



Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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Memorandum

DATE: July 7, 2016
TO: Deschutes County Board of Commissioners
FROM: Nick Lelack, AICP, Director
Peter Gutowsky, AICP, Planning Manager
RE: Planning Division Fiscal Year 2016-27 Work Plan Update / 1st Quarter

I. Summary

This memorandum updates the Board of County Commissioners (BOCC) on the Planning Division's Fiscal Year 2016-2017 Work Plan specifically relating to the first quarter. Regarding the Current Planning Section, land use applications submitted during the first six months of 2016 are exceeding last calendar year's pace by 44 applications (378 versus 334). If the BOCC rescinds the "opt out ordinance" and regulate marijuana related businesses, the total number of land use applications will further exceed last year's applications.

Based on the Community Development Department's (CDD) recently approved budget and sustained increases in the land use applications, CDD is recruiting two planners to meet business demands with the expectation to fill the positions by August 1, 2016. In addition, Senior Transportation Planner Peter Russell is performing development review for land use applications as the Division is employing an "all hands on deck" approach to speed up land use permit turnaround times during peak development season.

II. Long Range Planning Section / 1st Quarter Tasks

For the first quarter of the new fiscal year, there are four long range planning task, and a potential fifth, for the BOCC's consideration:

1. Comprehensive Plan and Zoning Text Amendments from Agricultural Lands Public Outreach Discussions

A public hearing with the BOCC is anticipated in August to consider three staff-initiated legislative amendments to County Code:¹

¹ The Planning Commission conducted a public hearing in March and recommended approval of the proposed definition of agricultural-exempt buildings and the setback standards for Haner Park but did not support the proposed amendments to the Comprehensive Plan. A BOCC hearing was placed on hold due to reallocating staff resources to draft marijuana regulations. This project requires minimal staffing resources.

- A Comprehensive Plan amendment recognizing non-resource lands process allowed under State law to change Exclusive Farm Use (EFU) zoning;
- A zoning text amendment providing a definition of agricultural-exempt buildings; and,
- A zoning text amendment reducing setbacks in the Forest Use (F-2) Zone, explicitly for the Haner Park Subdivision.

2. City of Bend Urban Growth Boundary Amendment

The BOCC will conduct a joint public hearing with the Bend City Council on August 25 to consider a 2,329 acre Urban Growth Boundary (UGB) amendment and legislative amendments to County Code. Staff anticipates the BOCC will deliberate and issue a final local decision in September or October depending on the public hearing and City actions.

3. Oregon Spotted Frog

There is staff capacity to initiate Comprehensive Plan amendments to designate Oregon spotted frog critical habitat as a Goal 5 resource.² There are two options for the BOCC to consider:

- Maintain the status quo, or
- Initiate a Comprehensive Plan amendment to recognize critical habitat.

Option 1 – Status Quo

There is no mandate for updating the Comprehensive Plan. Existing wetland, riparian and floodplain regulations already protect the Oregon spotted frog from human disturbance along the Upper Deschutes and Little Deschutes rivers. Designation of critical habitat does not affect land ownership, establish a refuge or preserve. It has no impact on private landowners taking actions on their land that do not require federal funding or permits. If a landowner needs a federal permit or receives federal funding for a specific activity, the agency responsible for issuing the permit or providing the funds would consult with the U.S. Fish and Wildlife Service to determine how the action may affect the spotted frog or its habitat.

The BOCC may want to consider postponing adoption of critical habitat until the Deschutes Basin Study Work Group (BSWG) completes its work in June 2018. While they are strictly focusing on water quantity, the Bureau of Reclamation and BSWG, as part of a \$1.5 million process through an agreement between Reclamation and the Deschutes Basin Board of Control, are developing a road map to meet water needs in the upper Deschutes, Whychus, and Crooked subbasins for rivers, agriculture and communities for the next 50 years.³ BSWG is particularly focused on finding solutions to restore flows in the Upper Deschutes River, the largest and most complex restoration need in the basin.

² **New regulations are not being proposed.** Wetlands and riparian habitat in the upper Deschutes River basin are already protected under Deschutes County Code. A majority of critical habitat along the Upper Deschutes and Little Deschutes rivers is identified as wetlands on Local and National Wetland Inventories. Wetland vegetation removal and wetland fill and removal require a conditional use permit. Along both rivers, a riparian setback of 100 feet measured from ordinary high water is also required for new development. Additionally, fill and removal as well as floodplain development requires a federal permit (Army Corps of Engineer and Federal Emergency Management Agency), which triggers a formal consultation with the U.S. Fish and Wildlife Service under ESA Section 7.

³ <http://www.usbr.gov/pn/studies/deschutes/wrkgrp.html>

The objectives of the Basin Study are to:

- Develop a comprehensive analysis of water supply and demand, integrating and updating the analyses to account for climate change;
- Analyze how existing operations and infrastructure will perform under the projected future water supply conditions and demands;
- Develop and evaluate options for addressing identified water imbalances; and,
- Complete analysis to compare relative cost, environmental impact, risk, stakeholder response, and other common attributes of identified options.

Option 2 – Comprehensive Plan Amendment

Adopting a federal critical habitat designation into the Comprehensive Plan allows CDD to share it with property owners and interested parties on Deschutes County Property Information.⁴ As shown in Table 1, there are 1,492 rural tax lots affected by critical habitat. Table 1 also identifies the number and acreage of tax lots affected by critical habitat in rural Deschutes County and the Bend and La Pine UGBs. In Deschutes County, Oregon spotted frog habitat extends along the Upper Deschutes and Little Deschutes rivers, terminating in Bend at the Old Mill District.

Table 1 –Critical Habitat for Oregon Spotted Frog / Affected Deschutes County Tax Lots⁵

Jurisdiction	Federal Properties		Private Properties		Total Acres of Critical Habitat
	Tax Lots	Acres	Tax Lots	Acres	
Bend UGB	0	0	13	3.70	3.70
La Pine UGB	0	0	91	135.05	135.05
Rural Deschutes County	26	1,062.33	1,492	4,230.96	5,293.79
Total	26	1,062.33	1,596	4,369.71	5,432.54

Public Outreach

If Option 2 is selected, public outreach announcing a Planning Commission work session and public hearing would consist of press releases to the *Bulletin*, *Newberry Eagle*, and *Sunriver Scene* and correspondences to community organizations in the Upper Deschutes basin. A Measure 56 notice is **not** required since Deschutes County is not “adopting or amending an ordinance in a manner that limits or prohibits uses previously allowed in the affected zone.”⁶ If there is interest in a courtesy mailing to property owners affected by the federal critical habitat designation, the cost is approximately \$1,000.

Below is a *tentative schedule* if the BOCC supports Option 2 to initiate a Comprehensive Plan amendment:

⁴ <https://dial.deschutes.org/>

⁵ Data listed in Table 1 excludes water bodies and rights-of-way.

⁶ ORS 215.503(9).

- July 28, 2016 – Planning Commission work session (Bend)
- September 8, 2016 – Planning Commission public hearing (Sunriver or La Pine)
- October 3, 2016 – BOCC public hearing (Bend)

4. Zoning Code Amendment Allowing Existing Buildings for Hardship Dwellings in EFU

The BOCC supported initiating this project as an element of CDD's Annual FY 2016-17 Work Plan. County Code is currently more restrictive than state law and only allows manufactured homes and RVs.

Below is a *tentative schedule*:

- July 28, 2016 – Planning Commission work session (Bend)
- September 8, 2016 – Planning Commission public hearing
- October 3, 2016 – BOCC public hearing (Bend)

5. Zoning Code Amendment Clarifying Surface Mining

Recent development projects, proposals and public inquiries have raised questions regarding the amount of material that may be excavated and/or removed from a property in order for the activity to qualify as surface mining.

The Deschutes County Code definition of surface mining is below. The section with ***emphasis added*** raises questions regarding the amount of material that may be excavated from a property for the primary purpose of construction. For example, how much material may be excavated to build a house or a pond?

"Surface mining" means

A. Includes:

1. All or any part of the process of mining by removal of the overburden and extraction of natural mineral deposits thereby exposed by any method including, open pit mining operations, auger mining operations, processing, surface impacts of underground mining, production of surface mining refuse and the construction of adjacent or off-site borrow pits, except those constructed for access roads; and
2. Mining which involves more than 1,000 cubic yards of material or excavation prior to mining of a surface area of more than one acre.

B. Does not include:

1. The construction of adjacent or off-site borrow pits which are used for access roads to the surface mine;
2. ***Excavation and crushing of sand, gravel, clay, rock or other similar materials conducted by a landowner, contractor or tenant on the landowner's property for the primary purpose of construction*** [emphasis added], reconstruction or maintenance of access roads and excavation or grading operations conducted in the process of farming or cemetery operations, on-site road construction and other on-site construction, or nonsurface impacts of underground mines; and
3. Batching and blending of mineral and aggregate into asphaltic concrete or portland cement concrete.

A project previously on the CDD Work Plan, but not initiated, was "...to investigate the potential benefits and drawbacks of adopting a County Grading Ordinance. This will entail examining the ICC model Grading Code, along with local adaptations utilized by other jurisdictions. Present a decision framework to the Board of County Commissioners."

Options to provide clarity:

1. Interpret this definition during an applicant initiated quasi-judicial land use application or complaint-initiated code enforcement action.
2. Initiate a code amendment to the definition of surface mining to clarify the amount of material in cubic yards that may be excavated (i.e., removed from the property) with/without a land use permit to provide certainty to landowners, contractors, tenants, and surrounding/nearby property owners. This project could be initiated immediately and simultaneously with the zoning code amendment to allow existing buildings for hardship dwellings in the EFU Zone (it would be a separate amendment).
3. Initiate the project previously on the CDD Work Plan.
4. Other.