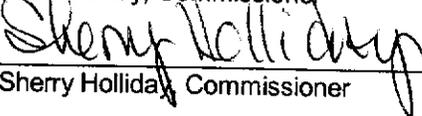
1 IT FURTHER APPEARING TO THE COURT: That the Court reviewed the record heard the Staff  
2 recommendation and all relevant comments from the parties. The Court considered the matter, and based  
3 upon the testimony present, the Court, being fully apprised in the premises, voted 3 to 0 to approve the  
4 request by the Wasco County Planning Department, for text and map amendments to the comprehensive  
5 plan to add inventory information of sensitive bird sites to the goal 5, wildlife background section and; to  
6 amend the zoning ordinance text and map to include provisions for protection in the new EPD-12 section  
7 of the ordinance; and for text and map amendments to the comprehensive plan to add inventory  
8 information of the western pond turtle to the goal 5, wildlife background section and; to amend the zoning  
9 ordinance text and map to include provisions for protection in the new EPD-13 section of the ordinance,  
10 as laid out in **Attachment A and B**; and  
11

12 NOW THEREFORE IT IS HEREBY ORDERED: That the request by the Wasco County Planning  
13 Department, for text and map amendments to the comprehensive plan to add inventory information of  
14 sensitive bird sites to the goal 5, wildlife background section and; to amend the zoning ordinance text and  
15 map to include provisions for protection in the new EPD-12 section of the ordinance; and for text and map  
16 amendments to the comprehensive plan to add inventory information of the western pond turtle to the  
17 goal 5, wildlife background section and; to amend the zoning ordinance text and map to include  
18 provisions for protection in the new EPD-13 section of the ordinance is approved.

19  
20 SIGNED this 15th day of December, 2004  
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26 Approved as to Form:

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32 Eric J. Nisley  
Wasco County District Attorney

WASCO COUNTY COURT  
  
Dan Ericksen, Judge  
  
Scott McKay, Commissioner  
  
Sherry Holliday, Commissioner

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Ordinance #ORD-04-102 (Goal 5, Sensitive Bird Sites-EPD 12 CPA-04-101/LUA-04-101/ZNC-04-101/REC-04-101  
and Western Pond Turtle-EPD 13-CPA-04-102/LUA-04-102/ZNC-04-102/REC-04-101)

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**Exhibit "A-1"**

*Sensitive Pond Turtle Sites Comprehensive Plan Inventory Information*

Exhibit "A-1" -Comprehensive Plan Text  
EPD 13 – Western Pond Turtles

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Western Pond Turtle Sensitive Habitat Area – Impacted Parcels					
Map and Lot #	Zone	Size	Ownership	Developed Undeveloped	Core Habitat (CH) Upland Management (UM)
2N 12 7:2700	A- 1(40)/GMA	23.08	Private	Dev	UM
2N 12 7:2800	A- 1(40)/GMA	20	Private	Dev	UM
2N 12 8:1900	F- F(10)/GMA	10.03	Private	Undeveloped	CH/UM
2N 12 8:2100	F- F(10)/GMA	9.56	Private	Undeveloped	CH/UM
2N 12 8:2200	F-F(10)	10.02	Private	Dev	UM
2N 12 8:2300	F-F(10)	9.81	Private	Dev	CH/UM
2N 12 17:400	R-R(10)	10	Private	Dev	UM
2N 12 17:100	R-R(10)	9.5	Private	Dev	CH/UM
2N 12 17:200	R-R(10)	10.05	Private	Dev	CH/UM
2N 12 17:300	R-R(10)	10.06	Private	Dev	UM
2N 12 17:1200	R-R(10)	10.07	Private	Undeveloped	UM
2N 12 17:1300	R-R(10)	10.07	Private	Dev	UM
2N 12 17: 1400	R-R(10)	10.10	Private	Dev	UM
2N 12 17:1600	R-R(10)	10	Private	Dev	UM
2N 12 17:1700	R-R(10)	10	Private	Dev	UM
2N 12 16B:1000	R-R(10)	1.17	Private	Dev	UM

Exhibit "A-1" -Comprehensive Plan Text  
EPD 13 – Western Pond Turtles

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## Exhibit "A" – Comprehensive Plan Inventory Text

### VI. Sensitive Turtle Habitat Location Quality and Quantity of the Resource

Biologists from the non-game division of ODFW and the USFS National Scenic Area Office have identified a series of ponds that provide critical Western Pond Turtle habitat. Wasco County reviewed the location information provided by ODFW and USFS for the sites along with the ownership patterns, parcel sizes and surrounding zoning and worked with ODFW to identify significant sites outside the Columbia River Gorge National Scenic Area that require Goal 5 protection. These sites are included in the inventory list and a mapped inventory is also included in the County's Comprehensive plan inventory section. The Western Pond Turtle is listed as a Critical Sensitive Species in Oregon. Habitat areas are mapped by ODFW as habitat for a wildlife species of concern or as a habitat of concern. All listed and mapped sites are deemed significant under OAR 660-023-0110 (4).

Significant Habitat areas extend into the Columbia River Gorge National Scenic Area (NSA) – General Management Area (GMA). A local ordinance has been adopted by Wasco County to implement the applicable GMA policies and guidelines in the NSA Management Plan. Further Goal 5 protection is not deemed necessary inside the NSA at this time. The only sites inventoried as significant are those sites located outside the NSA.

Significant sensitive habitat areas also provide distinct habitat values and are designated in accordance with their distinct functions to support the species. The core habitat area is inventoried and identified on the Western Pond Turtle Inventory Map. Upland management areas have also been identified and are also shown on the Western Pond Turtle Inventory Map. The function of each area, uses potentially in conflict with the function, and a program to protect the resource are discussed in the ESEE analysis.

### Conflicting Uses

The significant core habitat and upland management areas for Western Pond Turtles are located on land zoned for resource use and non resource use. Two lots impacted by the upland management area are zoned for agricultural use. All remaining habitat areas are located on Forest Farm land with a 10 acre minimum lot size or Rural Residential land with a 10 acre minimum lot size. Conflicting uses generally consist of residential, driveway, or roadway construction, land divisions that may result in the need to locate improvements in identified upland management or core habitat areas. A majority of the parcels are developed with residential uses. Redevelopment or expansion on parcels in this area is a concern and must be reviewed to limit potential impacts on sensitive resources. Specific conflicting uses are evaluated in the site specific ESEE analyses.

## **Economic, Social, Environmental and energy Consequences of Conserving Sensitive Western Pond Turtle Habitat**

1. Economic consequences:
2. Social Consequences:
3. Environmental Consequences:
4. Energy Consequences:
5. Conclusions:

An ESEE analysis has been prepared that considers both the core habitat and the upland management area. The ESEE analysis once adopted becomes a part of the County's comprehensive plan inventory and provides the frame work for program adoption. As new sites are deemed significant due to the availability of additional information about the location or status of the site an ESEE analysis will be performed to provide the necessary framework for the protection of newly inventoried sites.

### **A Program to Conserve Sensitive Pond Turtle Habitat**

The ESEE analysis done for both the core habitat and upland management areas helps the County to determine whether: the resource warrants protection to the point of prohibiting surrounding conflicting uses per OAR 660-023-0040 (5) (a), whether the conflicting uses should be allowed in a limited way that can protect the significant site to the desired extent per OAR 660-023-0040 (5) (b), or whether the conflicting use(s) warrant protection to the point of suspending resource protection measures without regard for the possible impacts to the resource site OAR 660-023-0040 (5) (c). A determination of whether to allow, limit, or prohibit identified conflicting uses has been made for each of the significant resource sites on the County's inventory. New sites deemed significant in the future will be subject to the same site specific determinations regarding the type or level of protection that should be afforded newly inventoried resource sites or areas before a program for protection is developed and adopted. The County shall amend its comprehensive plan so that the determinations will be included with the ESEE analyses for additional significant sites or areas in the same manner as those currently inventoried.

**Exhibit "A-2"**

*ESEE Analysis for significant habitat inventory [0040(5), 0110(6), and 0050]*

Exhibit "A-2" – ESEE Analysis  
EPD – 13 Western Pond Turtle Sensitive Habitat Area

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## **EXHIBIT "B"**

### **ESEE ANALYSIS – Western Pond Turtle Sensitive Habitat Area**

#### **Inventory**

The western pond turtle is listed as a critical sensitive species in Oregon. The Oregon Department of Fish and Wildlife (ODFW) in cooperation with the U.S. Forest Service has identified a population of western pond turtles along Morganson Road within Township 2N, Range 12E, Sections 7,8,9,17 and 16B. The population of western pond turtles along Morganson Road inhabits lands that are primarily zoned for rural residential uses. Most of the parcels are developed with residential uses. At the time this ESEE was developed three undeveloped parcels of land are considered to be impacted by inventoried significant sensitive habitat area. The sensitive habitat area is made up of:

1. Core habitat, consisting of the ponds, known or likely nesting habitats, and corridors between and to other nearby ponds that interconnect these ponds; and
2. Upland management area, an area in which nesting may take place and in which land uses may be limited to protect the core habitat values.

The core habitat and upland management areas are designated on the Western Pond Turtle Map in the County's Comprehensive Plan inventory section.

#### **Sensitive Habitat Area Characteristics**

##### **A. Core Habitat**

The biology of the turtle indicates that there are four critical habitat components which must be protected to ensure a viable turtle population:

1. Ponds such as the Six large primary ponds A, B, C, D, I, and J at the Morgansen Road area. Both the primary ponds and related secondary ponds E, F,G, and H are critical to this habitat area though the secondary ponds are considered less important due to size, location or existing developments and land uses;
2. Known or likely nesting habitats surrounding the ponds;
3. Corridors between and to other nearby ponds; and
4. Water quality and quantity

The core habitats (ponds and corridors) are considered together due to their close proximity and because their protection measures are the same and overlay each other spatially. The ponds are the primary water habitats for adult turtles and where they obtain most of their food. Ponds where turtles are known to occur and where existing land uses are minimal were considered critical. This includes ponds A, B, C, D, I and J. Some ponds already have human dwellings and other developments immediately adjacent to them and were not considered critical, such as ponds G and H. Ponds E and F are not known to have turtles.

Primary ponds (A, B, C, D, I, J) and their potential adjacent nesting habitats require a 600 ft. no disturbance buffer to protect the resource. The inventoried 600 ft. core habitat area is decreased if the habitat is altered or determined to be of decreased value due to topographic aspect or because of impacts related to existing development. All buffer zones are measured horizontally from the edge of

Exhibit "A-2" – ESEE Analysis

EPD – 13 Western Pond Turtle Sensitive Habitat Area

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a pond or wetland and from the ordinary high watermark on each side of a stream. Although ponds E and F are not known to be used by the western pond turtles, protection of these ponds is important in supporting the core habitat. A 150' foot buffer around each secondary pond and a connectivity corridor with a 150 ft. buffer was considered minimal. No core habitat was identified around Ponds G and H because of the existing adjacent land uses and the impacts they already pose. The existing buffers that apply to ponds G and H are per the Wasco County ordinance which requires a 100 ft. setback.

A 150 "no disturbance" buffer around the stream connectivity corridors is considered minimal. These corridors ensure that the turtles have an undisturbed route by which they can move from one pond to another. Movement along the corridors to other ponds may be critical in helping the turtles disperse to other areas and to encourage genetic out-breeding. It is common for food sources to dry up in some areas while not in others; if the individuals cannot move to more plentiful food sources, then the population becomes threatened.. Although the 150 ft. corridor buffers were diminished in some instances due to previous developments or land uses, the full buffer width was applied to most of the stream corridors.

Pond I is the only pond located outside the National Scenic Area. This pond and a narrow strip of core habitat area providing connectivity along a length of drainage way that follows the NSA boundary just west of pond I are the only core habitat areas located beyond the NSA boundary and subject to protection through the County's goal 5 process.

The core habitat is considered a no disturbance buffer in the Management Plan for the Western Pond turtle population on Morganson Road, Oregon prepared by the Forest Service and ODFW. "No disturbance" is defined to mean:

1. No new building construction
2. No new agricultural cultivation
3. No motor vehicle use, except for those required to maintain existing utilities and road; use of existing roads; and use for enhancement projects.
4. No livestock use.
5. No new ground disturbance
6. No livestock grazing

The no disturbance limitations have been applied inside the National Scenic area through implementation of the National Scenic Area Ordinances. Application of a compatible set of sensitive area protection measures will be accomplished outside the National Scenic Area through adoption and implementation of a Goal 5 program.

### Upland Management Area

The upland management area consists of upland nesting/hibernation areas and can be up to ¼ mile (1320 feet) from the ponds. In the spring (May-June) gravid females leave their water habitat and search for a nesting site which can be up to ¼ mile away from ponds or streams. The eggs are laid in nests excavated in the soil, in a sunny and warm location. The females then return to their water habitat. There is some evidence that the females return to the same nesting site year after year. The

Exhibit "A-2" – ESEE Analysis  
EPD – 13 Western Pond Turtle Sensitive Habitat Area

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loss or disturbance of nesting sites could have significant implications to these relatively small populations.

The eggs hatch within about 75 days but do not emerge from the nest until the following spring. The young turtles then attempt to reach the water. Whenever the turtles are away from the water, they are vulnerable to being crushed by heavy livestock or vehicles. Overgrazing will diminish suitable vegetation cover for hibernation.

The following table lists the parcels entirely or partially within the sensitive habitat area (core habitat and upland management areas) outside the NSA and subject to Wasco County's Land Use Ordinance and Comprehensive Plan. A majority of the sensitive habitat area is within the National Scenic Area. These areas are adequately protected by the Management Plan and National Scenic Area Ordinance criteria.

Western Pond Turtle Sensitive Habitat Area – Impacted Parcels					
Map and Lot #	Zone	Size	Ownership	Developed Undeveloped	Core Habitat (CH) Upland Management (UM)
2N 12 7:2700	A-1(40)/GMA	23.08	Private	Dev	UM
2N 12 7:2800	A-1(40)/GMA	20	Private	Dev	UM
2N 12 8:1900	F-F(10)/GMA	10.03	Private	Undeveloped	CH/UM
2N 12 8:2100	F-F(10)/GMA	9.56	Private	Undeveloped	CH/UM
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2N 12 17:400	R-R(10)	10	Private	Dev	UM
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2N 12 17:300	R-R(10)	10.06	Private	Dev	UM
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2N 12 17:1600	R-R(10)	10	Private	Dev	UM
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Exhibit "A-2" – ESEE Analysis  
 EPD – 13 Western Pond Turtle Sensitive Habitat Area

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## Conflicts Identification

Potentially Conflicting Uses within the Sensitive Habitat area are discussed below following the list of uses permitted outright or conditionally in affected zones.

### A. A-1(40) - Exclusive Farm Use Zone – Section 3.210

#### Uses Permitted Outright:

1. Farm use defined by ORS 215.203
2. Buildings customarily provided in conjunction with farm use.
3. Dwelling provided in conjunction with farm use subject to section 3.210
4. Dwelling for farm use occupied by a relative on the same parcel as farm operator's dwelling
5. Lot of Record dwelling which does not otherwise qualify for a dwelling on less than 80 acres which meets the standards of this section
6. Propagation and harvesting of a forest product.
7. Public or private schools
8. Churches except within three miles of an urban growth boundary.
9. Utility facilities

Uses Permitted Conditionally: In a A-1 Zone, the following may be permitted when authorized in accordance with the requirements of this Ordinance::

1. A dwelling not in conjunction with farm use subject to 3.210(F).
2. Operation conducted for mining.
3. A site for disposal of solid waster under ORS 459.245.
4. Home occupation carried on by the resident as an accessory use within their dwelling or other building customarily provided in conjunction with farm use.
5. Dog Kennels
6. Personal use airports
7. Golf courses
8. Commercial utility facilities
9. Private parks, playgrounds, and campgrounds except that such uses are prohibited on high value farmland.

### B. F-F (10) – Farm Forest Zone- Section 3.220

#### Uses Permitted Outright:

1. Farm use
2. A single family dwelling and other buildings and accessory uses in conjunction with forest or farm use
3. Propagation or harvesting of a forest product
4. Subdivisions
5. Planned Unit Developments
5. Breeding, boarding and training horses for profit

Exhibit "A-2" – ESEE Analysis  
EPD – 13 Western Pond Turtle Sensitive Habitat Area

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Uses Permitted Conditionally: In a F-F Zone, the following may be permitted when authorized in accordance with the requirements of this Ordinance::

1. Additional single family dwellings in conjunction with a commercial farm or forest use subject to income requirements
2. A single family dwelling not in conjunction with a farm or forest use
3. Commercial activities in conjunction with farm use
3. Exploration ,mining, and processing of aggregate resources
4. Private parks, playgrounds, hunting and fishing preserves and campgrounds.
5. Parks, playgrounds, or community center owned and operated by a governmental agency or non-profit organization
6. Home occupations
7. Personal use airports
8. Public or private schools
9. Churches
10. Sanitary landfill
11. Kennels

C. R-R Rural Residential Zone -- Section 3.250

Uses Permitted Outright

1. A single family dwelling subject to standards
2. A single family dwelling and other buildings and accessory uses in conjunction with forest or farm use
3. Propagation or harvesting of a forest product
4. Subdivisions
5. Planned Unit Developments
6. Breeding, boarding and training horses for profit

Uses Permitted Conditionally in the RR zone - In the R-R Zone, the following may be permitted when authorized in accordance with the requirements of this Ordinance:

1. Commercial activities in conjunction with farm use
3. Commercial activities in conjunction with farm use
7. Exploration ,mining, and processing of aggregate resources
8. Private parks, playgrounds, hunting and fishing preserves and campgrounds.
9. Parks, playgrounds, or community center owned and operated by a governmental agency or non-profit organization
10. Home occupations
11. Personal use airports
12. Public or private schools
13. Churches
14. Sanitary landfill
15. Kennels

The significant conflicting uses in the above zones would be farm uses including cultivation of land and grazing. Cultivation would destroy and/or disturb nesting sites which could have significant implications to these relatively small populations. Grazing is a conflict because whenever the turtles are away from the water they are vulnerable to being crushed by livestock. Overgrazing will also often diminish suitable vegetation cover for hibernation with resulting loss due to exposure or predation.

Another important conflict to the turtles arises from the existing and future roads and driveways within the buffer area because whenever the turtles are away from the water they are vulnerable to being crushed by vehicles.

Residential building construction within the buffer area would also destroy and/or disturb nesting sites located most frequently on sunny south facing slopes. Continued habitation and landscaping around a dwelling will also diminish suitable vegetative cover for hibernation and nesting.

Water quantity can be altered by use of existing or future water rights to the waters of the ponds. The only presently known water right is on pond A. In the long term, present water rights should be discontinued when appropriate alternatives are found. Future water rights should not be given for any of the water bodies or streams in the sensitive area.

Water quality will most likely be influenced by influx of pesticides from adjacent land uses, from sedimentation due to soil erosion, and from spillage of toxic compounds. All of these are unlikely to occur or directly influence the core water habitat if the upland management area is used in a manner consistent with the goal 5 program.

### **Economic, Social, Environmental and Energy Consequences Analysis.**

#### **A. Economic Consequences**

##### ***1. Core Habitat Area***

The limited land area designated core habitat area limits the economic consequences that would result from regulatory steps taken to protect the resource. Vehicular access to portions of the parcel separated from public or private roads by core habitat area will need to be provided for in some instances to ensure a loss of use of the property does not result. Existing drives will be used when ever possible. Agricultural practices will not be limited in the EFU (A-1 Zone). Limitations on grazing and new cultivation in core habitat areas in non resource zones may result in inconvenience but will not result in serious economic impacts. Typical parcel sizes outside the EFU zone are 10 acres or less. These parcels will not support commercial cattle or other uses reliant on the feeding and care of numerous large cloven hoofed animals. Location of buildings, other structures, and ground disturbing activities outside the core habitat area will not result in serious economic impact due to the large amount of ground available outside the core habitat area. Most parcels impacted by the overlay are developed with residential uses and limitations on development, redevelopment, or expansion of existing uses will be balanced against the need to accommodate reasonable uses on the rural residential parcels while limiting conflicting uses in a manner that will adequately protect resources. The limited extent of the core habitat area will

Exhibit "A-2" -- ESEE Analysis

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help ensure that necessary protection measures are not applied over large areas of many parcels. The greatest concern regarding the need to balance required access to developable portions of a property against the need to avoid impacts in the core habitat area would be expected to be on parcel 2100.

## **2. Upland Management Area**

Reviewing and potentially limiting new agricultural cultivation and grazing for FF and RR zoned parcels would not have significant economic impact on the County but could prove inconvenient and Costly to the individual land owner. Though the parcels are not generally managed for commercial agricultural production and the lot sizes are not consistent with accepted commercial scale farm management, it is not uncommon for residents in this rural area to have a horse, small orchard, or other small scale agricultural activity. It is important that all agricultural disturbance not be completely excluded in the upland management area. A Site Plan review process will identify allowable ground disturbances and allow limited agricultural activities in most instances. Likewise, however, such ground disturbances must be subject to review, in order to ensure that impacts to significant sensitive habitat are avoided wherever possible.

There are two parcels in the A-1 zone which total 48 acres. No restrictions on accepted agricultural practices are to be imposed upon Exclusive Farm Use or A-1 zones. Though the economic impact on commercial farming related to proposed limitations is limited by the limited number of parcels containing upland management area, the state law precluding state, city or county agencies from limiting agricultural use in the A-1 zone prevents any economic impact on these areas.

Limiting the location of residential development would not reduce the value of the property. No prohibition of development is being considered. A dwelling is anticipated to be sited on each legal parcel even where an entire parcel is located within the Upland management area. Site Plan Review will enable the site to be selected to avoid impact to valuable areas within the Upland management area and to minimize impacts if impacts cannot be avoided. Parcel sizes provide some flexibility with regard to siting of dwellings and driveways or private easement roads. Parcel sizes within the sensitive habitat area are not large enough to support further subdivision so no value related to prospective additional home sites will be lost. Two of the three parcels within the sensitive habitat area that were vacant at the time this ESEE was performed, are predominantly covered by upland management area. A single family home site will be able to be provided on each vacant parcel through the site plan review process to preclude any economic loss to the current or future owner related to the program to protect the resource.

Limiting new water rights could prevent some irrigated farm uses in the FF and RR zones. The review of water rights is outside of the purview of the zoning ordinance and Wasco County and is within the jurisdiction of the State Water master.

## **B. Social Consequences**

### **1. Core Habitat Area**

The social consequence of allowing unregulated conflicting uses in the core habitat area would be degradation or elimination of critical habitat and a potential loss of a visible species that inspires public interest.

A prohibition on all ground disturbance in the core habitat area, however could potentially deprive a land owner of basic use of their property, particularly where access through a core habitat area to a less sensitive upland area is needed. The limited extent of the core habitat area should minimize the need for flexibility to allow disturbance where it cannot otherwise be avoided without depriving a land owner of the basic use of their property.

Strict limitations on disturbance within the core habitat area is needed to preserve a very visible and interesting species, however, a degree of balancing may be necessary in very specific instances to ensure an entire parcels is not rendered inaccessible or undevelopable due to limitations on ground disturbances in the core habitat .

### ***2. Upland Management Area***

Prohibiting residential development (driveways and roads included) within the upland habitat area would have a social impact as property owners would be unable to develop their property in a manner consistent with the rural surroundings.

Limiting the location, and in some instances the timing, of development and ground disturbing activities would have less impact because homes could still be constructed on each parcel and land use practices typically employed in a rural area could be continued to some permissible extent on areas determined to be less sensitive to disturbance.

## **C. Environmental Consequences**

### ***1. Core Habitat Area***

The environmental consequence of allowing unregulated development in the core habitat area would be direct impacts on the core habitat area that could be expected to result in the loss of nesting sites and the continued loss of population leading to the potential for the extinction of the species.

The prohibition of conflicting uses within the core habitat area would have only positive environmental consequences.

### ***2. Upland Management Area***

Unregulated development in the upland management area might include the establishment of residences, roads, and other ground disturbing activities which would require removal of native vegetation which could provide cover for hibernation and predation or allow chemicals or pollutants to be transferred into the core habitat area. Though less direct, these secondary impacts, left unchecked would be expected to be detrimental to the habitat area and the species as a whole.

The prohibition of conflicting uses within the upland management area, though not reasonable based on the social or economic consequences, would likely be preferable from a strictly environmental

perspective. A balancing of these issues should allow for development and redevelopment to occur in a reasonable fashion within the upland habitat area without directly or indirectly adversely impacting the core habitat area or the overall health of the species and its habitat.

#### **D. Energy Consequences**

##### ***Core Habitat Area and Upland Management Area***

The energy consequence of allowing residential development and other potentially conflicting uses are the increased use of fuels for transportation of materials to support continued development and redevelopment, consumption of fuels for transportation to and from home if rural residents can be expected to inhabit population centers if rural housing options are lost, and the increased cost of other services such as law enforcement and fire protection outside existing cities and communities.

The potential negative energy consequences for prohibiting development in the sensitive habitat area would be to encourage growth to continue further out from the population centers of Mosier and The Dalles. The area at Morganson Road is a relatively high demand area and the lack of rural dwelling opportunities in this area could be expected to transfer the demand for rural living further out increasing the energy costs to commute from and serve the areas further removed..

##### **5. Program to Meet Goal 5.**

Based on the ESEE consequences the County finds that both the sensitive resource area and some of the conflicting uses (residential and agricultural development in the A-1 Zone and access to some portions of parcels) are important relative to each other and should be balanced to allow the conflicting uses in a limited way (OAR 660-23-040(5)(b). and ; in some instances the resource site is more important than the conflicting uses (building and new public road construction and cultivation and grazing in RR-FF zones and ) and should be prohibited (OAR 660-23-040(5)(a).

##### **Core Habitat Area**

1. In order to protect the core water habitat uses permitted outright and conditional uses except accepted farm practices on Exclusive Farm Use Land are not allowed within the core habitat area. The core habitat will be considered a no disturbance area and new disturbances will be allowed only in extremely limited situations where the use must be allowed to protect a substantive property right of the land owner and the use cannot be accommodated outside the core habitat area. This circumstance is not anticipated to arise. New ground disturbances are expected to be permitted in the core habitat area only in the most extreme circumstance and mitigation measures including monitoring for success of the mitigation effort will be required if a disturbance is allowed.
2. Wasco County will notify Oregon State Division of State Lands (DSL) of this habitat based limitation on disturbance by sending them maps and text describing the limitation. This coordination will be done to help decrease confusion should an independent party contact DSL regarding removal fill permit requirements in a wetland or riparian area. The County

Exhibit "A-2" – ESEE Analysis  
EPD – 13 Western Pond Turtle Sensitive Habitat Area

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will request that DSL inform anyone making inquiry about ground disturbing activities in the wetland or riparian areas that activities in the core habitat area are limited and local sensitive habitat review may be required by the County prior to any new ground disturbance.

#### Upland Management Area

3. The upland management area will be managed for protection of critical nesting habitat primarily consisting of those areas having a south or west aspect and suitable vegetation and the area between these areas and the core habitat. New ground disturbance including construction activities for expansion, maintenance, replacement of existing structures or construction of new structures, utilities replacement or maintenance, and new utilities requiring a building permit from the Wasco County Planning Department or septic installation requiring a permit for the Health Department shall be subject to a site plan review by the County and by the Oregon Department of Fish and Wildlife as part of the County's review to determine how the proposed development is or can be made to be compatible with the protection of the habitat.

Sensitive Habitat Area	Start of Peak Sensitivity	End of Peak Sensitivity
Core Habitat Area	Year round	None
Upland Management Area	May	September

4. Maintenance and repair of existing structures not requiring a construction permit, permitted work conducted within an enclosed structure creating no new ground disturbance, or repair of a failing septic system are exempt from this requirement.

**Exhibit "A-3"**

*EPD 13 SENSITIVE WESTERN POND TURTLE HABITAT PROTECTION DISTRICT*

Exhibit "A-3"  
Chapter 3- Wasco County Land Use and Development Ordinance  
Sections 3.921, EPD-13, Pond Turtle Overlay zone;

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**PROPOSED ORDINANCE AMENDMENT**

**EXHIBIT "C"**

**SECTION 3.921 DIVISION 12 - POND TURTLE SENSITIVE AREA OVERLAY**

In any zone which is in the Pond Turtle Wildlife Overlay (EPD-8PT), the requirements and standards of this Chapter shall apply in addition to those specified in the underlying zone. If a conflict in regulation or standards occurs, the provisions of this Section shall govern.

**A. Purpose**

The purpose of this overlay district is to conserve important wildlife areas by providing supplementary development standards; to protect the core water areas, nesting sites, connecting corridors, and hibernation sites of the Western Pond Turtle; and to permit development compatible with the protection of the wildlife resource.

**B. Application of Provisions and Definition of Sensitive Habitat Areas**

The sensitive habitat area is the area identified in the Wasco County Comprehensive Plan inventory and site specific ESEE for both the core habitat and upland management areas. The sensitive habitat, including both core habitat which extends between 150 and 600 feet from an important water body or connecting corridor and upland management area which extends as far as ¼ mile or 1320 feet from an important water body or connecting corridor in it furthest reaches. The specific size of the sensitive habitat area and rationale for identifying the distinction between core habitat and upland management area is discussed in the ESEE analysis. The need for variation in the program adopted to protect these areas is also explained in the ESEE analysis.

Significant sensitive habitat located within the Columbia River Gorge National Scenic Area is not subject to the provisions of this Section. The relationship between the habitat area inside the National Scenic Area and that protected by this goal 5 program is noted. Protection measures have been developed to provide compatible protection measures inside and outside the NSA.

Exhibit "A-3"

Chapter 3- Wasco County Land Use and Development Ordinance  
Sections 3.921, EPD-13, Pond Turtle Overlay zone;

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Unless identified for interim protection under subsection E of this section, only inventoried sites determined to be significant and evaluated for protection through a site specific ESEE analysis are afforded Goal 5 protection.

Sensitive resource plan review requirements are applicable to all uses in the underlying zone(s). Any use permitted or permitted conditionally in the zone is subject to the sensitive resource plan review procedure if located within the sensitive habitat area identified for the inventoried significant site. Land divisions of parcels including sensitive habitat area shall be reviewed to determine the need for sensitive resource plan review specifically considering review criteria in sub section D of this section. The sensitive resource plan review requirement is applicable in addition to and shall be applied concurrently with all other applicable standards and criteria in the county LUDO.

If setbacks or buffers specified in this ordinance overlap or conflict, they should be varied in a manner to achieve, to the greatest extent possible, the overall protection of affected resources and public interest.

Forest practices subject to ORS 527.610 to .770 and farm practices defined by ORS 30.947(2) are not regulated by the sensitive habitat overlay.

**C. Procedure for Applying the Overlay Zone**

1. Sensitive resource plan elements and description required for completed sensitive resource plan review application include the following:
  - a. A plot plan drawn to scale showing the location of all development including existing and proposed roads, driveways and structures.
  - b. Description of the general slope and aspect of the ground within the upland management area.
  - c. Description of the operating characteristics of the proposed use including times when activity within the sensitive turtle habitat area would potentially disturb surface soil, generate vibration, or create a need for traffic in core habitat or potential nesting areas (exposed south facing slopes within the upland management area).
  - d. Description of steps taken to avoid impacts to sensitive areas where possible and to minimize and mitigate for impacts in sensitive areas where impacts cannot be avoided.
  - e. Timing of construction activities including grading or filling land, hauling materials and building.
  - f. Description of existing vegetation and vegetation to be removed for the proposed development.

Exhibit "A-3"

Chapter 3- Wasco County Land Use and Development Ordinance  
Sections 3.921, EPD-13, Pond Turtle Overlay zone;

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- g. Description and location of proposed grazing activities.
2. Completed plot plan and sensitive resource plan review requests shall be submitted by the County to ODFW for comment. ODFW shall have 20 days from the date that the sensitive resource plan is mailed, to submit written comments to the County. If the County does not receive a response from ODFW within this time period, the County shall proceed to process the applicant's request.
3. Based upon the record, and evaluation of the proposal based on applicable criteria and review of the site specific ESEE analysis in the Comprehensive Plan, the Planning Director or designee shall approve or reject the sensitive resource plan and protection measures. If a sensitive resource plan review request is rejected the applicant may alter the sensitive resource plan and protection measures to achieve compliance with the applicable criteria.
4. Submittal of an altered sensitive resource review request will be considered a new application and will not be subject to limitations on resubmittal of similar applications.
5. Once deemed complete, the County will proceed to process altered sensitive resource plan review requests as a new land use application.

D. Criteria applicable within Sensitive Pond Turtle Habitat Area

1. In the area designated Core Habitat
  - a. This area is determined to be a "no disturbance" area. New uses shall be prohibited on lands designated Core Habitat . Prohibited uses include but are not limited to:
    - 1) new building construction;
    - 2) new agricultural cultivation on land not zoned EFU;
    - 3) expansion of existing buildings into core habitat areas;
    - 4) new ground disturbance, except for accepted agricultural practices on land zoned EFU;
    - 5) new landscaping;

Exhibit "A-3"  
Chapter 3- Wasco County Land Use and Development Ordinance  
Sections 3.921, EPD-13, Pond Turtle Overlay zone;

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- 6) motor vehicle use, except for those required to maintain existing utilities and roads, use of existing roads, and use for enhancement projects;
  - 7) livestock use/grazing on land not zoned EFU.
- b. Alteration, and/or restoration of a lawfully established dwelling which does not result in new ground disturbance within the core habitat area may be allowed subject to the sensitive resource plan review criteria listed in this section.
  - c. Implementation or completion of a ground disturbing or mitigation activity permitted subject to the required sensitive resource plan review and applied protection measures is allowed in accordance with the terms and conditions of the permit.
  - d. Replacement of a lawfully established dwelling. Any replacement dwelling shall be located outside of the core habitat area if possible and shall be permitted subject to the sensitive resource plan review criteria of this section and the development standards of the underlying zone. If it is not possible to replace the dwelling outside the core habitat area, replacement within the core habitat will be considered through the sensitive resource plan review process applied in the upland management area and impacts shall be minimized. Mitigation may be required to balance unavoidable impacts to the core habitat area.
  - e. Any use allowed within the core habitat area shall be reviewed through the sensitive resource plan review process in sub section C. of this section and will only be permitted upon a determination that:
    - (1) the base zone otherwise authorizes the use,
    - (2) there is no other location on the tract that that can be used to practicably accommodate the use,
    - (3) the use has been proposed in a manner that will minimize the impact of the proposed use on the resource, and
    - (4) the proposal includes a plan for mitigation of unavoidable impacts prepared by a qualified professional that includes a monitoring plan designed to confirm the success of the mitigation effort.

2. In the area designated Upland Management Area

Exhibit "A-3"

Chapter 3- Wasco County Land Use and Development Ordinance  
Sections 3.921, EPD-13, Pond Turtle Overlay zone;

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The following standards shall apply to any new ground disturbing activity. This includes: expansion, maintenance, replacement of existing structures or new structures; replacement or maintenance of existing utilities; new utilities; and septic installation requiring a building permit or septic permit; new grazing; new landscaping; and new cultivation.

- a. New ground disturbances proposed within the upland management Area shall be subject to a sensitive resource plan review by the Oregon Department of Fish and Wildlife in accordance with the sensitive resource plan review process in sub section c. of this section.
- b. Avoidance of ground disturbance within the entire sensitive habitat area, including both the core habitat and upland management areas, precludes the need for any sensitive resource plan review.
- c. The following factors shall be considered when sensitive resource plans and proposed protection measures are reviewed:
  - (1) Where possible new ground disturbances will be located to avoid impact to open south and west facing slopes within the upland management area. If location of a new ground disturbance is necessary on a south or west facing slope the County will work with ODFW and the applicant to identify necessary steps to minimize potential impacts to habitat values in the upland management area.
  - (2) The location, size, scope, configuration or density of new uses shall be regulated to protect wildlife species. The timing and duration of all construction and all uses shall also be regulated to ensure that they do not occur during the time of the year when wildlife species are most sensitive to disturbance.
  - (3) Proposed livestock grazing on non EFU ground will be reviewed to ensure livestock are controlled to prevent overgrazing of vegetation. Restrictions on livestock may be necessary on non EFU ground because they are known to crush turtles in hibernation or in transit from pond to pond.
  - (4) New driveway/road access will be reviewed along with the timing for increased construction traffic on existing roads or driveways located or proposed to be located within the Upland management area. The purpose of the review will be to avoid adverse impacts to turtles most likely to result from vehicles crushing them and to avoid impeding movement of the turtles along the riparian corridors, to

Exhibit "A-3"

Chapter 3- Wasco County Land Use and Development Ordinance  
Sections 3.921, EPD-13, Pond Turtle Overlay zone;

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other ponds, and to nesting sites. If potential adverse impacts cannot be avoided, the County will work with ODFW and the applicant to identify necessary steps to minimize potential impacts to habitat values in the upland management area.

- (5) Existing vegetation or other landscape features within the upland management area, which are confirmed to provide critical habitat values, shall be preserved and maintained. A restrictive covenant to preserve and maintain vegetation shall be required when specified in the ESEE for the site.
  - (6) No partitions or subdivisions shall be permitted which would force location of a dwelling structure or other ground disturbing activity, not otherwise permitted on the site to be allowed within the sensitive habitat area.
  - (7) The sensitive resource plan and proposed protection measures shall conform to the requirements of the ESEE analysis for the specific type of significant sensitive habitat area impacted.
- d. Alteration, restoration, or replacement of a lawfully established dwelling. Any replacement dwelling may be allowed so long as it complies applicable sensitive resource plan review criteria and other applicable provisions in the County's LUDO.
  - e. The applicant shall, as a condition of approval, record a deed restriction form adopted as Exhibit A, with the county clerk of the county restricting the use of the area identified as "Core Habitat".
  - f. The applicant shall, as a condition of approval, record the conditions of approval determined through the sensitive resource plan review process, with the county clerk of the county
  - g. Maintenance and repair of existing structures not requiring a construction permit, permitted work conducted within a closed structure, or repair of a failing septic system are exempt from sensitive resource plan review criteria.

**E. Interim Protection of Sensitive Habitat Area**

Any parcel identified as having sensitive pond turtle habitat, not yet included on the inventory or deemed significant, but acknowledged for interim protection under the applicable Comprehensive Plan policy, shall forego any land ground disturbing activity regulated by this section, except for emergency repairs, until such time as the County has the opportunity to consult with

Exhibit "A-3"

Chapter 3- Wasco County Land Use and Development Ordinance  
Sections 3.921, EPD-13, Pond Turtle Overlay zone;

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ODFW. Consultation with ODFW will be held to determine whether an unacceptable level of interference would result from approval of the proposed action or activity. Only those activities deemed to have no more than an acceptable level of interference with the use or long term value of the potentially significant sensitive habitat area will be permitted.

Interim wildlife protection granted under this section is only valid for a maximum of 120 days from the date the County acknowledges the need for interim protection to be applied.

Exhibit "A-3"  
Chapter 3- Wasco County Land Use and Development Ordinance  
Sections 3.921, EPD-13, Pond Turtle Overlay zone;

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**Exhibit "A-4"**

*Proposed Comp Plan Policy Amendments to support future amendments etc. [per  
0050]*

Exhibit "A-4"  
Comprehensive Plan Amendments  
EPD-13 Western Pond Turtle Sensitive Habitat Area

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## Goal #5 Open Spaces, Scenic and historic Areas and Natural Resources (continued)

### *Natural Resources – Sensitive Western Pond Turtle Habitat Area*

#### **POLICY 7 – B**

Inventory and protect significant sensitive western pond turtle habitat area in Northern Wasco County, avoiding impacts where possible and minimizing conflicts between new or altered uses and sensitive species where avoidance cannot be achieved.

#### **Implementation**

- A. Adopt, maintain, and update as necessary, an inventory of significant sensitive western pond turtle habitat. When new site specific information is presented to the county by ODFW, or other state or federal agencies, the county shall initiate the Goal 5 process spelled out in Division 23. If the county is not prepared to initiate a full legislative goal 5 process ODFW may elect to seek a site specific determination of significance and interim protection described in C. below. ODFW may also elect to seek a quasi judicial rezone and comprehensive plan amendment to determine the sites significant and propose an ESEE analysis and protection program for the newly identified site. Regardless of the adoption process, the county shall evaluate the information to determine whether it is sufficient to determine significance. ODFW will provide information sufficient to distinguish any core habitat area from upland management area and the County shall perform a site specific ESEE analysis for each new sensitive area. Once sufficient information is available the county shall proceed through the Goal 5 process.
- B. Adopt critical time periods applicable when considering timing of temporary impacts such as those generated by construction traffic. Restrictions on time frames will be developed along with site specific ESEE programs and implementing ordinances. The following guidelines shall be relied on for establishing reasonable limitations to protect significant sensitive habitat areas:

Sensitive Pond Turtle Habitat Area	Critical Protection Period
Core Habitat	Year Round
Upland Management Area	April 1 – September 30

Exhibit "A-4"  
Comprehensive Plan Amendments  
EPD-13 Western Pond Turtle Sensitive Habitat Area

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- C. Provide interim protection to new sites deemed significant by ODFW or another state or federal agency and for which the county has received sufficient information to proceed with its Goal 5 process. Interim protection will be provided in accordance with OAR 660-023-0030 (7). Interim measures shall only be applied when they are determined to be necessary due to the inadequacy of existing regulations to prevent irrevocable harm to the resources. The measures employed to provide interim protection shall remain effective for no more than 120 days or until a Goal 5 program can be adopted.

Exhibit "A-4"  
Comprehensive Plan Amendments  
EPD-13 Western Pond Turtle Sensitive Habitat Area

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**Exhibit "B-1"**

*Sensitive Bird Sites Comprehensive Plan Inventory Information*

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ODFW Site #	Co Ref #	Tax Lot # (March 2000)	Owner of Record (March 2000)	Size	Type
WA 1019-01	10	5S 13E 0:3100	BLM	301.35	GE
WA 1029-01	11	3S 14E 0:3200	Ken & Grace Web	857.52	GE
WA 1024-02	12	4S 14E0:1800	State of Oregon	197.5	GE
WA 1024-03	13	4S 14E0:2100	BLM	40	GE
WA 1024-01	14	4S 14E 0:300	BLM or Confederate Tribes of Warm Springs	667.55	GE
WA 1055-01	16 b	7S 14E 16:500	Meredith Wilson Jr.	280	PF
WA 1014-02GE	16 c	7S 14E 0:400	Seeligson	4,944.6	GE
WA 1083-01	18	8S 15E 0:3500	Friday	2,436.7	GE

## Exhibit "A" – Comprehensive Plan Inventory Text

### VI. Sensitive Bird Species

#### Location Quality and Quantity of the Resource

Biologists from the non-game division of ODFW have identified a set of bird sites throughout the County that have been recommended to the County for Goal 5 resource protection. Wasco County reviewed the location information provided by ODFW for the sites along with the ownership patterns, parcel sizes and surrounding zoning. The County worked with ODFW to identify the sites included in the inventory and deemed significant under OAR 660-023-0110 (4).

#### Conflicting Uses

The significant sites are all located on land zoned for resource use. All significant sites initially determined to be significant are located on EFU ground. Conflicting uses generally consist of residential, driveway, or roadway construction, land division, permitting of hunting and fishing preserves or shooting ranges. These same uses would present conflicts in any land use zone in which additional sites may be located. Specific conflicting uses are evaluated in the site specific ESEE analyses.

#### Economic, Social, Environmental and energy Consequences of Conserving Sensitive Bird Habitat

1. Economic consequences:
2. Social Consequences:
3. Environmental Consequences:
4. Energy Consequences:
5. Conclusions:

Exhibit "B-1"  
Comprehensive Plan Amendment  
EPD-12 Sensitive Bird Habitat

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An ESEE analysis has been prepared for each of the sites deemed significant. The ESEE analyses once adopted become a part of the County's comprehensive plan inventory and provide the frame work for program adoption. As new sites are deemed significant due to the availability of additional information about the location or status of the site an ESEE analysis will be performed to provide the necessary framework for the protection of newly inventoried sites.

### **A Program to Conserve Sensitive Bird Habitat**

The ESEE analysis done for each significant bird site helps the County to determine whether: the resource warrants protection to the point of prohibiting surrounding conflicting uses per OAR 660-023-0040 (5) (a), whether the conflicting uses should be allowed in a limited way that can protect the significant site to the desired extent per OAR 660-023-0040 (5) (b), or whether the conflicting use(s) warrant protection to the point of suspending resource protection measures without regard for the possible impacts to the resource site OAR 660-023-0040 (5) (c). A determination of whether to allow, limit, or prohibit identified conflicting uses has been made for each of the significant resource sites on the County's inventory. If new sites are deemed significant site specific determinations regarding the type or level of protection that should be afforded newly inventoried resource site and the site before a program for protection is developed. The County shall amend its comprehensive plan so that the determinations will be included with the ESEE analyses for additional significant sites in the same manner as those currently inventoried.

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**Exhibit "B-2"**

*EPD 12 Sensitive Bird Site Environmental Protection District -  
Ordinance Language [per 0050]*

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## **Section 3.950 Division 12 – Sensitive Bird Site Overlay**

### **A. Purpose**

The Purpose of the Sensitive Bird Site Overlay is to insure that sensitive habitat areas identified in the County's Goal 5 Sensitive Bird Inventory as critical for the survival of the golden eagle and prairie falcon are protected from the affects of conflicting uses or activities which are not subject to the Forest Practices Act. This objective shall be achieved by implementation of the decision resulting from the economic, social, environmental and energy (ESEE) analysis for each inventoried habitat area.

### **B. Definition of Sensitive Habitat Sites**

The sensitive habitat area is the area identified in the Wasco County Comprehensive Plan inventory and site specific ESEE for each sensitive bird site. The sensitive habitat site to be protected by the provisions of this section is defined as the area within ¼ mile or 1,320 feet of a sensitive bird site.

Significant sensitive habitat sites located on federal land are not subject to the provisions of this Section unless sensitive habitat area extends onto non-federal land.

Unless identified for interim protection under subsection F. of this section, only inventoried sites determined to be significant and evaluated for protection through a site specific ESEE analysis are afforded Goal 5 protection.

### **C. Applicability**

Sensitive bird site protection measures are applicable to all uses in the underlying zone(s). Any use permitted or permitted conditionally in the zone is subject to the sensitive resource review procedure if located within the sensitive habitat protection area identified for the inventoried significant site. Land divisions of parcels including sensitive habitat protection area shall be reviewed to determine the need for sensitive resource review specifically considering review criterion E. 5. The sensitive resource review requirement and resulting protection measures are applicable in addition to and shall be applied concurrently with all other applicable standards and criteria in the county LUDO.

If setbacks or buffers specified in this ordinance overlap or conflict, they should be varied in a manner to achieve, to the greatest extent possible, the overall protection of affected resources and public interest.

Exhibit "B-2"

Chapter 3 – Wasco County Land Use and Development Ordinance  
Sections 3.950, EPD 12, Sensitive Bird Habitat Area

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Forest practices subject to ORS 527.610 to .770 and farm practices defined by ORS 30.947(2) are not regulated by the sensitive bird site overlay.

**D. Procedure for Applying the Overlay Zone**

1. Sensitive resource plan elements and description required for completed sensitive resource review application include the following:
  - a. A plot plan drawn to scale showing the location of all development including existing and proposed roads, driveways and structures.
  - b. Description of the operating characteristics of the proposed use including times when activity within the sensitive bird habitat area would generate noise, dust, vibration, lights, traffic or be visible from the nest site.
  - c. Timing of construction activities including grading or filling land, hauling materials and building.
  - d. Description of existing vegetation and vegetation to be removed for the proposed development.
2. Completed plot plan and sensitive resource plan review requests shall be submitted by the County to ODFW for comment. ODFW shall have 20 days from the date that the sensitive resource plan is mailed to the agency, to submit written comments to the County. If the County does not receive a response form ODFW within this time period, the County shall proceed to process the applicant's request.
3. Based upon the record, and evaluation of the proposal based on applicable criteria and review of the site specific ESEE analysis in the Comprehensive Plan, the Planning Director or designee shall approve or reject the sensitive resource plan. If a sensitive resource plan review request is rejected the applicant may alter the sensitive resource plan to achieve compliance with the applicable criteria.
4. Submittal of an altered sensitive resource plan review request will be considered a new application and will not be subject to limitations on re submittal of similar applications.
5. Once deemed complete, the County will proceed to process altered sensitive resource plan review requests as a new land use application.

**E. Applicable Criteria**

Approval of a sensitive resource plan review request shall be based on the following criteria:

1. The approved sensitive resource plan shall consider the biology of the identified sensitive species, nesting, trees, critical nesting

Exhibit "B-2"

Chapter 3 – Wasco County Land Use and Development Ordinance  
Sections 3.950, EPD 12, Sensitive Bird Habitat Area

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periods, roosting sites and buffer areas. Based on the biology of the species and the characteristics of the site, sensitive resource protection measures shall be applied to provide protection that will prevent destruction of the subject nesting site and will, reasonably avoid causing the site to be abandoned.

2. Development activities likely to result in disturbance to the resource shall be avoided where possible in the sensitive habitat protection area. If it is impossible to locate a temporary or permanent disturbance outside the sensitive habitat protection area the impacts of the proposed use will be minimized to the greatest extent possible. Activities within the habitat protection area that are likely to result in disturbance to the habitat protection area will be prohibited during the nesting season identified in the site specific ESEE analysis for each site.
3. New roads, driveways or public trails shall be located at the greatest distance possible from the nest site unless topographic vegetation or structural features will provide greater visual protection and/or noise buffer from the nest site.
4. Existing vegetation or other landscape features which are located on the subject property and obscure the view of the nest from the proposed structure or activity shall be preserved and maintained. A restrictive covenant to preserve and maintain vegetation shall be required when specified in the ESEE for the site.
5. No partitions or subdivisions shall be permitted which would force location of a dwelling or other structure, not otherwise permitted by the site specific ESEE, within the sensitive habitat protection area.
6. All exterior lighting, including security lighting, located within the designated sensitive habitat protection area shall be sited and shielded so that the light is directed downward and does not shine on the subject nest site.
7. The sensitive resource plan and resulting development shall conform to the requirements of the ESEE analysis for the specific significant sensitive bird site. Sensitive habitat plan reviews resulting in approvals will include necessary protection measures, as conditions of approval, to ensure protection of sensitive habitat areas.

#### **F. Threatened and Endangered Species**

Upon receipt of an application for an action or development which will potentially disrupt a habitation or breeding site of a species listed as endangered by the U.S. Fish and Wildlife Service, the County will require verification of Federal coordination and review prior to deeming the application complete and initiating the local review process. ODFW will be consulted in the development and approval of the plan and will also coordinate with federal regulators during their review of the sensitive resource protection.

Exhibit "B-2"

Chapter 3 – Wasco County Land Use and Development Ordinance  
Sections 3.950, EPD 12, Sensitive Bird Habitat Area

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**G. Interim Protection of Sensitive Bird Habitat Sites**

Any parcel within a quarter mile of a sensitive bird site, not yet deemed significant but acknowledged for interim protection under the applicable Comprehensive Plan policy, shall forego any land use development, partitioning, building or on site septic construction, except for emergency repairs, until such time as the County has the opportunity to consult with ODFW. Consultation with ODFW will be held to determine whether an unacceptable level of interference would result from approval of the proposed action or activity. Only those activities deemed to have no more than an acceptable level of interference with the use or long term value of the potentially significant sensitive bird site will be permitted.

Interim wildlife protection granted under this section is only valid for a maximum of 120 days from the date the County acknowledges the need for interim protection to be applied.

Exhibit "B-2"

Chapter 3 – Wasco County Land Use and Development Ordinance  
Sections 3.950, EPD 12, Sensitive Bird Habitat Area

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**Exhibit "B-3"**

*Proposed Comp Plan Policy Amendments to support future amendments etc. [per  
0050]*

*P20040434 (79)*

# Goal #5 Open Spaces, Scenic and historic Areas and Natural Resources (continued)

## Natural Resources – Sensitive Bird Sites

### POLICY 7 – A

Inventory and protect significant sensitive bird sites through out Wasco County, avoiding impacts where possible and minimizing conflicts between new or altered uses and sensitive species where avoidance cannot be achieved.

### Implementation

- A. Adopt, maintain, and update as necessary, an inventory of significant sensitive bird sites. When new site specific information is presented to the county by ODFW, or other state or federal agencies, the county shall initiate the Goal 5 process spelled out in Division 23. If the county is not prepared to initiate a full legislative goal 5 process ODFW may elect to seek a site specific determination of significance and interim protection described in C. below. ODFW may also elect to seek a quasi judicial rezone and comprehensive plan amendment to determine the sites significant and propose an ESEE and protection program for the newly identified site. Regardless of the adoption process, the county shall evaluate the information to determine whether it is sufficient to determine significance. The county will perform a site specific ESEE analysis for each new site prior to adoption of a program for protection of the site. If sufficient information is available the county shall proceed through the Goal 5 process.
- B. Adopt early release guidelines and incorporate critical time periods into restrictions developed in site specific ESEE programs and implementing ordinances. The following guidelines shall be relied on for establishing reasonable limitations to protect significant sensitive bird sites:

Species	Critical Protection Period	Early Release
Golden Eagle	Feb 1 – Aug 31	May 1
Prairie Falcon	March 1 – Aug 30	June 1
Bald Eagle	Jan 15 – Aug 15	May 1
Perrigrin Falcon	Feb 15 – Aug 1	June 1
Great Blue Herron	Feb 15 – Aug 1	June 1

- C. Provide interim protection to new sites deemed significant by ODFW or another state or federal agency and for which the county has received sufficient information to proceed with its Goal 5 process. Interim protection will be provided in accordance with OAR 660-023-0030 (7). Interim measures shall only be applied when they are determined to be necessary due to the inadequacy of existing regulations to prevent irrevocable harm to

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the resources. The measures employed to provide interim protection shall remain effective for no more than 120 days or until a Goal 5 program can be adopted.

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## **Exhibit "B-4"**

*Staff recommended findings to support Planning Commission Recommendation for County Court adoption of ordinance and comprehensive plan and plan map amendments required under periodic review to implement Goal 5*

Exhibit "B-4" Recommended Findings  
Supporting Adoption of Goal 5 amendments required under Periodic Review  
EPD 12 – Sensitive Bird Sites  
EPD 13 – Western Pond Turtle Habitat

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## RECOMMENDED FINDINGS

### EXHIBIT "B-4"

#### *Findings to support adoption of Comprehensive Plan elements related to protection of Sensitive Bird and Western Pond Turtle Habitats along with Implementing Ordinance Language*

#### ***Purpose***

The purpose of these findings is to support recommendation by the Planning Commission and adoption by the County Court of: 1) an inventory, conflicts analysis, and analysis of the economic, social, environmental and energy (ESEE) consequences of protecting or not protecting County sensitive bird habitat areas and Western Pond Turtle habitat areas; 2) amendments to policies and implementation measures in the Goal 5 Chapter of Wasco County's Comprehensive Plan; and 3) ordinances to implement a program for protection of significant inventoried resources in accordance with the analysis of conflicts and ESEE consequences related to protection of the resource.

#### ***Procedural Background***

Western Pond Turtle hearings were originally held in November of 2000. The hearing was continued to December but was postponed due to the passage of Ballot Measure 7. The Planning Commission had requested at the time that there be a follow up meeting of parties including wildlife specialists and Todd Stevens to effectively evaluate the submittal provided by Mr. Stevens to the Planning Commission. A meeting summary sheet including follow up correspondence from Oregon and Washington Departments of Fish and Wildlife are included as "Sensitive Western Pond Turtle Introduction/Background" in the exhibits accompanying these findings. This hearing has been noticed as a new hearing, however, the record of submittals and back ground documentation was relied on to prepare both the original proposal and this proposal so the original record is maintained as back ground information and incorporated into the record for this proceeding. Discussions with ODFW have confirmed that all technical information presented on this matter is still current.

This is the first hearing held to consider sensitive bird sites deemed significant under Goal 5. Extensive work was done by a staff planner and representatives with ODFW to review potential sites and determine which sites ODFW wished the County to consider for Goal 5 protection. This information was reviewed and updated prior to completing this proposal. The sites represented in the proposed inventory represent all existing sites in Wasco County for which ODFW is seeking Goal 5 protection.

Wasco County renegotiated and amended its Periodic Review work program to facilitate County completion of Periodic Review. The amendment of the work program causes this review to come under Division 23, the "new" goal 5 rule, rather than Division 16. This does not appear to have caused any substantive shifts in the type of program proposed by staff for these resources but does alter the criteria under which the program and ESEE analyses are developed. Division 23 is addressed in these findings as the rule governing Goal 5 requirements for these two comprehensive plan elements.

## **Compliance with Goal 5**

### **Rule Citation:**

*Division 23 0250 (8) Local governments shall apply the requirements of this division to work tasks in periodic review work programs approved or amended under ORS 197.633(3)(g) after September 1, 1996.*

### **Findings & Conclusion:**

The County is applying the requirements of the appropriate Oregon Administrative Rule.

Work initially done on both Sensitive Bird sites and Western Pond Turtle Habitat areas was reviewed against the Division 23 standards and revised as necessary. These findings address the most applicable provisions of the Division 23 Goal 5 rule that were not presented in previous hearings held on Western Pond Turtle Ordinances.

### **Rule Citation:**

*Division 23 0110 (4) Local governments may determine wildlife habitat significance under OAR 660-023-0040 or apply the safe harbor criteria in this section. Under the safe harbor, local governments may determine that "wildlife" does not include fish, and that significant wildlife habitat is only those sites where one or more of the following conditions exist:*

*(a) The habitat has been documented to perform a life support function for a wildlife species listed by the federal government as a threatened or endangered species or by the state of Oregon as a threatened, endangered, or sensitive species;*

*(b) The habitat has documented occurrences of more than incidental use by a species described in subsection (a) of this section;*

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*(c) The habitat has been documented as a sensitive bird nesting, roosting, or watering resource site for osprey or great blue herons pursuant to ORS 527.710 (Oregon Forest Practices Act) and OAR 629-024-0700 (Forest Practices Rules);*

*(d) The habitat has been documented to be essential to achieving policies or population objectives specified in a wildlife species management plan adopted by the Oregon Fish and Wildlife Commission pursuant to ORS Chapter 496; or*

*(e) The area is identified and mapped by ODFW as habitat for a wildlife species of concern and/or as a habitat of concern (e.g., big game winter range and migration corridors, golden eagle and prairie falcon nest sites, or pigeon springs).*

### **Findings & Conclusion:**

The wildlife habitat designated as significant in the inventory lists (Exhibit A) qualifies under the wildlife habitat safe harbor criteria for significance.

Western Pond Turtles – are designated as Critical Sensitive species in Oregon State. They qualify for significance under subsection (a) and (b) above.

Sensitive Bird Sites – Golden Eagle and Prairie Falcon, the two species with inventoried significant sites in Wasco County, both are considered species of concern in Oregon State. Both qualify for significance under subsection (d) and (e) above. ODFW representatives report that both these species have been identified in the creation of the White River and Deschutes regional strategy as part of the state wide program for protection of avian resources. Part of the reason for concern for these species, according to ODFW representatives, is the fact that these species are:

- 1) reliant on habitats that exist in limited quantities e.g. cliffs and rims,
- 2) species having high site fidelity and a strong likelihood of returning to specific nest sites even if vacated for a series of seasons, and
- 3) species with the potential to become limited, that is they require protection if they are to avoid qualification for state or federal listing.

A question regarding the designation of good nest site locations vs. known nest sites was raised in the public workshop. ODFW confirmed that the only sites proposed for protection were known nest sites. Prime nest site habitat is not proposed for designation unless a nest site is identified there. It was also noted, however, that the nest sites do not have to be active every year to be inventoried as significant because of the cyclical nature of nest site and alternate nest site use.

## Rule Citation:

*Division 23 0110 (6) As set out in OAR 660-023-0250(5), local governments shall develop programs to protect wildlife habitat following the standard procedures and requirements of OAR 660-023-0040 and 660-023-0050. Local governments shall coordinate with appropriate state and federal agencies when adopting programs intended to protect threatened, endangered, or sensitive species habitat areas.*

*Division 23 0040 (5) Develop a program to achieve Goal 5. Local governments shall determine whether to allow, limit, or prohibit identified conflicting uses for significant resource sites. This decision shall be based upon and supported by the ESEE analysis. A decision to prohibit or limit conflicting uses protects a resource site. A decision to allow some or all conflicting uses for a particular site may also be consistent with Goal 5, provided it is supported by the ESEE analysis. One of the following determinations shall be reached with regard to conflicting uses for a significant resource site:*

*(a) A local government may decide that a significant resource site is of such importance compared to the conflicting uses, and the ESEE consequences of allowing the conflicting uses are so detrimental to the resource, that the conflicting uses should be prohibited.*

*(b) A local government may decide that both the resource site and the conflicting uses are important compared to each other, and, based on the ESEE analysis, the conflicting uses should be allowed in a limited way that protects the resource site to a desired extent.*

*(c) A local government may decide that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site, and must indicate why measures to protect the resource to some extent should not be provided, as per subsection (b) of this section.*

## Findings & Conclusion:

The County coordinated with the appropriate agencies and reviewed options to determine the appropriate level of protection for significant resources as required by the Goal 5 rule.

The County worked with ODFW extensively in the inventory, evaluation of significant sites and areas. The County also worked with ODFW on the development and review of programs designed to protect habitat while avoiding unreasonable impacts on private

landowners. ESEE analyses were performed for significant sensitive bird sites and significant western pond turtle habitat areas (Exhibit B).

Analysis of conflicting uses and impacts of resource protection measures on ESEE concerns determined that all sensitive bird sites and both western pond turtle habitat areas are "5(b)" resources for which protection measures should be balanced against the need to accommodate limited conflicting uses. The level of limitation on conflicting uses implemented in the proposed programs (Exhibit C) varies with the sensitivity of the resource. Even the more extensive limitations on uses that may conflict with natural resources (e.g. core habitat for Western Pond Turtle), are balanced against the social, energy and economic impacts of those limitations. The necessary balancing was discussed openly and concurred with by ODFW representatives.

### **Rule Citation:**

#### *Division 23 0050 (2) and (3)*

*(2) When a local government has decided to protect a resource site under OAR 660-023-0040(5)(b), implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards. For purposes of this division, a standard shall be considered clear and objective if it meets any one of the following criteria:*

*(a) It is a fixed numerical standard, such as a height limitation of 35 feet or a setback of 50 feet;*

*(b) It is a nondiscretionary requirement, such as a requirement that grading not occur beneath the dripline of a protected tree; or*

*(c) It is a performance standard that describes the outcome to be achieved by the design, siting, construction, or operation of the conflicting use, and specifies the objective criteria to be used in evaluating outcome or performance. Different performance standards may be needed for different resource sites. If performance standards are adopted, the local government shall at the same time adopt a process for their application (such as a conditional use, or design review ordinance provision).*

*(3) In addition to the clear and objective regulations required by section (2) of this rule, except for aggregate resources, local governments may adopt an alternative approval process that includes land use regulations that are not clear and objective (such as a planned unit development ordinance with discretionary performance standards), provided such regulations:*

*(a) Specify that landowners have the choice of proceeding under either the clear and objective approval process or the alternative regulations; and*

*(b) Require a level of protection for the resource that meets or exceeds the intended level determined under OAR 660-023-0040(5) and 660-023-0050(1).*

### **Findings & Conclusion:**

The proposed program provides a predictable process that allows for performance based review of proposed actions within an identified habitat site or area in a manner consistent with subsection (3) above. The proposed program allows a land owner the opportunity to avoid triggering the sensitive area review process by avoiding the clear and objective sensitive habitat area (buffer) in accordance with subsection (2) above.

To allow the best protection of natural resources while requiring the most reasonable restrictions on private properties, it is considered necessary to perform a site specific review of proposals that may create adverse impacts on resources. The implementing ordinances (Exhibit C) provide applicants the opportunity to avoid impacts that may result from the location of conflicting uses within the identified sensitive habitat areas. If an applicant elects to propose a potentially conflicting use within an identified sensitive habitat area a sensitive resource plan review will be done. This review will be done in accordance with the procedure and criteria established to meet the performance standards listed in the implementing ordinances (EPD 11 - Sensitive Bird Site Protection District and EPD 12 - Western Pond Turtle Protection District).

### **Rule Citation:**

*Division 23 0030 (1) Inventories provide the information necessary to locate and evaluate resources and develop programs to protect such resources. The purpose of the inventory process is to compile or update a list of significant Goal 5 resources in a jurisdiction.*

*(7) Local governments may adopt limited interim protection measures for those sites that are determined to be significant, provided:*

*(a) The measures are determined to be necessary because existing development regulations are inadequate to prevent irrevocable harm to the resources on the site during the time necessary to complete the ESEE process and adopt a permanent program to achieve Goal 5; and*

*(b) The measures shall remain effective only for 120 days from the date they are adopted, or until adoption of a program to achieve Goal 5, whichever occurs first.*

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## **Findings & Conclusion:**

Proposed amendments to the comprehensive plan policies and implementation measures address both initial adoption and future updates of Goal 5 inventories as required by the Goal 5 rule.

Policy and implementation language supports the required process for initial adoption of the site inventory, analysis, and resource protection programs (Exhibit D). It also provides the process through which amendments may be made to update the inventories. This will provide guidance to resource agencies wishing to request updates to the inventory and ensure public input before new or existing regulations are applied to additional habitat areas.

## **Compliance with Other Goals**

### **Goal 1 – Citizen Involvement**

Goal 1 has been complied with by initial hearings and work sessions with interested parties coming forward in the hearing process to consider Western Pond Turtle issues previously. Additional notice was provided prior to a public work shop with the Planning Commissioners prior to opening hearings again for the Western Pond Turtle proposal and initially for the Sensitive Bird Site proposal. Opportunity to participate has been provided for this proceeding at:

- 1) A public workshop prior to any public hearing
- 2) The hearing before the Planning Commission, and
- 3) The hearing before the County Court

### **Goal 2 – Land Use Planning**

An adequate factual base for land use decision making has been assured in this process by:

- 1) following the process prescribed by the Goal 5 rule for inventory and determination of significance of wildlife habitat sites,
- 2) considering the nature of potentially conflicting uses and the impacts of protecting inventoried resources from conflicting uses through the ESEE process,
- 3) weighing contradictory information received in the initial hearing held to consider adoption of a Western Pond Turtle Protection District,
- 4) verifying the adequacy of proposed implementing ordinances with appropriate resource agency representative having expertise in the needs of the species being protected and familiarity with the land use pattern in the vicinity of sensitive habitat areas or sites,

- 5) adopting maps with the programs to document the proposed impact areas and assist with the evaluation of impacts in the ESEE process, and
- 6) documenting a factual record in the text generated through the ESEE process to record the reason and anticipated outcome of adoption of the proposed program.

Workshop review of the proposal also generated the question of how the proposed protection measures to protect sensitive bird sites relate to and impact other resource protection buffers and setbacks in the EFU zone. Planning staff reviewed location of sensitive bird sites relative to other resource protection areas and found the following:

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Summary Table of Relationships – Birds sites and their proximity to other regulated areas

Selected Bird Nesting Sites	Goal 5 Aggregate Sites	Cultural Sites	Flood Areas	High Value Soils	Natural Areas
10	0	0	0	0	0
11	0	1a	1c	0	0
12	0	1b	1d	0	0
13	0	0	1e	1h	0
14	0	0	1f	0	0
16	0	0	1g	0	0
18	0	0	0	0	0

0 = No Observed Overlap within ¼ mile

1 = Observed Overlap within ¼ mile (see related key to table notes and explanation below)

**Table Note Key and Explanation:**

**Goal 5 Aggregate Sites:** Due to the distance between the selected nesting sites and Goal 5 Aggregate Sites, there are no observed conflicts between regulated or protected areas. Note Map 1 detail as indicated example.

**Cultural Sites :** Due to the distance between the selected nesting sites and Cultural Sites there is no observed conflict between regulated or protected areas. Two proposed nest sites occur within ¼ mile of inventoried cultural sites.

**1a)** Barlow Cut-off Road is approximately 1400' from nesting site 11. Due to parcel size and configuration, there is no observed impediment to exercising development options on parcel 3S 14E 0 3200, owned by Kenneth Webb.

**1b)** Cultural Site 14 is approximately 750' from nesting site 12. Due to parcel size and configuration, there is no observed impediment to exercising development options on parcel 4S 14E 0 1800, owned by the State of Oregon Parks and Recreation Department.

**Flood Sites:** Observed nesting sites are typical of those found on rim rock atop canyon walls above stream channels. Due to the relationship and distance between the selected nesting sites and areas subject to 100 and 500 year flood events, there is no observed conflict between regulated or protected areas. Setback from nesting site buffer will not convey potential development closer to flood areas. There are five sites within ¼ mile of mapped flood hazard areas.

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**1c)** Due to parcel size and configuration, there is no observed impediment to exercising development options on parcel 3S 14E 0 3200, owned by Kenneth Webb.

**1d)** Due to parcel size and configuration, there is no observed impediment to exercising development options on parcel 4S 14E 0 1800, owned the State of Oregon parks and Recreation Department.

**1e)** Due to parcel size and configuration, there is no observed impediment to exercising development options on parcel 4S 14E 0 2100, owned by United States Bureau of Land Management.

**1f)** Due to parcel size and configuration, there is no observed impediment to exercising development options on parcel 4S 14E 0 300, owned by The Confederated Tribes of the Warm Springs.

**1g)** Due to parcel size and configuration, there is no observed impediment to exercising development options on parcel 7S 14E 0 1700, owned by United States Bureau of Land Management.

**High Value Soils:** Due to the distance between the selected nesting sites and high value soils there are no observed conflicts between regulated or protected areas and potentially highly productive lands. There is one site with High value soils documented within ¼ mile of a sensitive nest site.

**1h)** Due to parcel size and configuration, there is no observed impediment to exercising development options on parcel 4S 14E 0 2100, owned by United States Bureau of Land Management.

**1h)** Due to parcel size and configuration, there is no observed impediment to exercising development options on parcel 4S 14E 0 2000, owned by Jon Justesen.

**Natural Areas:** There are no Natural Areas within ¼ mile of any of the selected nesting sites. Due to the distance between the selected nesting sites and Natural Areas there is no observed conflict between regulated or protected areas.

**UGB's and Rural Communities:** There are no nesting sites within ¼ mile of any Urban Growth Boundary or Rural Community. Due to the distance between the selected nesting sites and Urban Growth Boundaries or Rural Communities, there are no observed conflicts between regulated or protected areas.

**Scenic Waterways:** Overlapping buffers relate to the location of nesting sites on rim rock atop canyon walls above rivers and streams. Buffers are compatible as both support location of development further from scenic waterways. Five of the seven sensitive nest sites are located within ¼ mile of a scenic waterway buffer.

**1i – 1m)** Due to similar goal of protection buffers and the distance between the selected nesting sites and scenic waterway buffers, there are no observed conflicts between regulated or protected areas.

The above review, coupled with specific language in both the EPD 11 and EPD 12 text allowing for the balancing of conflicting buffers if they occur, alleviates concerns regarding potential conflicts between resource buffers and setbacks. The potential for conflicting buffers or setbacks has been considered and can be further addressed, as needed, during program implementation.

### **Goal 3 – Agricultural Lands**

The proposal does not conflict with Goal 3. It does not promote new non-farm uses on farm lands nor does it limit accepted farm practices on EFU ground.

### **Goal 4 – Forest Land**

The Goal 4 analysis with respect to forest lands is the same as that set forth under Goal 3 with respect to farm lands.

### **Goal 6 – Air, Land, and Water Resources**

Preservation of inventoried fish and wildlife resources does not conflict with Goal 6 since protection of such resources does not promote additional development and is, if anything complementary to objectives of air, land, and water resource protection.

### **Goal 7 – Areas Subject to Natural Disasters and Hazards.**

Implementation of Goal 7 is not impeded by this proposal. This proposal does not encourage additional structural development in sensitive habitat areas. Flood hazard areas were considered above. If conflicts were to arise between the need to avoid identified sensitive habitat sites or areas and the need to avoid other hazard areas such as geologic hazards the need to avoid conflict between the buffers can be weighed and given site specific consideration in order to best accomplish the intent of both regulations.

### **Goal 8 – Recreation Needs**

Providing for recreation needs is important to the Wasco County economy. Enjoyment of fish and wildlife resources is an integral part of outdoor recreational experience. Goal 5 interests represented by this proposal and Goal 8 interests are compatible.

### **Goal 9 – Economy of the State**

Preservation of fish and wildlife resources contributes to Oregon's increasingly important tourism industry, particularly in less populated areas of the state. The proposal will result in measures to further protect and inform people about wildlife resources in the County. No incompatibility exists between the current Goal 5 proposal and Goal 9 interests.

### **Goal 10 – Housing**

This goal is not impacted by this proposal. The overlays apply only outside the Urban Growth Boundaries (UGB) and under Goal 10 housing needs are to be addressed chiefly by measures taken inside the UGB.

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**Goal 11 – Public Facilities**

The proposal does not encourage new development or promote demand for public facilities outside the UGB. The proposal is not inconsistent with Goal 11.

**Goal 12 – Transportation**

Goal 12 response with respect to transportation impacts is the same as that set forth under Goal 11 with respect to public facilities.

**Goal 13 – Energy Conservation**

Goal 13 response with respect to impacts on energy conservation is the same as that set forth under Goal 11 with respect to public facilities.

**Goal 14 – 19**

Not applicable

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**Exhibit "B-5"**

ESEE Findings and Decision of Sensitive Bird Sites 10 - 18

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**Wasco County Site No. 10  
Golden Eagle  
(ODFW No. 1019-01)  
ESEE Findings and Decision**

1. Inventory

The Oregon Department of Fish and Wildlife has identified a golden eagle site in Township 5S, Range 13E, the ODFW identifier for this site is WA1019-01. The sensitive habitat area includes the area within a ¼ mile radius of each nest site. The habitat sites and sensitive habitat are designated on maps(s) attached as Exhibit "A".

2. Site Characteristics

This nest site is built on a 300ft basalt cliff 100ft up overlooking Wapinitia Creek. The area above the nest site is range land. Large raptors can have both primary and alternate nest locations and may not use the same nest site every year but nest use may be cyclical in nature. It is important to protect both the primary and alternate nest sites.

The land in the sensitive habitat area is zoned Exclusive Farm Use zone A-1(80) The nest site is on BLM land . The ownership to the northwest is a 86 acre, privately owned parcel zoned for farm use. This parcel has been approved by the Planning Office for a farm dwelling and farm ranch recreation use which includes overnight lodging, and raising birds.

The following table lists the parcels entirely or partially within the sensitive habitat area.

Map and Lot #	Zone	Size	Ownership
5S 13E Index 3100	A-1 (160)	301 acres	BLM
5S 13E Index 2200	A-1 (160)	636 acres	Private*
5S 13E Index 3200	A-1 (160)	86 acres	Private
5S 13E Index 2400	A-1 (160)	462.75 acres	Private
5S 13E Index 2500	A-1 (160)	838.73	BLM

\* tax code shows parcel to be developed with a residence

3. Conflicts Identification.

Potentially Conflicting Uses within the Sensitive Habitat Site

A. A-1(160) - Exclusive Farm Use Zone – Section 3.210

Uses Permitted Outright:

ESEE Analysis  
EPD 12 – Sensitive Bird Sites  
Site No. WA 1019-01  
Golden Eagle

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1. Farm use defined by ORS 215.203
2. Buildings customarily provided in conjunction with farm use.
3. Dwelling provided in conjunction with farm use subject to section 3.210
4. Dwelling for farm use occupied by a relative on the same parcel as farm operator's dwelling
5. Lot of Record dwelling which does not otherwise qualify for a dwelling on less than 80 acres which meets the standards of this section
6. Propagation and harvesting of a forest product.
7. Public or private schools
8. Churches except within three miles of an urban growth boundary.
9. Utility facilities

Uses Permitted Conditionally or Subject to Standards: In a A-1 Zone, the following may be permitted when authorized in accordance with the requirements of this Ordinance::

1. A dwelling not in conjunction with farm use subject to 3.210(F).
2. Operation conducted for mining.
3. A site for disposal of solid waster under ORS 459.245.
4. Home occupation carried on by the resident as an accessory use within their dwelling or other building customarily provided in conjunction with farm use.
5. Dog Kennels
6. Personal use airports
7. Golf courses
8. Commercial utility facilities
9. Private parks, playgrounds, and campgrounds except that such uses are prohibited on high value farmland.
10. Land partitioning which creates a 2-20 acre parcel from a unit of ownership subject to Section H. Part of Parcel requirements.
11. Farm Ranch Recreation

A significant conflicting use would be residential development which would reduce the solitude and foraging area for birds. Because residential development is somewhat restricted in the Agricultural zone to non-farm dwelling on legal lots created before January 1, 1993, and farm dwellings on new parcels of 160 acres the density, and Lot of Record dwellings, the density of development should not alter the foraging area and solitude of the birds sufficiently to cause abandonment of the site. The birds using this site are accustomed to an environment with little disturbance because there is little human activity within the sensitive habitat area or nearby.

The county is prohibited by state statute from regulating farm practices.

Another potential significant conflicting use would be recreational development in the Agricultural zone which could include lease hunting preserves, and shooting ranges. These would reduce the solitude sufficiently to cause abandonment of the site. The birds using this site are accustomed to an environment with little disturbance because there is little human activity with this portion of the sensitive habitat area.

ESEE Analysis  
 EPD 12 – Sensitive Bird Sites  
 Site No. WA 1019-01  
 Golden Eagle

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Partitioning of the EFU zoned land within the sensitive habitat area into smaller nonfarm parcels is not likely in this instance because of the limited amount of privately owned EFU land within the sensitive habitat area.

#### 4. Economic, Social, Environmental and Energy Consequences Analysis.

##### A. Economic Consequences

Limiting the location and development of forest dwellings would not reduce the value of the property to the degree of prohibition of development. Construction costs could increase if building activity is restricted during the nesting season.

Limiting the development of farm ranch recreation development such as hunting preserves and shooting courses should have a negligible economic consequence as these are not the primary economic enterprise of the EFU zone, but are subordinate to the commercial agricultural operation and provide 'added value' to the commercial agricultural operation.

Maintaining nest sites will help assure that the species does not become a federally threatened and endangered species. Should this happen, the protection criteria would be much more restrictive around the remaining nest sites.

##### B. Social Consequences

The social consequence of allowing unregulated conflicting uses could be the abandonment of the nest site which would be a loss to the segment of society that enjoys viewing wildlife. The positive social consequences of limiting conflicting uses would be continuing opportunities for the public, naturalists, scientists, and bird watchers, to study and enjoy the birds.

Prohibiting development on the parcels within the sensitive habitat area would have significant social impact as property owners would be unable to develop their property. Limiting the location and timing of development would have less social consequences.

##### C. Environmental Consequences

There are no identified negative environmental consequences of prohibiting conflicting uses.

Development in the sensitive area could cause nest failure and would result in alteration of foraging range. Noise, such as shooting or construction, during the nesting period could disturb the birds leading to nest abandonment or failure.

Golden eagles consume considerable numbers of rabbits, ground squirrels and other small prey. Farmers are constantly trying to control these small mammal populations. Loss of raptors could

mean higher use of chemical pesticides which can affect many other mammals, fish, insects and birds.

D. Energy Consequences

There are no negative or positive consequences from prohibiting or regulating development in the sensitive habitat area.

5. Program to Meet Goal 5.

Based on the ESEE consequences the County finds that both the resource site and the conflicting uses are important relative to each other and that the ESEE consequences should be balanced to allow the conflicting uses in a limited way (OAR 660-23-040(5)(b). and

1. In order to protect both the nest site and sensitive habitat area and allow limited conflicting uses, uses permitted outright in the A-1 zones within the sensitive habitat area shall be allowed.
2. Conditional uses and uses subject to standards (non-farm dwellings and structures) are not allowed within the sensitive habitat area.
3. Permitted uses which involve construction activities for expansion, maintenance, replacement of existing structures or construction of new structures requiring zoning approval on a building permit from the Wasco County Planning Department or septic installation requiring a permit from D.E.Q. shall be prohibited during the nesting season from January 15 through August 31.
4. Maintenance and repair of existing structures not requiring a construction permit, permitted work conducted within a closed structure, or repair of a failing septic system are exempt from this requirement. Construction activity subject to zoning approval on a building permit from the Wasco County Planning Department or a septic installation permit from D.E.Q. may occur after May 1, if ODFW determines in writing that the nest site is not active or that the young birds have fledged.

**Wasco County Site No. 11  
Golden Eagle  
(ODFW No. WA 1029-01)  
ESEE Findings and Decision**

1. Inventory

The Oregon Department of Fish and Wildlife has identified a golden eagle site in Township 3S, Range 14E, The ODFW identifier for this site is WA1029-01. The sensitive habitat area includes the area within a ¼ mile radius of each nest site. The habitat sites and sensitive habitat are a designated on maps(s) attached as Exhibit "A".

2. Site Characteristics

This nest site is built on an east aspect 110 ft. cliff overlooking the Deschutes River north of Shearers Bridge. The nest is at a height of approximately 80 ft. The area above the nest site is range land. Large raptors can have both primary and alternate nest locations and may not use the same nest site every year but nest use may be cyclical in nature. It is important to protect both the primary and alternate nest sites.

The land in the sensitive habitat area is zoned Exclusive Farm Use zone A-1(160) The nest site is on private land. The nest site and a portion of the sensitive habitat area on the west side of the Deschutes River is within the Deschutes Scenic River designation overlay zone. According to the Assessor's information the parcel on which the nest site is located is vacant; the adjacent ownership (tax lot 3000) to the north is a 114 acre, vacant, privately owned parcel zoned for farm use is also vacant.

The following table list the parcels entirely or partially within the sensitive habitat area.

Map and Lot #	Zone	Size	Ownership
3S 14E Index 3200	A-1 (160)	857 acres	Private
3S 14E Index 3000	A-1 (160)	114 acres	Private

3. Conflicts Identification.

Potentially Conflicting Uses within the Sensitive Habitat Site

A. A-1(160) - Exclusive Farm Use Zone – Section 3.210

ESEE Analysis  
EPD 12 – Sensitive Bird Sites  
Site No. WA 1029 01  
Golden Eagle

P2004-0434 (79)

Uses Permitted Outright:

1. Farm use defined by ORS 215.203
2. Buildings customarily provided in conjunction with farm use.
3. Dwelling provided in conjunction with farm use subject to section 3.210
4. Dwelling for farm use occupied by a relative on the same parcel as farm operator's dwelling
5. Lot of Record dwelling which does not otherwise qualify for a dwelling on less than 80 acres which meets the standards of this section
6. Propagation and harvesting of a forest product.
7. Public or private schools
8. Churches except within three miles of an urban growth boundary.
9. Utility facilities

Uses Permitted Conditionally or Subject to Standards: In a A-1 Zone, the following may be permitted when authorized in accordance with the requirements of this Ordinance:

1. A dwelling not in conjunction with farm use subject to 3.210(F).
2. Operation conducted for mining.
3. A site for disposal of solid waster under ORS 459.245.
4. Home occupation carried on by the resident as an accessory use within their dwelling or other building customarily provided in conjunction with farm use.
5. Dog Kennels
6. Personal use airports
7. Golf courses
8. Commercial utility facilities
9. Private parks, playgrounds, and campgrounds except that such uses are prohibited on high value farmland.
10. Land partitioning which creates a 2-20 acre parcel from a unit of ownership subject to Section H. Part of Parcel requirements.
11. Farm Ranch Recreation

A significant conflicting use would be residential development which would reduce the solitude and foraging area for birds. Because residential development is somewhat restricted in the Agricultural zone to non-farm dwelling on legal lots created before January 1, 1993, and farm dwellings on new parcels of 160 acres the density, and Lot of Record dwellings, the density of development should not alter the foraging area and solitude of the birds sufficiently to cause abandonment of the site. The birds using this site are accustomed to an environment with little disturbance because there is little human activity within the sensitive habitat area or nearby.

The county is prohibited by state statute from regulating farm practices.

Another potential significant conflicting use would be recreational development in the Agricultural zone which could include lease hunting preserves, and shooting ranges. These would reduce the solitude sufficiently to cause abandonment of the site. The birds using this site are accustomed to an

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environment with little disturbance because there is little human activity with this portion of the sensitive habitat area.

Partitioning of the EFU zoned land within the sensitive habitat area into smaller nonfarm parcels is possible but is limited by the parent parcel size with 3 as the maximum part of parcel per tract.

#### 4. Economic, Social, Environmental and Energy Consequences Analysis.

##### A. Economic Consequences

Limiting the location and development of forest dwellings would not reduce the value of the property to the degree of prohibition of development. Construction costs could increase if building activity is restricted during the nesting season.

Limiting the development of farm ranch recreation development such as hunting preserves and shooting courses should have a negligible economic consequence as these are not the primary economic enterprise of the EFU zone, but are subordinate to the commercial agricultural operation and provide 'added value' to the commercial agricultural operation.

Maintaining nest sites will help assure that the species does not become a federally threatened and endangered species. Should this happen, the protection criteria would be much more restrictive around the remaining nest sites.

##### B. Social Consequences

The social consequence of allowing unregulated conflicting uses could be the abandonment of the nest site which would be a loss to the segment of society that enjoys viewing wildlife. The positive social consequences of limiting conflicting uses would be continuing opportunities for the public, naturalists, scientists, and bird watchers, to study and enjoy the birds.

Prohibiting development on the parcels within the sensitive habitat area would have significant social impact as property owners would be unable to develop their property. Limiting the location and timing of development would have less social consequences.

##### C. Environmental Consequences

There are no identified negative environmental consequences of prohibiting conflicting uses.

Development in the sensitive area could cause nest failure and would result in alteration of foraging range. Noise, such as shooting or construction, during the nesting period could disturb the birds leading to nest abandonment or failure.

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Golden eagles consume considerable numbers of rabbits, ground squirrels and other small prey. Farmers are constantly trying to control these small mammal populations. Loss of raptors could mean higher use of chemical pesticides which can affect many other mammals, fish, insects and birds.

#### D. Energy Consequences

There are no negative or positive consequences from prohibiting or regulating development in the sensitive habitat area.

#### 5. Program to Meet Goal 5.

Based on the ESEE consequences the County finds that both the resource site and the conflicting uses are important relative to each other and that the ESEE consequences should be balanced to allow the conflicting uses in a limited way (OAR 660-23-040(5)(b). and

1. In order to protect both the nest site and sensitive habitat area and allow limited conflicting uses, uses permitted outright in the A-1 zones within the sensitive habitat area shall be allowed.
2. Conditional uses and uses subject to standards (non-farm dwellings and structures) are not allowed within the sensitive habitat area.
3. Permitted uses which involve construction activities for expansion, maintenance, replacement of existing structures or constructions of new structures requiring zoning approval on a building permit from the Wasco County Planning Department or septic installation requiring a permit from D.E.Q. shall be prohibited during the nesting season from January 15 through August 31.
4. Maintenance and repair of existing structures not requiring a construction permit, permitted work conducted within a closed structure, or repair of a failing septic system are exempt from this requirement. Construction activity subject to zoning approval on a building permit from the Wasco County Planning Department or a septic installation permit from D.E.Q. may occur after May 1, if ODFW determines in writing that the nest site is not active or that the young birds have fledged.

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Golden Eagle

12004-0434 (79)

**Wasco County Site No. 12,13,14  
Golden Eagle  
(ODFW No. WA 1024-01, 1024-02, 1024-03)  
ESEE Findings and Decision**

1. Inventory

The Oregon Department of Fish and Wildlife has identified three golden eagle site in Township 4S, Range 14E, The ODFW identifier for this site is WA 1024-01, 1024-02, 1024-03. The 01,02,03 identifier identifies three alternate nest sites. The sensitive habitat area includes the area within a ¼ mile radius of each next site. The habitat sites and sensitive habitat are a designated on maps(s) attached as Exhibit "A".

2. Site Characteristics

These nests consist of a primary and two alternative sites built on 45 to 80 ft cliffs overlooking the White River near its confluence with the Deschutes River. The area surrounding the nest site is range land. Large raptors can have both primary and alternate nest locations and may not use the same nest site every year but nest use may be cyclical in nature. It is important to protect both the primary and alternate nest sites.

The land in the sensitive habitat area is zoned Exclusive Farm Use zone A-1(160) One nest site is on lands owned by the Confederated Tribe of Warm Springs on which the county has no jurisdiction. The other two sites are on public land, BLM and the State of Oregon. A portion of the sensitive habitat buffer on sites 02 and 03 overlaps onto private land. According to assessor's information, there is a residence on tax lot 400 and tax lot 2000 is vacant.

The following table list the parcels entirely or partially within the sensitive habitat area.

Map and Lot #	Zone	Size	Ownership
4S 14E Index 1800	A-1 (160)	197.5 acres	State of Oregon
4S 14E Index 2100	A-1 (160)	40 acres	BLM
4S 14E Index 300	A-1 (160)	667 acres	Confed. Tribes of Warm Springs
4S 14E Index 400	A-1 (160)	1010 acres	Private *
4S 14E Index 2400	A-1 (160)	160 acres	BLM
4S 14E Index 2000	A-1 (160)	520 acres	Private
4S 14E Index 2300	A-1 (160)	253 acres	BLM

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Site No. WA 1024-01, 1024-02, 1024-03  
Golden Eagle

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\* tax code shows parcel to be developed with a residence

3. Conflicts Identification.

Potentially Conflicting Uses within the Sensitive Habitat Site

A. A-1(160) - Exclusive Farm Use Zone - Section 3.210

Uses Permitted Outright:

1. Farm use defined by ORS 215.203
2. Buildings customarily provided in conjunction with farm use.
3. Dwelling provided in conjunction with farm use subject to section 3.210
4. Dwelling for farm use occupied by a relative on the same parcel as farm operator's dwelling
5. Lot of Record dwelling which does not otherwise qualify for a dwelling on less than 80 acres which meets the standards of this section
6. Propagation and harvesting of a forest product.
7. Public or private schools
8. Churches except within three miles of an urban growth boundary.
9. Utility facilities

Uses Permitted Conditionally or Subject to Standards: In a A-1 Zone, the following may be permitted when authorized in accordance with the requirements of this Ordinance::

1. A dwelling not in conjunction with farm use subject to 3.210(F).
2. Operation conducted for mining.
3. A site for disposal of solid waster under ORS 459.245.
4. Home occupation carried on by the resident as an accessory use within their dwelling or other building customarily provided in conjunction with farm use.
5. Dog Kennels
6. Personal use airports
7. Golf courses
8. Commercial utility facilities
9. Private parks, playgrounds, and campgrounds except that such uses are prohibited on high value farmland.
10. Land partitioning which creates a 2-20 acre parcel from a unit of ownership subject to Section H. Part of Parcel requirements.
11. Farm Ranch Recreation

A significant conflicting use would be residential development which would reduce the solitude and foraging area for birds. Because residential development is somewhat restricted in the Agricultural zone to non-farm dwelling on legal lots created before January 1, 1993, and farm dwellings on new parcels of 160 acres the density, and Lot of Record dwellings, the density of development should not alter the foraging area and solitude of the birds sufficiently to cause abandonment of the site. The

ESEE Analysis  
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birds using this site are accustomed to an environment with little disturbance because there is little human activity within the sensitive habitat area or nearby.

The county is prohibited by state statute from regulating farm practices.

Another potential significant conflicting use would be recreational development in the Agricultural zone which could include lease hunting preserves, and shooting ranges. These would reduce the solitude sufficiently to cause abandonment of the site. The birds using this site are accustomed to an environment with little disturbance because there is little human activity with this portion of the sensitive habitat area.

Partitioning of the EFU zoned land within the sensitive habitat area into smaller nonfarm parcels are not likely in this instance because of the limited amount of EFU land within this sensitive habitat area.

The county has no authority to regulate uses on tribal lands.

#### 4. Economic, Social, Environmental and Energy Consequences Analysis.

##### A. Economic Consequences

Limiting the location and development of forest dwellings would not reduce the value of the property to the degree of prohibition of development. Construction costs could increase if building activity is restricted during the nesting season.

Limiting the development of farm ranch recreation development such as hunting preserves and shooting courses should have a negligible economic consequence as these are not the primary economic enterprise of the EFU zone, but are subordinate to the commercial agricultural operation and provide 'added value' to the commercial agricultural operation.

Maintaining nest sites will help assure that the species does not become a federally threatened and endangered species. Should this happen, the protection criteria would be much more restrictive around the remaining nest sites.

##### B. Social Consequences

The social consequence of allowing unregulated conflicting uses could be the abandonment of the nest site which would be a loss to the segment of society that enjoys viewing wildlife. The positive social consequences of limiting conflicting uses would be continuing opportunities for the public, naturalists, scientists, and bird watchers, to study and enjoy the birds.

Prohibiting development on the parcels within the sensitive habitat area would have significant social impact as property owners would be unable to develop their property. Limiting the location and timing of development would have less social consequences.

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Site No. WA 1024-01, 1024-02, 1024-03  
Golden Eagle

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C. Environmental Consequences

There are no identified negative environmental consequences of prohibiting conflicting uses.

Development in the sensitive area could cause nest failure and would result in alteration of foraging range. Noise, such as shooting or construction, during the nesting period could disturb the birds leading to nest abandonment or failure.

Golden eagles consume considerable numbers of rabbits, ground squirrels and other small prey. Farmers are constantly trying to control these small mammal populations. Loss of raptors could mean higher use of chemical pesticides which can affect many other mammals, fish, insects and birds.

D. Energy Consequences

There are no negative or positive consequences from prohibiting or regulating development in the sensitive habitat area.

5. Program to Meet Goal 5.

Based on the ESEE consequences the County finds that both the resource site and the conflicting uses are important relative to each other and that the ESEE consequences should be balanced to allow the conflicting uses in a limited way (OAR 660-23-040(5)(b). and

1. In order to protect both the nest site and sensitive habitat area and allow limited conflicting uses, uses permitted outright in the A-1 zones within the sensitive habitat area shall be allowed.
2. Conditional uses and uses subject to standards (non-farm dwellings and structures) are not allowed within the sensitive habitat area.
3. Permitted uses which involve construction activities for expansion, maintenance, replacement of existing structures or constructions of new structures requiring zoning approval on a building permit from the Wasco County Planning Department or septic installation requiring a permit from D.E.Q. shall be prohibited during the nesting season from January 15 through August 31.
4. Maintenance and repair of existing structures not requiring a construction permit, permitted work conducted within a closed structure, or repair of a failing septic system are exempt from this requirement. Construction activity subject to zoning approval on a building permit from the Wasco County Planning Department or a septic installation permit from D.E.Q. may occur after May 1, if ODFW determines in writing that the nest site is not active or that the young birds have fledged.

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Site No. WA 1024-01, 1024-02, 1024-03  
Golden Eagle

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ESEE Analysis  
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Site No. WA 1024-01, 1024-02, 1024-03  
Golden Eagle

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**Wasco County Site No. 16B  
Prairie Falcon  
(ODFW No. WA 1055-01)  
ESEE Findings and Decision**

1. Inventory

The Oregon Department of Fish and Wildlife has identified a Prairie Falcon site in Township 7S, Range 14E, Section 16. The ODFW identifier for this site is WA1055-01. The sensitive habitat area includes the area within a ¼ mile radius of each nest site. The habitat sites and sensitive habitat are designated on maps(s) attached as Exhibit "A".

2. Site Characteristics

This nest site is built 70 ft up on a south aspect 95 ft. rhyolite cliff south of North Junction off of the Deschutes River. The eyrie is in a small cavity between abandoned nest sites. The area surrounding the nest site is range land with some juniper encroachment. Large raptors can have both primary and alternate nest locations and may not use the same nest site every year but nest use may be cyclical in nature. It is important to protect both the primary and alternate nest sites.

The land in the sensitive habitat area is zoned Exclusive Farm Use zone A-1(160). The nest site is on private land. The ownership to the south within the sensitive habitat area is a 320 acre, vacant, privately owned parcel zoned for farm use.

The following table list the parcels entirely or partially within the sensitive habitat area.

Ownership Map and Lot #	Zone	Size	Ownership
7S 14E Sec.16 500	EFU	280	Private
7S 14E Sec. 16 600	EFU	320	Private

3. Conflicts Identification.

Potentially Conflicting Uses within the Sensitive Habitat Site

A. A-1(160) - Exclusive Farm Use Zone – Section 3.210

Uses Permitted Outright:

ESEE Analysis  
EPD 12 – Sensitive Bird Sites  
Site No. WA 1055-01  
Prairie Falcon

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1. Farm use defined by ORS 215.203
2. Buildings customarily provided in conjunction with farm use.
3. Dwelling provided in conjunction with farm use subject to section 3.210
4. Dwelling for farm use occupied by a relative on the same parcel as farm operator's dwelling
5. Lot of Record dwelling which does not otherwise qualify for a dwelling on less than 80 acres which meets the standards of this section
6. Propagation and harvesting of a forest product.
7. Public or private schools
8. Churches except within three miles of an urban growth boundary.
9. Utility facilities

Uses Permitted Conditionally or Subject to Standards: In a A-1 Zone, the following may be permitted when authorized in accordance with the requirements of this Ordinance::

1. A dwelling not in conjunction with farm use subject to 3.210(F).
2. Operation conducted for mining.
3. A site for disposal of solid waster under ORS 459.245.
4. Home occupation carried on by the resident as an accessory use within their dwelling or other building customarily provided in conjunction with farm use.
5. Dog Kennels
6. Personal use airports
7. Golf courses
8. Commercial utility facilities
9. Private parks, playgrounds, and campgrounds except that such uses are prohibited on high value farmland.
10. Land partitioning which creates a 2-20 acre parcel from a unit of ownership subject to Section H. Part of Parcel requirements.
11. Farm Ranch Recreation

A significant conflicting use would be residential development which would reduce the solitude and foraging area for birds. Because residential development is somewhat restricted in the Agricultural zone to non-farm dwelling on legal lots created before January 1, 1993, and farm dwellings on new parcels of 160 acres the density, and Lot of Record dwellings, the density of development should not alter the foraging area and solitude of the birds sufficiently to cause abandonment of the site. The birds using this site are accustomed to an environment with little disturbance because there is little human activity within the sensitive habitat area or nearby.

The county is prohibited by state statute from regulating farm practices.

Another potential significant conflicting use would be recreational development in the Agricultural zone which could include lease hunting preserves, and shooting ranges. These would reduce the solitude sufficiently to cause abandonment of the site. The birds using this site are accustomed to an

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Site No. WA 1055-01  
Prairie Falcon

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environment with little disturbance because there is little human activity with this portion of the sensitive habitat area.

Partitioning of the EFU zoned land within the sensitive habitat area into smaller nonfarm parcels are limited by acreage of the parent parcel. The maximum part of parcel that may be created per tract is 1 part of parcel per 162-500 acre tract which would allow for 1 non farm parcel per parcel in this instance.

#### 4. Economic, Social, Environmental and Energy Consequences Analysis.

##### A. Economic Consequences

Limiting the development of farm ranch recreation development such as hunting preserves and shooting courses should have a negligible economic consequence as these are not the primary economic enterprise of the EFU zone, but are subordinate to the commercial agricultural operation and provide 'added value' to the commercial agricultural operation.

Maintaining nest sites will help assure that the species does not become a federally threatened and endangered species. Should this happen, the protection criteria would be much more restrictive around the remaining nest sites.

##### B. Social Consequences

The social consequence of allowing unregulated conflicting uses could be the abandonment of the nest site which would be a loss to the segment of society that enjoys viewing wildlife. The positive social consequences of limiting conflicting uses would be continuing opportunities for the public, naturalists, scientists, and bird watchers, to study and enjoy the birds.

Prohibiting development on the parcels within the sensitive habitat area would have significant social impact as property owners would be unable to develop their property. Limiting the location and timing of development would have less social consequences.

##### C. Environmental Consequences

There are no identified negative environmental consequences of prohibiting conflicting uses.

Development in the sensitive area could cause nest failure and would result in alteration of foraging range. Noise, such as shooting or construction, during the nesting period could disturb the birds leading to nest abandonment or failure.

Prairie Falcons consume considerable numbers of ground squirrels and other small prey.

Farmers are constantly trying to control these small mammal populations. Loss of raptors could

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Site No. WA 1055-01

Prairie Falcon

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mean higher use of chemical pesticides which can affect many other mammals, fish, insects and birds.

D. Energy Consequences

There are no negative or positive consequences from prohibiting or regulating development in the sensitive habitat area.

5. Program to Meet Goal 5.

Based on the ESEE consequences the County finds that both the resource site and the conflicting uses are important relative to each other and that the ESEE consequences should be balanced to allow the conflicting uses in a limited way (OAR 660-23-040(5)(b). and

1. In order to protect both the nest site and sensitive habitat area and allow limited conflicting uses, uses permitted outright in the A-1 zones within the sensitive habitat area shall be allowed.
2. Conditional uses and uses subject to standards (non-farm dwellings and structures) are not allowed within the sensitive habitat area.
3. Permitted uses which involve construction activities for expansion, maintenance, replacement of existing structures or constructions of new structures requiring zoning approval on a building permit from the Wasco County Planning Department or septic installation requiring a permit from D.E.Q. shall be prohibited during the nesting season from January 15 through August 31.
4. Maintenance and repair of existing structures not requiring a construction permit, permitted work conducted within a closed structure, or repair of a failing septic system are exempt from this requirement. Construction activity subject to zoning approval on a building permit from the Wasco County Planning Department or a septic installation permit from D.E.Q. may occur after May 1, if ODFW determines in writing that the nest site is not active or that the young birds have fledged.

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Site No. WA 1055-01  
Prairie Falcon

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**Wasco County Site No. 16C  
Golden Eagle  
(ODFW No. WA 1014-02GE)  
ESEE Findings and Decision**

1. Inventory

The Oregon Department of Fish and Wildlife has identified a Golden Eagle site in Township 7S, Range 14E, The ODFW identifier for this site is WA1014-02GE. The sensitive habitat area includes the area within a ¼ mile radius of each nest site. The habitat sites and sensitive habitat are a designated on maps(s) attached as Exhibit "A".

2. Site Characteristics

This nest site is built on a north aspect 45 ft. cliff overlooking Cove Creek. The nest is at a height of approximately 30 ft. The area surrounding the nest site is range land. Large raptors can have both primary and alternate nest locations and may not use the same nest site every year but nest use may be cyclical in nature. It is important to protect both the primary and alternate nest sites.

The land in the sensitive habitat area is zoned Exclusive Farm Use zone A-1(160). The nest site is on a 4944 acre, vacant, privately owned parcel; the ownership to the east is a 300 acre parcel owned by the Deschutes Club land and taxed as recreational, vacant.

The following table list the parcels entirely or partially within the sensitive habitat area.

Ownership Map and Lot #	Zone	Size	Ownership
7S 14E Index 400	A-1 (160)	4944 acres	Private
7S 14E Index 800	A-1 (160)	300	Private
7S 14E Index 601	A-1 (160)	161.49	BLM

3. Conflicts Identification.

Potentially Conflicting Uses within the Sensitive Habitat Site

A. A-1(160) - Exclusive Farm Use Zone – Section 3.210

Uses Permitted Outright:

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EPD 12 – Sensitive Bird Sites  
Site No. WA 1014 02 GE  
Golden Eagle

2004-0434(79)

1. Farm use defined by ORS 215.203
2. Buildings customarily provided in conjunction with farm use.
3. Dwelling provided in conjunction with farm use subject to section 3.210
4. Dwelling for farm use occupied by a relative on the same parcel as farm operator's dwelling
5. Lot of Record dwelling which does not otherwise qualify for a dwelling on less than 80 acres which meets the standards of this section
6. Propagation and harvesting of a forest product.
7. Public or private schools
8. Churches except within three miles of an urban growth boundary.
9. Utility facilities

Uses Permitted Conditionally or Subject to Standards: In a A-1 Zone, the following may be permitted when authorized in accordance with the requirements of this Ordinance::

1. A dwelling not in conjunction with farm use subject to 3.210(F).
2. Operation conducted for mining.
3. A site for disposal of solid waster under ORS 459.245.
4. Home occupation carried on by the resident as an accessory use within their dwelling or other building customarily provided in conjunction with farm use.
5. Dog Kennels
6. Personal use airports
7. Golf courses
8. Commercial utility facilities
9. Private parks, playgrounds, and campgrounds except that such uses are prohibited on high value farmland.
10. Land partitioning which creates a 2-20 acre parcel from a unit of ownership subject to Section H. Part of Parcel requirements.
11. Farm Ranch Recreation

A significant conflicting use would be residential development which would reduce the solitude and foraging area for birds. Because residential development is somewhat restricted in the Agricultural zone to non-farm dwelling on legal lots created before January 1, 1993, and farm dwellings on new parcels of 160 acres the density, and Lot of Record dwellings, the density of development should not alter the foraging area and solitude of the birds sufficiently to cause abandonment of the site. The birds using this site are accustomed to an environment with little disturbance because there is little human activity within the sensitive habitat area or nearby.

The county is prohibited by state statute from regulating farm practices.

Another potential significant conflicting use would be recreational development in the Agricultural zone which could include lease hunting preserves, and shooting ranges. These would reduce the solitude sufficiently to cause abandonment of the site. The birds using this site are accustomed to an

ESEE Analysis  
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 Site No. WA 1014 02 GE  
 Golden Eagle

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environment with little disturbance because there is little human activity with this portion of the sensitive habitat area.

Partitioning of the EFU zoned land within the sensitive habitat area into smaller nonfarm parcels are limited by acreage of the parent parcel. The maximum part of parcel that may be created per tract is 3 part of parcel per 1000 acre or greater tract which would allow for 3 non farm parcels in this instance.

#### 4. Economic, Social, Environmental and Energy Consequences Analysis.

##### A. Economic Consequences

Limiting the development of farm ranch recreation development such as hunting preserves and shooting courses should have a negligible economic consequence as these are not the primary economic enterprise of the EFU zone, but are subordinate to the commercial agricultural operation and provide 'added value' to the commercial agricultural operation.

Maintaining nest sites will help assure that the species does not become a federally threatened and endangered species. Should this happen, the protection criteria would be much more restrictive around the remaining nest sites.

##### B. Social Consequences

The social consequence of allowing unregulated conflicting uses could be the abandonment of the nest site which would be a loss to the segment of society that enjoys viewing wildlife. The positive social consequences of limiting conflicting uses would be continuing opportunities for the public, naturalists, scientists, and bird watchers, to study and enjoy the birds.

Prohibiting development on the parcels within the sensitive habitat area would have significant social impact as property owners would be unable to develop their property. Limiting the location and timing of development would have less social consequences.

##### C. Environmental Consequences

There are no identified negative environmental consequences of prohibiting conflicting uses.

Development in the sensitive area could cause nest failure and would result in alteration of foraging range. Noise, such as shooting or construction, during the nesting period could disturb the birds leading to nest abandonment or failure.

Golden Eagles consume considerable numbers of rabbits, ground squirrels and other small prey. Farmers are constantly trying to control these small mammal populations. Loss of raptors could

ESEE Analysis  
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Golden Eagle

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mean higher use of chemical pesticides which can affect many other mammals, fish, insects and birds.

D. Energy Consequences

There are no negative or positive consequences from prohibiting or regulating development in the sensitive habitat area.

5. Program to Meet Goal 5.

Based on the ESEE consequences the County finds that both the resource site and the conflicting uses are important relative to each other and that the ESEE consequences should be balanced to allow the conflicting uses in a limited way (OAR 660-23-040(5)(b). and

1. In order to protect both the nest site and sensitive habitat area and allow limited conflicting uses, uses permitted outright in the A-1 zones within the sensitive habitat area shall be allowed.
2. Conditional uses and uses subject to standards (non-farm dwellings and structures) are not allowed within the sensitive habitat area.
3. Permitted uses which involve construction activities for expansion, maintenance, replacement of existing structures or constructions of new structures requiring zoning approval on a building permit from the Wasco County Planning Department or septic installation requiring a permit from D.E.Q. shall be prohibited during the nesting season from January 15 through August 31.
4. Maintenance and repair of existing structures not requiring a construction permit, permitted work conducted within a closed structure, or repair of a failing septic system are exempt from this requirement. Construction activity subject to zoning approval on a building permit from the Wasco County Planning Department or a septic installation permit from D.E.Q. may occur after May 1, if ODFW determines in writing that the nest site is not active or that the young birds have fledged.

**Wasco County Site No. 18  
Golden Eagle  
(ODFW No. WA1083-01)  
ESEE Findings and Decision**

1. Inventory

The Oregon Department of Fish and Wildlife has identified a Golden eagle site in Township 8S, Range 15E, The ODFW identifier for this site is WA1083-01. The sensitive habitat area includes the area within a ¼ mile radius of each next site all of which is located within one ownership which is private. The habitat site and sensitive habitat area are designated on maps(s) attached as Exhibit "A". There is a privately owned Goal 5 aggregate site (Wasco County site No. 213) .5 mile north of the bird site. Permitted uses within the extraction area of the rock pit include: extraction, blasting, processing including screening, crushing, batching, stockpiling, and sales.

2. Site Characteristics

This nest site is built on a large rock outcrop overlooking Antelope Creek. The area surrounding the nest site is range land where juniper removal has been conducted in the recent past. Large raptors can have both primary and alternate nest locations with the occupancy at any particular nest site cyclical in nature.

The land in the sensitive habitat area is zoned Exclusive Farm Use zone A-1(160). The nest site is on private land. There are no houses within ½ mile of the site.

The following table lists the parcels entirely or partially within the sensitive habitat area.

Ownership Map and Lot #	Zone	Size	Ownership
8S 15E Index 3500	EFU	2436.72 acres	Private

This site is improved  
with a residence

3. Conflicts Identification.

Potentially Conflicting Uses within the Sensitive Habitat Site

A. A-1(160) - Exclusive Farm Use Zone - Section 3.210

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Golden Eagle

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Uses Permitted Outright:

1. Farm use defined by ORS 215.203
2. Buildings customarily provided in conjunction with farm use.
3. Dwelling provided in conjunction with farm use subject to section 3.210
4. Dwelling for farm use occupied by a relative on the same parcel as farm operator's dwelling
5. Lot of Record dwelling which does not otherwise qualify for a dwelling on less than 80 acres which meets the standards of this section
6. Propagation and harvesting of a forest product.
7. Public or private schools
8. Churches except within three miles of an urban growth boundary.
9. Utility facilities

Uses Permitted Conditionally or Subject to Standards: In a A-1 Zone, the following may be permitted when authorized in accordance with the requirements of this Ordinance::

1. A dwelling not in conjunction with farm use subject to 3.210(F).
2. Operation conducted for mining.
3. A site for disposal of solid waster under ORS 459.245.
4. Home occupation carried on by the resident as an accessory use within their dwelling or other building customarily provided in conjunction with farm use.
5. Dog Kennels
6. Personal use airports
7. Golf courses
8. Commercial utility facilities
9. Private parks, playgrounds, and campgrounds except that such uses are prohibited on high value farmland.
10. Farm ranch recreation

A significant conflicting use would be residential development which would reduce the solitude and foraging area for birds. Because residential development is somewhat restricted in the Agricultural zone to non-farm dwelling on legal lots created before January 1, 1993, and farm dwellings on new parcels of 160 acres the density, and Lot of Record dwellings, the density of development should not alter the foraging area and solitude of the birds sufficiently to cause abandonment of the site. The birds using this site are accustomed to an environment with little disturbance because there is little human activity within the sensitive habitat area or nearby.

The county is prohibited by state statute from regulating farm practices.

A second conflicting uses would be blasting activity associated with the permitted rock pit during the period of active nesting (February 1 to August 1).

Another potential significant conflicting use would be recreational development in the Agricultural zone which could include lease hunting preserves, and shooting ranges. These would reduce the

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solitude sufficiently to cause abandonment of the site. The birds using this site are accustomed to an environment with little disturbance because there is little human activity with this portion of the sensitive habitat area.

Partitioning of the EFU zoned land within the sensitive habitat area into smaller nonfarm parcels is possible.

4. Economic, Social, Environmental and Energy Consequences Analysis.

A. Economic Consequences

Limiting the location and development of forest dwellings would not reduce the value of the property to the degree of prohibition of development. Construction costs could increase if building activity is restricted during the nesting season.

Limiting the development of farm ranch recreation development such as hunting preserves and shooting courses should have a negligible economic consequence as these are not the primary economic enterprise of the EFU zone, but are subordinate to the commercial agricultural operation and provide 'added value' to the commercial agricultural operation.

Maintaining nest sites will help assure that the species does not become a federally threatened and endangered species. Should this happen, the protection criteria would be much more restrictive around the remaining nest sites.

B. Social Consequences

The social consequence of allowing unregulated conflicting uses could be the abandonment of the nest site which would be a loss to the segment of society that enjoys viewing wildlife. The positive social consequences of limiting conflicting uses would be continuing opportunities for the public, naturalists, scientists, and bird watchers, to study and enjoy the birds.

Prohibiting development on the parcels within the sensitive habitat area would have significant social impact as property owners would be unable to develop their property. Limiting the location and timing of development would have less social consequences.

C. Environmental Consequences

There are no identified negative environmental consequences of prohibiting conflicting uses.

Development in the sensitive area could cause nest failure and would result in alteration of foraging range. Noise, such as shooting or construction, during the nesting period could disturb the birds leading to nest abandonment or failure.

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Golden eagles consume considerable numbers of rabbits, ground squirrels and other small prey. Farmers are constantly trying to control these small mammal populations. Loss of raptors could mean higher use of chemical pesticides which can affect many other mammals, fish, insects and birds.

D. Energy Consequences

There are no negative or positive consequences from prohibiting or regulating development in the sensitive habitat area.

5. Program to Meet Goal 5.

Based on the ESEE consequences the County finds that both the resource site and the conflicting uses are important relative to each other and that the ESEE consequences should be balanced to allow the conflicting uses in a limited way (OAR 660-23-040(5)(b). and

1. In order to protect both the nest site and sensitive habitat area and allow limited conflicting uses, uses permitted outright in the A-1 zones within the sensitive habitat area shall be allowed.
2. Conditional uses and uses subject to standards (non-farm dwellings and structures) are not allowed within the sensitive habitat area.
3. Permitted uses which involve construction activities for expansion, maintenance, replacement of existing structures or constructions of new structures requiring zoning approval on a building permit from the Wasco County Planning Department or septic installation requiring a permit from D.E.Q. shall be prohibited during the nesting season from January 15 through August 31.
4. Maintenance and repair of existing structures not requiring a construction permit, permitted work conducted within a closed structure, or repair of a failing septic system are exempt from this requirement. Construction activity subject to zoning approval on a building permit from the Wasco County Planning Department or a septic installation permit from D.E.Q. may occur after May 1, if ODFW determines in writing that the nest site is not active or that the young birds have fledged.

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