



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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### MEMORANDUM

**TO:** Deschutes County Planning Commission

**FROM:** Peter Russell, Senior Transportation Planner

**DATE:** August 4, 2015

**HEARING:** August 13, 2015

**SUBJECT:** Continued hearing to amend 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)

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### BACKGROUND

On July 23, 2015, the Planning Commission held public hearings at 2 and 5:30 p.m. in the La Pine Community Center, continuing the hearing to August 13 in Bend. The proposed amendments to 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.

### MAJOR ISSUES RAISED BY JULY 23 HEARING

The hearings were well-attended and three questions arose at or subsequent to the July 23 hearing. While not germane to the Goal 11 Exception itself, the questions are more along the lines of what would follow a successful Goal 11 Exception. In no particular order of importance, the three topics are:

- Can a property owner be compelled to hook up to a sewer system?
- What are the land use steps to establish a sewer system?
- Which land use zones in rural southern Deschutes County allow sewer systems?

***Can a property owner be compelled to hook up to a sewer system?***

Yes. Oregon Revised Statutes (ORS) 450.075 and 450.815 both speak to the powers of Sanitary Districts and Sanitary Authorities, respectively.

**SANITARY DISTRICTS**

**450.075 Powers of sanitary district.** A sanitary district may:

(13) Compel all residents and property owners in the district to connect their houses and structures requiring sewage or drainage disposal with adjacent street sewers, drains or other sewage disposal system of the district.

**SANITARY AUTHORITIES**

**450.815 General powers of authority.** For the purpose of carrying out the powers granted to the authority under other provisions of ORS 450.600 to 450.989 and in addition thereto, the authority may:

(8) Compel all residents and property owners in the authority to connect their houses and structures requiring sewage disposal with adjacent sewers within the authority.

Thus, under the ORS language cited above, a property owner can be compelled to hook up to a sewer system. The actual decision of whether a hook-up would be required or not would be at the discretion of sanitary district and/or sanitary authority; the County has no jurisdiction.

***What are the land use steps to establish a sewer system?***

Once a sewer district has been formed, the location of its infrastructure must go through the County's land use process. Deschutes County Code (DCC) at 18.04.030 defines sewers as utility facilities. The level of review depends on the zoning. As discussed below, some zones allow utility facilities as an outright permitted use while others require a Conditional Use Permit (CUP). Site plan is required in all cases. During the CUP process, the applicant will need to address how the sewer complies with the County's zoning, including local Goal 5 resources recognized in the Wildlife Area Combining Zone.

***Which land use zones in rural southern Deschutes County allow sewer systems?***

DCC Title 18 controls the unincorporated lands in southern Deschutes County and uses are categorized as either permitted outright or conditionally. If an activity is not listed as an outright or conditional use, than it is prohibited in that zone. As an example, Flood Plain (FP) does not allow sewers.

**EFU** – Yes, service lines are permitted outright at DCC 18.16.020(M) and utility facilities are allowed conditionally under 18.16.025(E) and 18.16.031(A) and (C). Sewer facilities sited under 18.16.025 must meet additional requirements set at 18.16.038(A).

**F-1** – Yes, sewers are a conditional use under 18.36.030(F), provided the applicant has a permit from the Department of Environmental Quality (DEQ). DCC 18.36.040 states uses approved under 18.36.030 must not significantly affect accepted farming and forest practices.

**F-2** – Yes, sewers are a conditional use under 18.40.030(G), provided the applicant has a permit from DEQ. DCC 18.40.040 states uses approved under 18.40.030 must not significantly affect accepted farming and forest practices.

**FP** – No, sewers are not an allowed use.

**RR-10** – Yes, sewers are an outright permitted use under 18.60.020 but do require site plan review.

### **OPTIONS AT CONCLUSION OF AUGUST 13 PUBLIC HEARING**

The Planning Commission has several options at the end of public testimony on August 13:

- Continue the public hearing and accept oral and written testimony at August 27 meeting
- Close the oral record, but keep the written record open until August 27 with deliberation on Sept. 10
- Close the oral and written record tonight and set deliberations for August 27
- Close the oral and written record tonight and deliberate

# Goal 11 Exception Process for Southern Deschutes County (File 247-15-000308-PA)

Deschutes Co. Planning Commission Public Hearing  
Deschutes Services Center, Barnes & Sawyer Room  
Bend, OR  
August 13, 2015

# Continuation of July 23 Public Hearing for File 247-15-000308-PA

- Anyone here not see the July 23 staff presentation?
- Questions raised at July 23 hearing:
  - Can sewer districts compel land owners to hook up to system?
  - If Goal 11 Exception is approved, what are the next steps?
  - In what zones in South County are sewers allowed?

# Planning Commission Public Hearing for File 247-15-000308-PA

- Presentation by DEQ, DLCD, Deschutes County staff
  - Recap of groundwater issues in southern Deschutes County
  - Goal 11 Exception Area Map
  - Overview of Goal 11 Exception

# Outreach Related to 247-15-000308-PA

- 10,000+ flyers sent to property owners in Goal 11 area explaining:
  - Dates, time, and places for Planning Commission public hearings
  - Goal 11 gives property owners the **OPTION** of sewers, but **DOES NOT** require them
  - Property owners would propose and vote on potential sewer districts
  - Sewers can vary in scale from a Big Pipe to a cluster system serving 4 homes
  - Goal 11 does not allow subdividing residential lots into less than 10 acres
  - Goal 11 does not change zoning of properties
- Application materials put on-line and in La Pine, Sunriver, Bend libraries

# General Background

How Did We Get To A Goal 11 Exception?



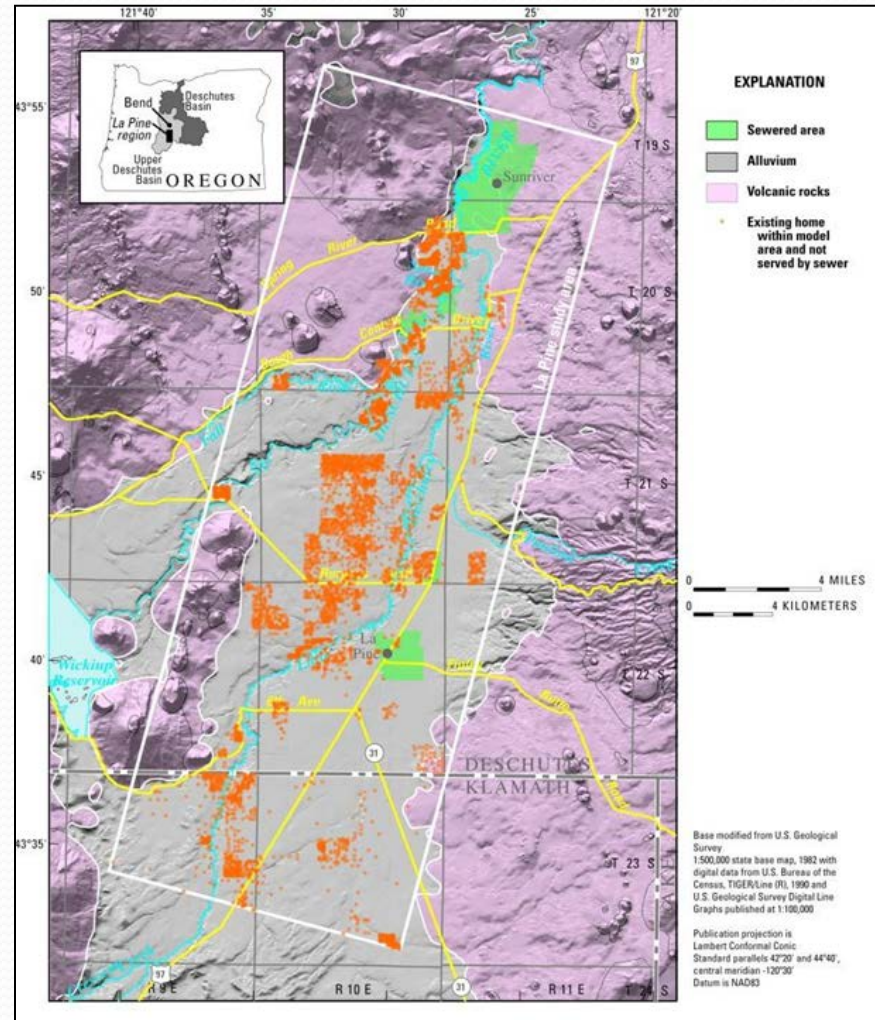
# 40 Years in 10 Bullet Points

- 1960s-1970s  
~15,000 lots of 0.5 acre to 1 acre each platted in South County
- Lots pre-date Oregon's statewide land use program
- Result is a land use pattern of urban-scale residential density served by rural-scale on-site septic systems



# 40 Years in 10 Bullet Points (con't.)

- Early 1980s groundwater pollution from nitrates begins to be noticed
- 1996-1999 DLCD and DEQ study 12,000 lots for groundwater pollution
- 2008 Deschutes County passes local rule requiring septic systems be converted to alternate treatment technology within 14 years



# 40 Years in 10 Bullet Points (con't.)

- 2009 voters overturn local rule
- 2010 DEQ forms Steering Committee to study issue, which in 2013 unanimously recommends pursuing a Goal 11 exception
- April 2015 DLCD, DEQ, and Deschutes County hold open houses in Sunriver and La Pine on Goal 11
- June 17, 2015, DLCD, DEQ, and Deschutes County apply for Goal 11 Exception in File 247-15-000308-PA



*Bend Bulletin photo*



*DEQ Steering Committee Graphic*



# DLCD Portion of Presentation

State Rules on Goal 11 and Exceptions

# DLCD's Role and Responsibility

- Expert in Goal 11 Exception Process
- Wrote Burden of Proof Related to State Laws, Rules:
  - Statewide Planning Goal 11 Public Facilities
  - Oregon Administrative Rule Chapter 660, Division 11, Public Facilities Planning
  - OAR 660-011-0060, Goal 11 Exception Process

# DEQ Portion of Presentation

History and Approaches to Protecting Groundwater

# DEQ's Role and Involvement

- Supporting the Goal 11 recommendation and working with Deschutes County and other state agencies to move it forward
- Providing historical information on groundwater contamination to justify the application



# DEQ and Public Health Protection

- Long history of involvement in the area
- Formation of a steering committee
  - Met for over 3 years; had 50+ meetings
- Focus on public health protection
- Worked with DLCDD to identify area for Goal 11 Exception

# DEQ Steering Committee Recommendation

- Goal 11 Exception (unanimously approved January 9, 2013)
- Intent of allowing sewer extension and other community and neighborhood treatment options
- Acknowledgement that centralized systems would provide better treatment of contaminants
- Exception does not require multi-residence systems
- Exception area to include at-risk areas in South Deschutes County

# Deschutes County Portion of Presentation

Compliance With Comprehensive Plan,  
Newberry Country Plan, Other Statewide Goals

# Deschutes County Land Use Process

- Deschutes County Comprehensive Plan
  - Amend for Exceptions Statement
  - Amend to add Legislative History
- Newberry Country Plan
  - Amend Policy 9.1 to prevent upzoning due to Goal 11
- Transportation Planning Rule (OAR 660, Division 12)
  - Traffic study of 1,823 red lots, based on 600 homes developing in 15 years
- Remaining Applicable Statewide Planning Goals

# Tonight's Agenda

- Planning Commission receives public testimony
- Planning Commission to decide whether to:
  - Continue hearing to August 27
  - Close oral record, but leave written record open until date certain
  - Close hearing tonight and deliberate August 27
  - Close hearing tonight and deliberate
- Ultimately, Planning Commission makes recommendation to Board which then holds public hearings on Ordinance 2015-007, which implements File 247-15-000308-PA

# Questions Raised by July 23 Hearing

- Can sewer districts compel land owners to hook up to a system?
  - Yes, according to Oregon Revised Statutes

## SANITARY DISTRICTS

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## Questions Raised by July 23 (con't)

- If Goal 11 Exception is approved, what are the next steps?
  - Formation of Sanitary Authority and/or District
  - If Formation is Successful; Apply for Conditional Use Permit and/or Site Plan Review
    - Utility Facility Allowed in EFU, F-1, F-2, RR-10 Zones
    - CUP Must Address Goal 5
      - Wildlife
      - Cultural/Historical Resources
      - Aggregate Sites

## Questions Raised on July 23 (con't)

- Zones in South County where are sewers allowed?
  - Exclusive Farm Use (EFU)
  - Forest (F-1 and F-2)
  - Rural Residential (RR-10)



# Questions of Staff?

