

February 6, 2018

House Committee on Agriculture and National Resources
Representative Brian Clem, Chair
900 Court Street, NE Salem, Oregon 97301

Chair Clem, Vice-Chairs McLain and Sprenger and members of the Committee:

Re: HB4029

You have received a great deal of passionate written testimony regarding HB4029, and I imagine you will hear from several others in person at the hearing on the 8th. I do not envy you in taking on this politically sensitive issue. Much has been said and written about regarding the Bend Park and Recreation District's (BPRD) project (aka South UGB Bridge) to eventually construct a new connecting segment of the Deschutes River Trail and a new pedestrian footbridge at the south end of Bend over the Deschutes River. As many have pointed out, HB4029 appears to be a short-sighted attempt to circumvent the local public process and outright prevent any future bike/pedestrian bridge on a large section of the Deschutes River at the south end of the Bend urban area.

I am the former Planning Manager for BPRD and therefore do not speak on behalf of the District. However, until June of 2017, I managed this bridge project since the time it was voter-approved as part of a package of Deschutes River Trail-related projects with the 2012 BPRD Bond (Measure 9-86). I was also involved in the multi-jurisdictional planning of this trail since 1994, when I was hired as Deschutes County's Senior Transportation Planner.

The following are my comments, opinions and research. As someone that personally managed this project, researched the issues extensively, and had been part of the public discourse surrounding this project, I believe that my information/insight could prove useful to the Committee in deciding the merits of HB4029, as well as clarify issues for the public at large. It was not my intention to bore you with all the details of this lengthy and sometimes contentious process, but this is surely a critical juncture in this project's process, and indeed the future of any subsequent trail and bridge projects that may be envisioned as Bend continues to grow. I believe that the House Committee on Agriculture and National Resources, and any subsequent committee, deserves to have all the pertinent background information that I can provide.

I realize it is extensive, so if you choose to read the background information below, be forewarned that I've tried to be complete as I can since many opposing arguments to any future bridge appear to be lacking the complete story or may be based in part on misinformation. Beginning with the background of the Upper Deschutes River Rules in question, one needs to understand and read the original (and subsequent legislation) that established the Oregon State Scenic Waterways to see the total picture. Much of the opposition to this project references claims of Oregonian voter-intent regarding environmental protections, including a ban on bridges, some as yet undetermined environmental

impacts, and the Bend Park District utilizing loopholes in state law. The original issue that I (and others) found particularly difficult was the apparent inequity in state law that singled-out the Upper Deschutes (and a portion of the Metolius) as the only river sections in the entire 1,200 miles of state scenic waterways that have an outright bridge and crossing prohibition.

<http://www.oregon.gov/oprd/NATRES/scenicwaterways/Pages/waterways.aspx>

Meaning that the Upper Deschutes (and a portion of the Metolius), are somehow more pristine and scenic than the Rogue, Owyhee, McKenzie, etc., yet the Upper Deschutes is impacted by much existing riverfront development, and in fact was compromised by riverfront development when the rules were drafted and adopted. I believe it was this inequity that BPRD attempted to address with OPRD.

The initial request to the Oregon Parks and Recreation Department (OPRD) back in 2012 after passage of the Bond Measure was to amend the Oregon Administrative Rule (OAR 736-040-0073) to allow footbridges on the Upper Deschutes, was not intended to amount to special treatment or promote new development as some argue, or lead to lessening of other river section protections, in fact it was intended to “level the playing field” and bring the Upper Deschutes rules on bridges in line with all other state scenic waterways. Allowing footbridges on the Upper Deschutes only meant that new bridge proposals would be allowed to run through the local and state land use processes, and environmental review just like any other existing state scenic waterway. In fact, considering that the segment of the Upper Deschutes outside of the Bend UGB is also a federal Wild and Scenic River (which BTW does allow bridges), there will be a very robust environmental process required before any bridge could be approved. The current bridge proposal is on federal land so there is little likelihood that it would spur increased development along the river.

While I was initially distressed to read about HB4029 and my initial reaction like many was to oppose its passage, I suggest that if possible, the Committee actually has a unique opportunity courtesy of HB4029’s unnamed sponsors to vote to amend HB4029 to specifically allow bicycle/pedestrian footbridges and correct this long overdue inequity in State law. I believe an amendment would also require the Oregon State Parks Commission to also amend language in OAR 736-040-0073. In doing so, the Committee will not circumvent proper land use processes, environmental review, and local public input, but in effect be allowing the possibility of a new bridge along this section of the Upper Deschutes just like most every other segment of scenic river in the state. Any applicant will still be required to utilize the local, state and in some cases federal land use and public input processes already in place. To assist the Committee, I have included a rough draft of simple amendment language that I am suggesting.

Therefore, I am opposed to the passage of HB4029 in its current form (Amendment 1) but would support an amended HB4029 as modified below to specifically allow bicycle/pedestrian bridges. Thank you for your time and dedication to the citizens of Oregon.

Sincerely,
Steve Jorgensen
61494 SW Longview St.
Bend, OR 97702

Suggested draft HB4029 amendment language:

**PROPOSED AMENDMENT TO
HOUSE BILL 4029**

On page 1 of the printed bill, line 2, after the first semicolon delete the rest of the line and line 3 and insert “and prescribing an effective date.”.

Delete lines 5 through 28 and delete page 2 and insert:

“SECTION 1. A person, a public body as defined in ORS 174.109 or a local service district as defined in ORS 174.116 may construct a bicycle/pedestrian bridge on the Deschutes River within that portion of the Deschutes Scenic Waterway established under ORS 390.826 (5) beginning at the Deschutes National Forest boundary in section 20, township 19 south, range 11 east, Willamette Meridian, and ending downstream at the Central Oregon Irrigation District’s diversion structure at river mile 171.

“SECTION 2. This 2018 Act takes effect on the 91st day after the date on which the 2018 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.”

Upper Deschutes River Background:

Oregon Scenic Waterway History as it Relates to the Upper Deschutes

1970 – Measure 9

The **Oregon Scenic Waterways Bill**, also known as **Measure 9**, was on the November 3, 1970 ballot in Oregon as an initiated state statute, where it was approved. The measure designated a number of rivers or portions of rivers as “scenic waterways,” prohibited dams and reservoirs on these rivers, regulated natural resource exploitation within one-mile of the rivers, and empowered the governor to designate additional “scenic waterways.” It did not include the Upper Deschutes River at the time.

Language:

9. SCENIC WATERWAYS BILL - Purpose: To preserve natural beauty of certain rivers. Designates as “scenic waterways” portions of Rogue, Illinois, Deschutes, Owyhee, John Day Rivers and all Minam River. Prohibits dams and reservoirs on these rivers. State Highways Commission given condemnation and rule-making powers. Landowners within a quarter mile of such rivers must give Commission one year advance notice before mining, cutting trees, or constructing any roads, buildings or other structures. Governor may designate additional “scenic waterways.”

It is clear that there was no voter-mandate in 1970 to protect Oregon’s scenic rivers from the impacts from new bridges. Passage of the Scenic Waterways Act, in 1970, immediately set into motion a state protection program for certain rivers in Oregon. Under the Act, Oregon Parks and Recreation Department (OPRD) must be notified of certain changes that landowners may want to make to their property, and those changes may be subject to review. See http://www.oregon.gov/oprd/rules/docs/sww_log.pdf for the full program description. Measure 9 text also clearly identifies the original intent to give a one-year “advance notice” to the Commission that ultimately became OAR 736-040-0080. This is not a “loophole” as some claim, but rather part of the original intent of the Act.

1971 - The Scenic Waterways Bill resulted in the adoption of **Oregon Revised Statute (ORS) 390.805-390.940** that guides the program. This is the ORS that HB 4029 seeks to amend.

1985 - The Legislature directed the Dept. of Transportation, Parks and Recreation Division (subsequently separated to become Oregon State Parks and ODOT) to study the Deschutes River in Deschutes County for possible eligibility as a State Scenic Waterway. The Study was completed and given to the Legislature in 1987 for approval.

1987 - The Oregon Legislative Assembly added designated portions of the Upper Deschutes River from Wickiup Dam to Bend. The Legislature approved “Scenic River” segments from Wickiup Dam to the Bend UGB.

1988 – Measure 7

The **Oregon Expansion of Scenic Waterways System Act**, also known as **Measure 7**, was on the November 8, 1988 ballot in Oregon as an initiated state statute, where it was approved. The measure added more river sections to the “scenic waterways” system to protect scenic, fishery, wildlife

and recreational values along the assigned rivers. Oregon voters formally added several segments of the Deschutes, including the last, most-downstream mile of the Upper Deschutes from Bend's UGB to the COID intake. Again like Measure 9 in 1970, no mention of protecting any rivers from the effects of new bridges.

Language:

7. OREGON SCENIC WATERWAY SYSTEM

QUESTION - Shall Oregon law designate more river sections as scenic waterways?

*EXPLANATION - Adds more river sections to the "scenic waterways" system established by existing state law. Effect is to designate as scenic waterways new sections of four previously designated waterways (Clackamas, **Deschutes**, John Day, Rogue) and seven new river sections (parts of Elk, Klamath, McKenzie, Metolius, Nestucca, Umpqua, Wallowa-Grande Ronde). Designation as scenic waterway protects scenic, fishery, wildlife and recreation values along river. Prohibits dams and placer mining. Sets standards for development within 1/4 mile of waterway. Does not affect Indian trust lands and tribal rights.*

1992 - Subsequent to the approval of Measure 7 in 1988, OPRD adopted Oregon Administrative Rule (OAR) 736-040-005 to 736-040-095 in 1992 to govern the program. Text of OAR 736-040-005 to 736-040-095 can be found here: http://arcweb.sos.state.or.us/pages/rules/oars_700/oar_736/736_040.html. The portion of the OAR specific to the Upper Deschutes River can be found in OAR 736-040-0073. The section of the Upper Deschutes River from Sunriver to the Bend UGB was designated "Scenic River" and the portion inside the Bend UGB was classified "River Community".

1993 - 1996 - After the OAR was adopted in 1992, there was a joint planning effort by the Tribes, US Forest Service, the Oregon Parks and Recreation Department, and others to help clarify guidelines and establish a river management plan in those portions of the Upper Deschutes River that had overlapping state and federal scenic waterway designations. That effort resulted in the 1996 Upper Deschutes Wild and Scenic River and State Scenic Waterway Comprehensive Management Plan (UDCMP) (<http://www.rivers.gov/documents/plans/upper-deschutes-plan.pdf>).

The Final Environmental Impact Statement (FEIS) for the UDCMP included work by a "Coordination Group" comprised of agency representatives, an "Upper Deschutes Wild and Scenic River Task Force" populated by 13 citizens and other agency members, and a "Deschutes Basin Resource Committee" with eight business, agency and public members.

EIS Public Review:

The 90-day draft EIS review period in October 1995 generated a total of 96 responses via mail, public meetings, fax and telephone. 74 of the responses were from Central Oregon and none of the public or agency comments mentioned a bridge prohibition. Yet, one of the recommendations for the Oregon State Scenic Waterway section was for a total ban on any new bridges on any section of the Upper Deschutes regardless of classification. This was in spite of having no similar bridge prohibition on the federal Wild and Scenic River segments of the Upper Deschutes, and no bridge prohibition on any other segment of state scenic waterway, regardless of classification, except for one segment of the Metolius River.

1996 (April) – The Oregon Parks and Recreation Commission adopted amendments to OAR 736-040-073 for the Upper Deschutes based on the findings in the UDCMP. <http://www.oregon.gov/oprd/docs/deschutes-rule-amend-1996-small.pdf> Draft amendments to OAR 736-040-073 were prepared by OPRD staff and presented to the public through informal workshops. Public hearings were held to obtain oral comments. Written comments were accepted by OPRD until January 27, 1996.

No oral comments were received at the workshops and public hearings held in Bend, Madras and La Pine in 1995 on the draft amendments. The workshops resulted in only one issue, “trespassing on private lands” and just six comment letters were received, which included these comments:

- *Condemn private property that has been developed too close to the river frontage.*
- *Conservation efforts should be directed towards preserving the lands from residential development.*
- *Metal roofs of approved design and color should be permitted because of high fire danger in this area.*
- *No building of homes, motels, etc. next to the river. Need land that remains natural/like it was intended to be.*
- *Riverbank erosion cannot be controlled without man’s intervention in some form. Do not eliminate river front walls entirely.*
- *The current state scenic waterway rules are restrictive enough for anyone to deal with.*

Once again, no comments from the public or agencies regarding a need for bridge prohibitions.

The OPRD response in 1996 to the last public comment above was:

- *“The proposed amendments add one restriction that would prohibit new above ground river crossings (utility, bridge, etc.). Other changes add clarification to the existing rules and extend similar regulations to the portion of the river that did not have adopted rules”.*

The bridge prohibition text referenced by OPRD and added by the Parks Commission in the 1996 OAR amendment:

(e) New bridges will not be permitted. Maintenance, repair and replacement of existing bridges shall be consistent with OAR 736-40-035 (6) and (7). Deschutes County land use and development regulations, and Oregon Division of State Lands regulations:

This text seems to have originated within the committee or committees working on the UDCMP and not from any public comment or testimony, nor were bridge prohibitions intended or included in voter-approved Measure 9 or Measure 7.

No ballot measure, public or formal agency comments that are part of any public record that I could find, reference bridge prohibitions for any segment of the Upper Deschutes River. There are also no references in the FEIS discussions on Outstandingly Remarkable Values (ORVs) related to bridges or their potential impacts. In fact, new bridges are not mentioned anywhere in the FEIS except for when it suddenly appears as proposed State Scenic Waterway Rule language.

The apparent disconnect between bridge prohibitions on just the Upper Deschutes and a portion of the Metolius, and all other scenic waterways in Oregon should be a concern. I was not a party to those meetings so I do not have direct knowledge of what was discussed.

Other reasons for “no new bridges” text could be traced to the concerns in Bend over rapid residential development at the time. The time period from 1993-1996, when the Committees were actively working on the UDCMP, was a time of rapid residential development in Bend. Elk Meadow (east side of the River) was still undeveloped but there were fears that the Bend UGB could be extended south and a new road crossing might be possible. The City of Bend’s comprehensive plan allowed higher density in the area. Brookwood Blvd. was being extended south to Deschutes River Woods and the Bill Healy Bridge downstream across the Deschutes was already on the City’s transportation plan. The Bend Parkway was approved and under construction as well. It is reasonable to assume that members of the UDCMP Committee might argue that this rulemaking was an opportunity to modify the OAR for state scenic waterways to halt any new bridges south of the Bill Healy Bridge location considering the controversy surrounding the Healy Bridge at the time. However, in spite of those concerns, the FEIS record demonstrates that there was minimal public engagement and/or interest, and no comments on bridges.

The 1996 UDCMP Committee actually made an interesting general comment about access and viewing opportunities from bridges in the FEIS. The whole FEIS is here: <https://books.google.com/books?id=E5s2AQAAMAAJ&pg=RA1-PA67&lpg=RA1-PA67&dq=jan+houck+upper+deschutes&source=bl&ots=i1Hv59Bn6Q&sig=7LewMO2GgNuoDQc6WIZ5YVGzUrU&hl=en&sa=X&ved=0ahUKEwjioJ2zj4zUAhWLg1QKHcYFAZYQ6AEIMTAC#v=onepage&q=bridges&f=false>

The narrative in the Plan identified an “imaginary” trip down the river starting on page 166. The description about Segment 4 (Sunriver to the COID Intake) mentioned this (page 169) at the end when describing the last portion downstream of Meadow Camp:

Though the scenic quality of the corridor from the perspective of the river user is of primary importance perhaps as many people view the river from bridges and other motor vehicle accessible access points. Bridges, parallel roads, and roads accessing developed and dispersed recreation sites provide a multitude of viewing opportunities to visitors in the upper portion of the river. In much of Segment 3 road access is limited to bridges as private property limits access for the general public. Downstream from Sunriver public access points are limited by the number of roads provided across public land and in the lower sections by private property. Virtually all of the falls on the river can be viewed after a short walk from a parking area. Many riparian areas can be viewed from automobiles while other require a trip across the river in a canoe, raft or small boat.

Summary

The scenic value of the Deschutes River is primarily within the foreground landscape as viewed from the river, trails along the river, and access roads to the river. The elements of the foreground making the Deschutes River unique are diverse changes as it flows through a variety of landforms and geographical features, many flowering and other riparian plant species, rugged lava flows and rimrock, and abundant wildlife such as eagle and osprey as well as furbearers and larger mammals. Mature stands of ponderosa pine visible from the river and access roads create an important element of the viewing experience on the river.

The river flows through areas that are natural in appearance yet evidence of urban life and development are visible throughout most of the private lands that have been subdivided. Reduction of stream flows during winter has diminished scenic values even more by exposing and undercutting streambanks.

Other features surrounding the river are snow-capped peaks, ridges, and volcanic features which have been featured in regional and national publications, numerous commercials, films, and television series have showcased the scenes found along this river. The diverse environmental setting and unusual features attract visitors regionally.

That is the only mention of bridges other than existing bridges, and certainly not to the point of recommending some sort of ban. Yet the bridge prohibition text is the only other place the word “bridge” shows up, with no explanation.

It is an interesting coincidence that the 1995 Wild and Scenic River Management Plan for the Metolius River also includes a recommended bridge prohibition in the “Recreational Homesites” area (page 225). <https://books.google.com/books?id=bkI3AQAAAJ&pg=PA228&lpg=PA228&dq=jan+houck+deschutes&source=bl&ots=i7EzRH3jNV&sig=FZf-pQcj5Ctca8soPicUjK3r6Kc&hl=en&sa=X&ved=0ahUKewjcy6aQllzUAhUms1QKHev8AGcQ6AEILDAD#v=onepage&q=bridge&f=false>

For the Metolius River, the recommendation for Scenic River classifications in the 1995 Management Plan resulted in two classifications, Recreational River Area and River Community Area. The Recreational Homesites area was recommended to have a footbridge prohibition, but this State Scenic “River Community Area” actually wound up with no bridge prohibition in the OAR. However, the other state scenic waterway classifications of “Recreational River”, which are upstream and downstream of the residential portion of Camp Sherman (River Community), are the segments that do have the bridge prohibition. The need for a bridge prohibition for those reaches was not mentioned in the 1995 Management Plan. Yet, once again a bridge prohibition shows up in the official OAR without explanation, and the wording for the Metolius River bridge prohibition is nearly identical to the wording for the Upper Deschutes prohibition.

In summary, there never was a stated intent to prohibit new bridges in the establishment and refinement of the State Scenic Waterway program (Measures 9 and 7), nor was there ever any public or agency testimony to prohibit bridges over the Upper Deschutes, nor even a mention of such a prohibition in the FEIS findings. The origin of the bridge prohibition text in the 1996 UDCMP was inconsistent with previous voter wishes and public/agency comments at the time.

2012 - BPRD Bond Measure 9-86

The idea of an extended Deschutes River Trail on the east side of the river and a bridge crossing somewhere in the area of the South UGB has been conceptually identified on various City of Bend, Deschutes County and BPRD planning documents since the 1995 City of Bend Urban Trails Plan. In 2012, BPRD included a future bridge as part of a series of projects to complete the Deschutes River Trail through Bend. For the trail and bridge connection to ever be completed as conceptualized, it was necessary to enter into a planning process to not only evaluate potential bridge sites and feasibility, but also work with the Deschutes National Forest staff and Oregon State Parks (OPRD) to see if the bridge could be built per the existing Rules, or possibly amend the rules if necessary.

After the passage of the 2012 Bond, BPRD coordinated with the Deschutes National Forest and OPRD to figure out how BPRD should proceed on evaluating a bridge site and moving the project forward. The recommendation from OPRD at the time was to send a letter to the state identifying BPRD's intent to eventually construct a new pedestrian bridge at the south part of the Bend UGB. BPRD was told that the request would be automatically denied per the bridge prohibition listed in OAR 736-040-0073, and that the 12-month waiting period would then commence per OAR 736-040-0080. BPRD did as instructed and the request was denied, and the 12-month clock was started. At the same time, Deschutes National Forest staff instructed BPRD to apply for a Forest Special Use Permit for a future bridge.

At the same time, a former staff member of the Oregon Department of Land Conservation and Development, who happened to live just south of the proposed bridge site, contacted BPRD and correctly pointed out that BPRD's letter to OPRD was in error since BPRD was not the legal owner of the property to be used for the bridge abutment sites. The intent at the time was to possibly use the federal property on both sides of the river for the bridge abutments. As the owner of the property, the Deschutes National Forest staff instructed BPRD to continue with the Special Permit process which would require an evaluation of bridge site and trail connection alternatives before the permit application would even be accepted.

BPRD proceeded as instructed BPRD did a direct mailing to 876 area residents in neighborhoods on both sides of the river including a survey (both mail and online), and also advertised a public meeting. The survey included specific questions about potential future bridge sites and use. The results indicated that over 80% favored a bridge. The public meeting at the local elementary school was well attended. Subsequently I advertised via email for residents willing to sit on a citizen's advisory committee (CAC) that would evaluate bridge and trail options with the intent of eventually making a recommendation to the Bend Park Board. The CAC would up with 22 members representing interests on both sides of the river and met approximately six times over a 12-month period in 2014-15. The CAC held their last

meeting in April 2015 with a recommendation for Bridge Option 3 and Trail Option 3C.

https://r.search.yahoo.com/_ylt=AwrSbnZzinpaFd8A5DRXNyoA;_ylu=X3oDMTEExN2pqaDUxBGNvbG8DZ3ExBHBvcwMyBHZ0aWQDVUIDMV8xBHNIYwNzcg--/RV=2/RE=1518009076/RO=10/RU=https%3a%2f%2f3.amazonaws.com%2falpineclients%2fBPRD%2fdocs%2fCurrent%2fdeschutes-river-trail%2fSouth-Canyon%2f2015%2fSouth%2fUGB%2fBridge%2fand%2fTrail%2fOption%2fPresentation.pdf/RK=2/RS=xKJBLLYd2WEItaNpSvGZ2Jt3kX4-

Bridge Option 3 was located adjacent to and south of the Bend UGB on federal land. Trail Option 3C was proposed at the end of the process by the owner of private land on the east side of the river as his preferred alignment and one that he would be willing to grant a public trail easement. The CAC recommended this trail option with the primary intent that it was constructible and would not involve the need for any use of eminent domain. <http://www.bendparksandrec.org/south-canyon/>

2015 - BPRD Request to Oregon Parks and Recreation Commission to Amend OAR 736-040-0073

In 2015-2016, BPRD petitioned the Oregon State Parks and Recreation Commission to amend the scenic waterway rules and loosen the restriction on new bridges. The amendment would have allowed a bicycle/pedestrian crossing within a portion of the Upper Deschutes, but after taking public comment and seeing a mix of both strong opposition and support for the idea, the Commission declined to amend the rules. Instead, it directed OPRD staff to undertake a process to evaluate if formal rulemaking should be opened for the portion of the river closest to Bend (within the UGB)

<http://www.oregon.gov/oprd/Pages/upper-deschutes-scenic-waterway.aspx>

2016 – 2017 OPRD established a local committee of citizens and agency representatives called the Upper Deschutes Advisory Group (UDAG)

OPRD contracted with a local non-profit to help guide the UDAG through a defined process, and create an environment conducive to open dialogue and collaboration. The meetings with staff and stakeholders were open to the public and also pulled-in thoughts from a much broader cross-section of the public, including recreational groups, nonprofits, and people who care about the river and recreation.

Results from the UDAG process, and the ultimate decision of the Director to not open rulemaking, have been put forth by bridge opponents as a clear mandate by the public, environmental agency staff, and OPRD to keep river protections in place. From my perspective as an agency member of the UDAG and seeing the process unfold, I would point out that all of the citizen members of the UDAG either submitted subsequent comments and oral testimony against the proposed bridge, represented organizations that were formally opposed to the bridge, or remained silent on the bridge. This included UDAG members that openly testified against a bridge at one or more of the UDAG public meetings (including some agency staff) without identifying themselves as committee members. No UDAG citizen members supported opening the rulemaking or the proposed bridge. While developed with good intentions by OPRD, I contend that this was a flawed process that yielded skewed results driven in large part by a vocal group of citizens and some agency staff members opposed to the bridge project.

2017 - OPRD Director Decision

The UDAG review produced a report to Oregon Parks and Recreation Department Director Lisa Sumption, and based on that report, on May 10th, Director Sumption decided not to pursue any new rule amendments. <http://cascadebusnews.com/state-leader-says-no-lifting-river-bridge-ban/>

2017 - HB2027 is Amended to prohibit any new bridges on the Upper Deschutes River

Representative Whisnant submits an amendment to HB2027 that removes and replaces current text with new text prohibiting any new bridges on State Scenic Waterway portions of the Upper Deschutes River.

2018 – HB4029 in introduced on behalf of Oregon Wild to prohibit any new bridges for two segments of the Upper Deschutes River.

Additional Background from HB2027 in 2017:

While not necessarily the subject of comments I've seen to date regarding HB4029, I've compiled specific issues suggested by supporters of HB2027 in 2017 that are useful background, followed by my researched responses/clarifications:

Issue #1 - BPRD use of Eminent Domain (aka condemnation)

News articles and public testimony given at public hearings in 2015-2017, and most recently before the Senate Committee on the Environment and Natural Resources in 2017, alluded to a July 4th 2015 meeting between myself and a husband and wife that own riverfront property across the river in the general area of the proposed footbridge and trail. They claim to have spoken to me at our Planning and Development tent during the 4th of July celebration BPRD holds annually in Drake Park. Comments attributed to me at that time were along the lines that "...we've (BPRD) condemned property before and we'll do it again..." This has been held up as "ground zero" for opponents wary of Park District intentions.

Facts:

While I have no recollection of talking to this particular couple, I'm sure I could have. I've talked with many people over the last 10 years at the 4th of July event in the park and I can't remember them all. I can say with absolute certainty that what they claim they heard was not something I would have ever said. I am occasionally asked in public settings about BPRD's ability to condemn property. The answer is always the same, yes the District has the legal authority to do so, but has never exercised that option, and it is a Board of Directors decision. In the history of the District it has only been threatened one time for a holdout property owner along the Larkspur Trail and was done so by the City of Bend on behalf of the District. I am personally opposed to the use of condemnation for park and trail-related projects so the idea that I'd be so flippant with using these terms is absurd.

What's more, in July of 2015, I had already wrapped up the year-long process (April 2014-April 2015) with a South UGB Bridge Citizen Advisory Committee (CAC) that resulted in a recommendation for a trail aligned away from the river, and a bridge located outside the Bend Urban Growth Boundary on federal land.

The couple in question (who also generated the Rep. Whisnant-amended HB2027) owns property on the west side of the river, which was never considered for any type of acquisition. My understanding is that this couple and several of their neighbors were concerned that a trail alignment (other than the CAC-recommended 3C) and users of that alternative trail would be several hundred feet across the river in view of their backyards. They felt that BPRD could and would use its ability to condemn private property to acquire this trail alignment across the river from their homes rather than adopt Option 3C.

To summarize this issue, the conceptual bridge proposal that the BPRD Board has endorsed is for one (1) future bicycle/pedestrian bridge across the Deschutes River. The bridge location would have the abutments on federal property (Deschutes National Forest) located on both sides of the River. There should be no need to acquire private land for this proposed bridge location.

There would have been a new Deschutes River Trail extension on the east side of the River that connects an existing public trail and crosses private land before connecting to federal land at the proposed bridge site. This trail extension was offered by the landowner in 2015 and his intent was reaffirmed during a recent land use action on adjacent property in 2017. This alignment avoids impacts to the property owner's Helen M. Thompson Wildlife Refuge.

To my knowledge, no BPRD staff member has ever threatened any landowner associated with, or living nearby this project with the use of eminent domain.

Issue #2 - Bridge not needed on the Upper Deschutes River

It has been asked, "Why does BPRD want to build a bridge on a section of river instead of just using the existing trail on the west side that already connects to Sunriver?" Opponents point out that trail users can just walk the trail south from Riverbend Park, head up the sidewalk along Reed Market Rd. at the Bill Healy Bridge and pick up the Haul Road Trail along Cascade Lakes Highway to get to the USFS trails past the Entrada Lodge. Further, the out-of-direction travel is insignificant and the existing South Canyon Bridge already provides adequate access from east to west. From the District perspective at the time, efforts should be made to keep the actual Deschutes River Trail as close to the river as practical and follow the intent of much planning effort that has been completed over the past 20 years.

Facts:

As a practical matter, the out-of-direction travel is significant.

Those choosing to travel by bicycle from neighborhoods on the east side of the river to the Deschutes National Forest face a long commute:

- *Through an agreement with Mt. Bachelor Village to build the Deschutes River Trail below their development, the caveat was that no bikes would be allowed between the South Canyon Bridge and the Bill Healy Bridge (Reed Market Rd.). Therefore only foot traffic is allowed and cyclists accessing the river in the "Good Dog" off-leash area (where the proposed Bridge Option 3 would land on federal land) travel approximately 16.4 miles (1 hour 30 minutes) round trip versus the distance for those travelling by car which is 14.4 miles round trip (34 minutes) just to the "Good Dog" parking lot.*

Those choosing to walk from neighborhoods on the east side of the river to the Deschutes National Forest:

- *Pedestrians have a potentially shorter, though certainly not insignificant route if they use the South Canyon Bridge. Their distance would be approximately 11.6 miles round trip (4 hours) versus a relatively direct connection across the river with Bridge Option 3.*

Issue #3 - Mule Deer Winter Range and Key Elk Management Area

Much has been made of a 2015 letter from ODFW introduced at an OPRD public hearing in Bend recommending that the Oregon Parks and Recreation Board Commission reject BPRD's proposed OAR

amendment to allow bridges. The letter referenced the impact to the 3-mile segment of Tumalo Deer Winter Range and USFS Key Elk Management Area on the west side of the River. The fear was that public use of areas important to the conservation of wildlife will increase due to a new bridge. ODFW specifically cited the need for management of these areas during winter when deer and elk are most vulnerable. ODFW also mentioned that several recent studies revealed that recreational activities can be a significant source of wildlife disturbance, including the human presence with and without dogs which has been shown to alter wildlife behavior in the form of increased vigilance and energy expenditure.

Facts:

- *A bridge would provide new non-motorized access to trails in the Deschutes National Forest (DNF) and on land in the deer winter range but not key Elk habitat as identified in the 1990 Deschutes National Forest Plan. Also, the area in question is already a **630-acre year round dog off-leash area** managed by the USFS with no limitations on bikes or pedestrians.*
- *The USFS has recently greatly expanded and formalized a parking area off Cascade Lakes Hwy. specifically for this off-leash area.*
- *The “Tumalo Deer Winter Range” has seasonal motorized vehicle closures, but not for bikes, pedestrians or dogs off-leash.*
- *The federal Deschutes National Forest Land and Resource Management Plan identifies the forest in this area and around Bend in general up to Mt. Bachelor as Management Unit 11 “Intensive Recreation”. The goal of this area is specifically “To provide a wide variety of quality outdoor recreation opportunities within a forest environment where the localized settings may be modified to accommodate large numbers of visitors”.*

Elk habitat and migration: *In addition to the public’s interpretations of the 2015 ODFW letter regarding elk habitat, comments have also been made about the impact of a new bridge on the traditional elk migration across the Deschutes River to Elk Meadow on the east side of the River.*

Facts:

- *The Deschutes National Forest Land and Resource Management Plan – Key Elk Management Area referenced by ODFW staff is contained in Appendix 16 of the Plan. Contrary to ODFW comments, the Elk Management Area does not include the subject area in Sections 14 and 23.*
- *Elk may have historically been seen swimming in the river or wading across this shallow section of River to get to Elk Meadow. Anecdotally, this pattern has not been seen in years since most of the former Elk Meadow was subdivided into several hundred residential lots now known as the River Rim Development and River Vale subdivision now under construction.*
- *The development of the Bachelor View Estates subdivision on the west side of the River has also likely modified elk migration as well and pushed them south into the USFS off-leash dog area that according to ODFW would be a significant deterrent to this migration.*
- *Much of the elk herds seemed to have relocated to the north of Awbrey Butte and the Awbrey Glen golf course.*

Issue #4 - Oregon Spotted Frog

Comments have been made about the detrimental impact of a new bridge on wetlands and likely spotted frog habitat.

Facts:

- *Oregon Spotted Frog Critical Habitat areas were finalized and went into effect on June 10, 2016. <https://www.regulations.gov/document?D=FWS-R1-ES-2013-0088-0115>*
- *Map 8A (on the website above) for the Upper Deschutes River specifically excludes several miles of river between Meadow Camp downstream to the Bill Healy Bridge (Reed Market Rd.). The bridge site is in the middle of this river segment.*
- *In 2015, staff of the US Fish and Wildlife Service confirmed in an email provided during BPRD's Citizen Advisory Committee process that the "Areas located between the Bill Healy Bridge and downstream of the Inn of the Seventh Mountain are not a significant concern for impacts to the spotted frog as this section of the river is lacking some of the key features (PBFs)..."*
- *Any NEPA analysis for the bridge on federal property would include the necessary environmental evaluations at the time and further identify areas to be avoided or impacts to be mitigated.*

In summary:

- *The bridge would be on public property subject to federal NEPA environmental analysis.*
- *The trail extension and BPRD Board-supported route had been offered by the property owner.*
- *No eminent domain for this project had ever been threatened by staff, or authorized by the BPRD Board. The opponents claiming threats of condemnation don't have property that would have ever been considered for the bridge or trail.*
- *There is no simple or convenient way for thousands of residents on the east side of the river to access USFS land and the Deschutes River Trail on the west side of the river without significant out-of-direction travel thereby increasing local traffic, air pollution and the need for parking in the National Forest.*
- *The area of impact on the west side of the river is identified by the USFS as being for "intensive recreation" and already contains many trails and a year-round off-leash dog area. Current and potential future user conflicts can be managed with revised trail design work.*
- *The area does contain Tumalo Deer Winter Range with no non-motorized seasonal or use restrictions. Even though on and off-leash dogs have been identified by ODFW as detrimental to wildlife, off-leash dogs are allowed in this winter range year-round.*
- *There is no USFS Key Elk habitat in the area.*
- *There is no federal Oregon Spotted Frog critical habitat identified along this section of river.*