



## MEMORANDUM

**TO:** Deschutes County Board of Commissioners (Board)

**FROM:** Tarik Rawlings, Senior Transportation Planner

**DATE:** January 31, 2024

**SUBJECT:** Deliberations: Draft 2020-2040 Transportation System Plan (TSP)

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The Road Department, with the assistance of the Community Development Department (CDD), has prepared an update of the 2010-2030 Deschutes County Transportation System Plan (TSP), covering the years 2020-2040. The TSP focuses on County arterials and collectors as well as bicycles, pedestrians, transit, and other modes. Following a public hearing on November 29, 2023, the Board of County Commissioners (Board) will engage in deliberations on February 7, 2024.

### I. BACKGROUND

The County selected Kittelson & Associates Inc. (KAI) as the consultant for the 2020-2040 TSP. The County and KAI prepared the draft of the 2020-2040 TSP based on technical analysis, public comments, and internal staff review. During the plan development process, KAI and County staff from the Road Department and Planning Division have coordinated with Oregon Department of Transportation (ODOT) and staff from other local jurisdictions. KAI and County staff reviewed a proposal from the County Bicycle and Pedestrian Advisory Committee (BPAC) on future road improvements and connectors. Additionally, KAI and the County held an on-line presentation from April 27 to May 14, 2021, including an online public meeting on May 4, 2021, to solicit public comment. The on-line presentation included technical memos on plans and policy reviews, goals and objectives, and needs analyses of existing and future conditions.

The background materials were posted at the following link:

<https://kaiproject.com/websites/68/>

The full record including public and agency comments is included at the following project-specific website: <https://www.deschutescounty.gov/cd/page/transportation-system-plan-update-2020-2040-247-23-000507-pa-508-ta>

The Deschutes County Planning Commission (PC) held a public hearing<sup>1</sup> on August 10, 2023 and held deliberations on October 12, 2023<sup>2</sup>. Ultimately, the PC issued a recommendation to the Board, which is reviewed later in this memorandum. Following a public hearing on November 29, 2023<sup>3</sup>, the Board extended the open record period until December 6, 2023 at 4pm to collect any additional testimony. On December 20, 2023, staff engaged the Board in a pre-deliberation update where the Board was asked to identify the pertinent issue areas they would like presented through a decision matrix during future deliberations<sup>4</sup>. On January 10, 2024, the Board elected to reopen the record through Board Order 2024-003, allowing for additional materials in record until January 31, 2024, at 4pm<sup>5</sup>. Staff has prepared a decision matrix reflecting the Board's input from the December 20, 2023, pre-deliberation update, attached to this memorandum.

## II. PUBLIC TESTIMONY

Overall, approximately 360 written comments were received from both individuals and public agencies. The main topics within the public testimony were highlighted for the Board during their November 29, 2023 public hearing. Of the highlighted public testimony topics, staff emphasizes the following topics which were directly referenced during the November 29, 2023 public hearing and in written comments leading up to the public hearing:

- Allowance/disallowance of multi-use pathways in the rural county related to wildlife values and resource-zoned lands;
- Multi-use pathway connection between the City of Sisters and Black Butte Ranch (BBR);
- Potential development of a footbridge across the Deschutes River near the Brookwood neighborhood of Deschutes River Woods;
- Concerns regarding Local Access Roads in Special Road District #1, including replacement of the canal crossing (culvert) on Island Loop Way; and
- Priority status elimination for BPAC Bicycle Route Community Connections

As a reminder, the written comments in public record appear at the following project-specific website under the tabs labeled "Comments & Submittals – Agencies", "Comments & Submittals – Public", "BOCC Hearing – Public Comments", and "BOCC Hearing – New Evidence & Testimony": <https://www.deschutescounty.gov/cd/page/transportation-system-plan-update-2020-2040-247-23-000507-pa-508-ta>

The Sisters-BBR multi-use pathway connection has generated numerous e-mails and phone calls, some prior to the initiation of the TSP public process and some during the Comprehensive Plan process. Regarding the subject land use before the Board, the bulk of the submitted written comments have been in opposition with a smaller amount being in favor. Recurring themes from those opposed include concerns about the public using private paths in BBR; adverse effects to the forest; potential trespassing; criminal activity; attracting transients; disruption to wildlife; and safety.

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<sup>1</sup> <https://www.deschutes.org/bc-pc/page/planning-commission-38>

<sup>2</sup> <https://www.deschutes.org/bc-pc/page/planning-commission-41>

<sup>3</sup> <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-139>

<sup>4</sup> <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-145>

<sup>5</sup> <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-146>

(Staff notes the multiuse path would lie on Deschutes National Forest (DNF) land and/or ODOT right of way, which each have their own regulations and environmental review processes.)

Concerning multi-use pathways generally, the TSP (at Table 5.6 - Bicycle Route Community Connections) describes and prioritizes connections between various cities, unincorporated communities, and destination resorts. Table 5.7 (Bicycle Route Recreation Connections) provides similar information about these corridors. Neither table lists specific design aspects such as precise routes, widths, surface type, etc., as those variables would be determined prior to actual construction. No specific alignments are identified or mapped, except for the Bend-Lava Butte Trail, which appears as S-3 on Figure 5-4 (ODOT Facility Changes). The TSP tables were prepared based on input from the Deschutes County Bicycle and Pedestrian Advisory Committee (BPAC). There has been a mix of public input regarding the overall allowance of multi-use pathways in Deschutes County with the bulk of testimony opposed to a full prohibition of multi-use pathways and additional comments in support of the prohibition based on wildlife habitat and resource-zoned property sensitivities.

Regarding the specific improvements requested for the Island Loop Way canal crossing/culvert and the larger Three Rivers community in general, the Road Department Director Chris Doty has provided individual responses to multiple comments received from the Three Rivers community related to project feasibility, funding, and legal constraints. Stakeholders have been referred to Special Road District #1 for maintenance and operational concerns within the District.

### ***Van Dyke LUBA Case Law***

Staff notes the *Van Dyke* LUBA case law has been raised in record and may be pertinent to the review of multi-use pathways as referenced in the updated TSP document. Staff presents the relevant case law, below, through the framing of two relevant questions related to pathways.

#### Question 1: How are conflicts handled between farm or forest uses and trails on resource lands?

##### *Van Dyke I (LUBA 2018-061)*

The above-referenced decision involved an appeal against Yamhill County's Ordinance 904, which authorized the development of a recreational trail within a portion of a former railroad corridor. Petitioners, who owned agricultural land adjacent to the proposed trail, raised concerns about the trail's impact on farming practices, particularly regarding pesticide use. They argued that the trail's development would necessitate new restrictions on pesticide application, significantly changing accepted farm practices in violation of ORS 215.296. However, the Land Use Board of Appeals (LUBA) remanded the decision, finding that the county failed to adequately assess and make findings on the potential impacts of the trail on farming practices as required by ORS 215.296.

Staff notes that, based on *Van Dyke I (LUBA 2018-061)*, trails are considered conditional uses subject to the Farm Impacts Test.

Question 2: How are conflicts handled between farm or forest uses and trails along a zone boundary (for example, EFU zoning adjacent to RR10 zoning)?

*Van Dyle II (LUBA 2019-047)*

In the above-referenced decision, the Land Use Board of Appeals (LUBA) concluded that the proposed recreational trail did not significantly change accepted farm practices or significantly increase the cost of these practices along a zone boundary. LUBA agreed with the county's argument that off-site pesticide application is not an accepted farm practice, and thus, the presence of the trail would not impose additional restrictions on pesticide use on the adjoining farmlands. This decision effectively allowed the construction of the trail, as it was found to comply with the farm impacts test under Oregon's land use laws.

Legal Counsel and staff are available if there are any further questions on the above-mentioned LUBA case law.

### **III. PLANNING COMMISSION REVIEW**

Staff held a June 22, 2023, work session<sup>6</sup> with the PC to provide an overview of the updated TSP and the process to create it. The PC held a public hearing<sup>7</sup> on August 10, 2023, on the draft 2020-2040 TSP. The PC closed the oral record and left the written record open until 4 p.m., August 24, 2023. Staff provided an update on record submittals during the August 24, 2023 Planning Commission meeting<sup>8</sup>. The PC held deliberations<sup>9</sup> on October 12, 2023, ultimately making a recommendation to the Board to adopt the TSP document including five (5) amendments, presented below in no particular order:

- Removal of the Conceptual Multi-use Pathway Connection between City of Sisters and Black Butte Ranch. *(6 Commissioners in favor, 1 Commissioner in opposition)*
- Changing the Multi-use Pathway Connection between Baker Road and Lava Butte to be located on the west side of Highway 97 rather than the east side. *(7 Commissioners unanimously in favor)*
- Changing the priority status for the 2<sup>nd</sup> Street/Cook Ave sidewalks in Tumalo project (Table 5.5 ID BP-3) from Medium to High. *(6 Commissioners in favor, 1 Commissioner absent)*
- Changing the priority status for the US 20/Powell Butte Highway Roundabout project (Table 5.4 ID S-9) from Low to High. *(6 Commissioners in favor, 1 Commissioner absent)*
- Changing the priority status for the US 20/Locust St Roundabout project (Table 5.4 ID S-11) from Low to High and noting that the project, with contributions from Deschutes County, City of Sisters, and ODOT, is funded for construction in 2024. *(6 Commissioners in favor, 1 Commissioner absent)*

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<sup>6</sup> <https://www.deschutes.org/bc-pc/page/planning-commission-30>

<sup>7</sup> <https://www.deschutes.org/bc-pc/page/planning-commission-38>

<sup>8</sup> <https://www.deschutes.org/bc-pc/page/planning-commission-39>

<sup>9</sup> <https://www.deschutes.org/bc-pc/page/planning-commission-41>

Throughout deliberations, the Planning Commission entertained other motions including the allowance of multi-use pathways generally within the County jurisdiction and dark skies standards. On both motions, the Planning Commission's vote resulted in a tie, leading to the failure of those motions. Staff includes this information to illustrate how the Planning Commission was generally closely aligned on certain deliberative aspects of these topics, but ultimately diverged on some of the more detailed points.

#### **IV. NEXT STEPS**

The Board is, of course, not limited to the issue areas outlined in the attached Decision Matrix (Attachment 2) and the Commissioners are welcome to deliberate on any desired topics from public record that they deem pertinent. If the Board determines that additional deliberations are necessary, staff will work with the Board to schedule a future meeting for continued deliberations. If the Board concludes their deliberations during the February 7, 2024 meeting, the Board may then vote on whether to adopt the plan as drafted, adopt the plan with amendments, or deny the plan. If the Board renders a vote during the February 7, 2024 meeting, staff will coordinate with the Board to return for a future meeting during which a draft ordinance and relevant exhibits will be presented and a first reading of the ordinance initiated.

#### **V. CONCLUSION**

Staff is prepared to answer any questions.

#### *Attachments:*

- 1. Draft 2020-2040 Transportation System Plan*
- 2. Decision Matrix*