



Oregon

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March 10, 2009

TO: Land Conservation and Development Commission

FROM: Richard Whitman, Michael Morrissey, Jon Jinings DLCD

SUBJECT: **Agenda Item 1, March 11-13, 2009 LCDC Meeting**

PUBLIC HEARING AND POSSIBLE ADOPTION OF METOLIUS BASIN AREA OF CRITICAL CONCERN, MANAGEMENT PLAN AND AREA MAP

I. AGENDA ITEM SUMMARY

This item is a public hearing and possible adoption of a Metolius Basin Area of Critical Concern, Management Plan and Area Map (MBACSC). The item will include a recommendation from a subcommittee of Land Conservation and Development Commission which has held hearings in Madras and Sisters concerning the MBACSC.

The Commission agreed to consider the MBACSC upon a request from Governor Kulongoski (Attachment A). The MBACSC sets three objectives: 1) protect the basin from destination resorts and large scale development, 2) give Jefferson County a clear path to allow resort development in a more appropriate location(s), and 3) provide a fair result for property owners. At issue are two proposed destination resorts in and straddling the basin, referred to as the Metolian owned by Dutch Pacific, LLC and the property owned by the Ponderosa Land & Cattle Company, LLC. They are on sites that have received Goal 8 mapping approval from Jefferson County, but which is on appeal to the Oregon Supreme Court, and is not considered effective. Neither property owner has submitted an official proposal to Jefferson County.

The MBACSC takes the form of a planning document which includes critical area designation and a management plan and other material required by ORS 197.405. A staff presentation will also be made. Should the MBACSC be adopted by the Commission, it will include a recommendation to the 2009 legislature that will be incorporated into legislation.

For information regarding this agenda item, contact:

Michael Morrissey, DLCD Policy Analyst; 503-373-0050 Ext. 320

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Additional information regarding statewide planning statutes, goals rules and DLCD staff contacts is available on the DLCD website at <http://www.oregon.gov/LCD/index.shtml>

II. SUMMARY OF RECOMMENDED ACTION

The LCDC subcommittee recommends that the LCDC adopt the MBACSC and submit it to the Oregon Legislature for their approval, including the Management Plan and Area Map.

III. BACKGROUND

A. Areas of Critical State Concern

SB 100 granted the Commission the authority to “Review and recommend to the Legislative Assembly the designation of areas of critical state concern.” (section 11(9)). Section 26(2) of SB 100 further details the requirements for such a review and recommendation. These requirements exist today in ORS 197.405 (Attachment B), in slightly modified form:

- (a) Shall specify the reasons for the implementation of additional state regulations for the described geographic area;
- (b) Shall include a brief summary of the existing programs and regulations of the state and local agencies applicable to the area;
- (c) May include a management plan for the area indicating the programs and regulations of state and local agencies, if any, unaffected by the proposed state regulations for the area;
- (d) May establish permissible use limitations for all or part of the area;
- (e) Shall locate a boundary describing the area; and
- (f) May designate permissible use standards for all or part of the lands within the area or establish standards for issuance or denial of designated state and local permits regulating specified uses of lands in the area, or both (ORS 197.405(1)).

Any such recommendation to designate such an area is not effective until approved by the Legislative Assembly (ORS 197.405(4)).

Areas initially considered (during discussion of SB 100) for statewide critical concern designation included several coastal sites, farmland statewide, the Willamette River Greenway, the Columbia River Gorge and Metolius deer winter range. Statewide planning goals ultimately provided protection for the first three of these areas, and the Columbia Gorge received federal protection through the Columbia River Gorge National Scenic Area Act. The Metolius deer winter range, including areas both inside and adjoining the Metolius basin ultimately did not receive ACSC designation, as DLCD preferred to study deer winter range on a wider basis. However, governor McCall and (later) governor Straub strongly encouraged Area of Critical Statewide Concern status for the Metolius deer winter range, even in advance of consideration for other areas.

The only time that LCDC accepted the task of designating an area of critical state concern was in 1977, with regard to Yaquina Head near Newport, on the Oregon coast. The Commission did recommend ACSC for Yaquina Head to the legislature, but no legislative action was taken, as the area was purchased by the Bureau of Land Management.

B. Metolius Basin

The Metolius Basin (the “Basin”) is part of the greater Deschutes River watershed, and includes portions of southwestern Jefferson County and northwestern Deschutes County. The portion of the basin owned and managed by the Confederated Tribes of the Warm Springs Reservation is not subject to the MBACSC. The basin drains approximately 148,000 acres in 14 sub-basins. The Basin includes the unincorporated communities of Camp Sherman and the Three Rivers Recreational Area, and is recognized for its unique natural resources, scenery, and recreational opportunities.

C. Destination Resorts

Siting of destination resorts is governed by ORS 197.435 and Statewide Planning Goal 8 (Recreation). Jefferson County approved its destination resort map in December of 2006 (Attachment C). The map identified only two sites, both in or adjoining the Metolius Basin, totaling about 10,000 acres, and preliminarily involving over 3,000 overnight and residential units.

D. Key Event Timeline

December 2006 Jefferson County approves Destination Resort Map containing two proposed destination resort sites in the Metolius river basin. (The mapping process is on appeal to the Oregon Supreme Court. Thus the maps have not received DLCD acknowledgement, nor can developers submit master plans and development permits until the mapping issues and litigation are resolved).

March 2007 Senate Bill 30 prohibiting destination resorts in the Metolius basin and within a 3 mile buffer from the Jefferson County portion of the basin passes the Senate, but dies in the House.

December 19, 2008 Governor Kulongoski requests that LCDC and DLCD designate the Metolius Basin an Area of Critical State Concern, work with Jefferson County to develop a management plan that would not allow destination resorts in the basin and prepare a recommendation for legislative approval.

January 15, 2009 LCDC accepts the Governor’s request to initiate the MBACSC process at its regularly scheduled meeting, appoints a subcommittee to prepare the MBACSC recommendation, and directs staff to assist the subcommittee.

January, 2009 Director Whitman and DLCD staff meet with a wide variety of interested parties to discuss the MBACSC objectives, including representatives of the Confederated Tribes of the Warm Springs Reservation, county commissioners from Jefferson and Deschutes Counties, the Mayor and city council members of the City of Sisters, property owners, natural resource organizations, natural resource state agencies and the media.

February, 2009 LCDC subcommittee holds public hearings in Sisters and Madras on the MBACSC. A hearing on February 26, 2009 focuses on the committee discussion draft plan.

March 11, 2009 LCDC holds regularly scheduled meeting. Includes agenda item for Commission to hold a public hearing in Madras and make a final decision on the MBACSC.

IV. ELEMENTS OF MBACSC

A. The Basin as an area of Statewide Importance

The unique and historically acknowledged qualities of the basin are detailed, resulting in agreement that the basin reaches the threshold of statewide concern. Key to these qualities are the river and the springs that give rise to the river in the headwaters area. The river has received federal designation as a Wild and Scenic River, and state designation (of the upper reach) as a state Scenic River. Key fish, plant and wildlife considerations include:

- The portions of the basin that serve as vital deer and elk winter range, migration corridors and other habitat values.
- Fisheries values for listed bull trout and redband trout. A very significant effort is also being made to reintroduce anadromous fish to the basin and surrounding streams, including summer steelhead, sockeye and spring Chinook
- Significant stands of Ponderosa pine and other plant species.

B. Responsibilities of Tribes, State, Local and Federal Government

Agencies responsible for resource protection, land use, development and management in the basin include the Confederated Tribes of the Warm Springs Reservation, US Forest Service (Deschutes National Forest), Jefferson and Deschutes Counties, the Oregon departments of Water Resources, Fish and Wildlife, Environmental Quality, Land conservation and Development.

C. Threats and Concerns to the Basin. Need for Additional Regulation

The scale of the two destination resorts, one quite large at over 2,500 dwelling units, and 10,000 acres, and one smaller at 460 dwelling units and 640 acres (additional overnight units are also part of these proposals) are a key part of the context for consideration of a designation of an Area of Critical State Concern for the basin. These destination resorts would be twice as large as Black Butte or Sun River. If full, at buildout, and at 2 residents/unit, the sites would contain over 6,000 people during peak seasons. By comparison, the population of City of Sisters is 1,800. Traffic generated by the Ponderosa resort alone could amount to in excess of 7,500 automobile trips/day for 2,500 residential units, based on analysis related to other Central Oregon destination resorts. The scale then, of these two proposed resorts have implications for water usage, fire and public safety risk, fish and wildlife impacts, and limits to the recreational capacity of the basin.

Following up on legislative consideration of SB 30 in the 2007 legislature, three state agencies and the Deschutes National Forest responded in writing to a letter from Governor Kulongoski, which inquired whether current regulations were sufficient to protect the natural resource values from destination resorts. The answers prompted him to conclude that existing laws and regulations are insufficient for that task. Those responses, plus testimony offered at the LCDC subcommittee public hearings in February of 2009 have elicited some of the following specific concerns:

- Wildlife—Areas in and adjacent to the Metolius basin have historically been recognized as important deer and elk winter range. Jefferson County has mapped deer and elk winter range in its Goal 5 inventory as part of its Comprehensive Plan. However these maps are perceived to be out of date, and more recent deer and elk mapping has been performed by the Confederated Tribes of the Warm Springs Reservation, the US Forest Service, and by the Oregon Department of Fish and Wildlife (Attachments D-G). There is general agreement that the deer herds especially have been declining in the past 10-12 years, and that further development and traffic in their winter and transition ranges pose a serious threat to the health of the herds. According to ODFW mule deer numbers are 70% of management objectives for the Metolius Unit.

Nesting sites for federally listed owls also exist in the basin. Many sites were destroyed in recent wildfires in the basin, so existing sites will have to be considered in that context.

- Water—The Metolius Basin is a sub-basin of the Deschutes Basin. Water management and withdrawals are subject to the Deschutes Groundwater Mitigation Program, which in turn has to meet requirements of the federal Wild and Scenic River Act. The program is managed by the Oregon Water Resources Department. Water withdrawals related to new construction in Metolius basin would require mitigation in the basin where few mitigation opportunities exist. Generally, water withdrawals south of the basin would require mitigation in the larger Deschutes basin. However, data from a USGS study, including analysis by both USGS and OWRD, show that withdrawals outside the basin can cause an impact to water supply inside the basin and may require mitigation inside the basin. This has raised concern from many parties, over time.
- Fire—The Deschutes Forest Metolius Watershed Analysis Update (2004) paints the most complete picture of the impact of wildfires in and around the basin, going back to the turn of the previous century (Attachments I and J). Since 2000 the basin has been subject to unusually large and destructive fires that have affected over $\frac{3}{4}$ of the basin and required emergency evacuation. The Update indicates proposed changes in the Forest Service's management of the basin's resources, including limiting recreational opportunities because the basin was recognized to be its maximum capacity in that regard. Placement of an additional 3,500 overnight and residential dwellings in and near the basin raises questions of public safety and natural resource protection with regard to fire.
- Recreational Carrying Capacity –Information provided by the Deschutes National Forest and the Sisters Ranger District indicates that, in their judgment, the Metolius is at capacity for recreational activities. Deliberate choices have been made by the Forest Service not to provide additional visitor accommodations or to invest in other improvements that could draw additional visitation to the Metolius Basin because a substantial increase would threaten the recreational resource.

D. The Area Subject to the Management Plan

The boundary of the Area of Critical Concern consists of three subareas: (a) the Metolius basin

(defined by surface hydrology as mapped by the Oregon Water Resources Department), but not including lands owned and managed by the Confederated Tribes of the Warm Springs Reservation ; (b) a buffer area along the southern edge of the basin located to include lands where groundwater use is likely to adversely effect surface water flows in the Metolius basin, or where large-scale development would interfere with deer or elk winter range¹; and (c) a third subarea near Round Butte (east of the Lake Billy Chinook) identified as an alternative location where destination resort development may be authorized by Jefferson County. These three subareas respond to each of the policy objectives described previously in this plan.

E. The Management Plan

In response to the three objectives for the MBACSC listed above, the management plan does the following:

1. Protect the Basin—The management plan protects the basin and the buffer, through application of supplemental land use regulations which prohibit destination resorts and other large scale development. These prohibitions are linked in part to demonstrated water uses by destination resorts in Central Oregon.² Also prohibited are golf courses, and new uses of tracts of land resulting in average annual consumptive water uses in excess of specified levels in the basin³ and in the buffer⁴. New development (not including residential development of platted

¹ The proposed boundary of Subarea 2 was located based on two sets of criteria: (a) mapping of important wildlife areas by ODFW, the US Forest Service, and by Jefferson County; and (b) analysis of projected effects of groundwater withdrawals on surface water flows in the portion of the Metolius River designated as wild and scenic. In general, the southernmost portion of the boundary was based on groundwater impacts (where the impact of water withdrawn from a site, on the flow of the Wild and Scenic reaches of the Metolius river, is estimated to be greater than 30%) , while the southeastern edge was based on both wildlife and groundwater impacts, as well as potential threats to those resources.

² The typical total water use for planning purposes for a destination resort in Central Oregon is approximately 1250 acre-feet of water based on current resort requirements (1 golf course, 400 dwellings and 200 overnight accommodations). This quantity of water is slightly greater than the estimated current consumptive use of water in the Metolius basin.

³ According to the Oregon Water Resources Department, the total consumptive use of water in the Metolius basin is estimated to range between 0.32 cfs and 3.36 cfs in any month, or approximately 1,045 acre feet of water annually. The proposed limit on any new land use to an average annual consumptive use of 10 acre-feet would limit each new use to about 1 percent of the current basin-wide water use – a level where mitigation is reasonably likely to be possible. Ten acre-feet of water use translates to the typical total water use (consumptive and non-consumptive) of about twenty homes in Central Oregon. The Metolian resort projects an average annual water use of 160 acre-feet (for 450 homes and 180 overnight accommodations).

⁴ As the proportion impact of groundwater withdrawals in the Deschutes County portion of Subarea 2 that will occur in the Metolius basin is relatively high (averaging close to or even above 50 percent depending on the specific

lots or parcels) are also limited in the basin and in the buffer area (differentially for Jefferson and Deschutes counties. Existing uses allowed by the comprehensive plan and zoning ordinances, not restricted by the identified land use limitations remain as allowed uses, including those in unincorporated communities.

2. Allow Jefferson County a Clear Path to Allow Resort Development in More Appropriate Locations—An alternative site is identified in the plan near Round Butte in Jefferson County. This site is east of the Metolius basin and west of the city of Madras. Mapping and siting a destination resort in this area has the benefits of lesser degree of water, wildlife and fire impacts, while proximity to Madras provides additional economic benefits with regard to retail shopping and worker housing. Alternatively this site is mostly within a prohibited 3-mile buffer for high value crop land, otherwise prohibited by Goal 8 for destination resort siting. If this site is not amenable to Jefferson County, they would be allowed to remap areas eligible within the 30 month waiting period otherwise required by Goal 8. With adoption by the legislature, Jefferson County's existing mapping would be voided, and the mapping issues being litigated at the Supreme Court would become moot.

3. Provide a Fair Result for Property Owners—The MBACSC allows the owners of the two destination resorts two options. The first option allows very limited development on their currently proposed sites, based on their estimated values under M49. For the Metolian this is estimated to be approximately 25 recreational dwellings. For the Ponderosa, it is estimated to be approximately 100 recreational dwellings. Alternatively, one or both developers could choose to work with property owners in the Round Butte alternative area to create destination resort opportunities there.

V. JEFFERSON COUNTY PARTICIPATION

Jefferson County has testified at the LCDC hearings that it does not support the creation of an Area of Critical Concern in the Metolius Basin, because it eliminates proposed destination resorts which the county feels it designated properly. The county has proposed their own plan, creating a 6-mile protection area along the wild and scenic portion of the Metolius River. This plan would allow the two proposed resorts to develop as currently planned. It is silent with regard to destination on the Round Butte alternative site or to the possibility of re-mapping for destination resorts.

location) the carrying capacity cap for the Deschutes county area has been set lower than for the area in Jefferson County. The Deschutes County portion of Subarea 2 also contains substantially less private land

ATTACHMENTS:

- A: Governor Kulongoski's Letter to LCDC Regarding Area of Critical State Concern
- B: Oregon Revised Statute Authorizing LCDC to Designate Areas of Critical State Concern
- C: Jefferson County Map of Goal 8 Eligible Destination Resort Lands
- D: Oregon Department of Fish and Wildlife Map of Deer and Elk Ranges in Jefferson County
- E: US Forest Service Map of Deer Range in the Metolius Basin
- F: US Forest Service Map of Elk Range in the Metolius Basin
- G: Oregon Department of Fish and Wildlife Map of Especially Sensitive Wildlife Habitat in Jefferson County
- H: Ponderosa Land and Cattle Company Ownership Map
- I: Oregon Department of Forestry Wildfire Risk Map
- J: Metolius Fire Risk Maps, 2004 US Forest Service Watershed Analysis Update

Attachment A: Governor's Letter to LCDC Regarding Area of Critical State
Concern



THEODORE R. KULONGOSKI
Governor

December 19, 2008

Mr. Richard Whitman, Director
Oregon Department of Land Conservation & Development
635 Capitol ST NE, Suite 150
Salem, OR 97301

Mr. John Van Landingham, Commission Chair
Land Conservation & Development Commission
376 East 11th AV
Eugene, OR 97401

Dear Director Whitman and Commission Chair VanLandingham:

This year marks the twentieth anniversary of the Oregon Rivers Initiative, by which the people of Oregon designated the Metolius River as a state Scenic Waterway. In that same year, Congress approved the addition of the Metolius to the National Wild and Scenic River System. Under the federal legislation, the Metolius and adjacent lands are managed to provide a primitive recreational experience. Under the state legislation and implementing rules, the Metolius and surrounding lands are administered to allow compatible river-oriented public outdoor recreational opportunities, to the extent that these do not impair substantially the natural beauty of the scenic waterway or diminish its aesthetic, fish and wildlife, scientific and recreational values.

As you know, the 2007 Legislative Assembly considered (and the Oregon Senate passed) a bill to prohibit destination resort development within three miles of the Metolius Basin. The purpose of Senate Bill 30 was to " * * * protect * * * the basin's natural resources, wildlife habitat and historical, cultural and scenic values from urban and similar forms of development." Although I agreed that the Metolius is a special place – deserving special protection, I expressed some concerns with Senate Bill 30 in a letter to Representative Diane Rosenbaum dated June 22, 2007. In that letter, I also reported that I had asked state agencies to report to me concerning the adequacy of existing state laws to protect the resources of the Metolius.

After analyzing the potential effects of resort development in and near the Metolius basin, the state agencies reported that existing laws do not fully protect the important natural resources of the Metolius basin including water quantity, water quality, and fish and wildlife. In addition, the Oregon Land Use Board of Appeals and the Oregon Court of Appeals since have confirmed that the groundwater sources that supply the Metolius River are specifically excluded from the

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natural resources that are protected under Jefferson County's comprehensive land use plan and corresponding state land use laws. As a result, local and state land use plans and goals do not protect the water sources that supply the Metolius River.

At present, Jefferson County has mapped two potential sites for destination resort development in or near the Metolius basin. While I know that the county went through a long and careful process to map potential sites for resort development, I am concerned that the combination of inadequate state protections and absent local safeguards for groundwater leaves the unique and irreplaceable resources of the Metolius exposed to the harmful effects of large-scale development. As a result, I am asking the Department and the Land Conservation & Development Commission to designate the Metolius basin as an Area of Critical Concern, and to work with Jefferson County to develop a state management plan for private lands in the basin. The management plan should not allow destination resorts within the Metolius basin, but may include provisions that allow small-scale development and that provide for the transfer of development rights out of the basin to nearby areas. In addition to working with Jefferson County and local citizens, the Department also should confer with other areas and entities that could be affected, including (but not limited to) the City of Sisters.

To assure that there is time to consider this matter during the 2009 Legislative Session, I also ask that you complete this effort by the middle of March of 2009. I recognize that this is an ambitious schedule, and that it may mean that some details of the management plan are left to be fleshed out in a later stage of work, but I would like the main elements of the plan completed by mid-March. If it is not possible to complete a designation and management plan by mid-March, we will need to explore legislative alternatives but (as you know) my preference is to develop an approach through a more collaborative process with Jefferson County and other interested parties and citizens.

Thank you in advance for taking on this important effort. I am hopeful that this will serve as a model for an alternative approach to direct legislative action in area-specific land use matters that involve resources of state-wide importance.

Sincerely,



THEODORE R. KUIBONGOSKI
Governor

Attachment B: Oregon Revised Statute Authorizing LCDC to Designate Areas of Critical State Concern

AREAS OF CRITICAL CONCERN

197.405 Designation of areas of critical state concern; commission recommendation; committee review; approval by Legislative Assembly. (1) The Land Conservation and Development Commission may recommend to appropriate legislative committees the designation of areas of critical state concern. Each such recommendation:

(a) Shall specify the reasons for the implementation of additional state regulations for the described geographic area;

(b) Shall include a brief summary of the existing programs and regulations of state and local agencies applicable to the area;

(c) May include a management plan for the area indicating the programs and regulations of state and local agencies, if any, unaffected by the proposed state regulations for the area;

(d) May establish permissible use limitations for all or part of the area;

(e) Shall locate a boundary describing the area; and

(f) May designate permissible use standards for all or part of the lands within the area or establish standards for issuance or denial of designated state or local permits regulating specified uses of lands in the area, or both.

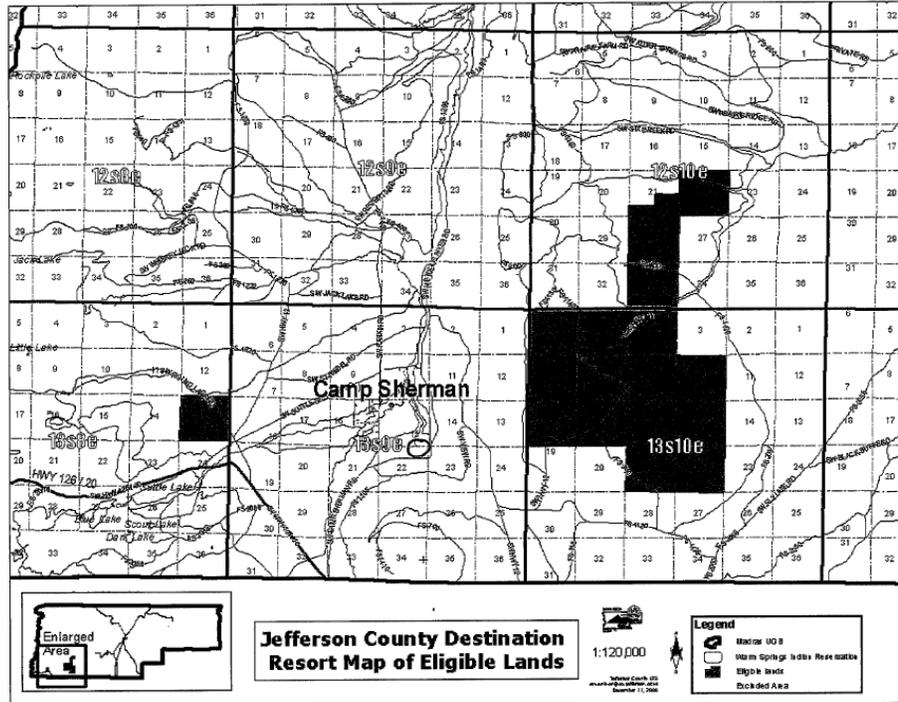
(2) The commission may act under subsection (1) of this section on its own motion or upon the recommendation of a state agency or a local government. If the commission receives a recommendation from a state agency or a local government and finds the proposed area to be unsuitable for designation, it shall notify the state agency or the local government of its decision and its reasons for that decision.

(3) Immediately following its decision to favorably recommend to the Legislative Assembly the designation of an area of critical state concern, the commission shall submit the proposed designation accompanied by the supporting materials described in subsection (1) of this section to the appropriate legislative committees for review.

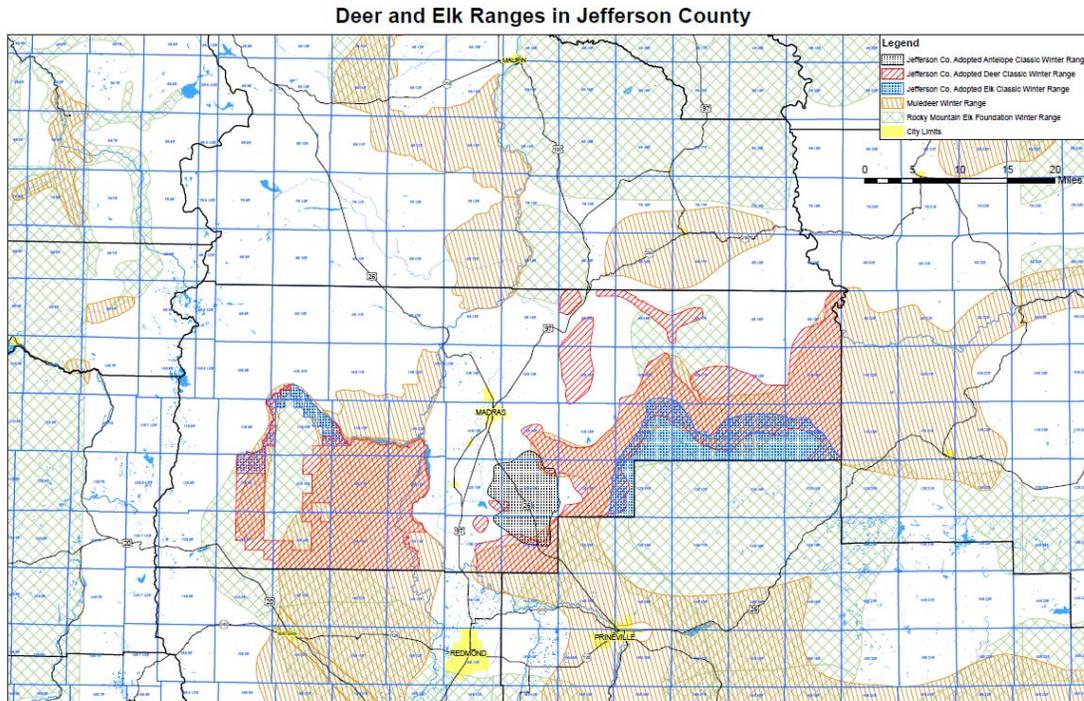
(4) No proposed designation under subsection (1) of this section shall take effect unless it has first been submitted to appropriate legislative committees under subsection (3) of this section and has been approved by the Legislative Assembly. The Legislative Assembly may adopt, amend or reject the proposed designation. [1973 c.80 §26; 1977 c.664 §28; 1981 c.748 §12; 2007 c.354 §11]

Attachment C: Jefferson County Map of Goal 8 Eligible Destination Resort Lands

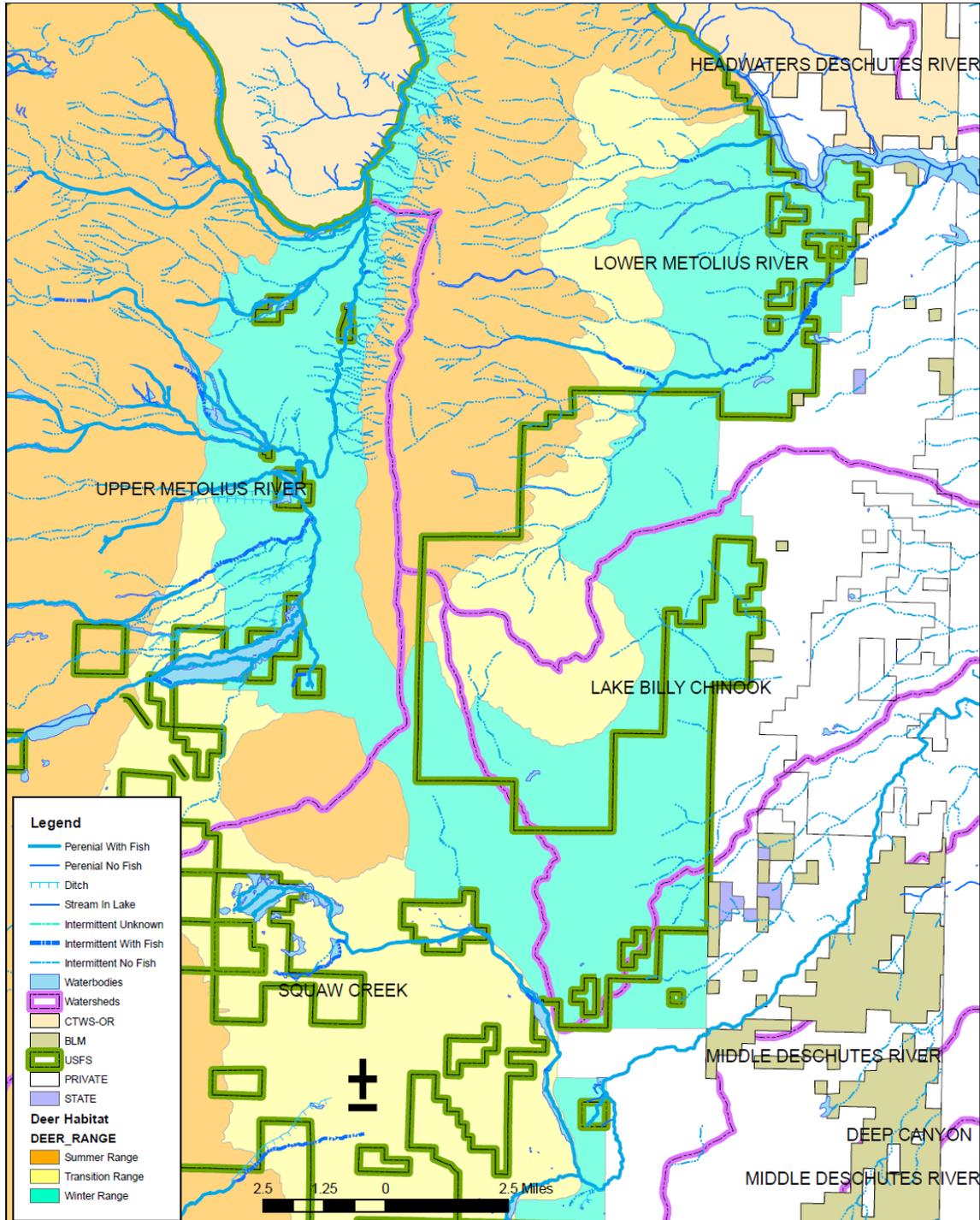
Jefferson County Comprehensive Plan



Attachment D: Oregon Department of Fish and Wildlife Map of Deer and Elk Ranges in Jefferson County

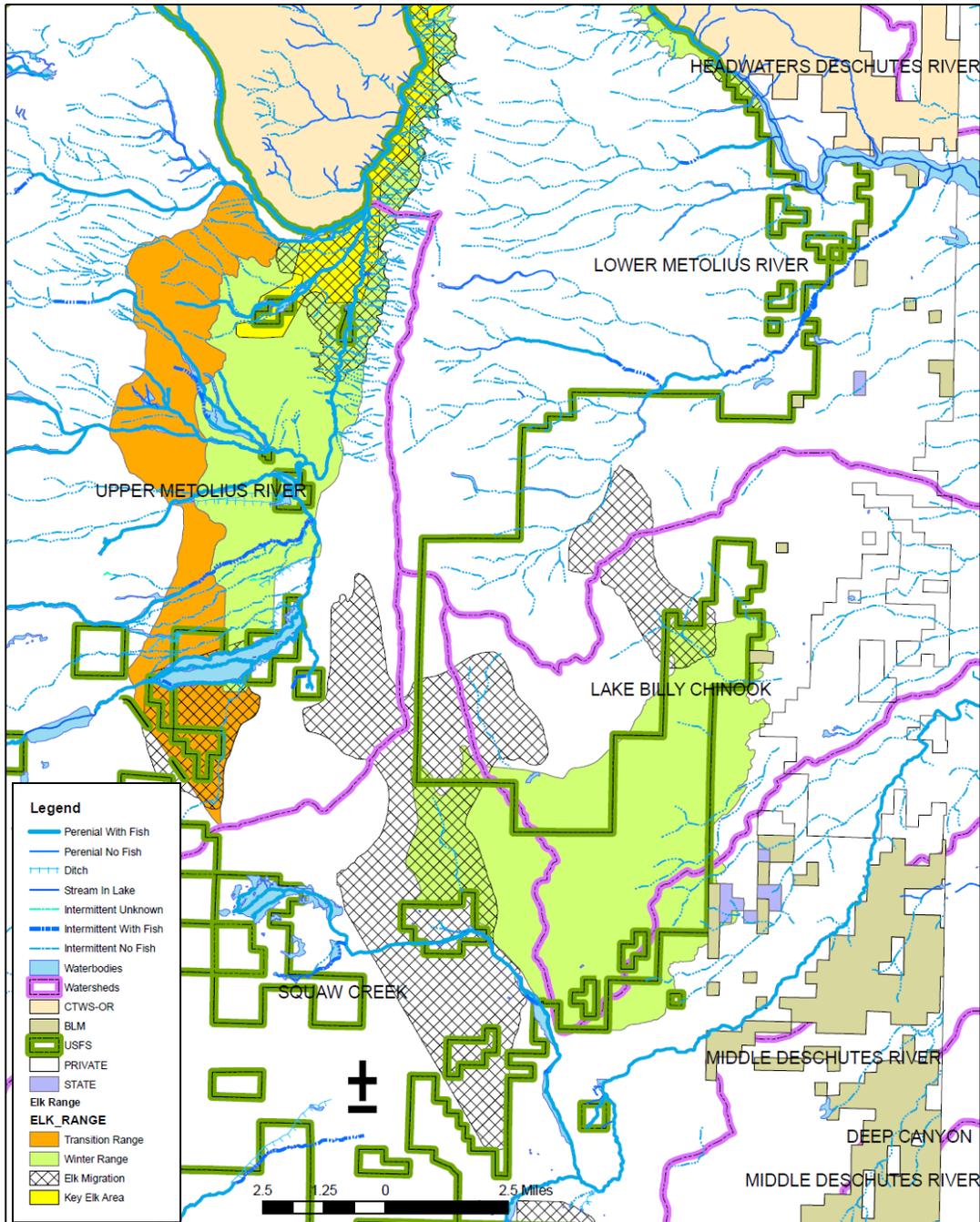


Attachment E: US Forest Service Map of Deer Range in the Metolius Basin

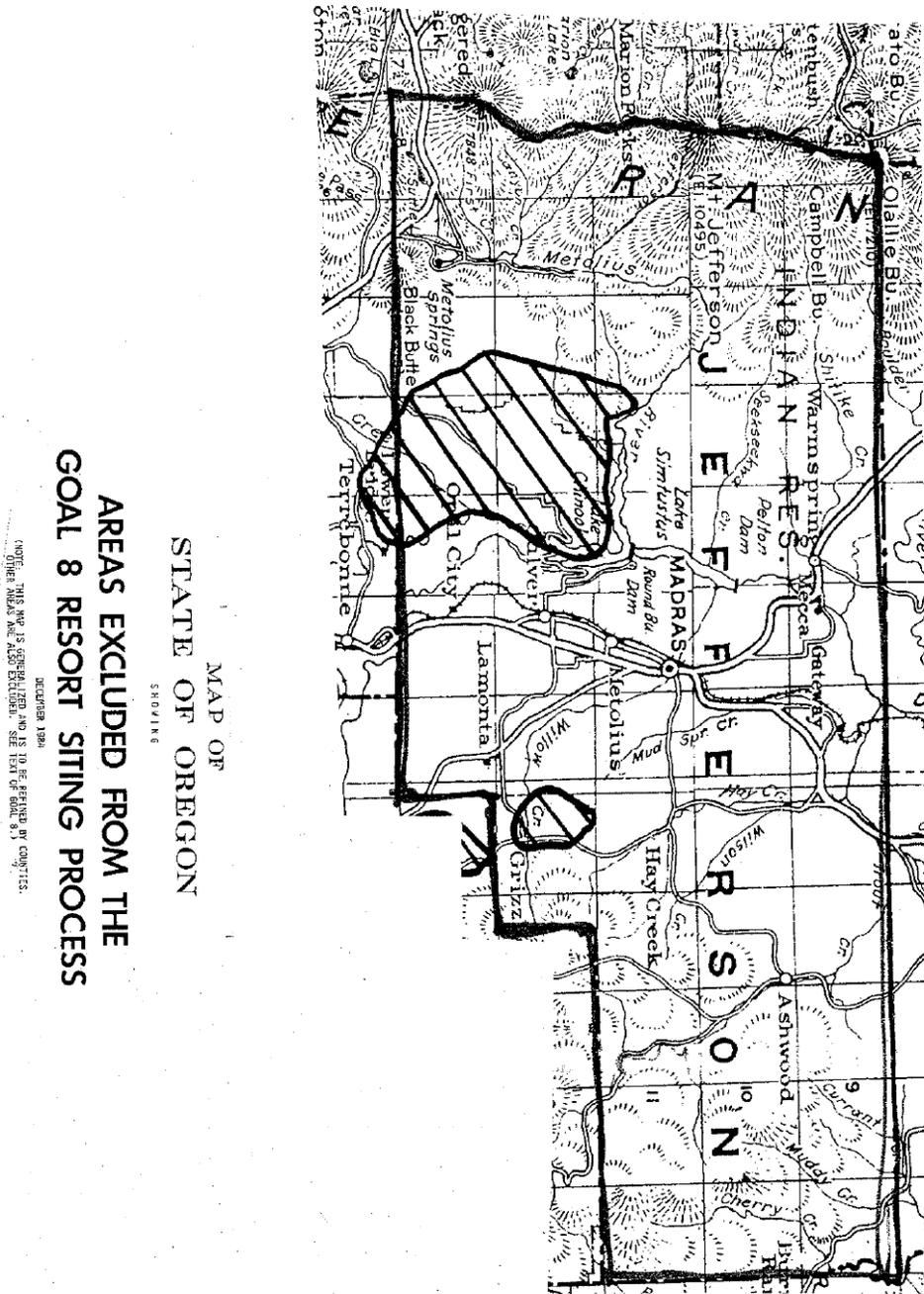


Attachment F: US Forest Service Map of Elk Range in the Metolius Basin

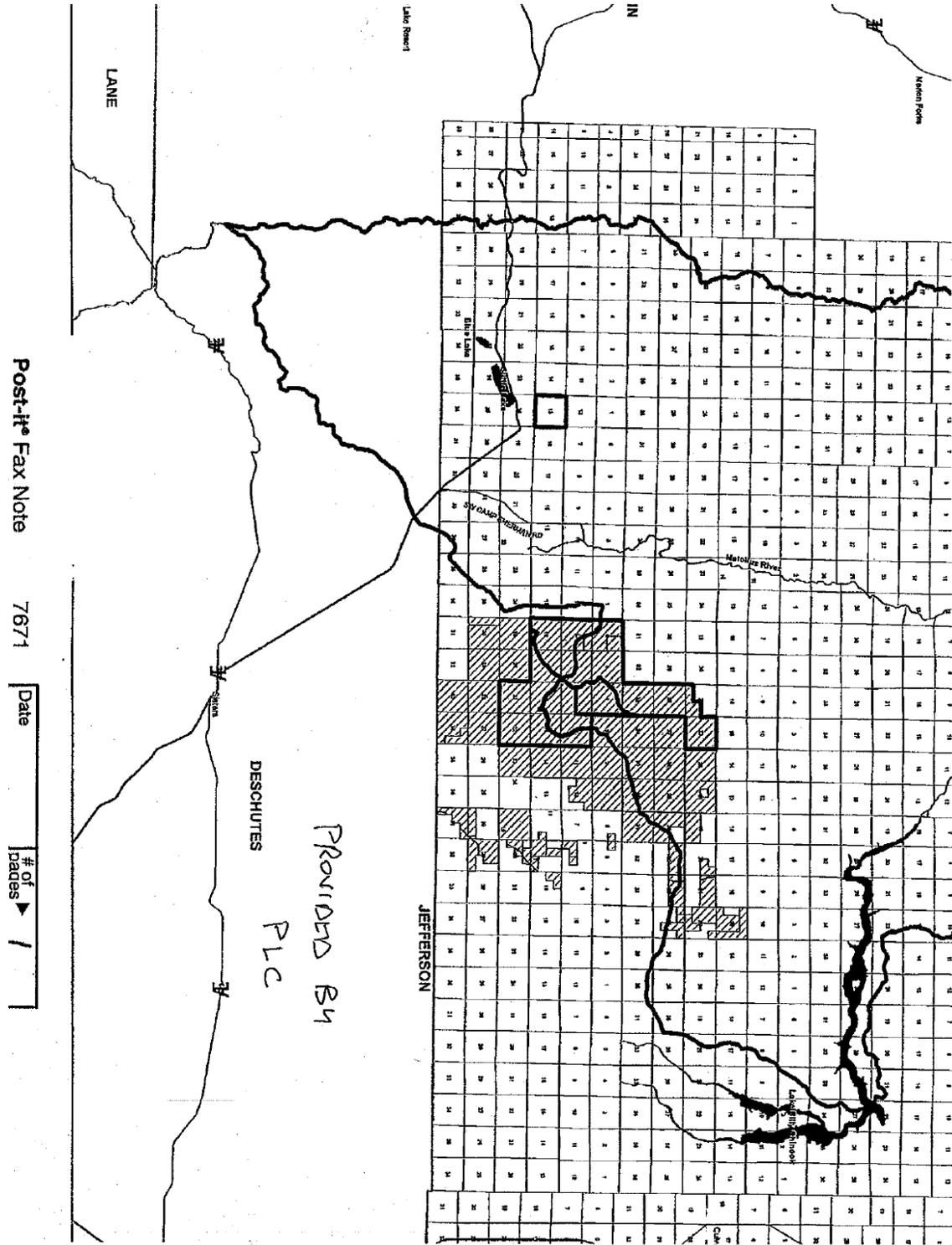
Elk Range Map - Metolius Basin



Attachment G: Oregon Department of Fish and Wildlife Map of Especially Sensitive Wildlife Habitat in Jefferson County



Attachment H: Ponderosa Land and Cattle Company Ownership Map



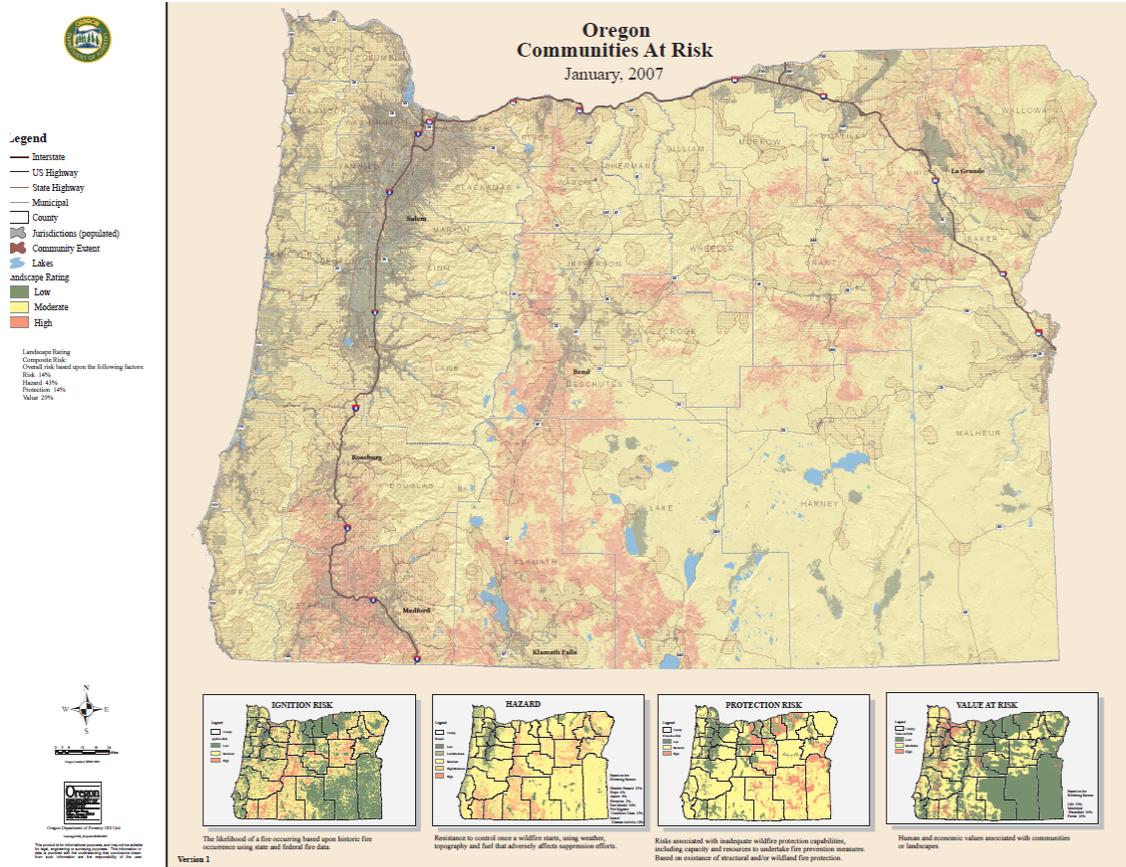
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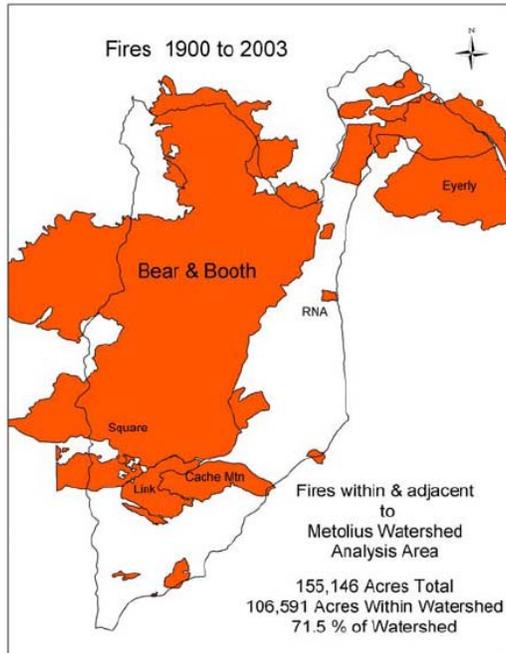
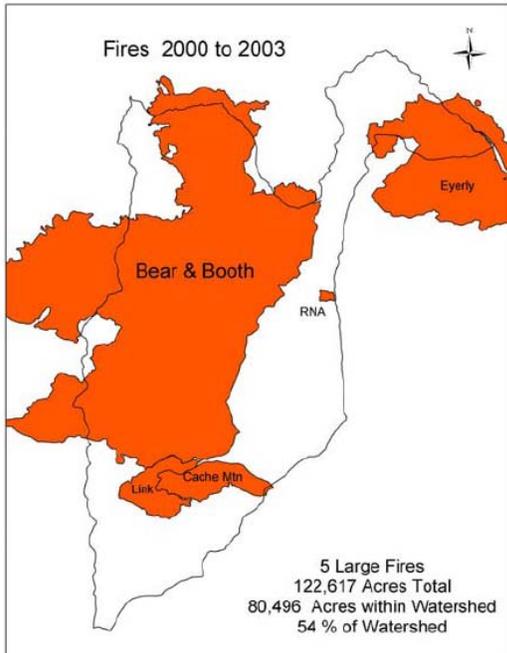
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Attachment I: Oregon Department of Forestry Wildfire Risk Map



Attachment J: Metolius Fire Risk Maps, 2004 US Forest Service Watershed
Analysis Update



Attachment J: Cont.

