



Community Development Department

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TO: Board of County Commissioners

FROM: Peter Russell, Senior Transportation Planner

DATE: October 7, 2015

SUBJECT: Work session on amending the Deschutes County Comprehensive Plan to add an exception to Goal 11 (Public Facilities and Services) to allow for sewers in unincorporated lands in southern Deschutes County; amend language to Newberry Country Plan to prevent upzoning; and add a Goal 11 map indicating affected tax lots (File 247-000308-PA)

BACKGROUND

The proposed amendments to the Deschutes County's Comprehensive Plan are to allow rural sewers in unincorporated lands in southern Deschutes County. The exception would allow the option of sewers at varying scales, but would not require them.

Additionally, the proposed amendment would amend *Newberry Country: A Plan for Southern Deschutes County* to add Policy 9.1(a) to prohibit upzoning based on a successful Goal 11 Exception. The amendment would also update a section in the *Newberry Country* plan which had referenced a then-impending Steering Committee recommendation to instead identify the Steering Committee's recommendation to pursue a Goal 11 exception. Finally, a Goal 11 map would be added to the Comprehensive Plan which indicates the affected tax lots.

The Planning Commission (PC) held public hearings on July 23 at 2 and 5:30 p.m. in La Pine and on August 13 in Bend. The PC deliberated on Sept. 10 and recommended 7-0 that the Board of County Commissioners (Board) approve the Goal 11 Exception with one modification. The PC recommended the *Deschutes County Comprehensive Plan* be amended to include the Department of Environmental Quality Steering Committee recommendations in the July 2013 "South Deschutes/North Klamath County Groundwater Protection: Report and Recommendations." Those recommendations are provided verbatim at the end of this memo.

MAJOR TOPICS IN PLANNING COMMISSION DELIBERATIONS

The PC deliberated for roughly an hour and discussed the following items at length. The PC requested staff to relay the PC's concerns to the Board. The concerns are presented in no particular order of importance.

1. What is meant by "imminent" health hazard?

OAR 660-011-0060 references that a health hazard must be significant and imminent for a Goal 11 Exception to be approved. The PC debated how the term imminent did or did not

apply to the pollution of groundwater and whether time should be considered based on a geologic scale or more of the typical timeframe.

2. *Can a Goal Exception be approved without an imminent health hazard?*

The PC during the discussion of defining imminent also debated whether a health hazard was even necessary for a Goal 11 Exception. OAR 660-011-0060(9) states in relevant part:

“Appropriate reasons and facts for an exception for Goal 11 **include but are not limited to the following: (emphasis added)**

(a) *The new system, or extension of an existing system, is necessary to avoid an imminent and significant health hazard...*

(b) *The extension of an existing system will serve land, that by operation of federal laws, is not subject to Statewide Planning Goal 11...*

Essentially, the issue is whether the highlighted text is inclusive or exclusive as it pertains to (a) and (b). In other words, do either (a) or (b) need to be present or is a Goal 11 exception possible if neither (a) nor (b) is present.

3. *What is the rationale behind the size of the area proposed for the Goal 11 Exception?*

A few members of the PC expressed concern that the proposed area was fairly large. They felt there either needed to be more discussion justifying the size of the area or that the area could be shrunk to align more with the areas experiencing or expected to experience groundwater issues.

4. *Is there enough scientific evidence in the record to demonstrate a health hazard?*

The PC mulled the amount of research placed in the record with some debating whether the USGS reports are accurate and others desiring additional groundwater modeling and/or monitoring of wells.

5. *Relationship between Goal 11 and real estate values.*

Although not an approval criteria, some members of the PC stated their concerns about how the Goal 11 process might lead to falling prices for undeveloped lands. This was tied to a larger concern about the publicity of the groundwater issues in South County adversely affecting development in the subbasin.

6. *Compulsion to join a sanitary district or authority*

The PC requested that the Board consider adopting language in the Comp Plan text or findings addressing public concerns over property owners being forced to joined sanitary districts, as legally allowed.

NEXT STEPS

The Board will hold a public hearing on Oct. 28 at 6 p.m. in the Sunriver Homeowners and Aquatic Recreation Center (SHARC) to accept testimony on the Goal 11 exception.

DEQ 2013 Steering Committee Recommendations:

Goal 11 Exception (Unanimously Approved 1/9/13)

- Provide a Goal 11 exception for the at-risk areas in South Deschutes and North Klamath counties for the following reasons:
 - o Lots were platted prior to statewide goals requiring 10 acre rural lots (in Deschutes County.
 - 6174 (60%) are 1 acre or less
 - 8737 (85%) are 2 acres or less
 - o North Klamath County currently of 4181 lots
 - 2177 (52%) are 1 acre or less
 - 3140 (75%) are 2 acre or less
 - o Provide better treatment opportunities than individual on site systems for the protection of groundwater, both in reducing nitrates and better treatment of other contaminants
 - This exception will allow the extension of sewers into the area
 - This exception will allow groups of citizens to implement public sewage treatment systems, such as cluster systems. These decentralized cluster systems would not require huge infrastructure expense
 - These centralized systems will allow better treatment of contaminants beyond nitrates and better treatment than ATT onsite systems.
 - This Goal 11 exception would not mandate a system be installed.

Groundwater Monitoring (Unanimously Approved 3/5/13)

- Request that DEQ design a testing program to determine whether there is a groundwater contamination problem, and if so, where it might be located.
 - o Tests first water
 - o Start with highest risk sections (neighborhoods) identified by (existing well test data, density, well depth). See MonitorCriteria.xlsx for simple ranking.
 - o Uses representative samples of the neighborhoods
 - o Do 10% – 20% of neighborhoods each year
 - If sample results from the first water test warrant it, increase the number of wells tested to possibly include additional first water wells and drinking water wells in the neighborhood. Alternatively, provide an on-demand targeted testing approach that tests source, receptor, and transport.
 - What should be tested for?
 - o Nitrates cheap test – 10 minute sample for nitrate testing only. Flush take sample.
 - o Retest wells with highest nitrate detection levels for other contaminants (such as pharmaceuticals...)
 - Monitoring managed by a sanitation authority with DEQ doing the monitoring until a sanitation authority is established.
 - Use this monitoring program in addition to the real estate transaction data
 - The DEQ should pursue all sustainable funding opportunities to support groundwater

monitoring in the area.

Governance (Unanimously Approved 4/2/13)

Form a Sanitation Authority to protect the groundwater in the affected area spanning South Deschutes and North Klamath counties.

- The Authority will manage groundwater monitoring.
- The Authority will help with neighborhood implementation of community waste water systems (allowed under the Goal 11 exception).
- The Authority can assist in establishing Local Improvement District (LID), a special district or similar entity to finance community waste water systems for areas within the Authority where they are necessary.
- Authority will explore financing options that may include: grants, loans and taxes
- Provide required maintenance and management for community waste water systems within the Authority
- Ensure individual systems are maintained (pumped and serviced as necessary)
- Manage the overall basin nitrate load and risk to groundwater
- Monitor performance based standards for alternative solutions (see green solutions)

Livestock (Unanimously Approved 1/9/13)

- In Deschutes County (Klamath has an ordinance) institute an ordinance that limits the number of livestock per acre to reduce risk to groundwater contamination. For instance Klamath ordinance is: R2 zone allows two large animals (horse, etc.) and 24 small animals (chickens, etc. not dogs or cats) PER ACRE.
- Provide education about how best to manage livestock to reduce risk to groundwater
 - o How to treat waste
 - o How to dispose of deceased livestock

Point Sources (Unanimously Approved 1/9/13)

- Point Sources (nurseries, golf courses)
 - o Investigate establishing a permitting/groundwater monitoring program for all golf courses, nurseries and other point sources
- Commercial RV and Manufactured/mobile Home Parks.
 - o Require equivalent treatment as residential (ensure equal regulations and treatment for residence and commercial).
 - o Require a Water Pollution Control Facilities Permit for new and existing properties.

ATT Moratorium (Approved 7-1 on 6/4/13)

- The moratorium will have an end date with specific community actions to include a Goal 11 exception, a monitoring program and a governance entity or substantial progress toward its creation must have been made. Five years seems reasonable. An extension might be necessary, based on progress made toward the above goals.
- When the Governance Entity is created, it will work with DEQ and the counties to determine what happens at the moratorium end date.
South Deschutes/North Klamath Groundwater Protection Project Steering Committee
State of Oregon Department of Environmental Quality 7
- During the moratorium, property owners that have to do a major repair have the option of installing an ATT or repairing or replacing existing systems without an upgrade. This is done with the understanding that if progress is not made toward program goals (listed above in paragraph 1), they will have to upgrade. The moratorium would extend to undeveloped lots that already have existing systems in place.

- The moratorium would apply to new development.

Disadvantaged Community Financing Solutions (Approved 7 - 1 on 6/4/13)

- DEQ shall research how other states have established financial aid for sewage treatment solutions and propose an approach to use in Oregon.

Outreach and Community Education (Unanimously Approved 6/4/13)

- With the delivery of these recommendations the Citizen Advisory Committee has completed our charter and will disband
- Prior to disbanding initial outreach materials will be developed
- To ensure ongoing community involvement with groundwater protection an outreach committee should be formed that will
 - o Identify and outreach opportunities
 - o Coordinate outreach delivery. Members from the current committee may be called on to participate in or lead the outreach events
 - o Maintain and improve outreach materials
- This committee should be made up of people with marketing/outreach interest and experience, and should be a small team of no more than 5 people with support from DEQ and the counties.
- This committee should have access to enough funding to make outreach successful

Alternative “Green” Solutions (Unanimously Approved 6/4/13)

Disposing of human waste is a worldwide problem. There are many innovating approaches being developed. People in the affected areas must be able to use new approaches to treat human effluent.

In order to use current and future new technologies the DEQ must develop performance standards for treatment and any system that provides the necessary performance level should be acceptable if effective safeguards are in place to ensure the new systems are properly used and maintained.

With the advent of Oregon grey water permitting a composting toilet solution should be acceptable. To ensure the toilets are used effectively:

- Inspection of composting systems could be added to or included in current grey water permit language; an additional fee for that inspection of the composting component might need to be considered.
- Language and parameters for disposal of the composted material is already established.
- The cost of permits for composting toilets should remain affordable.