



CENTRAL OREGON LANDWATCH

50 SW BOND ST., STE. 4

BEND, OR 97702

PHONE: (541) 647-2930

WWW.CENTRALOREGONLANDWATCH.ORG

*Protecting Central Oregon's natural environment
and working for sustainable communities.*

April 10, 2013
HB 3087: Support

Dear Chair Barker and Members of the House Judiciary Committee:

My name is Paul Dewey and I am testifying today on behalf of Central Oregon LandWatch as its Executive Director and attorney. LandWatch was organized in the mid-1980s and has operated for over 25 years in Central Oregon working to protect neighborhoods and encourage conservation of both private and public lands. Our mission is to achieve a balanced and integrated approach to land use planning in Central Oregon that will safeguard our natural resources and environment and foster socially and economically thriving communities.

Thank you for this opportunity to comment on HB 3087 which we fully support.

There has been a growing problem over the past several years of a few counties and cities making appeal fees to county commissions and city councils so high that the public cannot afford to engage in the process. Permit me to give you a few examples.

A few years ago a large destination resort was proposed for northern Klamath County. Consisting of thousands of acres and proposing thousands of homes, it was the equivalent of a small city. Arguably, it would be the most impactful development in the history of the county. Yet the public could not get the elected county officials to review the decision because they could not afford the appeal fee which was over \$10,000. No one from the public could afford that fee. Accordingly, the approval of the resort by the unelected planning commission was not appealed to or reviewed by the Klamath County Board of Commissioners.

Note that a handful of counties, including Deschutes, Jefferson, Crook and Klamath, use a formula of a base appeal fee plus 20% of whatever the original land use application cost. Deschutes County, for example, has a base appeal fee of \$2,615. Every appeal costs at least that much to appeal to the Board of Commissioners. Where the fee for a destination resort is \$13,235, 20% of that amount is \$2,647 for a total appeal fee of \$5,262. See Exhibit A, an excerpt of the 2013 Deschutes County Proposed Fee Schedule showing current fees. Note that Klamath County does place a maximum limit on appeal fees at \$11,850.

Even for a smaller land use application, such as a simple partition, the base appeal fee is the same. Recently, Central Oregon LandWatch had to pay a \$3,457 appeal fee to challenge a

partition of land for which the original fee was only \$2,585. Attached as Exhibit B is an email showing the County's calculation of the appeal fee, the staff report on the appeal and the County Commission's decision not to hear the appeal. In that instance where the County Commission chose not to hear the appeal, the County returned 75% of the fee and kept 25%.

Coming up with \$3,500 was not easy for LandWatch, but the issue was important. What was being proposed was a partition of forest land for residential development outside of the West Bend Fuel Break. This was the equivalent of proposing development on the ocean side of a levy in New Orleans. The proposal involved substantial fire risk for whoever would inhabit the area as well as for fire and other emergency personnel who would be responsible for fighting fires and evacuating people from the area. This forest area is at a high risk of catastrophic wildfire and all resources are necessary for protecting the forest. The location of residences in this area would have been completely irresponsible. On appeal to the Land Use Board of Appeals, Central Oregon LandWatch prevailed on virtually every appeal issue. The case was remanded back to the County where the Hearings Officer then ruled against the application. The FDIC then took over the applicant which was the Bank of Whitman and the case went away.

In another case involving a Declaratory Ruling, where the application fee was \$1,230, the appeal fee was \$2,736, over twice the application fee. In that instance, the Board of Commissioners again ended up not hearing the appeal, returned \$2,052 of the appeal fee and kept nearly \$700. It is difficult to imagine how the Staff or the Commissioners could have spent even an hour considering the appeal.

The counties claim that such high appeal fees are justified by their high costs associated with appeals. Yet there are no out-of-pocket expenses with the appeal to the local governing body and the Staff has already become familiar with the application and the issues by that point. They have already fully assessed the application and evidence and there has already been a hearings officer's or planning commission's decision assessing the appeal issues. All that happens on appeal to the governing body is a hearing in front of the governing body, usually a brief staff report and then deliberations by the governing body. Findings and a decision are then usually drafted by the applicant's attorney. I have seen appeals involving destination resorts where the staff was almost completely passive. The applicant's attorney did virtually everything. Even with county legal counsel review, the county's time expense is limited.

The counties and cities claim that this new law will impose a new fiscal obligation on them that they cannot afford. We dispute their estimate of the financial obligation, but in any event the city or county can totally avoid the cost by simply not deciding to hear the appeal. The City of Bend, for example, has a policy of not hearing appeals from a hearings officer or its planning commission unless it is a special case involving important public policy issues. Once the governing body decides not to hear an appeal, the lower body's decision stands unless it is appealed to LUBA.



Central Oregon LandWatch

50 SW Bond St., Ste. 4, Bend, OR 97702
Phone (541) 647-2930 Fax (541) 383-3470

Thank you again for this opportunity to testify today. We respectfully request your support for this very necessary measure.



PAUL DEWEY,
Executive Director
Central Oregon LandWatch



Central Oregon LandWatch

50 SW Bond St., Ste. 4, Bend, OR 97702
Phone (541) 647-2930 Fax (541) 383-3470

Deschutes County Proposed Fee Schedule
FY 2013

ITEM NO.	DESCRIPTION	FY 2012 Fee (\$)	UNIT	ENACTMENT AUTHORITY	FY 2013 Fee (ONLY if different from FY 2012)
	CDD - Environmental Soils Division (con inued)				
	disposal program, a surcharge of \$60.00 of each site evaluated, for each construction installation permit and for all other Activity				
	Site evaluation, for each site examined, based on a projected flow of:				
	Surcharge				
CDES 41	A. 1,000 gallons or less	60.00			
CDES 42	B. to 2,000 gallons	60.00			
CDES 43	C. 2,001 to 3,000 gallons	60.00			
CDES 44	D. 3,001 to 4,000 gallons	60.00			
CDES 45	E. 4,001 gallons or more	60.00			
CDES 46	Construction - installation permit	60.00			
CDES 47	Renewal permit	60.00			
CDES 48	Alteration permit	60.00			
CDES 49	Authorization notice	60.00			
CDES 50	Existing system evaluation report	60.00			
	*(There is no surcharge for pumper truck inspection.)				
	CDD - Planning Division				
CDPN 1	Administrative determination with notice - Major	1,230.00			1,290.00
CDPN 2	Administrative determination with notice - Minor	785.00			825.00
CDPN 3	Appeals to Board of Commissioners	2,490.00	+20% of original fee		2,615.00
CDPN 4	Appeals to Board of Commissioners - not accepted	75% refund			
CDPN 5	Appeals - Administrative	250.00		ORS 215.416(11)	
CDPN 6	Appeals - LUBA	2,500.00			
CDPN 7	Appeals - LUBA Remand Hearing	3,000.00			
CDPN 8	Conditional Use	2,185.00			2,295.00
CDPN 9	Conditional Use (non-farm dwelling)	2,955.00			3,100.00
CDPN 10	Conditional Use (golf course)	5,170.00			5,425.00
CDPN 11	Conditional Use (P.U.D. or cluster development)	4,640.00			4,870.00
CDPN 12	Conditional Use (new destination resort)	12,605.00	or ACS		13,235.00
CDPN 13	Conditional Use (schools with 100 students or more)	3,460.00	or ACS		3,630.00
CDPN 14	Conditional Use (power transmission line and communication tower or pole)	3,820.00	or ACS		4,010.00

*ACS=Actual Cost of Services

COL Ex A, p. 1
2013 HB 3087

Deschutes County Proposed Fee Schedule
FY 2013

ITEM NO.	DESCRIPTION	FY 2012 Fee (\$)	UNIT	ENACTMENT AUTHORITY	FY 2013 Fee (ONLY if different from FY 2012)
	CDD - Planning Division (continued)				
	Conditional Use (Home Occupation - Type 1 for EFU or F Zone)				825.00
CDPN 15	Conditional Use (Home Occupation - Type 2)	1,230.00			1,290.00
CDPN 16	Conditional Use (Home Occupation - Type 3)	2,185.00			2,295.00
CDPN 17	Condominium Plan Review	915.00	+ \$15 per lot		960.00
CDPN 18	Consultant Fee (for consultant or expert retained by County and paid for by applicant)	ACS			
CDPN 19	Declaratory Ruling (status determined under Chap. 22.40)	1,230.00			1,290.00
CDPN 20	Expedited Land Divisions	3,820.00	or ACS		4,010.00
CDPN 21	Extension Request	310.00			325.00
CDPN 22	Filing Activities	2,770.00			2,910.00
CDPN 23	Final Plat Review (all plats)	105.00	+ \$55 per lot		110.00
	*****\$35 of the \$55/lot fee is for long range planning*****				
CDPN 24	Hearings Officer Deposit	3,000.00	Deposit/ACS		
CDPN 25	Hearings Officer Deposit - Complex application	5,000.00	Deposit/ACS		
	Historic Landmarks Commission Public Hearing and Review				
CDPN 26	Exterior alteration - major	350.00			365.00
CDPN 27	Moving am to a Historic Landmark Structure	350.00			365.00
CDPN 28	Demolish an Historic Landmark Structure	1,600.00			1,680.00
CDPN 29	Delete Historic Site/Building from Goal 5 Inventory	1,600.00			1,680.00
CDPN 30	Add historic structure/site to Goal 5 Inventory	500.00			525.00
CDPN 31	National Register Nomination Hearing	350.00			365.00
CDPN 32	Appeal of Landmarks Commission Decision to Board	750.00			785.00
	Historic Administrative Review (Staff)				
CDPN 33	Exterior alteration - minor	250.00			260.00
CDPN 34	Appeal of Administrative Decision	250.00			260.00
CDPN 35	Improvement Agreement	1,230.00			1,290.00
CDPN 36	Land Use Verification Letter and/or Information Sheet	60.00			65.00
CDPN 37	Landscape Management Review (not visible from road or stream)	440.00			460.00
CDPN 38	Landscape Management Review (river)	1,120.00			1,175.00
CDPN 39	Landscape Management Review (road)	785.00			825.00
CDPN 40	Landscape Management Review (and less than 50 feet from rimrock)	1,475.00			1,550.00
CDPN 41	Limited Land Use Decision	3,820.00	+ \$25 per lot		4,010.00
	Limited Use Permit (Agri-tourism & other events in EFU zone)				
	Type 1				440.00
	Type 2 & 3				825.00
CDPN 42	Lot of Record Verification	440.00			460.00
CDPN 43	Property Line Adjustment	440.00			460.00

Red: Text or fees to be changed or deleted
Blue: New text or fees
Green: Emergency Fees approved during FY 2012

*ACS=Acutal Cost of Services

Deschutes County Proposed Fee Schedule
FY 2013

ITEM NO.	DESCRIPTION	FY 2012 Fee (\$)	UNIT	ENACTMENT AUTHORITY	FY 2013 Fee (ONLY if different from FY 2012)
CDPN 44	CDD - Planning Division (continued) Property Line Adjustment (consolidation)	345.00			360.00
CDPN 45	Property Line Adjustment (consolidation) Hillman & Laidlaw plats		+ 100 for ea adjacent consolidation application filed concurrently to create a single legal lot		320.00
CDPN 46	Master Plan (including final master plan for destination resort)	305.00			4,930.00
CDPN 47	Master Plan (Statutory defined)	4,695.00			
CDPN 48	Modification of Conditions	10,000.00			1,290.00
CDPN 49	Modification of Submitted Application	1,230.00			825.00
CDPN 50	Noise Ordinance Variance/Permit	785.00			1,290.00
CDPN 51	Non-Conforming Use Alteration	1,230.00			1,700.00
CDPN 52	Minor code changes	1,620.00			
CDPN 53	Major Code Change (applicant will be billed for M56 Notice)	5,000.00			
CDPN 54	Outdoor Mass Gathering/Extended Outdoor Mass Gathering	10,000.00	ACS (Notice)		2,615.00
CDPN 55	Partition	2,490.00			2,735.00
CDPN 56	Partition - Financial Permit sign-off for other agency (Role change, Land Use Compatibility Statement, DMV, Water Resources, etc.)	2,605.00	+ \$35 per lot		1,290.00
CDPN 57	New	1,230.00			
CDPN 58	Renewal	55.00			60.00
CDPN 59	Plan Amendment (without goal exception)	30.00			
CDPN 60	Plan Amendment (including goal exception/UGB expansion)	5,000.00			
CDPN 61	Pre-application meeting	10,000.00	ACS		
CDPN 62	Reconsideration by Hearing Officer	ACS			1,020.00
CDPN 63	Quadrant Plan(s) (Planning Commission)	970.00			4,290.00
CDPN 64	River Setback Exception	4,085.00	+ \$35 per lot		2,170.00
CDPN 65	Rimrock Setback Site Plan (within 50 feet of rim)	2,065.00			825.00
CDPN 66	Road Dedication	795.00			825.00
CDPN 67	Road Name Change	795.00			1,290.00
CDPN 68	Sign Permit	1,275.00			460.00
CDPN 69	Sign Permit Variance	440.00			1,805.00
CDPN 70	Similar Use Ruling	1,720.00			1,200.00
CDPN 71	with another application	1,145.00			320.00
		305.00			

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Deschutes County Proposed Fee Schedule
FY 2013

ITEM NO.	DESCRIPTION	FY 2012 Fee (\$)	UNIT	ENACTMENT AUTHORITY	FY 2013 Fee (ONLY if different from FY 2012)
	CDD - Planning Division (continued)				
	Site Plan:				
CDPN 72	Change of Use (site conforms with all existing standards)	440.00			460.00
CDPN 73	Alteration or Enlargement of 25% or less (if site conforms with all existing standards)	785.00			825.00
CDPN 74	Change of Use (site does not conform with all existing standards)	960.00			1,010.00
CDPN 75	Minor Alteration (alteration or enlargement of less impact than existing use)**	1,885.00			1,980.00
CDPN 76	Major Alteration**	2,605.00			2,170.00
CDPN 77	Site Plan with New Development**	2,955.00			3,100.00
	**All new site plans and major and minor alterations are subject to the following additional fees:				
CDPN 78	Per 1,000 sq. feet of structure	50.00			
CDPN 79	Per developed acre (over 1 acre)	125.00	over 1 acre		
CDPN 80	Per open space acre if impacted by development	40.00	over 1 acre		
CDPN 81	Site Plan/Wildlife Review	785.00			825.00
	Site Plan/Wind Energy				825.00
CDPN 82	Site Plan/Surface Mining	4,640.00			4,870.00
	Site Plan/Surface Mining Combining Zone (SMIA):				
CDPN 83	1/4 mile from mining site and two dwellings closer	440.00			460.00
CDPN 84	1/8 mile from mining site	705.00			740.00
CDPN 85	Closer than 1/8 mile from mining site	1,290.00			1,355.00
CDPN 86	Partition/subdivision SMIA review	50%	of site plan for each lot		
CDPN 87	Solar Access Permit	705.00			740.00
CDPN 88	Solar Shade Exemption	1,370.00			1,440.00
CDPN 89	Special operating permit	2,205.00			2,315.00
CDPN 90	Subdivision Name Change	785.00			825.00
CDPN 91	Subdivision (cemetery)	2,250.00			
CDPN 92	Subdivision Replat	2,250.00	+ \$35 per lot		2,360.00
CDPN 93	Subdivision (Tentative Plat)	4,640.00	+ \$35 per lot		4,870.00

CDL Ex A, p. 4

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Deschutes County Proposed Fee Schedule
FY 2013

ITEM NO.	DESCRIPTION	FY 2012 Fee (\$)	UNIT	ENACTMENT AUTHORITY	FY 2013 Fee (ONLY if different from FY 2012)
	CDD - Planning Division (continued)				
	Temporary Use:				
CDPN 94	Itinerant Merchant	345.00			360.00
CDPN 95	Medical Hardship	440.00			460.00
CDPN 96	Medical Hardship EFU or Forest	785.00			825.00
CDPN 97	Land Use Permit	1,145.00			825.00
CDPN 98	RV Renewal	100.00			
CDPN 99	Manufactured Home Storage	305.00			
CDPN 100	All other	785.00			825.00
CDPN 101	Variance	2,205.00			2,315.00
CDPN 102	Variance Type II (variance from less than 25% of the standards in urban areas/less than 10% of standards in the county)	1,290.00			1,355.00
CDPN 103	Wireless Communication Facility Site Plan	2,770.00			2,910.00
CDPN 104	Zone Change	4,640.00	ACS (Notice)		4,870.00
	Note: Where ACS is noted, applicant may be required to pay an advance deposit reflecting the estimated cost of service.				

*ACS=Actual Cost of Services

CAL EX A, P 5

Paul Dewey

From: William Groves <William_Groves@co.deschutes.or.us>
Sent: Tuesday, August 24, 2010 4:44 PM
To: Paul Dewey
Subject: Whitman appeal fee

2,940+20% original fee (\$2,585)

Total \$3,457

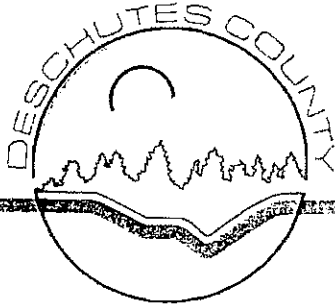
Will Groves

Senior Planner

Deschutes County Community Development Department ASFPM Certified Floodplain Manager ph# (541) 388-6518 fax# (541) 385-1764

Web: www.co.deschutes.or.us/cdd

2010-052



Community Development Department

Planning Division Building Safety Division Environmental Health Division

117 NW Lafayette Avenue Bend Oregon 97701-1925
(541)388-6575 FAX (541)385-1764
<http://www.co.deschutes.or.us/cdd/>

September 7, 2010

To: Deschutes Board of County Commissioners

From: Will Groves, Senior Planner

Subject: Board consideration to hear or not hear an appeal of a Hearings Officer decision approving of a minor partition to divide a 1,306-acre parcel in the F-1 Zone west of Bend into three parcels. (File numbers: MP-10-3, MA-10-4, and A-10-4)

BACKGROUND

Bank of Whitman requested approval of a minor partition to divide a 1,306-acre parcel in the Forest Use (F-1) Zone west of Bend into three parcels. The Hearings Officer approved this application on August 20, 2010. Central Oregon Landwatch filed a timely appeal requesting de novo review on August 31, 2010. The Board needs to decide whether or not to hear this appeal.

The Central Oregon Landwatch appeal addresses the following issues:

Access: The proposed parcel configuration includes 'flag' lots with 'flagpoles' up to a mile in length to meet the DCC 17.36.180(A) frontage requirements. The applicant has not proposed to take actual access from these 'flagpoles' and would instead use other travel surfaces in the area. Central Oregon Landwatch argues that the frontage and access standards of 17.36.180(A), 17.22.020(A)(3), and 17.36.260 together require actual, safe access can be taken from a public road. Central Oregon Landwatch also argues that 17.36.260 requires that two points of access be required for resident evacuation and that access roads be improved to county required widths.

Suitability: DCC 17.22.020(A)(5) requires that, "Each parcel is suited for the use intended or offered, considering the size of the parcels, natural hazards, topography and access." Central Oregon Landwatch argues that residences are one of the offered uses and that the applicant has not demonstrated that the proposed parcels are suitable for residential use, given the fire hazards in the area.

The 150-day period expires on September 30, 2010. It appears that, at this point, the Board's calendar would allow sufficient time to hear this matter.

COL Ex B, 02

STAFF DISCUSSION

The Hearings Officer's decision and the appeal both make reference to the *Thomas* partition (MP-02-12) affecting property northeast of the subject property (Tax Lots 4300, 4303 and 4304 on Assessor's Map 17-11). The Hearing Officer's and Board's decisions in this previous matter are attached for your reference.

The Board may decline to hear this appeal or agree to hear this appeal. If the Board agrees to hear this appeal, it may hear the matter de novo, or limit the scope of the hearing to the issues on appeal. Staff recommends that, if the Board accepts the appeal, that the Board hear the entire matter de novo, as requested by the appellant. Limiting testimony to specific issues may significantly complicate the hearing.

SCHEDULE

This matter is scheduled for the Board's afternoon meeting on September 8, 2010. Please contact me with any questions.

COL, Ex B, p. 3

LUBA No. 2010-085

0012

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Accepting Review of Hearings Officer's *
Decision in File no. A-10-4 (MP-10-3 and MA-10-4) * ORDER NO. 2010-052

WHEREAS, Applicants, the Bank of Whitman, requested a minor partition to divide a 1,306-acre parcel in the F-1 Zone west of Bend into three parcels, which was approved by the Hearings Officer's in application numbers MP-10-3 and MA-10-4 on August 20, 2010; and

WHEREAS, Appellant, Central Oregon Landwatch, appealed the Hearings Officer's decision in application number A-10-4 on August 31, 2010; and

WHEREAS, Section 22.32.027 of the Deschutes County Code allows the Board of County Commissioners (Board) discretion on whether to hear appeals of Hearings Officer's decisions; and

WHEREAS, the Board has given due consideration as to whether to review this application on appeal; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, HEREBY ORDERS as follows:

Section 1. That the Board will not hear on appeal application no. A-10-4 (MP-10-3 and MA-10-4).

Section 2. The appellants shall be granted a refund of some of the appeal fees, according to County Procedures.

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

COL Ex B, p4