



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONER MEETING

1:00 PM, MONDAY, AUGUST 08, 2022

Barnes Sawyer Rooms - Deschutes Services Bldg - 1300 NW Wall St – Bend

(541) 388-6570 | www.deschutes.org

AGENDA

MEETING FORMAT: The Oregon legislature passed House Bill (HB) 2560, which requires that public meetings be accessible remotely, effective on January 1, 2022, with the exception of executive sessions. Public bodies must provide the public an opportunity to access and attend public meetings by phone, video, or other virtual means. Additionally, when in-person testimony, either oral or written is allowed at the meeting, then testimony must also be allowed electronically via, phone, video, email, or other electronic/virtual means.

Attendance/Participation options are described above. Members of the public may still view the BOCC meetings/hearings in real time via the Public Meeting Portal at www.deschutes.org/meetings

Citizen Input: Citizen Input is invited in order to provide the public with an opportunity to comment on any meeting topic that is not on the current agenda. Citizen Input is provided by submitting an email to: citizeninput@deschutes.org or by leaving a voice message at 541-385-1734. Citizen input received by noon on Tuesday will be included in the Citizen Input meeting record for topics that are not included on the Wednesday agenda.

Zoom Meeting Information: Staff and citizens that are presenting agenda items to the Board for consideration or who are planning to testify in a scheduled public hearing may participate via Zoom meeting. The Zoom meeting id and password will be included in either the public hearing materials or through a meeting invite once your agenda item has been included on the agenda. Upon entering the Zoom meeting, you will automatically be placed on hold and in the waiting room. Once you are ready to present your agenda item, you will be unmuted and placed in the spotlight for your presentation. If you are providing testimony during a hearing, you will be placed in the waiting room until the time of testimony, staff will announce your name and unmute your connection to be invited for testimony. Detailed instructions will be included in the public hearing materials and will be announced at the outset of the public hearing.

For Public Hearings, the link to the Zoom meeting will be posted in the Public Hearing Notice as well as posted on the Deschutes County website at <https://www.deschutes.org/bcc/page/public-hearing-notices>.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ACTION ITEMS

1. **1:00 PM** SECOND READING: Ordinance No. 2022-009, Prohibiting the Establishment of Psilocybin Product Manufacturers and Psilocybin Service Center Operators within Unincorporated Deschutes County; Referral to the Electors
2. **1:05 PM** Measure 109 / Psilocybin Concepts / Preferred Alternative
3. **1:50 PM** Preparation for Public Hearing: LBNW LLC Plan Amendment and Zone Change
4. **2:30 PM** Senate Bill 391 – Rural Accessory Dwelling Unit (ADU) Legislative Amendments
5. **2:50 PM** State Legislative Representation and Lobbying Services
6. **3:10 PM** State of the County 2022

OTHER ITEMS

These can be any items not included on the agenda that the Commissioners wish to discuss as part of the meeting, pursuant to ORS 192.640.

EXECUTIVE SESSION

At any time during the meeting, an executive session could be called to address issues relating to ORS 192.660(2)(e), real property negotiations; ORS 192.660(2)(h), litigation; ORS 192.660(2)(d), labor negotiations; ORS 192.660(2)(b), personnel issues; or other executive session categories.

Executive sessions are closed to the public; however, with few exceptions and under specific guidelines, are open to the media.

7. Executive Session under ORS 192.660 (2) (e) Real Property Negotiations

ADJOURN



Deschutes County encourages persons with disabilities to participate in all programs and activities. This event/location is accessible to people with disabilities. If you need accommodations to make participation possible, please call (541) 617-4747.



BOARD OF
COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Monday, August 8, 2022

SUBJECT: SECOND READING: Ordinance No. 2022-009, Prohibiting the Establishment of Psilocybin Product Manufacturers and Psilocybin Service Center Operators within Unincorporated Deschutes County; Referral to the Electors

ATTENDANCE:
County Legal Counsel
Community Development Department

REVIEWED
DM
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Prohibiting the Establishment of Psilocybin Product Manufacturers and Psilocybin Service Center Operators within Unincorporated Deschutes County; Referral to the Electors. *
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*
*
ORDINANCE NO. 2022-009

WHEREAS, in November 2020, Ballot Measure 109 was passed by the electors of Oregon, thereby creating a program to permit licensed service providers to administer psilocybin-producing mushroom and fungi products to individuals 21 years of age or older; and

WHEREAS, Ballot Measure 109 has been codified as ORS 475A.718; and

WHEREAS, ORS 475A.718 allows that the governing body of a county may adopt an ordinance to be referred to the electors of the county at the next statewide general election to determine whether to prohibit the establishment of Psilocybin Product Manufacturers and/or Psilocybin Service Center Operators; and

WHEREAS, any prohibition on Psilocybin approved by the electors will only apply within the unincorporated County and will not impact Psilocybin operations or businesses within any city limits; and ,

WHEREAS, to date the Oregon Health Authority has not completed rulemaking necessary to provide regulatory oversight of Psilocybin Product Manufacturers and Psilocybin Service Center Operators; and

WHEREAS, the Board of Commissioners believes that the timing is appropriate to refer this matter to the voters of Deschutes County, as authorized by Ballot Measure 109 and ORS 475A.718; now therefore,

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

Section 1. In accordance with ORS 475A.718, and subject to the vote of the electors at the November 8, 2022 General Election, the following are prohibited in the unincorporated areas subject to the jurisdiction of Deschutes County:

- (a) Psilocybin Product Manufacturing;
- (b) Psilocybin Service Center Operations;

Section 2. This ordinance shall be referred to the electors of Deschutes County at the General Election on Tuesday, November 8, 2022.

Section 3. The text of this ordinance shall be provided to the Oregon Health Authority.

Section 4. Effective Date. Pursuant to ORS 203.045(9), this ordinance takes effect upon approval of a majority of those voting on the proposed ordinance.

Dated this _____ of _____, 2022

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, Chair

ANTHONY DEBONE, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

Date of 1st Reading: 20 day of July, 2022.

Date of 2nd Reading: _____ day of _____, 2022.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Phil Chang	—	—	—	—
Patti Adair	—	—	—	—
Anthony DeBone	—	—	—	—

Effective date: Upon approval of a majority of those voting on the proposed ordinance at the November 8, 2022 General Election.



BOARD OF
COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 8, 2022

SUBJECT: Measure 109 / Psilocybin Concepts / Preferred Alternative

BACKGROUND AND POLICY IMPLICATIONS:

This item provides an overview for Board of County Commissioners (Board) consideration of three potential legislative time, place, and manner (TPM) concepts for the regulation of psilocybin.

BUDGET IMPACTS:

None

ATTENDANCE:

Tanya Saltzman, AICP, Senior Planner
Will Groves, Planning Manager
Peter Gutowsky, AICP, Director



MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Tanya Saltzman, AICP, Senior Planner
Will Groves, Planning Manager
Peter Gutowsky, AICP, Director

DATE: August 3, 2022

SUBJECT: Measure 109 / Psilocybin Concepts / Preferred Alternative

This memorandum provides an overview for Board of County Commissioners (Board) consideration on August 8, 2022 of three potential legislative time, place, and manner (TPM) concepts for the regulation of psilocybin. At the conclusion of the discussion, staff seeks direction for:

- A preferred alternative to develop TPM amendments for a first evidentiary hearing with the Planning Commission on September 29.

I. BACKGROUND

Measure 109, which legalized psilocybin in Oregon, automatically opts cities and counties into the psilocybin program, which is currently under development and is slated to begin statewide on January 2, 2023. However, Measure 109 offers the option for cities and counties to opt out via a ballot measure in the next general election—in this case, November 8, 2022. On July 13, 2022, the Board conducted an afternoon and evening hearing to consider Ordinance No. 2022-009, Referring a Measure to the Electors to Prohibit Product Manufacturers and Psilocybin Service Center Operators within Unincorporated Deschutes County.¹ The Board deliberated on the matter on July 20 and adopted a first reading of Ordinance No. 2022-009. Second reading will occur on August 8. Upon second reading, it will be subject to Deschutes County voters for the November 8, 2022 General Election.

During deliberation the Board expressed interest in developing TPM amendments in the event voters reject prohibiting psilocybin manufacturing and psilocybin service centers in the unincorporated county. Amendments could be adopted by the end of the calendar year, prior to the Oregon Health Authority (OHA) accepting applications for licensure on January 2, 2023. On July 27, the Board directed staff to begin the TPM process.²

¹ <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-63>

² <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-65>

Measure 109 does contain limited basic criteria pertaining to land use. For instance, psilocybin service centers may not be located within 1,000 feet of elementary or secondary schools (500 feet if there is a physical or geographic barrier), and manufacturing facilities may not be located outdoors. Service centers may not be located in single family dwellings. Staff continues to monitor the rulemaking process and is coordinating with Association of Oregon Counties (AOC) on any pertinent developments to the program. Staff is also coordinating with other counties, including Wasco and Jackson, which are undertaking TPM amendments on a similar schedule, while recognizing that ultimately each county will have its own set of opportunities and constraints.

II. REGULATORY CONCEPTS

Measure 109 provides no direction as to reasonable time, place, and manner restrictions. It is difficult for staff to estimate impacts from a transportation and land use standpoint without real world examples of psilocybin production, processing, and service centers that the Board can consider. Ultimately, in order for regulations to be “reasonable,” such regulations must be necessary to protect public health, safety and welfare. It may be that erring on the side of more restrictive TPM regulations is defensible because the range and extent of potential impacts of psilocybin production, processing and service centers cannot be defined at this early stage.

Nonetheless, staff prepared three regulatory concepts for TPM regulations ranging from restrictive (Option 1) to less restrictive (Option 3). An overview of those concepts is provided below. They are primarily targeted to psilocybin production and processing/manufacturing.

- **While ORS 475A.570 acknowledges that the operation of a psilocybin service center may be carried on in conjunction with a psilocybin-producing fungi crop, all three regulatory concepts prohibit psilocybin service centers outside those existing zones that permit medical clinics, medical centers, or retail or service businesses.³ In those existing zones, psilocybin service centers would be restricted to only daily operations.**

The limited timeframe to adopt TPM amendments into Deschutes County Code (DCC), prevents staff or the psilocybin industry from convening a work group, hiring consultants, and creating adequate findings that address the operational characteristics and land use impacts of a psilocybin service center. Factors warranting analysis include but are not limited to: minimum lot/parcel size, setbacks, lot coverage, number of employees and patients, overnight lodging, food preparation and service, compatibility with acknowledged wildlife inventories (Goal 5 – Wildlife), and trip generation analysis (Goal 12 – Transportation Planning Rule). In the Exclusive Farm Use (EFU) zones, one also must perform a farm impacts test.⁴

³ Psilocybin service centers, if they are modeled in the zoning code after medical clinics or retail businesses will have lower transportation impacts since they do not serve a broader range of patients or customers under the age of 21. Medical clinics are allowed in Rural Service Centers (Brothers, Hampton, Millican, Whistlestop, Wildhunt, and Alfalfa), Rural Commercial Zones (Deschutes Junction, Deschutes River Store, Pine Forest and Rosland), Sunriver Commercial District, and Sunriver Town Center District. A medical center is allowed in the Terrebonne Commercial District. Retail or service businesses are allowed in the Tumalo Commercial District.

⁴ ORS 215.296(1) and (2). DCC 18.16.040(A)(1) and (2). LUBA has a well-established methodology for demonstrating compliance with the farm impacts test. See *Brown v. Union County*, 32 Or LUBA 168 (1996). Under that methodology, a proposal can be

Applicants interested in establishing a psilocybin service center with or without overnight opportunities on EFU property or any other rural zone where growing psilocybin production is permitted always have the option to submit an applicant-initiated legislative amendment that justifies service centers are consistent with state law and Deschutes County’s Comprehensive Plan. As noted above, applicants seeking to establish a psilocybin service center on EFU property will be required to perform a farm impacts test to evaluate the impacts to each individual farm on a “farm-by farm and farm practice basis” to determine whether the proposed use will force a significant change in accepted farming practices or the cost of the practices.

Table 1 - Psilocybin Regulatory Concepts

Option 1 - Restrictive		
Option	Description	Notes
Psilocybin Production	Allowed in: <ul style="list-style-type: none"> EFU zone 	<ul style="list-style-type: none"> Psilocybin-producing fungi is recognized by Measure 109 as a farm use and is therefore permitted outright in EFU zones. Psilocybin-producing fungi must be grown indoors. Commercial activities in conjunction with farm use do not apply to growing psilocybin.
Psilocybin Processing/Manufacturing	Allowed in: <ul style="list-style-type: none"> EFU zone.⁵ 	<ul style="list-style-type: none"> Manufacturing may be carried on in conjunction with a psilocybin producing fungi crop according to Measure 109.
Psilocybin Service Centers	Allowed subject to a conditional use permit and site plan review in: <ul style="list-style-type: none"> Rural Commercial Rural Service Centers Sunriver Commercial District Sunriver Town Center District Terrebonne Commercial District Tumalo Commercial District 	<ul style="list-style-type: none"> Hours of operation will be limited to daily treatments. No option for larger retreat-style, overnight operations. Service centers may not be located within 1,000 feet of elementary or secondary schools (500 feet if there is a physical or geographic barrier). Setbacks from other uses like religious institutions?

approved only if it: (1) describes farm practices on surrounding lands devoted to farm use; (2) explains why the proposed development will not force a significant change in those practices; and (3) explains why the proposed development will not significantly increase the cost of those practices. To begin that process, LUBA has held that “[i]n applying ORS 215.296(1), it is entirely appropriate for the applicant and county to begin by visually surveying surrounding lands to identify the farm and forest uses to which those lands are devoted.” *Dierking v. Clackamas County*, 38 Or LUBA 106, 120-21 (2000). Other parties are then free to dispute the initial findings, or to add to the record additional evidence of nearby farm uses that the applicant and county must respond to.

⁵ DCC 18.16.025 requires the facility uses less than 10,000 square feet for its processing area and complies with all applicable siting standards. Exception: A facility which uses less than 2,500 square feet for its processing area is exempt from any applicable siting standards.

Option 2 - Moderate

Option	Description	Notes
Psilocybin Production	Allowed in: <ul style="list-style-type: none"> • EFU • Forest Use Zones (F1, F2) • Multiple Use Agriculture (MUA-10) 	<ul style="list-style-type: none"> • Psilocybin-producing fungi is recognized by Measure 109 as a farm use and is therefore permitted outright in EFU zones. • If a county chooses, it can also be recognized in other zones where farm or forest uses are allowed. Limited to MUA-10, F1 and F2 zones. • Psilocybin-producing fungi must be grown indoors. • Commercial activities in conjunction with farm use do not apply to growing psilocybin.
Psilocybin Processing/Manufacturing	Allowed in: <ul style="list-style-type: none"> • EFU • F1 and F2 • MUA-10 	<ul style="list-style-type: none"> • Manufacturing may be carried on in conjunction with a psilocybin producing fungi crop
Psilocybin Service Centers	Allowed subject to a conditional use permit and site plan review in: <ul style="list-style-type: none"> • Rural Commercial • Rural Service Centers • Sunriver Commercial District • Sunriver Town Center District • Terrebonne Commercial District • Tumalo Commercial District 	<ul style="list-style-type: none"> • Hours of operation will be limited to daily treatments. • No options for permitting larger retreat-style, overnight operations. • Service centers may not be located within 1,000 feet of elementary or secondary schools (500 feet if there is a physical or geographic barrier). • Setbacks from other uses like religious institutions?

Option 3 - Least Restrictive

Option	Description	Notes
Psilocybin Production	Allowed in: <ul style="list-style-type: none"> • EFU • F1 and F2 • MUA-10 • Open Space and Conservation • Rural Commercial • Rural Industrial • Rural Residential • Rural Service Centers • Suburban Low Density Residential • Surface Mining Zone • Urban Area Reserve 	<ul style="list-style-type: none"> • Psilocybin-producing fungi is recognized by Measure 109 as a farm use and is therefore permitted outright in EFU zones. • If a county chooses, it can also be recognized in other zones where farm or forest uses are allowed. • Psilocybin-producing fungi must be grown indoors. • Commercial activities in conjunction with farm use do not apply to growing psilocybin. However, the operation of a psilocybin service center may be carried on in conjunction with a psilocybin-producing fungi crop on EFU land.

<p>Psilocybin Processing/Manufacturing</p>	<p>Allowed in:</p> <ul style="list-style-type: none"> • EFU • F1 and F2 • MUA-10 • Open Space and Conservation • Rural Commercial • Rural Industrial (permitted; requires site plan review if located within 600 feet from a residential dwelling, a lot within a platted subdivision, or a residential zone) • Rural Residential • Rural Service Centers • Suburban Low Density Residential • Surface Mining Zone • Tumalo Industrial District (site plan review) • Urban Area Reserve 	<ul style="list-style-type: none"> • Manufacturing may be carried on in conjunction with a psilocybin producing fungi crop
<p>Psilocybin Service Centers</p>	<p>Allowed subject to a conditional use permit and site plan review in:</p> <ul style="list-style-type: none"> • Rural Commercial • Rural Service Centers • Sunriver Commercial District • Sunriver Town Center District • Terrebonne Commercial District • Tumalo Commercial District 	<ul style="list-style-type: none"> • Hours of operation will be limited to daily treatments. • No options for permitting larger retreat-style, overnight operations. • Service centers may not be located within 1,000 feet of elementary or secondary schools (500 feet if there is a physical or geographic barrier. • Setbacks from other uses like religious institutions?

III. TIMELINE

As noted in the July 27 Board meeting, a tentative timeline for the development and adoption of TPM amendments is as follows:

Table 2 - Psilocybin TPM Schedule

Task	Timeline
1. Draft amendments and findings	August 9 to 24
2. 35-day DLCD Post Acknowledgement Plan Amendment Notice	August 25
3. Planning Commission Work Session	September 8
4. Planning Commission Public Hearing	September 29
5. Planning Commission Deliberation	October 13 and 27 if needed
6. Board Work Session	November 14
7. Board Hearing	November 28
8. Board Deliberation	December 5
9. Consideration of First Reading	December 14
10. Consideration of Second Reading	December 28

IV. NEXT STEPS

Staff seeks Board direction on a preferred alternative. Once it is determined, staff draft text amendments and corresponding findings in preparation for the first evidentiary hearing with the Planning Commission on September 29.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Monday, August 8, 2022

SUBJECT: Preparation for Public Hearing: LBNW LLC Plan Amendment and Zone Change

RECOMMENDED MOTION:

Hearings Officer recommends approval of file no. 247-21-000881-PA, 882-ZC pursuant to DCC 22.28.030.

BACKGROUND AND POLICY IMPLICATIONS:

Staff will provide background and prepare the Board for a Public Hearing on a future date to be determined by the Board. The future public hearing will consider a request for a Plan Amendment and Zone Change (file no. 247-21-000881-PA, 882-ZC) for a 19.12-acre subject property (comprised of three tax lots) along Highway 97 between Redmond and Bend, submitted by LBNW LLC.

BUDGET IMPACTS:

None

ATTENDANCE:

Tarik Rawlings, Associate Planner



MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Tarik Rawlings, Associate Planner

DATE: July 25, 2022

SUBJECT: LBNW LLC Comprehensive Plan Amendment and Zone Change – Work Session

The Board of County Commissioners (“Board”) will conduct a work session on August 8, 2022, in preparation for a public hearing on a future date to be determined, to consider a request for a Comprehensive Plan Amendment and Zone Change (file nos. 247-21-000881-PA, 882-ZC) for approximately 19.12 acres along Highway 97. The subject property consists of three tax lots totaling approximately 19.12 acres. The application includes a request for a Goal 14 Exception as an alternative argument, if determined to be necessary for approval of the Plan Amendment/Zone Change. Staff requests Board feedback regarding potential public hearing dates. Furthermore, staff would like direction on whether the Board would like to set oral testimony time limits for the applicant and/or members of the public providing testimony.

Staff has included a few public hearing date options below for the Board’s consideration:

- Wednesday, August 31
- Wednesday, September 7
- Wednesday, September 21

I. BACKGROUND

The applicant, LBNW LLC, is requesting a Comprehensive Plan Amendment to re-designate the subject properties from Agriculture to Rural Industrial and a corresponding Zone Change to rezone the properties from Exclusive Farm Use (EFU) to Rural Industrial (RI). The applicant’s reasoning for the request is that the properties were mistakenly identified as farmland, do not contain high-value soils or other characteristics of high-value farmland, and therefore should be re-designated and rezoned for rural industrial use. The applicant has provided a supplementary soil study that identifies non-high value (Class VII and VIII) soils on a majority of the subject properties. Additionally, the applicant has provided findings within the burden of proof that provide responses to relevant state and local requirements and policies.

II. PUBLIC COMMENTS

Staff received approximately 47 public comments from neighbors, stakeholders, local interest groups and public agencies prior to the April 26, 2022 Hearing's Officer hearing. Most of the comments received were in support of the project, but Staff did receive a number of detailed public comments in opposition to the application. Comments received in opposition expressed concern related to the following factors:

1. Potential loss of agricultural land
2. Compatibility with surrounding properties
3. Validity of the Order 1 soil survey used to demonstrate a lack of agricultural land on the properties
4. The application's compliance with Oregon Statewide Planning Goals 3, 5, 12, and 14 and the application's potential need for goal exceptions
5. Traffic and emergency access impacts.

Comments received in support reference the properties' lack of productive soils, the properties' inability to be farmed outside of the poor soil quality, the regional need for industrial-zoned property and uses in rural Deschutes County, the character of the applicants, and improvement of the subject properties since the current owners took over.

III. HEARINGS OFFICER RECOMMENDATION

The Deschutes County Hearings Officer held a public hearing on April 26, 2022. Not including the applicant's team, one (1) individual representing Central Oregon LandWatch provided testimony during the public testimony portion of the hearing in opposition of the proposal.

On July 12, 2022, the Hearings Officer issued a recommendation of approval for the proposed Plan Amendment and Zone Change, denying the oppositional points put forward during the open record period and finding that no goal exceptions to any Oregon Statewide Planning Goals are needed. The Hearings Officer also recommended a condition of approval, related to OAR 660-012-0060 compliance (Division 12, Transportation Planning within state administrative rules) limiting the maximum number of vehicle trips associated with the subject properties:

The maximum development on the three subject parcels shall be limited to produce no more than 32 trips in the PM peak hour and/or 279 daily trips as determined by the Institute of Engineers Trip Generation Manual, 11th Edition. The County may allow development intensity beyond these maximum number of vehicle trips only if the applicant submits to the County a traffic impact analysis that demonstrates that the proposed intensification of use would be consistent with the Transportation Planning Rule and the Deschutes County Code.

Staff notes this condition of approval was acknowledged and deemed sufficient by County planning staff, Oregon Department of Transportation (ODOT), and the applicant, but was opposed by Central Oregon LandWatch.

IV. BOARD CONSIDERATION

As the property includes lands designated for agricultural use, Deschutes County Code 22.28.030(C) requires the application to be heard *de novo* before the Board, regardless of the determination of the Hearings Officer. The record is available for inspection at the Planning Division and at the following link: <https://www.deschutescounty.gov/cd/page/247-21-000881-pa-and-247-21-000882-zc-lbnw-llc-comprehensive-plan-amendment-and-zone-change>.

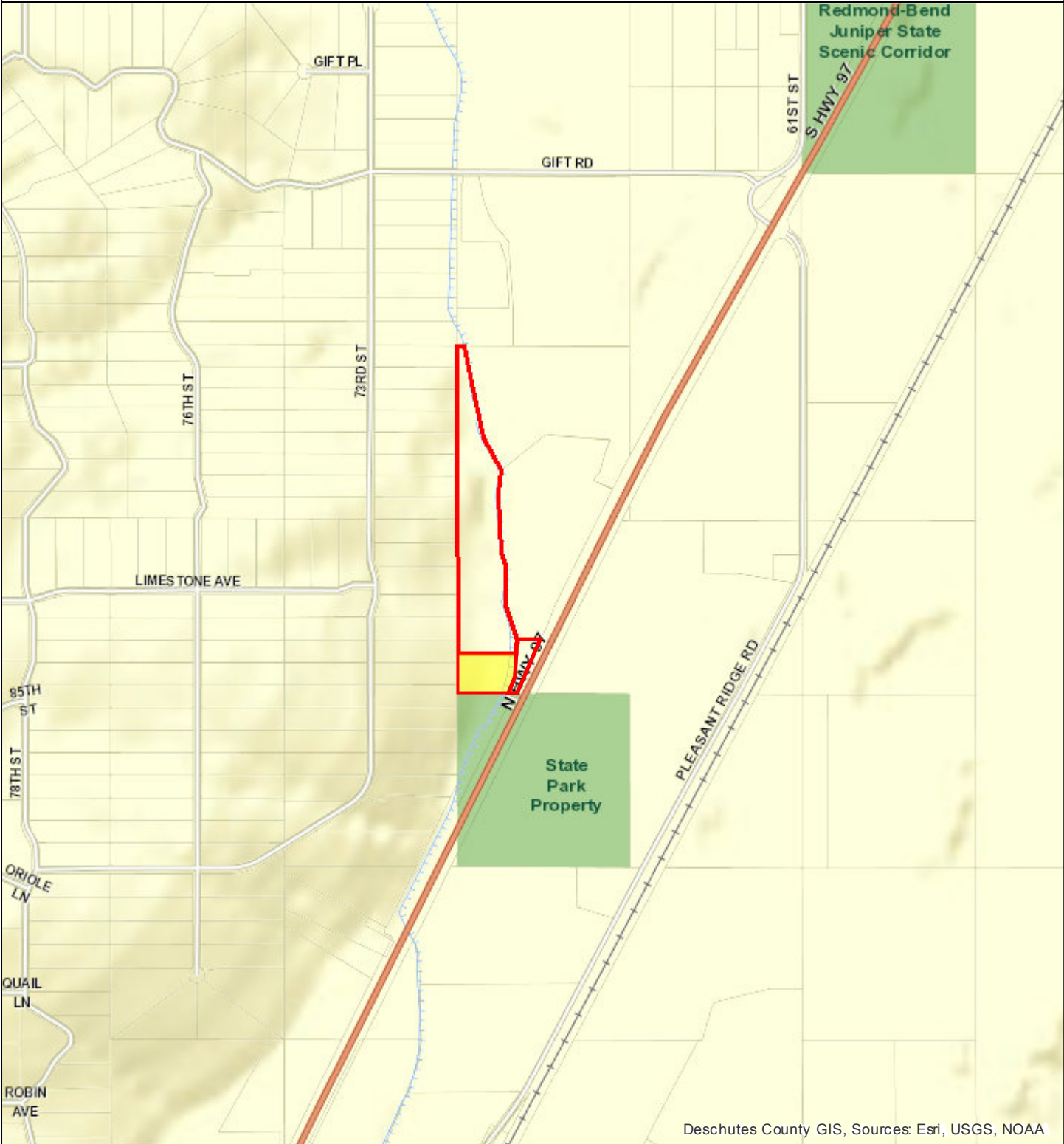
V. NEXT STEPS

Based on the feedback received during the Board’s Work Session, Staff will prepare for the upcoming public hearing.

ATTACHMENT(S):

- 1. Area Map

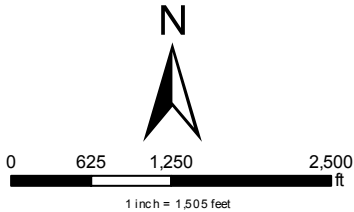
247-21-000881-PA, 882-ZC



Deschutes County GIS, Sources: Esri, USGS, NOAA



Date: 10/5/2021





BOARD OF
COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Monday, August 8, 2022

SUBJECT: Senate Bill 391 – Rural Accessory Dwelling Unit (ADU) Legislative Amendments

BACKGROUND AND POLICY IMPLICATIONS:

Staff will provide background and updates to the Board regarding Senate Bill (SB) 391 and the upcoming legislative amendment process to allow rural ADUs in Deschutes County.

BUDGET IMPACTS:

None

ATTENDANCE:

*Kyle Collins, Associate Planner
Will Groves, Planning Manager*



MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Will Groves, Planning Manager
 Kyle Collins, Associate Planner

DATE: August 3, 2022

SUBJECT: Senate Bill (SB) 391 – Rural Accessory Dwelling Unit (ADU) Legislative Amendments

At Board of County Commissioners (Board) direction, staff is preparing legislative text amendments to formally adopt provisions for rural ADUs as identified in SB 391¹. This memo outlines the upcoming amendment process, including public hearing dates and summaries of the draft amendment language.

I. BACKGROUND

Rural residential zones exist throughout Oregon. By definition, rural residential zones exist outside of urban growth boundaries (UGBs) but are excluded from the state’s resource land (farm and forest zone) protections. With certain exceptions, those protections allow residential uses only in conjunction with a farm or forest use. However, in rural residential zones, a dwelling can be a primary use of the land. Currently, state law allows counties to permit an additional dwelling on a property containing a house built prior to 1945.² However, unlike in urban zones, rural residential zones do not have any other by-right accessory dwelling options, making inter-generational and alternative housing options difficult to achieve.

The Oregon Legislature adopted SB 391 into law on June 23, 2021. It authorizes a county to allow an owner of a lot or parcel within a rural residential zone to construct one ADU subject to certain restrictions and limitations. SB 391 does not obligate a county to allow ADUs. It also does not prohibit a county from imposing any additional restrictions, including those relating to the construction of garages and outbuildings that support an ADU, property size restrictions, or other land use considerations.

II. STATE REGULATIONS

SB 391 contains several provisions related to properties eligible for rural ADUs which cannot be amended by counties. Those criteria and restrictions are highlighted in the table below:

¹ <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB0391/A-Engrossed>

² House Bill 3012 (2017).

Table 1 - SB 391 - Rural Accessory Dwelling Unit Standards

Eligibility	Restrictions
1. Rural Residential Exception Areas, Minimum Lot Size, and Dwelling Requirements ³	<ul style="list-style-type: none"> Applies to Rural Residential (RR10), Multiple Use Agricultural (MUA10), Urban Area Reserve (UAR-10) and Suburban Residential (SR 2.5) zones. Lot or parcel must be at least two (2) acres in size. One (1) single-family dwelling must be sited on the lot or parcel.
2. Existing Dwelling Nuisance	<ul style="list-style-type: none"> The existing single-family dwelling is not subject to an order declaring it a nuisance or pending action under ORS 105.550 to 105.600.
3. ADU Sanitation Requirements	<ul style="list-style-type: none"> The ADU must comply with all applicable laws and regulations relating to sanitization and wastewater disposal and treatment.
4. ADU Square Footage Requirements	<ul style="list-style-type: none"> The ADU cannot include more than 900 square feet of useable floor area.
5. ADU Distance Requirements	<ul style="list-style-type: none"> The ADU is required to be located no farther than 100 feet from the existing single-family dwelling.
6. ADU Water Supply Requirements	<ul style="list-style-type: none"> If the ADU is relying on a domestic well, no portion of the lot or parcel can be within new or existing ground water uses restricted by the Water Resource Commission.
7. ADU Water Supply Source Option	<ul style="list-style-type: none"> A county may require that an ADU be served by the same water supply source or water supply system as the existing single-family dwelling, provided such is allowed by an existing water right or a use under ORS 537.545 (exempt uses).⁴
8. ADU / Metolius Area of Critical State Concern / Limitations	<ul style="list-style-type: none"> No portion of a lot or parcel can be within a designated area of critical state concern.
9. ADU Setback Requirements	<ul style="list-style-type: none"> The ADU is required to have adequate setbacks from adjacent lands zoned Exclusive Farm Use (EFU) or Forest Use.
10. ADU / Wildland-Urban Interface Requirements	<ul style="list-style-type: none"> The lot or parcel must comply with the rules of the State Board of Forestry under ORS 477.015 to 477.061.
11. ADU / Outside Wildland-Urban Interface (WUI) Area Requirements	<ul style="list-style-type: none"> If the ADU is not subject to ORS 477.015 to 477.061 (i.e. outside of the newly-defined wildland-urban interface), it must have defensible space and fuel break standards as developed in consultation with local fire protection service providers.
12. ADU / Statewide Wildfire Map Requirements	<ul style="list-style-type: none"> Applies to properties identified as high or extreme risk and located within a designated WUI on the statewide wildfire risk maps established per SB 762. ADUs are then required to comply with the Oregon residential specialty code relating to wildfire hazard mitigation for the mapped area (R327.4).
13. ADU Adequate Access and Evacuation for Firefighting Requirements	<ul style="list-style-type: none"> Local regulations must ensure the ADU has adequate access for firefighting equipment, safe evacuation and staged evacuation areas
14. ADU Occupancy Requirements	<ul style="list-style-type: none"> ADUs cannot be allowed for vacation occupancy, as defined in ORS 90.100.

³ Acknowledged nonresource plan amendments and zone changes from Exclusive Farm Use (EFU) to RR-10 or MUA-10 are ineligible for an ADU.

⁴ https://oregon.public.law/statutes/ors_537.545

Eligibility	Restrictions
15. ADU Land Division Requirements	<ul style="list-style-type: none"> If an eligible property with an ADU is divided, the single family dwelling and ADU cannot be situated on a different lot or parcel.
16. ADU / Additional Units	<ul style="list-style-type: none"> A second ADU is not allowed.

III. DESCHUTES COUNTY INTERPRETATIONS

As relayed to the Board during previous work sessions, numerous portions of the SB 391 language were not defined during the legislative process and thus were left open to interpretation by local jurisdictions that elect to allow rural ADUs. Specifically, the following items were not explicitly defined:

- “Useable Floor Area” as related to the 900-square-foot size limitation for rural ADUs.
- The specific standards of the 100-foot site distance requirements for rural ADUs.
- Adequate access for firefighting equipment, safe evacuation, and staged evacuation areas.

As summarized in Table 2, staff drafted the amendments to address these areas in the following manner:

Table 2 – Draft Interpretations

Undefined SB 391 Standard	Draft County Interpretation
Useable Floor Area	<ul style="list-style-type: none"> Means the area of the accessory dwelling unit included within the surrounding insulated exterior walls, exclusive of garages, carports, decks and porch covers.
100-Foot Siting Distance	<ul style="list-style-type: none"> A unit must be located no farther than 100 feet from the existing single family dwelling, measured from a wall of the single-family dwelling to the nearest part of the “useable floor area” of the accessory dwelling unit.
Adequate Access and Evacuation for Firefighting Requirements	<ul style="list-style-type: none"> • “Safe evacuation plan” means an identifiable route from the rural accessory dwelling unit to the staged evacuation area. • “Staged evacuation area” means a public or private location that occupants of the rural accessory dwelling unit may evacuate to reorganize. • Adequate access for firefighting equipment, safe evacuation and staged evacuation areas are met by providing: <ul style="list-style-type: none"> ○ Written certification from the applicable fire district, on a form prepared by Deschutes County, that access to the property meets minimum fire district requirements to provide emergency services to the property; ○ A safe evacuation plan; and ○ Written authorization from the owner of the staged evacuation area that the occupants of the rural accessory dwelling unit may evacuate to the staged evacuation area.

Groundwater Protection

Due to vulnerable groundwater characteristics in southern Deschutes County, the Onsite Wastewater Division recommends increasing the minimum lot or parcel size for rural ADUs to be at least five (5) acres in size.

Future Revisions

The Board should be aware that these draft amendments and interpretations are subject to change throughout the legislative adoption process based on public input, professional recommendations, or direction from Commissioners. The information presented above is intended to provide the Board with staff's current understanding of the primary interpretive matters and major considerations of developing rural ADU legislation.

IV. SB 762 WILDFIRE STANDARDS & TIMING

As relayed to the Board in previous work sessions, certain properties in Deschutes County will be subject to new wildfire mitigation measures as approved under SB 762.⁵ One of the primary pieces of SB 762 is the creation of a comprehensive State Wildfire Risk Map to guide new wildfire regulations for development. The final risk map was made available on June 30, 2022.⁶

Properties included in **both** a designated Wildland Urban Interface (WUI) boundary and classified as either high or extreme risk within the State Wildfire Risk Map will be subject to additional development regulations. Properties meeting both of these standards will be subject to:

- 1) Home hardening building codes as described in section R327 of the 2021 Oregon Residential Specialty Code; and
- 2) Defensible space standards as determined by the Oregon State Fire Marshal.

The standards will apply to all residential and residential accessory construction within these properties, including the development of rural ADUs. SB 762 requires the Oregon State Fire Marshal, the Oregon Department of Forestry (ODF), and the State Building Codes Division to adopt new wildfire mitigation standards as described in the legislation and further developed through ongoing stakeholder committees. At present, the State Fire Marshal has yet to develop final statewide defensible space requirements. SB 762 requires these standards to be developed on or before December 31, 2022. The earliest date that the R327 building code standards may become effective is October 1, 2022, and they will become mandatory on April 1, 2023. Regardless of other qualifying characteristics, properties included in both a designated WUI boundary and classified as either high or extreme risk within the State Wildfire Risk Map will not be eligible for a rural ADU until **April 1, 2023** at the earliest.

Based on an initial review of the State Wildfire Risk Map, there are approximately 6,635 properties potentially eligible for a rural ADU (based on parcel size and zoning characteristics) which will be subject to additional regulatory requirements pursuant to SB 762. There are approximately 2,951 potentially

⁵ SB 762 (2021)
⁶ <https://oregonexplorer.info/tools>

eligible properties which are not subject to additional regulatory requirements pursuant to SB 762. Staff notes that not all of these properties are currently developed with a single family dwelling and thus would not qualify for a rural ADU until establishment of a primary dwelling onsite.

V. ANTICIPATED PROPERTY ELIGIBILITY

Staff is amending Deschutes County Code (DCC), Titles 18 and 19 to allow Rural ADUs consistent with SB 391 in the Multiple Use Agricultural (MUA-10), Rural Residential (RR-10), Suburban Low Density Residential (SR 2.5), Urban Area Reserve (UAR-10), and Westside Transect Zones (WTZ). Eligibility criteria will be incorporated in DCC Chapters 18.116, Supplementary Provisions and 19.92, Interpretations and Exceptions. Based on initial review of the qualifying characteristics, approximately 7,798 tax lots in Deschutes County could potentially qualify for a rural ADU. However, staff notes the following limitations and revisions to that initial estimate:

- Based on the recommended standard of a 5-acre minimum parcel size within southern Deschutes County, 645 properties are below 5 acres and would not qualify for a rural ADU. There are 224 properties 5 acres or larger that would qualify for a rural ADU.
- The estimate is only based on general requirements from SB 391 and does not evaluate properties on an individual level. Specific properties may have unique lot boundaries, geographic features, onsite wastewater limitations, or other characteristics which make the establishment of a rural ADU more challenging or impossible.
- Property owners may encounter additional costs and challenges when constructing a rural ADU above and beyond specific land use standards. It is likely that numerous properties will need to incorporate significant upgrades to onsite wastewater treatment systems prior to establishment of rural ADUs.
- By adopting SB 391 in 2021, the Oregon Legislature added a new use, ADU, to rural residential zones. To the extent that Statewide Planning Goal 5 (Wildlife) applies, findings will address ADUs as a conflicting use. Certain areas in rural Deschutes County, zoned MUA-10 and RR-10 zones contain Goal 5 resources because they are overlaid with a Wildlife Area Combining Zone. The two zoning codes are being amended to allow ADUs and are therefore subject to an Economic, Social, Environmental and Energy (ESEE) analysis.
- There are 1,293 potentially eligible tax lots in the Deer Migration Corridor, 455 in Deer Winter Range, and 39 in Significant Elk Habitat. Findings will demonstrate that ADUs within the MUA-10 and RR-10 zones and within the Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat can be allowed fully, notwithstanding the possible impacts on these inventoried resources.

VI. LEGISLATIVE AMENDMENT SCHEDULE

Table 3 – Rural ADU Adoption Schedule

Task	Timeline ⁷
1. Present draft amendments in preparation for formal legislative process in Fall 2022	August 8
2. 35-day DLCD Post Acknowledgement Plan Amendment Notice	August 18
3. Planning Commission Work Session	September 8
4. Planning Commission Public Hearing	September 22
5. Planning Commission Deliberation	October 13 and 27 if needed
6. Board Work Session	November 9
7. Board Hearing	November 23
8. Board Deliberation	December 5
9. Consideration of First Reading	December 14
10. Consideration of Second Reading	December 28
11. DLCD Notice of Adoption	December 28

⁷ Dates are tentative.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Monday, August 8

SUBJECT: State Legislative Representation and Lobbying Services

BACKGROUND AND POLICY IMPLICATIONS:

In June, the County sought proposals from qualified individuals or to provide state legislative representation and lobbying services. After scoring proposals, the Board of Commissioners conducted interviews with three finalists on July 27. NW Policy Advocates, Pac/West and Public Affairs Counsel provided presentations and were interviewed by the Board.

Staff will seek direction from the Board on next steps, which could include:

- 1. Selecting a firm to provide state legislative and lobbying services.*
- 2. Officially rejecting all proposals.*
- 3. Directing staff to obtain additional information from one or more proposing firms.*
- 4. Invite one or both firms not selected for an interview to an interview.*

BUDGET IMPACTS:

Funds for lobbying services were included in the FY 2023 budget.

ATTENDANCE:

Whitney Hale, Deputy County Administrator



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Monday, August 8

SUBJECT: State of the County 2022

BACKGROUND AND POLICY IMPLICATIONS:

On Tuesday, Aug. 16, the Board of Commissioners will present the 2022 State of the County as part of the Bend Chamber’s What’s Brewing series. The event will be held at OSU-Cascades at 5:30 p.m.

The Board’s presentation will contain updates on how the County is tackling many issues, including growth and planning for our future, housing, homelessness, transportation and infrastructure, solid waste, wildfire and resilience, health and safety, and more, along with meeting everyday needs through high-quality cost-effective services.

Staff will attend the Board’s meeting on Monday, Aug. 8 to review a draft of the State of the County presentation and coordinate presentation logistics with the Board.

BUDGET IMPACTS:

None

ATTENDANCE:

Whitney Hale, Deputy County Administrator