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LEGAL COUNSEL

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

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MARY SUE BENHOLLOW  
COUNTY CLERK

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An Ordinance Amending Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, As Amended, To Prohibit Hydroelectric Facilities In Designated Zones and Stretches\* Of The Deschutes River And Its Tributaries, To Allow Hydroelectric Facilities As Conditional Uses In Designated Zones and Stretches of the Deschutes River, Establishing Conditional Use Criteria, Adopting Findings And Conclusions, and Declaring An Emergency. \*

ORDINANCE NO. 86-018

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

Section 1. Section 1.030, Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, is further amended to include the following definitions:

- "(25B) Conduit. Any tunnel, canal, pipeline, aqueduct, flume, ditch or similar man-made structure which is or may be used to convey water.
- (27A) Dam. Any man-made structure which is or may be used to impound water.
- (28A) Diversion. Any man-made structure which is or may be used to deflect or divert water from a river or stream into a conduit.
- (37A) Fish Passage Device. Any man-made structure which is or may be used to enable fish to pass over a dam to move upstream.
- (37B) Fish Protection Device. Any man-made structure, such as a fish screen, which is or may be used to prevent fish from entering into or passing through con-

duits, penstocks and other water-conducting structures or devices connected to a hydroelectric facility.

- (53A) Hydroelectric Facility. All aspects of any project or development necessary for or related to the generation of hydroelectric energy, including, but not limited to, conduits, dams, diversions, fish ladders and screens, generators, impoundments, penstocks, turbines, transmission facilities, and related buildings, structures, storage areas, access roads, parking areas and surrounding and adjacent lands which are necessary for or related to the facility.
- (53B) Impoundment. Any man-made structure which is or may be used to impound water.
- (85A) Penstock. Any conduit or other structure which is or may be used to convey water to the driving mechanism of the generator.
- (130A) Transmission Facility. The conductors, lines, poles, towers, structures, corridors and construction staging and assembly areas necessary for or associated with the transmission of electricity from a hydroelectric facility for distribution."

Section 2. Subsection 134, Section 1.030, Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, is further amended to read as follows:

- "(134) Utility Facility. Any major structures, excluding hydroelectric facilities, owned or operated by a public, private or cooperative electric, fuel, communications, sewage or water company for the generation, transmission, distribution or processing of its products or for the disposal of cooling water, waste or by-products, and including power transmission lines, major trunk pipelines, power substations, water towers, sewage lagoons, sanitary landfills and similar facilities, but

excluding local sewer, water, gas, telephone and power distribution lines, and similar minor facilities allowed in any zone."

Section 3. Subsection 3, Section 4.010, Exclusive Farm Use - EFU 320, Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, is further amended by the addition of the following:

"(O) Hydroelectric facility, in accordance with Sections 5.210 and 8.050(22) of this Ordinance."

Section 4. Subsection 3, Section 4.020, Exclusive Farm Use - EFU 80, Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, is further amended by the addition of the following:

"(O) Hydroelectric facility, in accordance with Sections 5.210 and 8.050(22) of this Ordinance."

Section 5. Subsection 3, Section 4.030, Exclusive Farm Use - EFU 40, Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, is further amended by the addition of the following:

"(O) Hydroelectric facility, in accordance with Sections 5.210 and 8.050(22) of this Ordinance."

Section 6. Subsection (3), Section 4.040, Exclusive Farm Use - EFU 20, Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, is further amended by the addition of the following:

"(P) Hydroelectric facility, in accordance with Sections 5.210 and 8.050(22) of this Ordinance."

Section 7. Subsection 3, Section 4.060, Multiple Use Agricultural Zone - MUA, Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, is further amended by the addition of the following:

"(T) Hydroelectric facility, in accordance with Sections 5.210 and 8.050(22) of this Ordinance."

Section 8. Subsection 3, Section 4.070, Forest Use F-1, Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, is further amended by the addition of the following:

"(B) Hydroelectric facility, in accordance with Sections 5.210 and 8.050(22) of this Ordinance."

Section 9. Subsection 3, Section 4.080, Forest Use F-2, Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, is further amended by the addition of the following:

"(O) Hydroelectric facility, in accordance with Sections 5.210 and 8.050(22) of this Ordinance."

Section 10. Subsection 3, Section 4.085, Forest Use F-3, Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, is further amended by the addition, of the following:

"(P) Hydroelectric facility, in accordance with Sections 5.210 and 8.050(22) of this Ordinance."

Section 11. Subsection 3, Section 4.100, Surface Mining Zone - SM, Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, is further amended by the addition of the following:

"(F) Hydroelectric facility, in accordance with Sections 5.210 and 8.050(22) of this Ordinance."

Section 12. Subsection 3, Section 4.110, Surface Mining Reserve Zone - SMR, Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, is further amended by the addition of the following:

"(F) Hydroelectric facility, in accordance with Sections 5.210 and 8.050(22) of this Ordinance."

Section 13. Subsection 3, Section 4.120, Rural Residential - RR-10, Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, is further amended by the addition of the following:

"(P) Hydroelectric facility, in accordance with Sections 5.210 and 8.050(22) of this Ordinance."

Section 14. Section 4.195, Deschutes River Combining Zone - DR, Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, is repealed.

Section 15. Subsection 3, Section 4.220, Rural Industrial Zone - RI, Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, is further amended by the addition of the following:

"(P) Hydroelectric facility, in accordance with Sections 5.210 and 8.050(22) of this Ordinance."

Section 16. Subsection 2, Section 4.240, Planned Community Zone - PC, Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, is amended by the addition of the following:

"(E)2.f. Hydroelectric facility, in accordance with Sections 5.210 and 8.050(22) of this Ordinance."

Section 17. Article 5, Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, Supplementary Provisions, is amended by the addition of a new Section 5.210, providing as follows:

"Section 5.210, Hydroelectric Facilities.

(1) No new hydroelectric facilities shall be constructed, and no existing hydroelectric facilities shall be enlarged or expanded in size of area or generating capacity, on the following rivers and streams within Deschutes County:

- (A) Deschutes River, from its headwaters to River Mile 227, above but not including Wickiup Dam, and from Wickiup Dam to River Mile 171 below Lava Island Falls;
- (B) Crooked River;
- (C) Fall River;
- (D) Little Deschutes River;
- (E) Spring River;
- (F) Paulina Creek;
- (G) Squaw Creek;
- (H) Tumalo Creek.

- (2) Hydroelectric facilities are allowed as a conditional use on the Deschutes River at Wickiup Dam, and from River Mile 171 below Lava Island Falls downstream to the northern Deschutes County line. Such conditional use shall be governed by the conditions set forth in Section 8.050 of this Ordinance."

Section 18. Section 8.050, Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, Conditional Uses, is amended by the addition of a new subsection (22), providing as follows:

"(22) Hydroelectric Facilities.

- (A) The criteria set forth below shall apply to any construction or expansion of, or other modification to, hydroelectric facilities in zones where such facilities are permitted as a conditional use. A conditional use permit may be granted for the construction or expansion of, or other modification to, a hydroelectric facility only upon findings by the Hearings Body that the proposal meets each of the following criteria, where applicable;

- (1) The facility is located at and physically connected to an existing man-made diversion or impoundment;
- (2) The facility will not increase the maximum surface area or capacity of the impoundment created by the existing dam or diversion to which the facility will be connected;
- (3) The facility will maintain or enhance, to the greatest extent possible, the existing scenic, visual, environmental and aesthetic qualities of the affected stretch of the river.
- (4) The facility will maintain or enhance the existing recreational opportunities on or adjacent to the affected stretch of the river.
- (5) The facility will maintain or enhance existing fish and wildlife

habitat, and will have no adverse impact upon any threatened or endangered fish, wildlife or plant species or their habitat.

- (6) The facility and its operation will maintain or enhance existing water quality in the affected stretch of the river, except during construction of the facility, when adverse impacts on water quality will be minimized. Specifically, the facility and its operation will not:
  - (a) deposit, or create a zone for the deposit of, sediments in the river at or adjacent to the site;
  - (b) increase the temperature of the river in the affected stretch by any means, including but not limited to removal of vegetation or reduction in streamflow; or
  - (c) create the potential for, or result in, spillage, leakage or discharge of oil, chemicals or other substances or waste products which could reach the river.
- (7) The facility and its operation will not increase soil or bank erosion or destroy bank habitat at or on land adjacent to the site, except during construction of the facility, during which time soil or bank erosion and destruction of bank habitat will be minimized.
- (8) The facility and its operation will maintain existing public access to the affected stretch of the river.
- (9) The facility will not be located at or immediately adjacent to any identified archaeological or historical site, national or state park, wildlife refuge, Bureau of Land Management Outstanding Natural Area or Area of Critical Environmental Concern,

Federal Research Natural Area or U.S. Forest Service Special Interest Area.

- (10) The facility will not be located on any stretch of the river that is being studied or recommended for inclusion in either the Federal Wild and Scenic Rivers Program or the State Scenic Waterways Program, unless location of the facility at that site would not preclude inclusion of the stretch in the state or federal program.
  - (11) The facility and its operation will comply with all applicable noise, water quality and pollution regulations of the Oregon Department of Environmental Quality.
  - (12) The facility and its operation will comply with all applicable state and local fill-and-removal statutes and regulations.
- (B) The applicant for a conditional use permit for a hydroelectric facility, in addition to all other requirements, shall submit the following for approval:
- (1) Detailed construction plans and profiles of all facility features, including building elevations of the powerhouse and other structures, excavation plans and narrative as to where blasting will occur and where excess material will be deposited, and landscaping and reclamation plans.
  - (2) Detailed plans for meeting the criteria set forth in subsection (A) above.
  - (3) Detailed plans for river enhancement documenting both on-site and off-site enhancement plans consistent with adopted river-related goals and policies, such as plans and methods for conserving water and enhancing streamflows. The plan shall identify costs, time schedules and coordination activ-

ities with affected persons and agencies for such enhancement plans.

- (4) A cash deposit, performance bond or other security acceptable to Deschutes County, in an amount equal to 100 percent of the estimated cost of river enhancement.
- (5) Detailed plans for a water conservation and stream enhancement program to be funded by a portion of revenues generated by the operation of the proposed facility. The program plans shall contain the following:
  - (a) A program timetable;
  - (b) Projected gross revenues from the proposed facility;
  - (c) Projected program expenditures and the percentage of gross revenues they represent;
  - (d) Projected water savings and the percentage of known current water losses they represent;
  - (e) A declaration by the applicant that at least fifty percent of the conserved water will remain undiverted by the applicant;
  - (f) A declaration by the applicant that water diversion for power generation will not cause water flow in the affected stretch of the river (from the diversion to the tailrace exit) to fall below the minimum streamflow for that stretch as recommended by the Oregon Department of Fish and Wildlife; and
  - (g) A declaration by the applicant that it will enter into an agreement with Deschutes County, prior to beginning construction of the facility, by which the applicant agrees to fulfill all of the require-

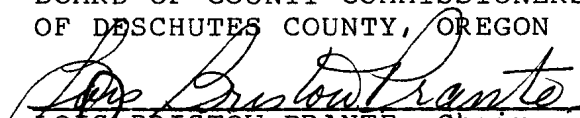
ments in paragraphs (a) through  
(f) of this subsection."

Section 19. The Board of County Commissioners adopts as its findings and conclusions supporting the amendments in Sections 1 through 18 of this Ordinance the Staff Report, dated May 21, 1986, relating to the Deschutes River Corridor.


Section 20. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

DATED this 30<sup>th</sup> day of June, 1986.

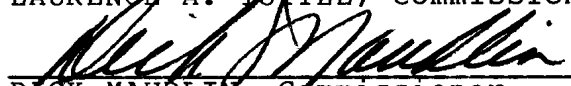
BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

  
LOIS BRISTOW PRANTE, Chair

ATTEST:

  
LAURENCE A. TUTTLE, Commissioner

  
Recording Secretary

  
DICK MAUDLIN, Commissioner