

**CHAPTER 90
MISCELLANEOUS**

**ARTICLE 99
SENSITIVE BIRD SPECIES HABITAT OVERLAY**

99.005 - PURPOSE

The purpose of the Sensitive Bird Species Habitat Overlay is to insure that sensitive habitat areas identified in the County's Goal 5 Sensitive Species Inventory as critical for the survival of the Golden Eagle, Prairie Falcon, and the Northern Bald Eagle are protected from the effects 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 analysis (ESEE).

99.010 - DEFINITION OF SENSITIVE HABITAT AREA

- A. The sensitive habitat area is the area identified in the Klamath County Comprehensive Plan Resource Element inventory and site specific ESEE for each sensitive species site. The sensitive habitat area to be protected by the provisions of this article is defined as the area:
1. Within a diameter of 660 feet or 1/8 of a mile of a golden eagle nest, bald eagle nest, or prairie falcon nest
 2. Within a diameter of 1320 feet or 1/4 of a mile of a golden eagle nest, bald eagle nest, or prairie falcon nest

99.015 - LIMITATIONS AND USES PERMITTED

- A. Uses permitted and conditionally permitted in the underlying zone(s) are either prohibited or subject to the additional procedure and requirements of Section 99.020 and the provisions of the ESEE decision. The Sensitive Species Habitat Zone does not regulate or prohibit forest practices subject to ORS 527.610 to 527.770 and the rules adopted pursuant thereto; or to farm practices as defined by ORS 30.947(2).
- B. When there is a conflict between the site-specific ESEE analysis and the provisions of this overlay the ESEE analysis shall take precedence.

99.020 - APPLICABILITY

- A. A review under this article shall be triggered by the following proposals occurring within a sensitive habitat area, as defined in Section 99.010 of this article:
1. An application for a site plan approval or any land use permit identified as a conflicting use in the ESEE analysis.
 2. Land divisions creating new building sites within the sensitive habitat area.
 3. An application for a conditional use permit identified as a conflicting area in the ESEE analysis.

99.030 - SITE PLAN

- A. For those proposals identified in 99.020 to be sited within an inventoried sensitive habitat area, as defined under Section 99.010, a site plan shall be prepared in accordance with the requirements of this section and Article 41. The site plan shall be approved prior to issuance of a building permit, land partition, subdivision, or conditional use permit.
- B. The site plan shall provide the following information in addition to the requirements of Article 41 (Site Plan Review):
 - 1. Description of operating characteristics of the proposed use including times when activity within the sensitive habitat area would generate noise, dust, vibration, lights, traffic or be visible from the nest.
 - 2. Timing of construction activities including grading or filling land, hauling building materials.
 - 3. Description of existing vegetation and vegetation to be removed for the proposed development.
- C. The County shall submit a copy of the site plan to the Oregon Department of Fish and Wildlife (ODFW) for comment. ODFW shall have 20 days from the date the site plan is mailed to submit written comments to the County.
- D. Based on the comments, the criteria in Section 99.040, and the ESEE analysis, the County shall approve or reject the site plan. The County may allow the applicant to revise the site plan if the applicant has not met the standard for approval. Applicant shall waive the 150-day time limit if he/she chooses to revise the site plan.

99.040 - SITE PLAN REVIEW

- A. Approval of a site plan shall be based on the following criteria:
 - 1. The site plan shall consider the biology of the identified sensitive species, nesting trees, critical nesting periods, roosting sites and buffer areas.
 - 2. Development activities, including grading and fill, mining, construction or activities generating noise or dust within the sensitive habitat area shall be prohibited during the nesting season identified in Section 99.055, unless the site qualifies for On-Site Validation under section 99.050.
 - 3. New roads, driveways or public trails shall be located at the greatest distance possible from the nest unless topographic or vegetation or structural features will provide greater visual and/or noise buffer from the nest.
 - 4. Existing vegetation or other landscape features which are located on the subject property and which obscure the view of the nest from the proposed development shall be preserved and maintained. All existing vegetation not disturbed by the proposed project shall be preserved and maintained.

5. No partitions or subdivisions shall be permitted which would allow the location of a dwelling sensitive habitat impact area or other structure not otherwise permitted by the site specific ESEE, within the 660-foot.
6. All exterior lighting, including security lighting, shall be sited and shielded so that the light is directed downward and does not shine on the subject nest.
7. The site plan shall conform with the requirements of the ESEE decision for the subject sensitive species habitat site contained in Goal 5 Inventory of the Klamath County Plan.

99.050 - ON-SITE VALIDATION

- A. If a site has been abandoned or that nesting activity has ceased prior to the time specified in Section applicant may have to hire a private contractor that will follow the established protocol in 99.050(B) to provide the necessary information to ODFW. If confirmation is validated by the ODFW, the applicant will be able to build or start his/her project on or after the early release date.
- B. The purpose of these guidelines are to establish criteria for modifying the species protection period for a pair of birds in the event the nest site is inactive, unsuccessful or the young have left the nest area. If it can be determined that a nest site is not active then the species protection period can be lifted for that year. The early release dates proposed here reasonably reflect that date after which nest initiation or re-nesting attempts probably would not occur.
 1. To determine if a nest is active or inactive, the nest site must be monitored. A monitoring plan should include, at a minimum, three field observation periods of four hours duration. Sampling periods should be separated by at least ten days. If a nest is not active by the early release date then the protection period can be terminated. If it is determined that nesting is active, after the young have fledged and left the nest tree area, the protection period can be lifted.
 2. If no monitoring is planned for the site, then the full species protection period should be in effect.
 3. The nest monitoring must be conducted by a biologist. The field activities must not become a disturbing activity and possible cause of nest abandonment.

99.055 - PROTECTION PERIOD

<i>Species</i>	<i>Protection Period</i>	<i>Early Release</i>
Bald Eagle	Jan 1 - Aug 31	May 1
Golden Eagle	Feb 1 - Aug 31	May 1
Prairie Falcon	April 1 - July 30	June 1

99.060 – REMOVAL AND EXPANSION OF USES

- A. If site is confirmed by Oregon Department Fish and Wildlife or a biologist to be abandoned or destroyed, then the site shall be removed from the inventories.
- B. A prohibited use may be established if approved as a plan amendment under the provisions of Articles 47, 48, and 49 of the Klamath County Land Development Code.