



Oregon

Theodore R. Kubongski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

5/7/2010

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: Deschutes County Plan Amendment
DLCD File Number 012-09

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Thursday, May 20, 2010

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. Pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE:** The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

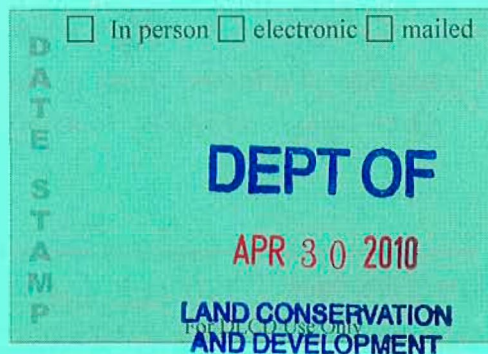
Cc: Will Graves, Deschutes County
Jon Jinings, DLCD Community Services Specialist
Jon Jinings, DLCD Regional Representative

<paa> N

DLCD

Notice of Adoption

THIS FORM MUST BE MAILED TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: DESCHUTES County Local file number: PA-9-4
 Date sent to DLCD: 4-28-10 mail Electronic in person Date of Adoption: 4/26/10
 Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? No If yes, when: 11/25/09
 Comprehensive Plan Text Amendment Comprehensive Plan Map Amendment
 Land Use Regulation Amendment Zoning Map Amendment
 New Land Use Regulation Other: _____

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

MODIFIED EXISTING EXCEPTION AREA TO INCLUDE WIRELESS TOWERS.

Does the Adoption differ from proposal? Please describe. If no proposal submitted, check here:
No.

Plan Map Changed from: NO CHANGE to: _____
 Zone Map Changed from: NO CHANGE to: _____
 Address of Property: 20-10 TL 1900 Acres Involved: 400+
 Specify Density: Previous: NO CHANGE New: _____

Applicable statewide planning goals:

- | | | | | | | | | | | | | | | | | | | |
|--------------------------|--------------------------|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|----|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 |

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

- 45-days prior to first evidentiary hearing? Yes No
- If no, do the statewide planning goals apply? Yes No
- If no, did Emergency Circumstances require immediate adoption? Yes No

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

OREGON WATER WORKS DISTRICT II SEWER DISTRICT

Local Contact: WILL GROWES Phone: 541-388-6518 Extension: _____
Address: 117 NW LAFAYETTE City: SEASIDE Zip: 97130
Fax Number: _____ E-mail Address: WILLG@DESCHUTES.ORG

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO Complete Copies (documents and maps) of the Adopted Amendment to:

ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540
2. **Electronic Submittals:** Go to: <http://webserver.lcd.state.or.us/upload2/uploadForm1.php>
Enter the number of files to be uploaded and then browse to locate files and when all files are found, press submit and your files will be sent to DLCD. At least **one** hard copy must be sent by mail or delivered in person. If you would like help with electronic submittals, please call Mara Ulloa at (503) 373-0050 extension 238.
3. **Please Note:** Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to mara.ulloa@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Adding Deschutes County Code *
23.120.170, to Adopt an Exception to Goal 4 and 11 * ORDINANCE NO. 2010-015
and Declaring an Emergency. *

WHEREAS, AT&T Mobility proposed a “reasons” exception to Goals 4 and 11 and a Plan Amendment to Deschutes County Code (“DCC”) Chapter 23.120, Goal Exception Statement; and

WHEREAS, after notice was given in accordance with applicable law, a public hearing was held on January 5, 2010 before the Deschutes County Hearings Officer and, on February 9, 2010 the Hearings Officer recommended approval of the zone change; and

WHEREAS, after notice was given in accordance with applicable law, a public hearing was held on April 5, 2010 before the Board of County Commissioners (“Board”), and

WHEREAS, the Board, after review conducted in accordance with applicable law, approved the Goal Exception to Goals 4 and 11; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC Section 23.120.170, Oregon Water Wonderland Unit 2 Sewer District, is amended to read as described in Exhibit “A”, with new language underlined and deleted language set forth in ~~strike through~~, to add Wireless Telecommunications Facilities as a use allowed in the exception area described in Exhibit “B” with both exhibits attached and incorporated by reference herein.”

Section 2. FINDINGS. The Board adopts as its findings in support of this decision Exhibit “C,” and incorporated by reference herein.

Section 3. The Board shall execute an amendment to the conservation easement on the subject property, recorded in the Deschutes County Clerk’s records at Volume 2004, Page 64973, substantially in the form in Exhibit D, attached and incorporated by reference herein.

///

Section 4. EMERGENCY. This Ordinance being necessary for the public peace, health and safety, an emergency is declared to exist and this Ordinance takes effect on its passage.

Dated this 26th of April, 2010

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Dennis R. Luke
DENNIS R. LUKE, Chair

Alan Unger
ALAN UNGER, Vice Chair

ATTEST:

Bonnie Baker
Recording Secretary

- absent -
TAMMY BANEY, Commissioner

Date of 1st Reading: 26th day of April, 2010.

Date of 2nd Reading: 26th day of April, 2010.

Commissioner	Record of Adoption Vote:			
	Yes	No	Abstained	Excused
Dennis R. Luke	<u>✓</u>	—	—	—
Alan Unger	<u>✓</u>	—	—	—
Tammy Baney	—	—	—	<u>✓</u>

Effective date: 26th day of April, 2010.

23.120.170. Oregon Water Wonderland Unit 2 Sewer District.

In conjunction with the Board's approval of County file nos. PA-02-5/ZC-02-3, as amended by PA-09-4, a "reasons" exception to Statewide Planning Goals 4, Forest Lands, and 11, Public Facilities & Services, was taken for certain property. The plan amendment changed the plan designation to Rural Residential Exception Area and the zone change changed the zoning to Rural Residential with a Limited Use Combing Zone to allow only the uses approved through the Board's decision on PA-02-5/ZC-02-3, as amended by PA-09-4. Reasons justifying why the state policies embodied in Goals 4 and 11 should not apply in this situation are set forth in Exhibit "C" to Ordinance 2003-012, as amended by Ordinance 2010-015, which findings are incorporated herein by reference. (Ord. 2010-015 §1, 2010; Ord. 2003-015 §1, 2003)

Ordinance 2010-015 – Exhibit B
Legal Description of Subject Property

Township Twenty (20) South, Range Ten (10), East of the Willamette Meridian, Deschutes
County, Oregon Section Twenty-Five (25), E $\frac{1}{2}$ and E $\frac{1}{2}$ W $\frac{1}{2}$.

DECISION OF DESCHUTES COUNTY BOARD OF COUNTY COMMISSIONERS

FILE NUMBER: PA-09-4

APPLICANT: AT&T Mobility
c/o Joe Riddle
Cascadia PM
5501 N.E. 109th Court, Suite A-2
Vancouver, Washington 98662

PROPERTY OWNER: Oregon Water Wonderland Unit 2 Sewer District
55841 Swan Road
Bend, Oregon 97701

APPLICANT'S ATTORNEY: Myles A. Conway
Schwabe, Williamson & Wyatt
360 S.W. Bond Street, Suite 400
Bend, Oregon 97702

REQUEST: The applicant requests approval of a plan amendment and a "reasons" goal exception to add wireless telecommunications facilities to the list of uses permitted in the Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone.

STAFF REVIEWER: Will Groves, Senior Planner

HEARING DATE: April 5, 2010

RECORD CLOSED: April 5, 2010

I. APPLICABLE STANDARDS AND CRITERIA:

- A. Title 18 of the Deschutes County Code, the Deschutes County Zoning Ordinance**
1. Chapter 18.04, Title, Purpose and Definitions
 - * Section 18.04.030, Definitions
 2. Chapter 18.60, Rural Residential Zone – RR10
 - * Section 18.60.090, Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone
 3. Chapter 18.112, Limited Use Combining Zone
 - * Section 18.112.010, Purpose
 - * Section 18.112.020, Combining Zone Requirements
 4. Chapter 18.136, Amendments
 - Section 18.136.020, Rezoning Standards
- B. Title 22 of the Deschutes County Code, the Development Procedures Ordinance**
1. Chapter 22.24, Land Use Action Hearings
 - * Section 22.24.140, Continuances and Record Extensions
 2. Chapter 22.28, Land Use Action Decisions
 - Section 22.28.030, Decision on Plan Amendments and Zone Changes
- C. Title 23 of the Deschutes County Code, the Comprehensive Plan**

1. Chapter 23.08, Introduction
 - * Section 23.08.010, Introduction
2. Chapter 23.20, Comprehensive Planning Process
 - * Section 23.20.040, Goals and Policies
3. Chapter 23.24, Rural Development
 - * Section 23.24.020, Goals
 - * Section 23.24.030, Policies
4. Chapter 23.44, Regional Problem Solving for South Deschutes County
 - * Section 23.44.020, Goals
 - * Section 23.44.030, Strategies
5. Chapter 23.68, Public Facilities and Services
 - * Section 23.68.020, Policies
6. Chapter 23.92, Forest Lands
 - * Section 23.92.020, Goal
 - * Section 23.92.030, Policies
7. Chapter 23.120, Goal Exception Statement
 - Section 23.120.170, Oregon Water Wonderland Unit 2 Sewer District

D. Oregon Administrative Rules, Chapter 660, Land Conservation and Development Commission

1. Division 4, Interpretation of Goal 2 Exception Process
 - * OAR 660-04-0010, Application of the Goal 2 Exception Process to Certain Goals
 - * OAR 660-04-0018, Planning and Zoning for Exception Areas
 - * OAR 660-04-0020, Goal 2, Part II(c) Exception Requirements
 - * OAR 660-04-022, Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)
2. Division 11, Public Facilities and Services
 - * OAR-660-011-0005, Definitions
3. Division 12, Transportation Planning
 - * Section 66-012-0060, Plan and Land Use Regulation Amendments
4. Division 15, Statewide Land Use Planning Goals and Guidelines
 - * OAR 660-015-000, Statewide Planning Goals and Guidelines No. 1 Through No. 14
 - * OAR 660-015-005, Statewide Planning Goal and Guideline No. 15
 - * OAR 660-015-010, Statewide Planning Goals and Guidelines No. 16 Through No. 19

II. FINDINGS OF FACT:

The Board of County Commissioners ("Board") adopts and incorporates herein by reference the findings of fact proposed by the Hearings Officer in the February 9, 2010, decision, as revised and supplemented herein.

- A. Procedural History:** On February 9, 2010, the Hearings Officer issued a decision approving the subject application. Section 22.28.030(C) requires: "[Z]one changes . . . concerning lands designated for forest or agricultural use shall be heard de novo before the Board of County Commissioners without the necessity of filing an appeal, regardless of the determination of the Hearings Officer[.]" Pursuant to that section, the Board held a de novo public hearing on the subject application on April 5, 2010.

The entire record of the proceeding to date was placed before the Board at the public hearing, and the Board closed the record at the conclusion of the hearing. At the hearing, the Board deliberated and voted to approve the subject application and to adopt the Hearings Officer's findings and conclusions, as revised and supplemented herein.

- B. Public Notice and Comments:** The Planning Division mailed individual written notice of the public hearing before the Board to the owners of record of all property located within 750 feet of the subject property. In addition, notice of the public hearing was published in the "Bend Bulletin" newspaper. No public comment was received in writing. One member of the public spoke at the public hearing on the subject application on April 5, 2010.

The Board concurs with Hearings Officer's conclusion, as revised and supplemented herein.

III. CONCLUSIONS OF LAW:

A. Adoption of Hearings Officer's Conclusions of Law

FINDINGS: The Board adopts and incorporates herein by reference the conclusions of law proposed by the Hearings Officer in the February 9, 2010, decision, as revised and supplemented herein.

IV. DECISION:

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby **APPROVES** the applicant's proposed plan amendment, zone change and "reasons" exception to Goals 4 and 11, subject to the conditions of approval included in the February 9, 2010 Hearings Officer's decision.

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

AMENDEMENT TO CONSERVATION EASEMENT

This Amendment to Conservation Easement is made this ___ day of _____, 2010, by and between Oregon Water Wonderland Unit II Sewer District (hereafter “Grantor”) and DESCHUTES COUNTY, a political subdivision of the State of Oregon (hereafter “Grantee”).

RECITALS

A. Grantor is the fee simple owner of the approximately 480 acres of real property in Deschutes County, Oregon that is legally described in Exhibit A attached hereto (hereafter the “Property”). Grantor previously applied for and received a land use permit on the Property that required, as a condition of approval, that Grantor provide Grantee with a conservation easement. The parties entered a Conservation Easement on October 4, 2004, that is recorded in volume 2004, page 64973 of the Deschutes County real property records (hereafter the “Conservation Easement”).

B. Land uses on the Property are governed by the Conservation Easement and the Oregon Water Wonderland Limited Use Combining Zone (Deschutes County Code Section 18.60.090). In 2010, the Grantor applied to modify the text of DCC Section 18.60.090 to allow “wireless telecommunication facilities” as a use that is permitted conditionally in the limited use combining zone. The Board of County Commissioners authorized this change and adopted Ordinance 2010-016. The parties now wish to amend the Conservation Easement to reference the changes to DCC 18.60.090 that have been authorized in Deschutes County Ordinance 2010-016.

NOW THEREFORE, the parties agree to amend the Conservation Easement as follows:

1. The Recitals set forth above are hereby incorporated as material terms of this Agreement.

///

2. Section 2 of the Conservation Easement is hereby amended to authorize the siting, development, construction, operation, maintenance and replacement of "wireless telecommunications facilities" on the Property subject to the requirements of DCC 18.60.090 (as amended by Ordinance 2010-016) and DCC 18.128. Except as specifically modified herein, all other terms and conditions of the Conservation Easement shall remain the same.

Dated this _____ of _____, 2010

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

DENNIS R. LUKE, Chair

ALAN UNGER, Vice Chair

ATTEST:

Recording Secretary

TAMMY BANEY, Commissioner

Dated this ____ day of _____, 2010

OREGON WATER WONDERLAND
SEWER DISTRICT II

BY _____

ITS _____

REVIEWED
re
LEGAL COUNSEL

|

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code *
18.60.090, to add Wireless Telecommunications * ORDINANCE NO. 2010-016
Facilities as a Conditional Use and Declaring and *
Emergency. *

WHEREAS, AT&T Mobility proposed a “reasons” exception to Goals 4 and 11 and a Plan Amendment to Deschutes County Code (“DCC”) Chapter 23.120, Goal Exception Statement; and

WHEREAS, an amendment to DCC 18.06.090 is necessary to implement the goal exception adopted in Ordinance 2010-015; and

WHEREAS, after notice was give in accordance with applicable law, a public hearing was held on January 5, 2010 before the Deschutes County Hearing Officer and, on February 9, 2010 the Hearings Officer recommended approval of the goal exception and text amendment; and

WHEREAS, the Board of County Commissioners considered this matter after a duly noticed public hearing on April 5, 2010 and approved the goal exception and text amendment; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC 18.60.090, Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone is amended to read as described in Exhibit “A”, attached and incorporated by reference herein, with new language underlined and deleted language set forth in ~~strike through~~.

Section 2. FINDINGS. The Board adopts as its findings in support of this decision, Exhibit “B”, attached to Ordinance 2010-015 and incorporated by reference herein.

///

Section 5. EMERGENCY. This Ordinance being necessary for the public peace, health and safety, an emergency is declared to exist and this Ordinance takes effect on its passage.

Dated this 26th of April, 2010

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Dennis R. Luke
DENNIS R. LUKE, Chair

Alan Unger
ALAN UNGER, Vice Chair

ATTEST:

Bonnie Baker
Recording Secretary

-absent-
TAMMY BANEY, Commissioner

Date of 1st Reading: 26th day of April, 2010.

Date of 2nd Reading: 26th day of April, 2010.

Commissioner	Record of Adoption Vote:			
	Yes	No	Abstained	Excused
Dennis R. Luke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Alan Unger	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tammy Baney	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Effective date: 26th day of April, 2010.

18.60.090. Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone.

- A. Uses Permitted Outright. In the Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone, uses shall be permitted as follows, the following uses and their accessory uses are allowed outright:
- a. Agricultural use as defined in DCC Title 18.
 - b. Propagation or harvesting of a forest product.
 - c. Ground application of treated effluent.
- B. Uses Permitted Subject to Site Plan Review. In the Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone, uses shall be permitted as follows, the following uses and their accessory uses are permitted subject to applicable provisions of DCC 18.116, Supplementary Provisions, and DCC 18.124, Site Plan Review:
- a. Sewage Treatment Facility.
 - b. Treated Effluent Ponds.
- C. Uses Permitted Conditionally. In the Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone, Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B), and their accessory uses are permitted conditionally subject to the applicable provisions of DCC 18.128, Conditional Uses.
- ED. Definitions. For the purpose of this section, the use Sewage Treatment Facility includes any buildings or structures associated with the operations of a sewer treatment plant including, but not limited to, treatment station or pump station.
- DE. Special Conditions. Pursuant to DCC Section 23.120.170, an application for site plan review to establish a sewage treatment facility must include a conservation easement and a plan of implementing the conservation easement that provides standards and implementation methods for managing the conservation easement, along with a recorded road maintenance agreement between Oregon Water Wonderland Unit 2 Sewer District and the Beaver Special Road District, with the site plan review application. The road maintenance agreement between the applicant and the Beaver Special Road District shall include Oregon Water Wonderland Unit 2 Sewer District's pro rata share for the maintenance cost of Foster Road through Section 25.
- (Ord. 2010-016§1, 2010; Ord. 2003-012 §1, 2003)



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04/29/2010
Mailed From 97701
US POSTAGE

Deschutes County Community Development Department

117 NW LAFAYETTE AVENUE
BEND, OREGON 97701-1925
(541) 388-6575

Plan Amendment Specialist
Dept. of Land Conserv. & Developmnt
635 Capitol St., N.E., Suite 150
Salem, OR 97301-2540