



BOARD OF COMMISSIONERS

1300 NW Wall Street, Bend, Oregon
(541) 388-6570

FOR RECORDING STAMP ONLY

BOCC MEETING MINUTES

9:00 AM

WEDNESDAY, February 1, 2023

Barnes Sawyer Rooms
Live Streamed Video

Present were Commissioners Anthony DeBone, Patti Adair, and Phil Chang. Also present were Nick Lelack, County Administrator; Kim Riley, Assistant County Counsel; and Brenda Fritsvold, BOCC Executive Assistant.

This meeting was audio and video recorded and can be accessed at the Deschutes County Meeting Portal website www.deschutes.org/meetings.

CALL TO ORDER: Chair DeBone called the meeting to order at 9:02 a.m.

PLEDGE OF ALLEGIANCE

CITIZEN INPUT:

- Dorlee Kingen described a proposal to promote community living on land zoned MUA-10 by permitting individual homes to be built at a density of one structure per acre, but allowing the homes to be sited in close proximity to each other rather than be dispersed. She explained this would promote security, friendship and neighborliness and said she is seeking authorization from the State legislature for a pilot project.

Commissioners DeBone and Adair spoke to efforts to engage one or more State legislators on this idea. Commissioner Chang noted that MUA-10 is a rural zone and advised consideration of the potential results of allowing this type of use all over the county, which could affect thousands of acres. He raised the question about possible impacts to other rural property owners.

Chair DeBone acknowledged the receipt of five citizen input emails regarding the Camping Feasibility Study; one email supporting the availability of the COVID bivalent booster for children aged six months to five years; and one email asking that the Bear Creek site be removed from consideration for locating a new landfill.

CONSENT AGENDA: Before the Board was Consideration of the Consent Agenda.

ADAIR: Move Board approval of Consent Agenda
CHANG: Second

VOTE: ADAIR: Yes
CHANG: Yes
DEBONE: Chair votes yes. Motion Carried

1. Memorandum of Agreement with the Federal Highway Administration for the Chip Seal of Cascade Lakes Highway – Mt Bachelor to Elk Lake
 2. Memorandum of Understanding with Saving Grace: Justice for Families Program
 3. Consideration of Board Signature on letters of appointment, reappointment and thanks for various Special Road Districts
 4. Approval of the BOCC meeting minutes for January 11, 2023
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ACTION ITEMS:

5. Public Hearing: Board Review of Two Appeals of a Modification Request to the Thornburgh Destination Resort’s Fish & Wildlife Management Plan

Caroline House, Senior Planner, explained the procedure for the hearing.

The public hearing was opened at 9:17 am.

House next presented a staff report sharing the background of the proposed project and the request from the applicant to replace its 2008 Fish & Wildlife Management Plan (FWMP) with a new plan developed in 2022. That request was denied by the Hearings Officer, and two appeals were subsequently filed—one by the applicant, and one by Annunziata Gould. House explained the four options before the Board following the conclusion of the public hearing, as follows:

1. Continue the hearing to a date and time certain;
2. Close the oral portion of the hearing and leave the written record open to a date and time certain;

3. Close the hearing and commence deliberations; or
4. Close the hearing and schedule deliberations for a date and time to be determined.

Commissioner Chang recalled he had asked whether other destination resorts had been required to submit their FWMPs to the Oregon Department of Fish & Wildlife (ODFW). House replied that all four destination resorts said ODFW reviewed the no net loss standard as it pertains to fish and wildlife impacts, and the submitted management plans were approved.

House concluded that the County has received more than 200 comments on this matter.

Commissioner Adair noted that the "Three Rivers Irrigation District" referred to in a footnote of the Hearings Officer's report should actually read the "Three Sisters Irrigation District."

J. Kenneth Kataroff, representing the applicants Central Land & Cattle Company and Kameron DeLashmutt Pinnacle Utilities, introduced James B. Newton from Cascade Geoengineering who supplied information on how the resort's reduced ground water withdrawals will impact fish habitat. Newton said the applicant sought a modification to the FWMP because more information is available now than in 2008, and that new information allows for better mitigation measures. Newton described the Upper Deschutes basin and the Deschutes formation aquifer including its size, annual recharge area, total use of groundwater and surface water, and proposed use by the Thornburgh development. He further explained groundwater flows and discharge activity back to the Deschutes River, summarized the differences between the 2008 and 2022 FWMPs, said Thornburgh is proposing a reduction in water use from 2,129 to 1,460 AF, reviewed the technical analyses that have been conducted by various consultants and agencies, and concluded that the proposed mitigation measures will meet the required "no net loss" standard.

Kellie Vashe from Maxstep Aquatics elaborated on the expected thermal impacts of the proposed mitigation plan on the Middle Deschutes River and Whychus Creek. He provided an overview of the temperature modeling that was conducted over a six-month period from April to October and said results indicate that very small changes in river flow result in very small changes in river temperature.

Joseph Eilers, a professional hydrologist, spoke to the projected positive effects of harvesting juniper on the resort property as well as on adjacent lands owned by the Bureau of Land Management.

Kataroff distribute updated copies of the FWMP, noting that section 2 includes the mitigation measures and more detailed information on compliance and reporting. The applicant requests changes to condition #38 to remove the language stating

that “The mitigation measures include removal of existing wells on the subject property, [sic] and coordination with ODFW to model stream temperatures in Whychus Creek” along with a proposed new condition #40.

Commissioner Chang commented on the plans to thin and clear juniper and how this will or will not affect groundwater levels. He questioned how the applicant will ensure that the mitigation measures are delivered via clear, enforceable objectives.

Newton responded that the mitigation measures must be reviewed and approved by the State before Thornburgh can pump any groundwater. The property owner will provide annual reports to the Oregon Water Resources Department (OWRD).

- Austin Smith, Jr., manager for the Confederated Tribes of the Warm Springs, sought time to confer with the applicant and ODFW and asked for 30 days to allow such consultation and a review of the submitted information. Smith referred to plans and Memorandums of Understanding with ODFW for hunting and fishing rights and expressed concern regarding potential habitat impacts for cultural resources.
- Ellen Grover, legal counsel for the Confederated Tribes of the Warm Springs, spoke to the technical expertise needed to evaluate the modeling and said the Tribe is experienced in developing fish passage and other resource conservation plans to support and improve habitat and reintroduce key species. She said the Tribe wants to understand the projected impacts to the Whychus River and Crooked River and seeks also to make sure that the applicant has fully met its burden to address potential impacts through mitigation. She asked that the record be kept open following the public hearing for 30 or 60 days.
- Danette Faucera, water policy coordinator for ODFW, said ODFW has not yet received sufficient information to determine that the modified plan and its modeling results are valid, and therefore cannot determine that the no net loss standard has been met. Faucera referenced the letter submitted by ODFW which detailed still-unresolved concerns, including the reliability of water rights.
- Jerry George, ODFW district fish biologist for the Upper Deschutes watershed, said groundwater pumping is expected to have impacts in the Crooked River, in the Deschutes River downstream of Lower Bridge, and in Whychus Creek. He said the species supported by these streams including trout and steelhead need clean, cold water especially during the summer’s elevated temperatures. He noted increasing demands on groundwater from residential and agricultural uses and said a serious decline in groundwater levels has occurred since 2008 due to new development.

Commissioner Chang emphasized that the County’s standard is no net loss of habitat quality or quantity, which means that any water offered as mitigation must be currently being extracted from the river or the ground.

- Jennifer Bragar, representing appellant Annunziata Gould, argued that because the Conceptual Master Plan (CMP) became voided in 2015, the applicant has no

right to water and no fire suppression. She stressed that the County should not issue building permits to a development that has no access to water. She added that the applicant has not filed a complete application, has not shown that its proposed new sources of water are available, and has not shown that the project's negative impacts will be completely mitigated.

- Karl Anuta, also representing Gould, agreed that the resort does not have a functional water right, although it is proposing an amendment to use different water rights. He said the record does not support that it will meet the no net loss requirement; rather, the analyses clearly show impacts to the Crooked River basin and watershed. He encouraged the Board to uphold the Hearings Officer's denial of the request.
- Bragar concluded that more time is needed to evaluate the proposed condition change and proposed new condition of approval, especially as these changes were drafted by the applicant. She asked that the record be kept open for 60 days.
- Annunziata Gould emphasized the need to protect fish and water, and said the County Code requires the "no net loss" standard be met.
- Linda Swearingen referred to her past work for various destination resorts and said Thornburgh is being required to meet a greater standard than any other. She noted the resort market has changed dramatically over the years and believed that ODFW lacked evidence to support its claims due to lack of staff and resources.
- Joe Craig expressed concern about the pressure on the region's water supply and asked that the County deny Thornburgh's appeal. He objected that the resort outbid the City of Bend for water rights and said because conditions have changed since 2008, the resort should submit a new application based on current conditions, including the number of wells which are running dry.
- Jane Lesson urged the Board to deny the request, said the applicant must solidify water rights before using them, and was concerned that the health and welfare of the Deschutes River and all the life it supports be protected. She said the County is on the precipice of a water crisis and believed it a waste of public resources to spend time on this.
- Mary Fleischmahn opposed the approval of this appeal owing to concerns about continuing loss of groundwater, climate change, and impacts on natural resources. She encouraged developing a master land use plan to manage growth and accommodate affordable housing, open areas and wildlife corridors.
- Bill Littlefield testified that the amount of water that recharges has dwindled over time. He said for the last three years, he has paid for irrigation rights without receiving any water, and noted that many property owners are having to deepen their wells. He spoke to the need to protect fish and wildlife and encouraged the Board to be mindful of current and longtime residents.
- Douglas Stout spoke on behalf of the Bend chapter of the Oregon Hunters Association, himself and his family. He agreed that wells are going dry and reported that subterranean water is down 38 feet from 1980 according to the

USGS. He said it would be wrong to grant this proposal under those conditions and emphasized the need to protect wildlife and their fragile habitat.

- Carol Macbeth, representing Central Oregon LandWatch, disputed the proof put forward by the applicant in terms of water (G17036). She said the proposed changes are substantial and require the submittal of a new application.
- Bob Buddenbohn shared his status as a landowner farmer and expressed his support for an update of the wildlife inventory to address mule deer winter habitat. He reported his previous objection to the sale of 400 acres from the Oregon Department of State Lands to the resort and said while he has 100-year water rights, the irrigation district is restricting those because sufficient water is not available. He said in this deteriorating situation, the County should not approve new service demands—instead, it should prioritize granting more rights to existing irrigation districts for those who have longstanding financial interests.
- Lauren Cramer said she owns a small farm in Tumalo, and the lack of adequate water has forced her to cut back on 50% of her water rights. She requested that the County require the applicant to conduct a study to ensure the protection of eagles and their habitat. She urged the protection of current residents and wildlife, said that the County should not allow the transfer of water rights which have not been used, and asked that the Board deny the appeal and choose what is right for the community as a whole.
- Dirk Van Houweling agreed with and supported the appeal submitted by Annunziata Gould and said a new Conceptual Master Plan is required due to the substantial changes proposed. He encouraged the Board to consider the health and welfare of the County's ecosystem today and ten years from now, especially as the region is experiencing a water crisis. He objected that the resort wants to take water from farmers.
- James Garner shared his high regard for the Thornburghs and their history and love for this area. He said destination resorts are a desirable use and said growth will continue to happen and should be done in a thoughtful way that limits sprawl.
- William Larson agreed that removing junipers will not increase the amount of water available for use. He questioned if the information put forth by the applicant can be trusted and asked if building this resort will improve the current water situation. He found the projected net increase in water availability laughable and said the development would absolutely have a large impact on neighboring properties, yet the applicant will not be on the hook to pay for private wells that go dry and must be extended or replaced.
- Pam Monheimer said another water use is not ecologically sustainable and this development would also stress mule deer along with other ecosystems. She noted that the Wickiup Reservoir is nearly empty at the end of the irrigation season and said the County does not need another golf course or resort but rather needs farms as well as water for consumption and household use.
- Abby Kellner-Rode asked that the appeal be denied and this development stopped. She commented on worsening drought conditions, said extravagant

water usage is dooming, and spoke to the need for affordable housing and farms, not this kind of development.

- Susan Burdick said because her well went dry in 2021 and could not be deepened, she was forced to borrow money to dig another. She said this development would negatively affect her water table along with others.
- Jacqueline Berger ask that the Board deny this request and instead require the submittal of a new application since the applicant cannot prove a ten-year water supply as necessitated by law. She supported protecting farming and ranching opportunities as well as access to public lands, wildlife and open spaces, and said the existing resorts are short-staffed with amenities not always available.
- Susan Hart asked that the appeal be denied and said the data presented by the applicant is outdated. She referred to projections that show moderate to extreme drought in Deschutes County, said 91.2% of people in the county are affected by drought, and added that juniper trees serve as habitat for wildlife.
- Steve Greening said as a person who hunts, skis and fishes, he was concerned that this project would take an incredible amount of water from the ground and affect the Crooked River in addition to neighboring wells.
- Cate Havstad-Casad asked the Board to reject this this proposal, saying that the applicant has failed to show that the no net loss standard will be met. She supported coming together on behalf of all area irrigation districts and was concerned about a lawsuit threatening water rights.

Commissioner DeBone acknowledged the receipt of citizen input emails on this matter from Mary Fleischmahn, Denise LaBuda and Ruby Swanson.

J. Kenneth Katzaroff said no new water is proposed to be used; rather, the resort has acquired current water rights. He said all of the arguments put forth by appellant Gould have been rejected by the courts, and both LUBA and the Court of Appeals have said the water right described under G17036 is available to the property owner. He said the applicant has provided a great deal of information to ODFW and further said that the mitigation measures in the 2022 modified FWMP will benefit the Crooked River and Whychus Creek in contrast to the 2008 plan. He emphasized that all of the water rights are currently owned and being used.

Jim Newton concurred that the plan does not involve new water. He explained that changing an existing water right requires cancellation in lieu of a new use, and no new use can be allowed without alleviating a previous or current use.

Commissioner Adair asked staff to confirm that the Pronghorn resort changed its water source and did not have to address fish habitat management.

Commissioner Chang asked if all of the resorts were required to submit Fish and Wildlife Management Plans, and if so, did those plans contain a fish habitat component. He was not clear on how wet the water being offered up as mitigation water is and asked for clarification on this. Specifically, he wanted to know if the

water being offered as mitigation is being used now on a regular basis, and if so, how much in terms of quantity and frequency of use.

Discussion ensued regarding the possible extension of the comment period and the upcoming deadline for the County to issue a final decision on this matter. The Board was in consensus to keep the record open for two weeks with a possible additional extension. Parties can file a request for continuance of the initial two-week period no later than Monday, February 13th. The applicant will notify the County no later than Tuesday, February 14th whether any extension of the 150-day period will be requested. On Wednesday, February 15th, the Board will decide whether to grant an extension of the open record period.

The public hearing was closed at 12:36 p.m. and a break was announced.

The meeting was reconvened at 12:44 p.m.

6. Adult Parole & Probation Expansion Project, Skanska USA Building, Inc. Change Order No. 4—DCSO Wellness Area

Lee Randall, Facilities Director, and Sergeant Blair Barkhurst and Captain Paul Garrison from the Sheriff's Office presented the proposal to have Skanska convert an existing dormitory in the DCSO's work center to a staff wellness area (a fitness room and showers, among other facilities). The change order would also allow for upgrades to the low voltage data and security camera cabling and the replacement of HVAC equipment which has reached the end of its serviceable life. The \$717,762 cost of these changes is budgeted in Campus Improvements Fund 463 for FY 2023, funded by a transfer from Sheriff's Office Fund 255.

ADAIR: Move Board approval of Chair signature of Document No. 2023-130, Change Order No. 4 to the Adult Parole & Probation Expansion Project contract with Skanska USA Building, Inc. for the Work Center Wellness Area Remodel, low voltage cabling upgrades, and HVAC equipment replacement

CHANG: Second

VOLE: ADAIR: Yes
CHANG: Yes
DEBONE: Chair votes yes. Motion Carried

7. 2022 Annual Report for the Prescribed Fire, Smoke and Public Health Community Response Plan

County Forester Kevin Moriarty summarized key items in the report, which describes actions taken from December 7, 2021 through December 31, 2022 regarding the implementation of the Bend Smoke Sensitive Receptor Area Community Response Plan.

Commissioner Chang offered to share this information with the County's Congressional representatives when he travels to Washington, D.C. next week. He asked if staff has any results, anecdotal or otherwise, on the impacts of these public outreach efforts. Sarah Worthington, Climate & Health Coordinator, replied that she has been working to compile statistics and accumulate baseline data regarding how smoke affects people with asthma or other respiratory conditions.

8. Approval of the 2022 Title III Certification Form Related to Secure Rural Schools Funds

Kevin Moriarty, County Forester, explained that this federal funding is used in part to fund Search and Rescue efforts. It also helps pay for the Forester and Fire Adapted Communities Coordinator positions.

Commissioner Chang noted the total amount of \$120,000 received in Title III funds for 2022 and asked about the stability of this revenue source. Moriarty confirmed that staff expects this funding to continue to decrease as has been happening in recent years.

ADAIR: Move Chair signature of Document No. 2023-136, 2022 Title III Certification Form

CHANG: Second

VOTE: ADAIR: Yes

CHANG: Yes

DEBONE: Chair votes yes. Motion Carried

9. Authorization to apply for a grant from the Patient-Centered Outcomes Research Institute to address Health Systems Factors and Social Determinants of Maternal Health

Anne Kilty, Manager of Clinical & Family Services, explained that Deschutes County would be a sub-recipient of this grant and receive approximately \$2.5 million of the total \$20 million award over the next five or six years. The other partner agencies will be Oregon Community Health Information Network's research division (the primary applicant responsible for overall project management and administration), and Oregon Health and Science

University, which would be responsible for community engagement and the collection and analysis of qualitative data.

For the project, DCHS would dedicate staff to enhanced postpartum services and integration of health information technology tools to facilitate the coordination of care.

CHANG: Move to authorize staff to apply for a grant from the Patient-Centered Outcomes Research Institute to address health systems factors and social determinants of maternal health

ADAIR: Second

VOTE: ADAIR: Yes

CHANG: Yes

DEBONE: Chair votes yes. Motion Carried

A recess was announced at 1:21 pm.

The meeting was reconvened at 2:00 pm.

10. FY 2023 Q3 Discretionary Grant Review

Stephanie Robinson, Grant & Operations Specialist, presented the funding applications submitted to the County's Discretionary Grant Program for the third quarter of 2022-23. The Board reviewed the requests and determined allocations.

OTHER ITEMS:

- Commissioner Adair announced she will view encampments in the China Hat area tomorrow with Deputy Blaylock.
- Commissioner DeBone reported he will attend the COIC board meeting tomorrow.
- Commissioner DeBone shared that he has offered to host a land use leadership meeting for Oregon LandWatch on April 3rd.

Discussion ensued regarding allowing the use of Barnes & Sawyer in the evening by outside groups. Commissioner Adair said if this is done, the County should charge a fee. The Board asked that staff estimate the potential cost of offering this service.

- Commissioner Adair said yesterday's COVA meeting included updates on the organization's operations.
- Commissioner Chang reported that he testified on HB 2101 on behalf of the County.

- County Administrator Nick Lelack said Doug Riggs, the County's lobbyist, has asked for the Board's top five issues to discuss with legislators this Friday.

The Board suggested rural ADUs, a behavioral health investment package, homeless services facility investments, state investments in housing and infrastructure (roads, water, sewer), and the enterprise zone bill.

- Commissioner DeBone requested a spreadsheet or bill tracker be provided.
- Commissioner Adair attended the Redmond Chamber annual dinner event at the Fairgrounds.
- Lelack reported that the County has issued the press release announcing two upcoming vacancies on the Planning Commission—one at-large position and one representing the Tumalo area.

EXECUTIVE SESSION:

At 2:39 p.m., the Board went into Executive Session under ORS 192.660 (2) (e) Real Property Negotiations. The Board moved out of executive session at 3:01 p.m. to direct staff to proceed as discussed.

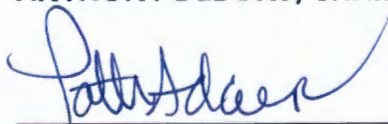
At 3:02 p.m., the Board went into Executive Session under ORS 192.660 (2) (e) Real Property Negotiations. The Board moved out of executive session at 3:16 p.m. to direct staff to proceed as discussed.

ADJOURN:

Being no further items to come before the Board, the meeting was adjourned at 3:16 p.m.

DATED this 2nd Day of March 2023 for the Deschutes County Board of Commissioners.


 ANTHONY DEBONE, CHAIR


 PATTI ADAIR, VICE CHAIR

ATTEST:

 BRENDE FITZGERALD
 RECORDING SECRETARY


 PHIL CHANG, COMMISSIONER