



BOARD OF COMMISSIONERS

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

FOR RECORDING STAMP ONLY

BOCC MEETING MINUTES

1:00 PM

MONDAY February 3, 2025

Allen Room
Live Streamed Video

Present were Commissioners Anthony DeBone, Patti Adair (via Zoom) and Phil Chang. Also present were Nick Lelack, County Administrator; Whitney Hale, Deputy County Administrator; Kim Riley, Senior 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 1:00 pm.

CITIZEN INPUT: None

AGENDA ITEMS:

1. Southern Deschutes County Groundwater Monitoring Project Results / Department of Environmental Quality

Greg Svelund from the Oregon Department of Environmental Quality (DEQ) provided information about the Southern Deschutes County Groundwater Monitoring Project, which involved collecting samples of groundwater in the southern part of the County. The sampling results detected nitrate in 65 of the tested wells, three of which exceeded the amount deemed to be safe. Svelund

said a full report of the monitoring results will not be published until later this year.

Adding that groundwater management is receiving a large amount of attention at the State level, Svelund said DEQ remains concerned about longer-term nitrate contamination in southern Deschutes County, especially as shallower systems are more vulnerable to groundwater contamination.

Sean Rochette, Onsite Manager for DEQ, said the recent sampling event did not return any unexpected results. Stressing that the information is merely raw data at this point, he said DEQ is working to update its rulemaking to more specifically address nitrates and allow protective technologies.

In response to Commissioner Chang, Rochette said the rulemaking changes address nitrates, the variance process, and ADUs. Sewer availability will be taken into consideration.

Responding to Commissioner DeBone, Svelund confirmed that only private domestic wells were tested and said multiple wells have been tested more than once, with some having been tested up to five times. Testing is voluntary, and it can be difficult to secure the participation of private well owners.

Commissioner DeBone shared his willingness to strongly advocate for an area-wide Goal 11 exception to allow serving rural properties with sanitary sewer. He referred to previous discussions on this issue as long as 15 years ago, noted that DEQ has taken the lead in testing the groundwater, and expressed frustration that addressing these concerns has taken so long.

Commissioner Chang noted that over 1,000 households with private septic systems have been moved to nitrate-reducing systems, and La Pine now offers a sanitary sewer system for new developments. He concurred that the County should seriously consider making another attempt for a Goal 11 exception, but in a more focused area as the former 840-square mile proposal with 11,000 lots was unrealistic whereas reducing the area could make it economically feasible.

Commissioners DeBone and Chang spoke to working in partnership with the State on this matter.

In response to Commissioner DeBone, Svelund said the owners of wells which tested above the actionable level for nitrates were referred to resources at the Department of Health.

Commissioner Chang commented that in the contaminated areas, nitrates are percolating slowly into the groundwater.

Commissioner DeBone asked what can be done to address acute health hazards that people are experiencing.

Noting that DEQ held 46 public meetings in three years on this matter, Svelund believed that the County will need to address this situation through land use. He said while the State is out of tools at this point, it continues to remain a partner in whatever direction the County wants to go.

Commissioner DeBone spoke to the need for Legislative support and State guidance and investment. He envisioned working with areas of 100, 200 or 300 residential properties at a time and referred to problems experienced when needed land use decisions are appealed.

Commissioner Chang expected that individual property owners will have to pay for new infrastructure as well as its monthly operation. Because it's not realistic to install sewer in more dispersed areas, older systems will have to be replaced with nitrate-reducing systems.

Commissioner Adair said it would be more scientific to test the same wells repeatedly over time. Adding that the County cannot ignore the tests which returned results showing high levels of nitrates, she encouraged promoting testing to the community to gain higher participation.

Commissioner DeBone supported the County contributing to funding for well testing, saying that revenues from the groundwater protection fund might be utilized for this purpose.

2. Southern Deschutes County Groundwater Protection Program / Annual Report

Peter Gutowsky, Community Development Director, presented the annual report on the Southern Deschutes County Groundwater Protection Program. Noting that the La Pine subbasin, which extends into northern Klamath County, serves as primary drinking source for thousands of residents south of Sunriver, Gutowsky said groundwater investigations indicate this sole source aquifer is vulnerable to nitrate loading from onsite wastewater systems. Because most homes in the subbasin rely on onsite wastewater systems and domestic wells, Gutowsky said it is critical that the County require higher treatment standards for existing and future septic systems to protect the region's groundwater.

Gutowsky shared information on the number of lots in the subbasin and how many are developed as well as how many of the developed lots rely on conventional onsite septic systems and how many of these have alternative treatment systems (ATTs).

Commissioner Adair said ATTs must be 95% effective at capturing nitrates, not just 70% effective. Todd Cleveland, Onsite Wastewater Manager, said the more effective systems lack distributors and installers.

Continuing, Gutowsky spoke to emerging opportunities and advised that the County convene a Financial Advisory Committee to determine how to incentivize property owners to switch to ATTs to reduce the nitrate load into the ground.

Commissioner DeBone noted that ATTs cost \$10,000 more than conventional systems, yet the rebate given to those required to install ATTs was just \$3,500. He added that in 2008, the Board of County Commissioners established a local rule which required that all owners of property in Southern Deschutes County having an existing septic system retrofit with an ATT by 2022. In 2009, this regulation was overturned by voter approval of Measure 970.

Commissioner Chang agreed it is necessary to determine how to incentivize property owners to upgrade their systems.

Cleveland spoke to the cost of upgrading standalone septic systems, saying that some property owners did take advantage of the original offered rebate, but the cost of such upgrades has since doubled. Referencing the suggestion that the County could use proceeds from the sale of County-owned land at Newberry to increase the rebate amount, he said another option would be establishing a loan program through NeighborImpact.

Commissioner DeBone spoke to the Newberry Regional Partnership, which is working to create a community strategic action plan and boost civic engagement and education. He said a plan is needed for reusing ATTs if sewer is put in and said water systems are needed in addition to sewer systems, in part to ensure adequate flows to fight fires.

Commissioner Adair said the testing has been inadequate, and the County cannot continue to sit back and hope that the State is doing what it should. Adding she was unsure when the Newberry properties will sell, she said more education is needed on these matters.

Commissioner Chang reiterated his interest in looking at a more geographically limited Goal 11 exception than was sought previously. He agreed with the need

to motivate property owners to upgrade their systems and suggested lobbying the Legislature to give DEQ more tools to address these situations.

3. State DLCD Farm and Forest Modernization Project Update

Tanya Saltzman, Senior Planner, reviewed that last year, the State Land Conservation and Development Commission (LCDC) initiated the Farm and Forest Modernization Project to improve the clarity and consistency of implementing Oregon's farm and forest program across the state. After new Oregon Administrative Rules (OARs) took effect on January 1, 2025, Planning began working to incorporate these into Deschutes County Code.

Commissioner Chang asked if this rulemaking will lead to things being done differently in Deschutes County. Planning Manager Will Groves said the new rules have already taken effect, and everyone is already subject to them. The changes to County Code constitute basic housekeeping only to align with the changes at the State level.

Saltzman reviewed specific changes involving: the Farm Impacts Test for Conditional Uses in Exclusive Farm Use Zones; Agri-Tourism and Other Commercial Event Standards in Exclusive Farm Use Zones; Transportation Facilities on Rural Lands; Private Parks; the Preparation of Products on Farmland; Verification of Income for Farm Dwellings and Farm Stands in Exclusive Farm Use Zones; and Home Occupations in EFU Zones.

In addition, conforming rule changes require text amendments to various sections, as follows: Replacement Dwelling Requirements, Template Test Provisions, Childcare, Nonconforming Schools, Campsites, Rabbit Processing, and Farm Dwellings in Conjunction with Cranberry Operations.

4. Work Session: Preparation for Public Hearing - Clear and Objective Housing Text Amendments

Kyle Collins, Associate Planner, explained that in 2017, the State adopted regulations which require that local governments utilize clear and objective standards, criteria, and procedures when processing applications for housing projects. In 2023, the State expanded this requirement to unincorporated communities, non-resource lands and areas zoned for rural residential use, effective July 1, 2025.

Collins provided an overview of what constitutes "clear and objective," e.g., counts and measurements, and said the County has worked since 2023 to modify sections of its Code which were previously not in compliance with this

mandate. Staff is proposing various changes, including to some definitions to address terms which contain ambiguous or contradictory language. Part of the work done included distinguishing between a dwelling unit and an accessory structure and developing a process to ensure that accessory structures are not unlawfully converted to or otherwise used for dwelling.

The Planning Commission held a public hearing on January 9th, after which it voted unanimously to recommend approval of the revisions as presented. A second public hearing will be held before the Board on February 12th. Collins noted the changes proposed at this time are the first of multiple grouped revisions which will be needed to conform with the new regulations.

County Administrator Nick Lelack commended Saltzman and Collins for their work, saying these changes will provide clarity.

In response to Lelack, Collins confirmed that the State's intention for requiring clear and objective standards is to streamline the permitting process with the aim of lowering some of the costs of building new homes.

OTHER ITEMS:

- CDD Director Peter Gutowsky asked that the Board consider issuing a letter opposing House Bill 3013-1, which would define the process by which a permit or zone change that is based on provisions of a comprehensive plan or land use regulation which fails to gain acknowledgment would be voided; further, any resulting improvements or uses would have to be removed or revoked. Gutowsky warned that this legislation would incentivize litigation as any third party who was not a participant in a proceeding could appeal a decision to the Land Use Board of Appeals. Also, because the change risks the revocation of certain investments and would result in those being put back to pre-development status, it could have a chilling effect on the efforts of local governments to address community needs.

Saying this proposal is very complicated, Commissioner Chang was not comfortable taking a position.

ADAIR: Move that Commissioners Adair and DeBone sign a letter opposing HB 3013-1 on behalf of the BOCC

DEBONE: Second

VOTE: ADAIR: Yes
CHANG: (abstain)
DEBONE: Chair votes yes. Motion Carried 2 – 1 - 0

- County Administrator Nick Lelack presented a draft letter from the Board regarding Spring Butte Rock's objection to the proposal that the County acquire 40 acres of Deschutes National Forest land near La Pine for the purpose of selling it to a private party. Commissioner DeBone reported the receipt of an email from Congressman Cliff Bentz stating that this transfer is not proceeding at the federal level at this time. Lelack will forward this email to all Commissioners.
- Commissioner DeBone shared legislative priorities of the Eastern Oregon Counties Association, in particular support for HB 2410 due to Umatilla County's advocating for a demonstration project for exploring small nuclear reactors, and HB 3173 which would remove the percentage cap on County Fair revenues from video lottery funds.
- Commissioner Adair suggested submitting a letter on SB 780.
- Commissioner DeBone reported a message from AOC Executive Director Gina Nichol regarding the Recycling Systems Advisory Council.
- Commissioner Chang reported on last Thursday's meeting of the Redmond Managed Camp group, saying that work continues on a draft Memorandum of Understanding regarding the development of a camp and its operations.
- Commissioner Adair shared that a certain consumer product--"Universal Fire Shield" Fire Code #100 guards against wood burning when applied to fences or other structures every six to seven years.

EXECUTIVE SESSION:

At 3:41 pm, the Board entered executive session under ORS 192.660 (2) (e) Real Property Negotiations.

At 4:34 pm, the executive session concluded and the public was invited to return to the room. The Board then directed staff to proceed as discussed during the executive session.

ADJOURN:

Being no further items to come before the Board, the meeting was adjourned at 4:34 pm.

DATED this 2nd Day of April 2025 for the Deschutes County Board of Commissioners.


 ANTHONY DEBONE, CHAIR

ATTEST:


RECORDING SECRETARY


PATTI ADAIR, VICE CHAIR


PHIL CHANG, COMMISSIONER