

Nicole Mardell

From: Smith, Adam <asmith@schwabe.com>
Sent: Wednesday, November 29, 2023 9:50 PM
To: Nicole Mardell; Deschutes2040
Subject: COID Proposed Amendments to draft Comp Plan [IWOV-PDX.FID4535317]
Attachments: COID Comment Letter_Comp Plan Amendments.pdf

[EXTERNAL EMAIL]

Nicole,

I hope you had a wonderful Thanksgiving with family and friends.

Please see the attached correspondence. Please also provide the attached correspondence to the Planning Commission and add the document to the record for File No 247-23-000644-PA.

Thanks,
-Adam

Adam Smith

Shareholder

Pronouns: he, him, his

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SCHWABE, WILLIAMSON & WYATT

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November 29, 2023

VIA E-MAIL

Deschutes County Planning Commission
c/o Nicole Mardell, Senior Planner
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D. Adam Smith

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RE: Deschutes County 2040 (Comprehensive Plan Update)
Our File No.: 136697-256185

Dear Commissioners:

As you know, our firm represents Central Oregon Irrigation District (“COID”). On behalf of COID, we previously requested that the Planning Commission continue the November 9, 2023 public hearing to provide additional time for COID (and others) to draft proposed amendments to the Deschutes County’s Comprehensive Plan update as specifically requested by County staff. Consistent with that request, the Planning Commission continued the public hearing to December 14, 2023. COID thanks the Planning Commission for granting that continuance.

Attached to this letter as Exhibit A are several proposed amendments consistent with COID’s original comments submitted on October 25, 2023. Our intention is to propose the minimum edits necessary to address COID’s original concerns. Accordingly, we understand that staff may elect to further revise our proposed amendments to ensure consistent style, formatting, tone, and terminology are utilized throughout the proposed Comprehensive Plan update. COID has no objection to further refinements so long as the original intent of the proposed amendments are maintained.

However, please also note that the amendments outlined in Exhibit A do not address all of COID’s concerns outlined in our October 25 letter. In several instances, that letter noted that current Comprehensive Plan draft did not clearly state or otherwise indicate the County’s intentions. COID is understandably not in a position to clarify such ambiguities, and we therefore anticipate that County staff will likely need to propose further amendments in addition to those included in Exhibit A to fully address COID’s numerous comments outline in our October 25 letter. As previously offered in that letter, COID welcomes the opportunity to meet with County staff to discuss the amendments proposed in Exhibit A in addition to those several instances where the current Comprehensive Plan draft is ambiguous.

Deschutes County Planning Commission
November 29, 2023
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Thank you for including this letter in the record and considering COID's proposed amendments attached as Exhibit A.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Adam Smith', with a stylized flourish at the end.

D. Adam Smith

DASM

PDX37619131.5

Exhibit A

Water Supply and Irrigation – Page 3-3:

“Much of Deschutes County is served by six irrigation districts (Map 3-1) – these are special entities created for the purpose of delivering water to their patrons. These districts are ~~effectively non-profit water user associations~~ quasi-municipal corporations chartered under Oregon law that operate as political subdivisions of the State of Oregon. In addition to irrigation, these districts also supply other services including municipal, industrial, and pond maintenance. In most cases, these districts are holders of senior water rights with shares then distributed to their patrons. As is the case with all water rights, the irrigation districts’ water rights are managed by the Oregon Water Resources Department and subject to “beneficial use” requirements to prevent the waste of the water resource. ~~The total water available for irrigation and other human uses in Deschutes County is fixed under the current water regime, and~~ No additional water rights can be issued without the decommissioning of a previous claim. Therefore, there is little opportunity to expand irrigated farming in the County. ~~Existing farms with senior water rights in general have relatively generous irrigation rights, which have rarely been fully utilized, and are expected to have sufficient water to cope with increasing temperatures and drought conditions in the future.~~ Irrigation districts with more junior water rights such as Junior water right holders, associated with Arnold Irrigation District and North Unit Irrigation District (operating north of Deschutes County), have recently seen challenges with water delivery due to limited availability and drought.”

Changes in Climate Conditions – Page 3-3:

“Because the total volume of water available for agricultural and human use is fixed, strategies to decrease water usage (capping or piping irrigation channels, irrigation timing strategies, water conservation) will become more crucial. Deschutes County is committed to working with irrigation districts and holders of water rights to increase water conservation efforts throughout the County in a manner consistent with existing legal frameworks established by State and Federal law.”

Conflicts with Other uses – Page 3-3:

“~~Agricultural uses continue to be affected by conflicts with adjacent or surrounding non-farm uses (primarily new rural homes). In some cases, new residents object to impacts of common farming practices, such as noise, dust, and odors related to farm activity.”~~

Farm and Forest Resources, Goals and Policies – Page 3-8:

“Policy 3.2.4. Work cooperatively with irrigation districts, public agencies and representatives, and landowners to promote and support agricultural uses and operations, including through use of rural reserves, conservation easements, transfer of development rights programs, land acquisition, and other preservation strategies consistent with existing Federal and State Law.”

Water Resources – Page 5-3

“The high desert climate of Central Oregon poses many challenges with water supply and allocation. Water laws are seen as antiquated by many and issues related water levels in private

residential wells, irrigation allocation to farmers, and protection of habitat areas for dependent species arise frequently.

A 2021 report by the Oregon Department of Water Resources found that groundwater levels through Deschutes County are declining, by as much as 50 feet of total decline in the central part of the basin. This decline is considered “excessively declined” per state statute and is attributed toward a shift in overall drier conditions since the late 1990s, a warming trend in the basin, and decreased snowpack. Ongoing development and piping of canals (which limits artificial groundwater recharge while conserving canal water) also exacerbate the issue. To address these issues, irrigation districts and other entities are engaged in ongoing efforts to pipe canals and modernize irrigation systems to increase their efficiency. Due to water losses in open irrigation canals from seepage into groundwater and evaporation, piped canals typically require only half the amount of water to be diverted from the river or stream to deliver the same volume of water to the end user compared to open canals.

Deschutes County has limited jurisdiction of water use, instead playing a coordination role along with the Oregon Department of Water Resources, irrigation districts, water users, and owners of private wells to address these water resource issues.”

Statewide Planning Goals – Page 5-5

“It is important to underscore that the primary water resource management process occurs outside of the state land use planning system. Oregon land use and water management are not integrated; there are no overarching administrative rules that consider statewide water management in conjunction with land use planning. Accordingly, it is imperative that Deschutes County land use policies are aligned with and do not conflict with Federal and State laws governing our community’s water resources.”

Lava Sponge – Page 5-6

“Deschutes County is fortunate to be underlain on the western side by relatively young volcanic lava sponge. This sponge is highly porous and is able to absorb large quantities of water during the wet season and gradually release it via abundant springs along the eastern slope. The great advantage this provides is that the resulting summer flows into the Deschutes basin are not as dependent on overground flow of snowmelt, and therefore are expected to maintain a relatively stable water supply even as snowpack decreases into the next century. It is for these reasons that the Deschutes River is one of the most stable rivers in the western United States.”

Reservoirs – Page 5-8

“The majority of the irrigation in Deschutes County comes from reservoirs, which are mostly These reservoirs are primarily spring fed from the Cascades. Reservoirs serve the dual purpose of supplying water for irrigation and ensuring sufficient streamflow in the lower Deschutes River. The water levels in these lakes have been low in recent years due to drought in the region Regional droughts in recent years have resulted in lower water levels in these reservoirs. When water is limited, the supply rate is determined by the age of water rights, with the more senior water permits having priority over the youngest. The Swalley and Central Irrigations are the most senior in the county, while the North Union Irrigation District is the most junior.”

Key Community Considerations – Page 5-9

“Natural resources for recreation, passive enjoyment, habitat protection, and economic production are a fundamental part of life in Deschutes County, and as such were a key part of the community conversation in this Comprehensive Plan update. Highlights of this conversation include:

- Concern about the ability of the County’s water supply to accommodate more residents, visitors, and water-intensive jobs in the future.
- Interest in re-evaluation of water rights for urban, agricultural, and “hobby farm” uses.
- A robust discussion around wildfire inventories, habitat conservation, open space regulations, and impacts on private property owners.

The topic of habitat conservation came up frequently, with most participating respondents saying that further protections are needed. However, there was also notably some push back related to the burden these protections may put on property owners. Additionally, Deschutes County acknowledges that it does not have the authority or expertise to reevaluate water rights as part of its land use planning efforts, leading the County to instead work with the Oregon Department of Water Resources, irrigation districts, and holders of water rights to increase the efficiency of water distribution throughout the community.”

Water Goals and Policies – Page 5-9

“Goal 5.1. ~~Develop~~Support regional, comprehensive water management ~~policies~~solutions that balance the diverse needs of water users and recognize Oregon water law.”

Water Goals and Policies – Page 5-9

“Policy 5.1.1.a. Work cooperatively with appropriate federal, state, tribal and local agency resource managers, such as The Confederated Tribes of the Warm Springs Reservation of Oregon, the Oregon Water Resources Department (OWRD), irrigation districts, and other stakeholders and nonprofit water organizations, such as the Deschutes Basin Water Collaborative, the County Soil and Water Conservation District;”

Irrigation Districts – Pages 12-4-5

“Irrigation districts in Oregon are organized as Special Districts under ORS Chapter 545. Six irrigation districts operate in Deschutes County: Arnold, Central Oregon, North Unit, Swalley, Tumalo, and Three Sisters Irrigation Districts. They are quasi-municipal public corporations under Oregon Law, with prescribed rules for purpose, boards, elections, staffing, charges, etc. The districts are operate as political subdivisions of the State of Oregon created for the purpose of delivering water to their patrons. ~~As such they are effectively non-profit water user associations.~~–In addition to irrigation uses, these districts also supply a number of other services, including municipal, industrial, and pond maintenance, warranting coordination with municipalities.”

Hydroelectric Energy Generation– Page 14-4

“Several water districts in Deschutes County have implemented hydropower projects to harness the energy of moving water. These projects may have impacts on wildlife habitat and migration, as well as construction, visual, and noise impacts.

Currently, Deschutes County has three approved “in conduit” hydroelectric facilities that are owned and operated by irrigation districts within existing irrigation district canals. Approval of these facilities have previously been contentious with many community members expressing concern about wildlife and impacts to other basin users. Those concerns, however, stem primarily from dated Deschutes County Code provisions originally drafted to address “in channel” hydroelectric facilities. To promote renewable energy development using man-made waterways, irrigation districts have expressed interest in helping the County updated the Deschutes County Code to more appropriately address “in conduit” hydroelectric facilities separate and apart from “in-channel” hydroelectric facilities. Reducing barriers to permitting these types of developments to promote renewable energy development using man-made waterways.”