



## BOARD OF COMMISSIONERS

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

FOR RECORDING STAMP ONLY

# BOCC MEETING MINUTES

9:00 AM

**WEDNESDAY March 29, 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](http://www.deschutes.org/meetings).

**CALL TO ORDER:** Chair DeBone called the meeting to order at 9:00 a.m.

### **PLEDGE OF ALLEGIANCE**

**CITIZEN INPUT:** None

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

**CHANG:** Move Board approval of the Consent Agenda after removing item #2 for separate consideration

**ADAIR:** Second

Chair DeBone noted a change to the minutes of March 8<sup>th</sup> clarifying that the Bethlehem Inn referred to is the organization's facility in Redmond. In addition, he noted a change to the minutes of March 22<sup>nd</sup> to make clear that the recent Wildfire Leadership Council tour he traveled to Klamath Falls for was conducted virtually due to inclement weather.

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

1. Consideration of Approval of Board Order No. 2023-012 to authorize a loan assumption, and to authorize the Deschutes County Property Manager to execute the necessary documents to complete the loan assumption
  3. Consideration of Document No. 2023-330, Amendment No. 3 to an Intergovernmental Agreement with the Oregon Department of Transportation for the US20: Tumalo - Cooley Road Project
  4. Second Amendment to Ground Lease with Mountain View Community Development
  5. Consideration of Board Signature on letter appointing Jim Starnes for service on the Deschutes County Facility Project Review Committee.
  6. Approval of Minutes of the March 8 and 20, 2023 BOCC Meetings
  7. Approval of Minutes of the March 10 and 17, 2023 Legislative Update Meetings
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2. Notice of Intent to Award for Juvenile Justice Remodel

In response to a question, Lee Randall, Facilities Director, said the final amount of this contract is still being negotiated due to the County's having identified potential cost-saving opportunities; the Notice of Intent to Award will serve to establish the protest period and communicate the County's intention to award the contract to the apparent low bidder. Randall explained that some alternate bids were solicited relating to accessibility upgrades, and confirmed that the final contract will be routed for Board signatures after the protest period has expired.

ADAIR:            Move to authorize Chair signature of the Notice of Intent to Award a contract for the Juvenile Justice Remodel project  
CHANG:            Second

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

**ACTION ITEMS:**

**8. Final Decision for a Commercial Activity in Conjunction with Farm Use (Meadery) in the Exclusive Farm Use Zone**

Nathaniel Miller, Associate Planner, presented the final decision before the Board on this matter following the public hearing on January 25<sup>th</sup> and Board deliberations on March 8<sup>th</sup>. Miller noted the draft decision was submitted last week and called attention to two edits, the first of which removes the following sentence from page 15: "According to the applicant in *Craven*, their farm-to-table meals both sell the farm products in a prepared form and aid the farm operation in processing and marketing crops to the public." The second edit, on page 14, revises the first sentence in the "FINDING" section to correctly reference two components rather than three: "The Board finds the use permitted conditionally under this paragraph includes ~~three~~ two components: ..."

CHANG: Move Board approval of Order No. 2023-011, issuing a final decision regarding commercial activity in conjunction with farm use (Meadery) in the Exclusive Farm Use Zone for property on Highway 126 near Sisters

ADAIR: Second

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

Commissioner Adair said it was unfortunate that the business is not allowed to host weddings, although it can have other events. Commissioner DeBone noted the possibility of a modification being sought in the future to change this. Commissioner Chang expressed his appreciation for the regenerative agriculture which will occur on the property.

**9. Consideration of Approval of Board Order No 2023-014, authorizing the sale of an 8.35-acre property in Redmond known as Map and Tax Lot 151329BB00300 to the City of Redmond, and authorizing the Deschutes County Property Manager to execute the documents associated with the sale**

Kristie Bollinger, Property Manager, reviewed the background of the County's acquisition of this property from ODOT in 2002. In 2021 and 2022, the County negotiated to sell the property to the City of Redmond for affordable housing.

John Roberts, City Manager for the City of Redmond, said the City has secured CDBG funds for this purchase. He confirmed that HUD will require that the housing be affordable in perpetuity.

Commissioner Chang asked about plans for the three acres which have been determined to be undevelopable. Roberts responded these will be used for passive or perhaps active open space. Roberts added that the housing will not be multi-family; instead, the City plans to build 22 to 30 separate cottages or townhomes on the five acres that will be developed.

Commissioner Chang asked if a higher density could be achieved—perhaps eight or ten units per acre. Roberts replied that the City must balance the number of units built with infrastructure costs; the underlying zoning will also be a factor.

Responding to Commissioner Adair, Roberts said the City envisions completing the project in four or five years.

ADAIR: Move Board approval of Order No. 2023-014, authorizing the sale of an 8.35-acre property in Redmond (Map and Tax Lot 151329BB00300) to the City of Redmond, and authorizing the Deschutes County Property Manager to execute the documents associated with the sale

CHANG: Second

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

#### **10. Deliberations: Board Review of Two Appeals for a Modification Request to the Thornburgh Destination Resort's Fish & Wildlife Mitigation Plan**

Caroline House, Senior Planner, reported that six comments were submitted on this matter after the close of the public hearing. The Board was in consensus that none of the comments received after the close of the public hearing will be considered as the Board makes its decisions.

Continuing, House shared that appellant Annunziata Gould has, via her attorney, objected to the inclusion of eight documents in the record which were submitted as rebuttal.

Stephanie Marshall, Assistant Legal Counsel, explained that the objections refer to the timing of submittal of those documents; however, there is no requirement that all relevant information must be submitted before the opportunity for rebuttal

arises. Marshall added that while the Board has broad discretion to allow rebuttal testimony, if it determines that any of the submitted material constitutes new evidence not responsive to arguments made by Appellant or other participants, the Board may exclude that from consideration or reopen the record. Marshall described each of the eight documents which were objected to by Appellant Gould.

Assistant Legal Counsel Kim Riley advised that the Board can decide to allow all of the evidence into the record and assign it as much or as little weight as the Board deems appropriate.

Marshall summarized that the Board can decide to exclude the eight documents, or reopen the record, or keep these eight documents as part of the record and either allow or do not allow a response to them.

ADAIR: Move to deny Appellant Gould's motion to exclude the documents referenced by the applicant in rebuttal, and deny the request to reopen the public hearing to allow for a response to those documents

DEBONE: Second

VOTE: ADAIR: Yes

CHANG: No

DEBONE: Chair votes yes. Motion Carried 2 - 1

Continuing, House then presented the matrix of decision points before the Board, as follows (not every decision point was taken up in order of the matrix):

2. Did the applicant present more credible and/or persuasive evidence to demonstrate that the "no net loss" standard is met?

Following discussion, a majority of the Board was in consensus that the applicant presented sufficient credible and/or persuasive evidence to demonstrate that the "no net loss" standard is met.

3. Does compliance with the OWRD Ground Water Mitigation Program ensure the applicant's 2022 FWMP meets the "no net loss" standard?

Following discussion, a majority of the Board was in consensus that compliance with the OWRD Ground Water Mitigation Program ensures that the applicant's 2022 FWMP meets the "no net loss" standard.

4. Is ODFW approval of the 2022 FWMP required and/or a substantial consideration when determining if the “no net loss” standard is met?

Following discussion, a majority of the Board was in consensus that ODFW approval of the 2022 FWMP is not required when determining if the “no net loss” standard is met.

5. Is the Confederated Tribes of Warm Springs approval of the 2022 FWMP required and/or a substantial consideration when determining if the “no net loss” standard is met?

Following discussion, a majority of the Board was in consensus that Confederated Tribes of Warm Springs approval of the 2022 FWMP is not required when determining if the “no net loss” standard is met.

6. Are Thornburgh’s water rights considered “reliable” and/or “wet water” for the purpose of evaluating the “no net loss” standard?

Following discussion, a majority of the Board was in consensus that Thornburgh’s water rights are considered “reliable” and/or “wet water” for the purpose of evaluating the “no net loss” standard.

7. Have the “no net loss” mitigation requirements been met for Whychus Creek?

Following discussion, a majority of the Board was in consensus that the the “no net loss” mitigation requirements have been met for Whychus Creek.

8. Does the Board find the “excess mitigation” measures in the 2022 FWMP provide additional mitigation beyond the Resort’s “no net loss” requirements?

Following discussion, a majority of the Board was in consensus to acknowledge but not require the “excess mitigation” measures in the 2022 FWMP offered by the applicant for the purpose of providing additional mitigation beyond the Resort’s “no net loss” requirements.

1. Does the applicant’s 2022 FWMP ensure the “no net loss” standard is met?

Following discussion, a majority of the Board was in consensus that the applicant’s 2022 FWMP ensures the “no net loss” standard is met.

10. Are the proposed water rights that will be used for the Resort’s water supply and mitigation reasonably certain to be approved for transfer by the OWRD?

Following discussion, a majority of the Board was in consensus that the proposed water rights that will be used for the Resort's water supply and mitigation are reasonably certain to be approved for transfer by the OWRD.

11. Does the 2022 FWMP ensure the proposed mitigation water will be permanently protected in stream?

Following discussion, a majority of the Board was in consensus that the 2022 FWMP ensures the proposed mitigation water will be permanently protected in stream.

12. Do the applicant's proposed FWP conditions 38 and 40 ensure ongoing compliance with the "no net loss" standard?

Following discussion, a majority of the Board was in consensus to approve the applicant's proposed FWP Condition 38, as revised, and new Condition 40 to ensure ongoing compliance with the "no net loss" standard with the direction that the second sentence of Condition 40 be removed and only the first sentence retained such that Condition 40 will read, in its entirety: "Thornburgh shall comply with the 2022 Fish and Wildlife Mitigation Plan, including its compliance and reporting mechanisms found in Section II of that plan."

9. Does the FWMP ensure ongoing compliance and sufficient monitoring?

Following discussion, a majority of the Board was in consensus that the FWMP with the revised Condition 38 and the new Condition 40 (as edited) ensures ongoing compliance and sufficient monitoring.

13. Does the applicant's proposal impact the water availability CMP/EMP criteria?

Following discussion, a majority of the Board was in consensus that the applicant's proposal does not impact the water availability CMP/EMP criteria.

14. Is Thornburgh's CMP void?

A majority of the Board was in consensus that Thornburgh's CMP is not void.

15. Is the applicant's proposal a 'substantial change' to the original CMP?

Following discussion, a majority of the Board was in consensus that the applicant's proposal is not a 'substantial change' to the original CMP.

16. Are the "surrounding properties" when considering impacts associated with a modification request limited to adjacent properties?

Following discussion, a majority of the Board was in consensus that what constitutes “surrounding properties” when considering impacts associated with a modification request are specific to the request and not necessarily limited to adjacent properties.

17. Does the County’s newspaper notice need to be published 20 days prior to, not including the day of, the initial hearing?

Following discussion, a majority of the Board was in consensus that the County’s newspaper notice need to be published 20 days prior to, not including the day of, the hearing being advertised.

ADAIR: Move to affirm the applicant’s appeal, Appeal No. 247-22-000984-A  
DEBONE: Second

VOTE: ADAIR: Yes  
CHANG: No  
DEBONE: Chair votes yes. Motion Carried 2 - 1

ADAIR: Move to approve the request to modify its Final Maser Plan approval, File No. 247-22-00678-MC  
DEBONE: Second

VOTE: ADAIR: Yes  
CHANG: No  
DEBONE: Chair votes yes. Motion Carried 2 - 1

ADAIR: Move to revise FMP Condition 38 and add a new FMP Condition 40 as decided during today’s deliberations  
DEBONE: Second

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

ADAIR: Move to deny the appeal filed by Annunziata Gould, Appeal No. 247-23-000003-A  
DEBONE: Second

VOTE: ADAIR: Yes  
CHANG: No  
DEBONE: Chair votes yes. Motion Carried 2 - 1



House confirmed that the written decision on this matter will be brought to the Board for its review and approval. She noted the decision must be issued by April 10<sup>th</sup> unless the applicant agrees to extend that deadline.

Commissioner Chang clarified his statements which appeared in an article published on this matter and said while the 2022 FWMP may be a significant improvement over the 2008 proposal, he wished to see this validated via monitoring and documentation and hoped that the applicant will work to further the provision of such assurances.

Commissioner DeBone noted several typos or suggested edits to the FWMP, specifically to pages 6, 9, 20 and 21.

*Chair DeBone announced a break at 12:59 pm. The meeting reconvened at 1:30 pm.*

#### **OTHER ITEMS:**

- County Administrator Nick Lelack relayed an opportunity for the Board to submit a no-cost advertisement regarding the Tower Theatre's Stage the Change program, which the BOCC previously sponsored via an Arts and Culture grant.
- Lelack noted Sally Russell's transition on the Deschutes Collaborative Forest Project Steering Committee from a seat representing local government to an at-large seat.

Saying that he occupies the other local government seat on this committee, Commissioner Chang explained current projects and shared that Anthony Broadman from the City of Bend has expressed interest in being appointed to the seat vacated by Russell. Commissioner Adair said that Kathryn Osborne from the City of Redmond could also fill this role.

Chair DeBone clarified that this appointment is not made by Deschutes County.

- Commissioner DeBone reported on the Coffee with a Commissioner event yesterday in Bend and said the Friends of Oregon's Land Use Leadership Initiative will hold its end-of-year training session at the County building next Monday.
- Commissioner DeBone shared that The Bend Bulletin is celebrating 120 years of publication tomorrow and commented on a mountain biking exhibit opening up at the historical society.
- Commissioner Adair reported that Horse and Rider magazine recently featured a four-page spread on Sisters and Black Butte.

- Commissioner Adair commented on the Helping Hands tour next Thursday and the possibility of that program expanding to Deschutes County. She relayed objections that commissioners aren't on the Multi-Agency Coordinating group (MAC) and shared plans to meet with Andrea Bell, Executive Director of Oregon Housing and Community Services.
- Commissioner Chang and Commissioner DeBone attended the Council on Aging ribbon-cutting at the new Senior Services Center last week.

**EXECUTIVE SESSION:**

At 1:45 p.m., the Board went into Executive Session to discuss Real Property Negotiations under ORS 192.660 (2) (e).

At 1:51 p.m., the Board moved out of Executive Session to take the following action:

ADAIR: Move to authorize the sale of a 2.95-acre lot at the southeast corner of CW Reeves Lane and Mitts Way in La Pine, and authorize the Property Manager to execute the purchase and sale agreement and all necessary documents to close the transaction

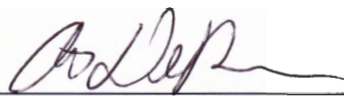
CHANG: Second

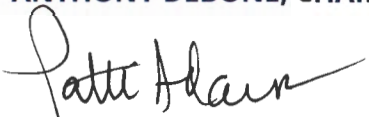
VOTE: ADAIR: Yes  
 CHANG: Yes  
 DEBONE: Chair votes yes. Motion Carried

**ADJOURN:**

Being no further items to come before the Board, the meeting was adjourned at 1:52 p.m.

DATED this 15<sup>th</sup> Day of May 2023 for the Deschutes County Board of Commissioners.

  
 ANTHONY DEBONE, CHAIR

  
 PATTI ADAIR, VICE CHAIR

**ATTEST:**

  
**RECORDING SECRETARY**

  
**PHIL CHANG, COMMISSIONER**