



## COMMUNITY DEVELOPMENT

### DESCHUTES COUNTY PLANNING COMMISSION

5:30 PM, THURSDAY, OCTOBER 27, 2022

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

(541) 388-6575 | [www.deschutes.org](http://www.deschutes.org)

## AGENDA

### MEETING FORMAT

The Planning Commission will conduct this meeting in person, electronically, and by phone.

Members of the public may view the Planning Commission meeting in real time via the Public Meeting Portal at [www.deschutes.org/meetings](http://www.deschutes.org/meetings).

Members of the public may listen, view, and/or participate in this meeting using Zoom. Using Zoom is free of charge. To login to the electronic meeting online using your computer, copy this link:

<https://us02web.zoom.us/j/89157309589?pwd=ZDMzLytUVjBrSEJvUTExcHZJaW9FUT09>

**Passcode:** 740669

Using this option may require you to download the Zoom app to your device.

Members of the public can access the meeting via telephone, dial: 1-312-626-6799. When prompted, enter the following Webinar ID: 891 5730 9589 and Passcode: 740669. Written comments can also be provided for the public comment section to [planning@deschutes.org](mailto:planning@deschutes.org) by 5:00 p.m. on October 27. They will be entered into the record.

#### I. CALL TO ORDER

#### II. APPROVAL OF MINUTES

#### III. PUBLIC COMMENT

#### IV. ACTION ITEMS

- [1.](#) Deliberations - Senate Bill (SB) 391 and Rural Accessory Dwelling Units Text Amendment (*Kyle Collins, Associate Planner; Will Groves, Planning Manager*)
- [2.](#) Deliberations - Psilocybin TPM Amendments (*Tanya Saltzman, Senior Planner*)

#### V. PLANNING COMMISSION AND STAFF COMMENTS

## VI. 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.

---



## MEMORANDUM

**TO:** Deschutes County Planning Commission

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

**DATE:** October 19, 2022

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

### I. OVERVIEW

The Deschutes County Planning Commission (Commission) will conduct deliberations on October 13, 2022 concerning local provisions for rural ADUs as identified in Senate Bill (SB) 391<sup>1</sup> (file no. 247-22-000671-TA). Staff submitted a 35-day Post-Acknowledgement Plan Amendment (PAPA) notice to the Department of Land Conservation and Development (DLCD) on August 17, 2022. Staff presented the proposed amendments to the Commission at a work session on September 8, 2022.<sup>2</sup> A public hearing was held with the Commission on September 22, 2022<sup>3</sup> at which time the oral record was closed and the written record was left open until September 29, 2022. The Commission initially elected to hold deliberations on October 13, 2022. During that meeting, the Commission elected to postpone deliberations on this matter until October 27, 2022.

Attached to this memorandum are the proposed text amendments and a staff report summarizing the changes. Within the proposed amendments, added language is shown underlined and deleted shown as ~~strikethrough~~.

### Commission Decision Matrix

A summary review and discussion of the primary issue areas, themes, and decision options is provided in the associated Commission Decision Matrix, prepared in conjunction with this deliberation memorandum.

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

<sup>2</sup> See Deschutes County Planning Commission September 8, 2022 Agenda for more information: <https://www.deschutes.org/bc-pc/page/planning-commission-16>

<sup>3</sup> See Deschutes County Planning Commission September 22, 2022 Agenda for more information: <https://www.deschutes.org/bc-pc/page/planning-commission-17>

## II. WRITTEN RECORD

The full record is available for inspection at the Planning Division and at the following website: <https://www.deschutes.org/adu>.

## III. 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:

**Table 1 - SB 391 – Rural Accessory Dwelling Unit Standards**

Eligibility	Restrictions
1. Rural Residential Exception Areas, Minimum Lot Size, and Dwelling Requirements	<ul style="list-style-type: none"> <li>Applies to Rural Residential (RR10), Multiple Use Agricultural (MUA10), Urban Area Reserve (UAR-10), Suburban Residential (SR 2.5), and Westside Transect (WTZ) zones.</li> <li>Lot or parcel must be at least two (2) acres in size.</li> <li>One (1) single-family dwelling must be sited on the lot or parcel.</li> </ul>
2. Existing Dwelling Nuisance	<ul style="list-style-type: none"> <li>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.</li> </ul>
3. ADU Sanitation Requirements	<ul style="list-style-type: none"> <li>The ADU must comply with all applicable laws and regulations relating to sanitization and wastewater disposal and treatment.</li> </ul>
4. ADU Square Footage Requirements	<ul style="list-style-type: none"> <li>The ADU cannot include more than 900 square feet of useable floor area.</li> </ul>
5. ADU Distance Requirements	<ul style="list-style-type: none"> <li>The ADU is required to be located no farther than 100 feet from the existing single-family dwelling.</li> </ul>
6. ADU Water Supply Requirements	<ul style="list-style-type: none"> <li>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.</li> </ul>
7. ADU Water Supply Source Option	<ul style="list-style-type: none"> <li>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).<sup>4</sup></li> </ul>
8. ADU / Metolius Area of Critical State Concern / Limitations	<ul style="list-style-type: none"> <li>No portion of a lot or parcel can be within a designated area of critical state concern.</li> </ul>
9. ADU Setback Requirements	<ul style="list-style-type: none"> <li>The ADU is required to have adequate setbacks from adjacent lands zoned Exclusive Farm Use (EFU) or Forest Use.</li> </ul>
10. ADU / Wildland-Urban Interface Requirements	<ul style="list-style-type: none"> <li>The lot or parcel must comply with the rules of the State Board of Forestry under ORS 477.015 to 477.061.</li> </ul>
11. ADU / Outside Wildland-Urban Interface (WUI) Area Requirements	<ul style="list-style-type: none"> <li>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.</li> </ul>

<sup>4</sup> [https://oregon.public.law/statutes/ors\\_537.545](https://oregon.public.law/statutes/ors_537.545)

Eligibility	Restrictions
12. ADU / Statewide Wildfire Map Requirements	<ul style="list-style-type: none"> <li>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.</li> <li>ADUs are then required to comply with the Oregon residential specialty code relating to wildfire hazard mitigation for the mapped area (R327.4).</li> </ul>
13. ADU Adequate Access and Evacuation for Firefighting Requirements	<ul style="list-style-type: none"> <li>Local regulations must ensure the ADU has adequate access for firefighting equipment, safe evacuation and staged evacuation areas</li> </ul>
14. ADU Occupancy Requirements	<ul style="list-style-type: none"> <li>ADUs cannot be allowed for vacation occupancy, as defined in ORS 90.100.</li> </ul>
15. ADU Land Division Requirements	<ul style="list-style-type: none"> <li>If an eligible property with an ADU is divided, the single family dwelling and ADU cannot be situated on a different lot or parcel.</li> </ul>
16. ADU / Additional Units	<ul style="list-style-type: none"> <li>A second ADU is not allowed.</li> </ul>

#### IV. DESCHUTES COUNTY INTERPRETATIONS

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 proposed 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"> <li>Means the area of the accessory dwelling unit included within the surrounding insulated exterior walls, exclusive of garages, carports, decks and porch covers.</li> </ul>
100-Foot Siting Distance	<ul style="list-style-type: none"> <li>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.</li> </ul>

Undefined SB 391 Standard	Draft County Interpretation
Adequate Access and Evacuation for Firefighting Requirements	<ul style="list-style-type: none"> <li>• “Safe evacuation plan” means an identifiable route from the rural accessory dwelling unit to the staged evacuation area.</li> <li>• “Staged evacuation area” means a public or private location that occupants of the rural accessory dwelling unit may evacuate to reorganize.</li> <li>• Adequate access for firefighting equipment, safe evacuation and staged evacuation areas are met by providing: <ul style="list-style-type: none"> <li>○ 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;</li> <li>○ A safe evacuation plan; and</li> <li>○ 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.</li> </ul> </li> </ul>

### 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. The draft amendments as presented include this provision. Additionally, in consultation with the Onsite Wastewater Division, staff has explored the possibility of requiring advanced wastewater treatment systems for ADU development in southern Deschutes County. Further details are included as part of the attached decision matrix.

## **V. SB 762 WILDFIRE STANDARDS & TIMING**

Certain properties in Deschutes County will be subject to new wildfire mitigation measures as approved under SB 762.<sup>5</sup> 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 initial risk map was made available on June 30, 2022.<sup>6</sup> However, based on significant concern from citizens and interest groups through the state, ODF withdrew the initial risk map to provide more time for additional public outreach and refinement of risk classification methodologies. ODF anticipates new risk maps will be finalized by late fall or **early winter 2023**.

Due to the current unavailability of fire risk maps, staff cannot provide specific estimates on the number of properties which may be subject to additional wildfire mitigation standards. Additionally, as staff cannot currently determine which properties may be subject to additional standards, no properties in Deschutes County will be eligible for rural ADUs, despite any adoption of County standards which approve said use within the County Comprehensive Plan and zoning ordinances, until such time as a new iteration of a Statewide Map of Wildfire Risk is formally released by ODF.

<sup>5</sup> SB 762 (2021)

<sup>6</sup> <https://oregonexplorer.info/tools>

Once these risk maps are finalized, 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

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.

- 2) Defensible space standards as determined by the Oregon State Fire Marshal.

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.

## VI. WRITTEN TESTIMONY AND DISCUSSION

A total of twenty-two (22) comments from agency partners and members of the public have been received by staff concerning the proposed amendments. This includes nine (9) comments received during the open record period following the public hearing before the Commission. One of the open record period comments was presented by the Oregon Department of Fish and Wildlife (ODFW) in response to an inquiry presented by staff.

Seven (7) of the submitted comments generally expressed support for the proposed ADU amendments, citing the following items:

- Opportunities for a general increase in housing supply, particular given ongoing housing shortages and burdensome rental costs in Central Oregon.
- Increased opportunities for intergenerational living as many aging parents and family members pursue housing with other family members on existing developed properties.
- Increased economic activity from rural ADU development.
- In conjunction with the initially proposed County standards, the existing requirements in SB 391 will serve to limit the effects of increased development in rural areas of the county.

Alternatively, nine (9) of the submitted comments expressed general disapproval of the proposed ADU amendments, citing the following items:

- Negative impacts from increased traffic.
- Additional risk from adding residential development in high wildfire risk areas.
- Impacts to pre-existing water resources from adding additional exempt, private residential wells in the rural county.
- Loss of open space and rural quality of life expected from increased rural density.
- Impacts to wildlife populations and habitat related to increased development density.
- General skepticism around the impact that rural ADUs would have on housing availability and

affordability in the region.

- Concerns that certain restrictions, such as the limitation of utilizing rural ADUs for short term vacation rental purposes, can be accurately tracked and enforced by county staff.

Among those comments expressing general disapproval, not all requested a full denial of the proposed amendments. Certain commenters suggested additional actions or details that should accompany any ADU program if ultimately approved by county decision makers:

- Delaying the amendment process until final versions of the State Wildfire Risk Map required by Senate Bill (SB) 762 has been released by the Oregon Department of Forestry.
- Prohibit ADUs in all Goal 5 inventories captured by Deschutes County, including the Wildlife Area Combining Zone, Greater Sage-Grouse Area Combining Zone, and the Flood Plain Zone.
- Prohibit ADUs in the Westside Transect Zone
- Delay the amendment process until the County's proposed Goal 5 inventory update is completed.

## **VII. HEARING TESTIMONY AND DISCUSSION**

During the public hearing, nine (9) individuals provided testimony. Some testimony expressed dissatisfaction regarding the proposed text amendments in general. These comments focused primarily on the following items:

- Negative impacts to wildlife populations.
- Negative impacts on ground water supplies.
- Potential code compliance issues, specifically related to the required prohibition on vacation rentals.
- Additional wildfire risk from increased development in the rural county.
- A lack of compatibility between the proposed amendments, the statewide land use goals, and the Deschutes County Comprehensive Plan.

Some testimony expressed support for the proposed text amendments in general. These comments focused primarily on the following items:

- Opportunities for a general increase in housing supply, particular given ongoing housing shortages and burdensome rental costs in Central Oregon.
- Increased opportunities for intergenerational living as many aging parents and family members pursue housing with other family members on existing developed properties.
- Increased economic activity from rural ADU development.

## **VIII. AGENCY COMMENTS AND DISCUSSION**

As part of the record, comments have been included from several state and local agencies with an interest in the proposed ADU amendments. Staff will attempt to highlight some of those specific comments that are relevant to the deliberation discussion:



## Oregon Department of Fish and Wildlife

The Oregon Department of Fish and Wildlife (ODFW) has requested certain mitigation standards for any ADUs that may be developed within the Wildlife Area (WA) Combining Zone. Specifically, ODFW has requested the following:

1. The siting and fencing standards of Deschutes County Code (DCC) 18.88<sup>7</sup> be maintained for all rural ADU development in the WA Combining Zone
2. A specific size limitation be instituted for all accessory components (i.e.- garages, storage structures, etc.) of any developed ADU not included in the 900 square-foot “useable floor area” required by SB 391
3. Access to properties should utilize existing roads and driveways for all rural ADU development

Staff believes that the siting and fencing standards of DCC 18.88 would apply to all rural ADU development, regardless of specific language included in the proposed text amendments. However, to maintain clarity staff has modified the proposed amendment language to explicitly state the referenced standards from DCC 18.88 will apply to any future ADU development.

As presently drafted, no specific size limitations have been proposed for accessory components of an ADU outside the 900 square-foot “useable floor area” required by SB 391. Further discussion of ODFW’s request on this matter and possible limitations that may be evaluated by the Planning Commission are included as part of the attached decision matrix.

Additionally, staff notes that construction of new roads is typically reviewed through a subdivision or partition process against the standards of DCC Title 17. These proposals are generally distinct from specific physical development on an individual property, such as the construction of an ADU. Additionally, driveway permits are issued and reviewed through the Road Department primarily for compliance with clear sighting and other safety requirements. If driveway access to rural ADUs is required to be consolidated to existing access points, it is unclear how this specific standard would be reviewed or enforced over time.

### ESEE Analysis Alterations

Staff would like to highlight some minor changes made to the economic, social, environmental, and energy (ESEE) analysis which evaluates allowing rural ADU uses in recognized Goal 5 resource areas, specifically the Wildlife Area (WA) Combining Zone. As noted in the attached staff report, local governments, as part of the Comprehensive Planning process, are required to inventory the extent, location, quality, and quantity of significant natural resources within their jurisdictional boundaries. Following this inventory, local governments then conduct an ESEE analysis to determine the extent to which land uses should be limited in order to adequately protect significant resources.

---

7

[https://deschutescounty.municipalcodeonline.com/book?type=ordinances#name=CHAPTER\\_18.88\\_WILDLIFE\\_AREA\\_COMBINING\\_ZONE;WA](https://deschutescounty.municipalcodeonline.com/book?type=ordinances#name=CHAPTER_18.88_WILDLIFE_AREA_COMBINING_ZONE;WA)

Based on staff's understanding of previous comments from ODFW, the prepared ESEE analysis made several statements concerning Central Oregon mule deer populations, including the following:

"In some parts of the county, mule deer populations have declined up to 70% since 2000 as a result of human caused habitat reduction, fragmentation, and disturbance on winter range."

However, with additional information and context from ODFW, staff has revised these statements to more accurately reflect the existing data regarding mule deer population declines in the region. The statement above and similar statements throughout the ESEE analysis have now been altered as follows:

"Based on previous ODFW testimony, mule deer populations have declined in recent years and are currently at about 40% of management objectives for the areas in Central OR managed out of the ODFW Bend office. This reduction represents an approximately 55% population decline since 1998. There are many factors that have contributed to the decline of mule deer populations in Central Oregon, some of which can be directly tied to increased human presence, including habitat alteration, habitat conversion and loss, roadkill, and illegal harvest. Other contributing factors may include increased predation and increased disease amount mule deer populations. By allowing ADUs in Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat, there is the potential for greater disturbance of deer and elk populations that could reduce hunting and viewing opportunities."

Presently, staff notes the edits and additional context above have not caused a change in the general findings discussed in the ESEE analysis. Staff is welcome to discuss additional details on this matter if desired.

## **IX. ANTICIPATED PROPERTY ELIGIBILITY**

This proposal amends 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 **8,660** tax lots in Deschutes County could potentially qualify for a rural ADU. This includes properties which do not currently have a single-family dwelling onsite, but otherwise meet the qualifying standards. However, staff notes the following limitations and revisions to that initial estimate:

- 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.

- There are 765 potentially eligible tax lots in the Wildlife Area Combining Zone (includes Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat). There are no potentially eligible tax lots within the Greater Sage Grouse Area Combining Zone.
- There are 120 potentially eligible parcels in the Westside Transect Zone.
- The 8,660 tax lot estimate is based on a 5-acre minimum parcel size in southern Deschutes County. There are approximately 319 potentially eligible tax lots in southern Deschutes County based on a 5-acre minimum parcel size. There are approximately 1,129 potentially eligible tax lots in this area based on a 2-acre minimum parcel size.

## **X. NEXT STEPS**

At the conclusion of the meeting, the Commission can:

- Continue deliberations to a date certain;
- Close deliberations and propose a recommendation during this meeting;

Ultimately, the Planning Commission will provide a recommendation to the Board of County Commissioners. Options include:

- Approve amendments as drafted;
- Approve amendments with suggested edits;
- Approve certain amendments / deny others;
- Deny amendments altogether;
- Other

### Attachments:

1. Deliberation Matrix
2. Staff Report & Proposed Text Amendments
3. Map of Potentially Eligible Properties

## PLANNING COMMISSION DECISION MATRIX

SENATE BILL (SB) 391 – RURAL ACCESSORY DWELLING UNIT (ADU) TEXT AMENDMENTS Land Use File No. 247-22-000671-TA				
	Issue Area	SB 391 Criterion	Current Amendment Standards	Possible Alternatives
1	Should rural ADUs be allowed with additional standards or prohibited?	None	Allows an owner of a lot or parcel within an area zoned for rural residential use to construct one accessory dwelling unit on the lot or parcel. Applies to Rural Residential (RR10), Multiple Use Agricultural (MUA10), Urban Area Reserve (UAR-10), Suburban Residential (SR 2.5), and Westside Transect (WTZ) zones. Additional local standards are proposed.	<ol style="list-style-type: none"> <li>1. Prohibit rural ADU development in Deschutes County.</li> </ol>
2	How should “Useable Floor Area” be defined?	The ADU cannot include more than 900 square feet of “useable floor area.”	“Useable floor area” is undefined within SB 391 and the administering statutes. For the purposes of Deschutes County Code, “Useable Floor Area” currently means “the area of the accessory dwelling unit included within the surrounding insulated exterior walls, exclusive of garages, carports, decks and porch covers.”	<ol style="list-style-type: none"> <li>1. Require the 900 square-foot limit to apply to the entire ADU structure, including garages and accessory components.</li> <li>2. Set a maximum size limit to accessory components of ADUs such as garages.</li> <li>3. Additional requirements for permitting standards on habitable versus non-habitable space (i.e. – Group R-3 building permits for habitable space and Group U permits for non-habitable space).</li> </ol>
3	How should the 100-Foot Siting Distance requirement be interpreted?	The accessory dwelling unit will be located no farther than 100 feet from the existing single-family dwelling.	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.	<ol style="list-style-type: none"> <li>1. Requiring the entire footprint of an ADU to be located within 100 feet of the existing single-family dwelling.</li> </ol>

## PLANNING COMMISSION DECISION MATRIX

### SENATE BILL (SB) 391 – RURAL ACCESSORY DWELLING UNIT (ADU) TEXT AMENDMENTS

Land Use File No. 247-22-000671-TA

	Issue Area	SB 391 Criterion	Current Amendment Standards	Possible Alternatives
4	Are specific limitations warranted for Southern Deschutes County Groundwater Protection?	None	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. The boundaries of this recommendation were defined by the upper Deschutes watershed area studied during the La Pine Demonstration Project, US Geological Survey report 2007-5237, USGS Fact Sheet 2007-3103.	<ol style="list-style-type: none"> <li>1. Prohibit all rural ADU development in the identified southern Deschutes County boundaries.</li> <li>2. Maintain 5-acre minimum parcel size for rural ADU development and require advanced nitrogen reducing systems for wastewater treatment for both existing single-family dwellings and proposed ADUs.</li> <li>3. Set a larger minimum parcel size requirement for all southern Deschutes County properties to qualify for rural ADU development.</li> <li>4. Remove the minimum size requirements for all southern Deschutes County properties to qualify for rural ADU development.</li> </ol>
5	Do the current amendments and ESEE analysis adequately address and protect Goal 5 and Natural Resources?	None	Allows rural ADU development in designated Goal 5 areas such as the Wildlife Area Combining Zone, subject to existing standards and requirements. Any development within Goal 5 sites such as the Flood Plain Zone or jurisdiction wetlands requires a Conditional Use Permit and review by local, state, and federal agencies to ensure compliance with environmental and natural hazard mitigation regulations. However, as presently drafted, the proposed amendments do not allow ADU development within the Flood Plain Zone (DCC 18.96).	<ol style="list-style-type: none"> <li>1. Prohibit rural ADU development in designated Goal 5 resource areas (i.e. – Wildlife Area Combining Zone, Greater Sage-Grouse Area Combining Zone, and the Sensitive Bird and Mammal Habitat Combining Zone)</li> <li>2. Prohibit rural ADU development in some, but not all, designated Goal 5 resource areas.</li> <li>3. Develop additional restrictions in coordination with the Oregon Department of Fish and Wildlife (ODFW) for rural ADU development in designated Goal 5 resources areas such as minimum parcel sizes, driveway access consolidation, etc.</li> <li>4. Delay the adoption of rural ADU legislation until such time as the proposed Deschutes County Goal 5 inventory update is complete.</li> </ol>

## PLANNING COMMISSION DECISION MATRIX

### SENATE BILL (SB) 391 – RURAL ACCESSORY DWELLING UNIT (ADU) TEXT AMENDMENTS

Land Use File No. 247-22-000671-TA

	Issue Area	SB 391 Criterion	Current Amendment Standards	Possible Alternatives
6	Do the current amendments adequately address Senate Bill 762 and Wildfire Mitigation?	<ul style="list-style-type: none"> <li>Statewide wildfire risk maps have been approved and the accessory dwelling unit complies with the Oregon residential specialty code relating to wildfire hazard mitigation for the mapped area;</li> <li>The accessory dwelling unit has adequate setbacks from adjacent lands zoned for resource use;</li> <li>The accessory dwelling unit has adequate access for firefighting equipment, safe evacuation and staged evacuation areas;</li> <li>If the accessory dwelling unit is not subject to ORS 477.015 to 477.061, the accessory dwelling unit has defensible space and fuel break standards as developed in consultation with local fire protection service providers.</li> </ul>	<ul style="list-style-type: none"> <li>The accessory dwelling unit will have a minimum setback of 100 feet between the accessory dwelling unit and adjacent land zoned F-1, F-2, or EFU and meet the other minimum setback requirements of the underlying zone and combining zones.</li> <li>The lot or parcel is served by a fire protection service provider with professionals who have received training or certification described in ORS 181A.410.</li> <li>Adequate access for firefighting equipment, safe evacuation and staged evacuation areas are met by providing:                             <ul style="list-style-type: none"> <li>Written certification from a fire protection service provider with professionals who have received training or certification described in ORS 181A.410, on a form prepared by Deschutes County, that access to the property meets minimum fire district requirements to provide emergency services to the property;</li> <li>A safe evacuation plan; and</li> <li>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</li> </ul> </li> <li>The lot or parcel and accessory dwelling unit comply with rules of the State Board of Forestry under ORS 477.015, 477.025 and 477.027. If the accessory dwelling unit is not subject to ORS 477.015, 477.025 and 477.027, the accessory dwelling unit has defensible space and fuel break standards as developed in consultation with local fire protection service providers</li> <li>Statewide wildfire risk maps, described in ORS 477.490, have been approved. Pursuant to the Statewide wildfire risk maps, the following requirements shall apply:                             <ul style="list-style-type: none"> <li>For extreme and high wildfire risk classes in the wildland-urban interface that are identified pursuant to ORS 477.490, the wildfire hazard mitigation building code standards as described in section R327 of the 2021 Oregon Residential Specialty Code;</li> <li>For extreme and high wildfire risk classes in the wildland-urban interface that are identified pursuant to ORS 477.490, the minimum defensible space rules established by the State Fire Marshal as described in ORS 476.392.</li> <li>If the accessory dwelling unit is not subject to ORS 477.015, 477.025 and 477.027, the accessory dwelling unit has defensible space and fuel break standards as developed in consultation with local fire protection service providers.</li> </ul> </li> </ul>	<ol style="list-style-type: none"> <li>1. Delay the adoption of rural ADU legislation until such time as the final State Wildfire Risk Map has been released by the Oregon Department of Forestry.</li> <li>2. Require all rural ADUs contain fire sprinklers (per recommendation from Chief Mike Supkis of La Pine Rural Fire Protection District).</li> </ol>

**PLANNING COMMISSION DECISION MATRIX**

**SENATE BILL (SB) 391 – RURAL ACCESSORY DWELLING UNIT (ADU) TEXT AMENDMENTS**  
 Land Use File No. 247-22-000671-TA

	Issue Area	SB 391 Criterion	Current Amendment Standards	Possible Alternatives
7	Should ADUs be allowed in the Westside Transect Zone?	None	Rural ADUs would be allowed on properties within the Westside Transect Zone (WTZ). All existing requirements related to development within the WTZ including subdivision and property scale fuel treatments, wildfire mitigation building code standards, and maintenance of designated open space corridors would be unaffected by the proposed amendments.	<ol style="list-style-type: none"> <li>1. Prohibit rural ADU development in the WTZ.</li> <li>2. Develop additional restrictions for rural ADU development in the WTZ such as siting standards, etc.</li> </ol>
8	Should Vacation Occupancy be prohibited in the existing residence, as well as the ADU?	A county may not allow an accessory dwelling unit allowed under this section to be used for vacation occupancy, as defined in ORS 90.100.	The applicant shall sign and record with the County Clerk, prior to the issuance of a building permit, a restrictive covenant stating an accessory dwelling unit allowed under this section cannot be used for vacation occupancy, as defined in DCC 18.116.370(A)(8) and consistent with ORS 90.100.	<ol style="list-style-type: none"> <li>1. Prohibit both the existing single-family dwelling and the ADU for vacation occupancy use, as defined in DCC 18.116.370(A)(8) and consistent with ORS 90.100.</li> </ol>



## STAFF REPORT

**FILE NUMBER:** 247-22-000671-TA

**APPLICANT:** Deschutes County Community Development  
117 NW Lafayette Avenue  
Bend, Oregon 97703

**PROPERTY OWNER:** N/A

**REQUEST:** Pursuant to Senate Bill (SB) 391, Text Amendments to allow an owner of a lot or parcel within a rural residential exception area to construct one accessory dwelling unit (ADU) subject to certain restrictions and limitations.

**STAFF CONTACT:** Kyle Collins, Associate Planner

### I. APPLICABLE CRITERIA:

Deschutes County lacks specific criteria in DCC Titles 18, 19, 22, or 23 for reviewing a legislative text amendment. Nonetheless, since Deschutes County is initiating a legislative text amendment, the County bears the responsibility for justifying that the amendments are consistent with Statewide Planning Goals and its existing Comprehensive Plan

### II. BASIC FINDINGS:

#### A. **Senate Bill 391**

On June 23, 2021, the Oregon Legislature adopted Senate Bill (SB) 391, which authorizes counties to allow an owner of a lot or parcel within a rural residential exception area to construct one accessory dwelling unit (ADU) subject to certain restrictions and limitations.<sup>1</sup> SB 391 does not obligate a county to allow ADUs, nor does it prohibit a county from imposing any additional restrictions beyond what is mandated in state law.

Rural residential exception areas and their corresponding zones exist throughout Oregon. By definition, rural residential zones exist outside urban growth boundaries (UGBs), but are excluded

<sup>1</sup> <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB391>



from the state’s resource land (farm and forest zone) protections. While the protections afforded to resource lands allow residential uses only in conjunction with a farm or forest use, rural residential zones allow a dwelling as a primary use of the land. Prior to the adoption of SB 391, state law allowed counties to permit an additional dwelling on a property containing a house built prior to 1945.<sup>2</sup> However, unlike urban zones, rural residential zones did not have other by-right accessory dwelling options, making inter-generational and alternative housing options difficult to achieve.

SB 391 only authorizes ADUs on lands zoned for rural residential use. Areas zoned for rural residential use are defined by ORS 215.501 to mean “land that is not located inside a UGB as defined in ORS 195.060 (Definitions) and that is subject to an acknowledged exception to a statewide land use planning goal relating to farmland or forestland and planned and zoned by the county to allow residential use as a primary use.” The applicable zoning designations in Deschutes County for these lands are Multiple Use Agricultural (MUA-10), Rural Residential (RR-10), Suburban Low Density Residential (SR 2.5), Urban Area Reserve (UAR-10), and Westside Transect Zone (WTZ).

## B. Deschutes County Rural ADU Ordinance

In addition to only applying to lands recognized as rural residential exception areas, SB 391 also contains minimum criteria that must be met for a lot or parcel to qualify for an ADU. Many of those criteria are general in nature and therefore require counties to provide their own interpretations or definitions. At the same time, SB 391 contains several provisions related to wildfire hazard mitigation, which relied on and referred to actions at the state level as directed by the passage of SB 762, a comprehensive wildfire hazard mitigation bill.<sup>3</sup> While wildfire requirements were being created at the state level, staff worked with the Board of County Commissioners to “translate” the language of SB 391 into the local code presented in these amendments.

## III. PROPOSAL:

This is a legislative text amendment to Deschutes County Code (DCC), Title 18, County Zoning, and Title 19, Bend Urban Growth Boundary Zoning Ordinance. The primary purpose of the amendments is to allow rural ADUs per the adoption of SB 391. The proposal creates two new subsections (effectively the same but pertaining to different zones in Titles 18 and 19) that govern the criteria for rural ADUs. Table 1 provides a summary of each provision of the amendments.

**Table 1 – SB 391 Requirements**

Topic	SB 391 Requirements	Comment
Single Family Dwelling	SB 391 Section 2(2)(c) requires one single-family dwelling to be located on the lot or parcel.	DCC 18.116.370(B)(1) and DCC 19.92.160(B)(1) are consistent with SB 391.

<sup>2</sup> House Bill 3012 (2017).

<sup>3</sup> SB 1533 (2022) corrected broken links in SB 762 related to wildfire mapping.

Topic	SB 391 Requirements	Comment
<b>Urban Reserve Area</b>	SB 391 Section 2(b) requires that the lot or parcel is not located within an area designated as an urban reserve as defined in ORS 195.137. In Deschutes County, the Redmond Urban Reserve Area is the only urban reserve that meets this definition.	DCC 18.116.370(B)(2) is consistent with SB 391. Redmond's Urban Reserve Areas is not near lands zoned in Title 19, therefore it is not cited in DCC 19.92.160.
<b>Nonresource Lands</b>	SB 391 Section 2(1)(b) requires that "Area zoned for rural residential use" has the meaning given that term in ORS 215.501.  ORS 215.501(1)(b), "Area zoned for rural residential use" means land that is not located inside an urban growth boundary as defined in ORS 195.060 (Definitions) and that is subject to an acknowledged exception to a statewide land use planning goal relating to farmland or forestland and planned and zoned by the county to allow residential use as a primary use.	Pursuant to DLCD, Acknowledged nonresource plan amendments and zone changes from Exclusive Farm Use (EFU) to RR-10 or MUA-10 are eligible for an ADU.
<b>Areas of Critical State Concern</b>	SB 391 Section 2(2)(i) requires that no portion of the lot or parcel is within a designated area of critical state concern. Areas of critical state concern are generally defined in ORS 197.405 and apply to the Metolius Area of Critical State Concern in ORS 197.416.	DCC 18.116.370(B)(4) is consistent with SB 391. The Metolius Area of Critical State Concern is not near lands zoned in Title 19, therefore it is not cited in DCC 19.92.160.
<b>Minimum Lot Size</b>	SB 391 Section 2(2)(b) requires the subject lot or parcel be at least two acres in size.	DCC 18.116.370(B)(5) and DCC 19.92.160(B)(2) are consistent with SB 391.  DCC 18.116.370(B)(5) requires a minimum lot or parcel to be at least 5 acres in size south of Sunriver due to groundwater protection.
<b>Setbacks</b>	SB 391 Section 2(2)(m)(A) requires that the ADU has adequate setbacks from adjacent lands zoned for resource use.	DCC 18.116.370(B)(6) and DCC 19.92.160(B)(3) are consistent with SB 391. Both require a minimum setback of 100 feet between the ADU and adjacent EFU and Forest Use zoned (F-1, F-2) properties.
<b>ADU Size</b>	SB 391 Section 2(2)(f) limits the size of the ADU to 900 square feet of useable floor area.	DCC 18.116.370(B)(7) and DCC 19.92.160(B)(4) are consistent with SB 391.  Usable floor area is defined as, "the area of the accessory dwelling unit included within the surrounding insulated exterior walls, exclusive of garages, carports, decks and porch covers."

Topic	SB 391 Requirements	Comment
<b>Distance from Dwelling</b>	SB 391 Section 2(2)(g) requires the ADU to be located no farther than 100 feet from the single family dwelling. <sup>4</sup>	DCC 18.116.370(B)(8) and DCC 19.92.160(B)(5) are consistent with SB 391.  Both require the ADU 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 ADU.
<b>Sanitation and Wastewater</b>	SB 391 Section 2(2)(e) requires the ADU to comply with applicable sanitation and wastewater regulations.	DCC 18.116.370(B)(9) and DCC 19.92.160(B)(6) are consistent with SB 391.
<b>Fire Protection District Service</b>	SB 391 Section 2(2)(j) requires the lot or parcel be served by a fire protection service provider with professionals who have received training or certification described in ORS 181A.410.	DCC 18.116.370(B)(10) and DCC 19.92.160(B)(7) are consistent with SB 391.
<b>Access and Evacuation</b>	SB 391 Section 2(2)(m)(B) requires that the ADU has adequate access for firefighting equipment and safe evacuation and staged evacuation areas.	DCC 18.116.370(B)(11) and DCC 19.92.160(B)(8) are consistent with SB 391.  Both require certification of access by the applicable fire protection district and that there are evacuation plan and authorized staged evacuation areas.
<b>Wildland Urban Interface (WUI) Defensible Space Requirements</b>	SB 1533 Section 5(2)(k) requires that if the lot or parcel is in an area identified on the statewide map of wildfire risk described in ORS 477.490, as within a WUI with a high to extreme risk classification, the lot or parcel must comply with any applicable minimum defensible space requirement for wildfire risk reduction established by the State Fire Marshal under ORS 476.392.	DCC 18.116.370(B)(12) and (13) and DCC 19.92.160(B)(9) and (10) are consistent with SB 391.  Property owners not subject to this provision, upon adoption of these amendments, can apply for an ADU.  For those property owners subject to this provision, upon adoption of these amendments, they cannot apply for an ADU until April 1, 2023 at the earliest.

<sup>4</sup> The bill language and legislative history are unclear if the entire ADU must be entirely within 100 feet of the dwelling or just a portion. Local governments are therefore granted deference to interpret this provision.

Topic	SB 391 Requirements	Comment
<b>Wildland Urban Interface (WUI) Fire Hardening</b>	SB 762 Section 12 requires that if the lot or parcel is in an area identified on the statewide map of wildfire risk described in ORS 477.490, as within a WUI with a high to extreme risk classification, the ADU must comply with R327 (fire hardening standards) in the Oregon Residential Specialty Code.	DCC 18.116.370(B)(12) and (13) and DCC 19.92.160(B)(9) and (10) are consistent with SB 391.  Property owners not subject to this provision, upon adoption of these amendments, can apply for an ADU.  For those property owners subject to this provision, upon adoption of these amendments, they cannot apply for an ADU until April 1, 2023 at the earliest.
<b>Nuisance</b>	SB 391 Section 2(2)(d) requires that the ADU complies with applicable sanitation and wastewater regulations.	DCC 18.116.370(B)(14) and DCC 19.92.160(B)(11) are consistent with SB 391.
<b>Subdivision and Other Accessory Dwelling Unit Limitations</b>	SB 391 Section 2(4)(a) and (b) preclude a subdivision, partition or other division of the lot or parcel so that the existing single-family dwelling is situated on a different lot or parcel than the ADU; and precludes construction of an additional ADU on the same lot or parcel.	DCC 18.116.370(B)(15) and DCC 19.92.160(B)(12) are consistent with SB 391.
<b>Water Supply</b>	SB 391 Section 2(5) allows a county to require that the ADU be served by the same water source or water supply system as the existing single-family dwelling. If the ADU is served by a well, the construction of the ADU shall maintain all setbacks from the well required by the Water Resources Commission or Water Resources Department.	DCC 18.116.370(B)(16) and DCC 19.92.160(B)(13) are consistent with SB 391.  While not requiring the same water source, DCC 18.116.370(B)(16) and DCC 19.92.160(B)(15) require setbacks from the well to be maintained from an ADU.
<b>Water Right Exempt Use</b>	SB 391 Section 2(6) recognizes that a single family dwelling and an ADU are considered a single unit and therefore do not require a groundwater permit from the Oregon Water Resources Department. <sup>5</sup>	DCC 18.116.370(B)(17) and DCC 19.92.160(B)(14) are consistent with SB 391.
<b>Vacation Occupancy</b>	SB 391 Section 2(3) prevents an ADU from being used for vacation occupancy as defined in ORS 90.100.	DCC 18.116.370(B)(18) and DCC 19.92.160(B)(15) are consistent with SB 391.  Both require a restrictive covenant be recorded to ensure compliance.

<sup>5</sup> Deschutes County does not contain any critical groundwater areas as defined by the Water Resources Commission.

#### IV. FINDINGS:

##### CHAPTER 22.12, LEGISLATIVE PROCEDURES

Section 22.12.010.

##### ***Hearing Required***

**FINDING:** This criterion will be met because a public hearing was held before the Deschutes County Planning Commission and Board of County Commissioners.

Section 22.12.020, Notice

##### ***Notice***

##### ***A. Published Notice***

- 1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.***
- 2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.***

**FINDING:** This criterion will be met as notice was published in the Bend Bulletin newspaper for the Planning Commission public hearing, and the Board of County Commissioners' public hearing.

- B. Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.***

**FINDING:** Posted notice was determined by the Planning Director not to be necessary.

- C. Individual notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.***

**FINDING:** Given the proposed legislative amendments do not apply to any specific property, no individual notices were sent.

- D. Media notice. Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.***

**FINDING:** Notice was provided to the County public information official for wider media distribution. This criterion is met.

Section 22.12.030 Initiation of Legislative Changes.

***A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of County Commissioners.***

**FINDING:** The application was initiated by the Deschutes County Planning Division at the direction of the Board of County Commissioners, and has received a fee waiver. This criterion is met.

Section 22.12.040. Hearings Body

- A. *The following shall serve as hearings or review body for legislative changes in this order:***
- 1. *The Planning Commission.***
  - 2. *The Board of County Commissioners.***
- B. *Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.***

**FINDING:** The Deschutes County Planning Commission held the initial public hearing on September 22, 2022. The Board then held a public hearing on [TBD]. These criteria are met.

Section 22.12.050 Final Decision

***All legislative changes shall be adopted by ordinance***

**FINDING:** The proposed legislative changes will be implemented by Ordinance No. [number TBD] upon approval and adoption by the Board of County Commissioners. This criterion will be met.

**B. *Statewide Planning Goals and Guidelines***

Goal 1: Citizen Involvement: The amendments do not propose to change the structure of the County's citizen involvement program. Notice of the proposed amendments was provided to the *Bulletin* for the Board public hearing.

Goal 2: Land Use Planning: This goal is met because ORS 197.610 allows local governments to initiate post acknowledgments plan amendments (PAPA). An Oregon Land Conservation and Development Department 35-day notice was initiated on August 17, 2022. The Planning Commission held a public hearing on September 22, 2022 and the Board of County Commissioners will hold a public hearing on [TBD]. The Findings document provides the adequate factual basis for the amendments.

Goal 3: Agricultural Lands: No changes related to agricultural lands are proposed as part of the text amendments. This goal does not apply.

Goal 4: Forest Lands: No changes related to forest lands are proposed as part of the text amendments. This goal does not apply.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources: By adopting SB 391 in 2021, the Oregon Legislature added a new use, ADU, to rural residential exception areas. Local governments can choose to allow this use by: 1) amending their zoning codes and complying with SB 391's development standards. Goal 5 does not apply.

However, to the extent that it does, local governments apply Goal 5 to a PAPA when the amendment allows a new use and the new use "could be" a conflicting use with a particular Goal 5 resource site on an acknowledged resource list. Certain areas in rural Deschutes County, zoned MUA-10 and RR-10 contain Goal 5 resources because they are overlaid with a Wildlife Area Combining Zone. Two zoning codes are being amended to allow Rural ADUs and are therefore subject to an ESEE Analysis. No other changes to the code warrant specific ESEE Analysis as they are not adding new uses that conflict with Goal 5 resources. The ESEE analysis is included in *Appendix A* which is attached to this document.

Goal 6: Air, Water and Land Resources Quality: The proposed text amendments do not propose changes to the County's Comprehensive Plan policies or implementing regulations for compliance with Goal 6, and therefore are in compliance. However, it is worth noting that the amendments preclude citing an ADU south of Sunriver on lots or parcels that are between 2 and 4.99 acres. The eligible lot or parcel size in this area of the County is 5 acres. In the RR-10 zone south of Sunriver, there are 912 tax lots between 2 and 4.99 acres and 387 tax lots 5 acres or larger.

Goal 7: Areas Subject to Natural Disasters and Hazards: The proposed text amendments do not propose to changes the County's Comprehensive Plan or implementing regulations regarding natural disasters and hazards; therefore, they are in compliance. Eligible properties subject to SB 762, effective April 1, 2023, will be required to comply with Oregon Residential Specialty Code (R327) to fire harden the ADU and coordinate with the Oregon State Fire Marshal to ensure the property has defensible space.

Goal 8: Recreational Needs: Accessory Dwelling Units are not a recreational use or need. This goal does not apply.

Goal 9: Economic Development: Accessory Dwelling Units are not primarily economic in nature. This goal does not apply.

Goal 10: Housing: This goal is not applicable because unlike municipalities, unincorporated areas are not obligated to fulfill certain housing requirements.

Goal 11: Public Facilities and Services: Accessory Dwelling Units in the rural county typically rely on domestic wells and onsite wastewater treatment systems. A Goal 11 exception would be required for a centralized sewer system and would need to be applied on a property specific, needs related basis. This goal does not apply.

Goal 12: Transportation: By adopting SB 391 in 2021, the Oregon Legislature added a new use, ADU, to rural residential exception areas. Local governments can choose to allow this use by: 1) amending

their zoning codes and complying with SB 391's development standards. ADUs will still be subject to Transportation System Development Charges (SDCs) prior to the issuance of a building permit. To the extent that the Transportation Planning Rule at OAR 660-012-0060 does apply, staff notes the following comments from the County's Senior Transportation Planner:

The Transportation Planning Rule (TPR) at OAR 660-012-0060 requires a determination if a new land use regulation will significantly affect a transportation facility. Approximately 9,831 lots could be eligible for a rural accessory dwelling unit (ADU) based on zoning and size of the tax lot with roughly 3,000 tax lots being eligible immediately. The remaining roughly 6,000 tax lots' eligibility will need to be determined based on the wildfire rules and requirements in development based on Senate Bill (SB) 763.

The potential lots for a rural ADU are geographically spread out:

- Bend area: 3,876 lots
- Redmond area: 2,886 lots
- Sisters area: 1,576 lots
- South County: 1,123 lots

The County is currently updating its 2010-2030 Transportation System Plan (TSP) to 2020-2040. The analysis of future traffic volumes only indicated a few intersections that would not meet County performance standards. Both were tied to the Deschutes Junction interchange at US 97/Deschutes Market Road-Tumalo. The TSP has planned improvements to mitigate the deficiencies at those intersections.

The geographic distribution of the lots, the adequate reserve capacity on the County system, the low trip generation of each home, an average of nine daily trips, including one p.m. peak hour trip, and the fact the lots will develop over years and years, means the road system is adequate to handle the traffic volumes generated by rural ADUs.

The rural ADUs do not result in any changes to the County's functional classifications or access management policies. The County collects transportation system development charges (SDCs) for all new developments, including single-family homes. The SDC rate is indexed to construction costs and resets every July 1. As a rural ADU is essentially a second home on the property, the County would collect SDCs as each rural ADU develops. The current SDC rate for a single-family home is \$4,115. If the SDC rate remained unchanged, which is highly unlikely, the 9,831 lots would generate \$38.6 million dollars in SDCs.

The addition of a second rural ADU on approximately 9,381 lots will not create a significant nor adverse effect to the County transportation system and thus complies with the TPR.



Goal 13: Energy Conservation: Any future site-specific application for an ADU will be required to incorporate energy conservation measures through the Oregon Building Code. This goal does not apply.

Goal 14: Urbanization: The purpose of Goal 14 is to direct urban uses to areas inside UGBs. As the proposed amendments do not seek to allow urban uses on rural land, nor do they seek to expand an existing urban growth boundary, this goal does not apply.

Goals 15 through 19: Deschutes County does not contain any of the relevant land types included in Goals 15-19. Therefore these goals do not apply.

## C. Deschutes County Comprehensive Plan

### Chapter 3, Rural Growth

#### Section 3.3, Rural Housing

*3.3.5 Maintain the rural character of the County while ensuring a diversity of housing opportunities, including initiating discussions to amend State Statute and/or Oregon Administrative Rules to permit accessory dwelling units in Exclusive Farm Use, Forest and Rural Residential zones.*

**FINDING:** Implementing SB 391, which allows ADUs to be sited in rural residential exception areas, is consistent with Policy 3.3.5.

## V. CONCLUSION:

Based on the information provided herein, the staff recommends the Board of County Commissioners approve the proposed text amendments that make minor changes necessary to clarify existing standards and procedural requirements, incorporate changes to state and federal law, and to correct errors.

# Rural Accessory Dwelling Unit Text Amendment

**Appendix A: ESEE Analysis Document to**

**File No. 247-22-000671-TA**

Deschutes County Community Development

August 16, 2022

# Table of Contents

Chapter 1: Overview of Goal 5 and ESEE Analyses ..... 11

Chapter 2: Deschutes County Goal 5 Inventory and Methodology ..... 14

Chapter 3: Conflicting Use Analysis ..... 16

Chapter 4: Impact Areas ..... 19

Chapter 5: ESEE Analysis ..... 20

Chapter 6: ESEE Decision..... 27

Chapter 7: Program to Achieve Goal 5 ..... 28

## References

- Attachment 1 – Deschutes County Goal 5 Inventory Summary Table
- Attachment 2 – Inventory Site Maps

## Chapter 1: Overview of Goal 5 and ESEE Analyses

### Introduction

This appendix report was prepared to supplement the findings document associated with File No. 247-22-000671-TA. Deschutes County is amending Deschutes County Code (DCC), Titles 18 and 19 to allow Rural Accessory Dwelling units (ADUs) consistent with Senate Bill (SB) 391 (2021) in 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). DCC Chapter 18.88 is the Wildlife Area (WA) Combining Zone, which recognizes four Goal 5 inventories: Antelope Range, Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat. Certain areas in rural Deschutes County, zoned MUA-10 and RR-10, are overlaid with a Deer Migration Corridor, Deer Winter Range, and/or Significant Elk Habitat.

In addition, there are some areas zoned MUA-10 and RR-10 that contain Goal 5 riparian resources and their associated fish, furbearer, waterfowl, and upland game bird habitat. Recognizing that an ADU is a new conflicting use in the WA Combining Zone, Deschutes County is applying Goal 5 in consideration of this Post Acknowledgment Plan Amendment (PAPA). The full findings document provides additional detail and background information regarding the intent of the amendments and compliance with other applicable local and state regulations outside of Statewide Land Use Planning Goal 5 – *Natural Resources, Scenic and Historic Areas, and Open Spaces*.

### Deschutes County Goal 5 Program

The purpose of Goal 5 is “to protect natural resources and conserve scenic and historic areas and open spaces.” Local governments, as part of the Comprehensive Planning process, are required to inventory the extent, location, quality, and quantity of significant natural resources within their jurisdictional boundaries. Following this inventory, local governments then conduct an economic, social, environmental, and energy (ESEE) analysis to determine the extent to which land uses should be limited in order to adequately protect significant resources. Following an ESEE analysis, governments then establish a program to protect significant natural resources. Deschutes County established its initial Goal 5 natural resource inventory, ESEE analyses, and protection programs between the years of 1988-1994, as part of periodic review.

In reviewing this document, it is important to acknowledge there are six policies and development standards within the Deschutes County Comprehensive Plan and DCC that were established through ESEEs over time that could still limit the development of ADUs near inventoried Goal 5 resources. Deschutes County finds the proposed amendments do not alter the following existing protections.

1. Setback Protections: 100-foot structural setback from the ordinary high water mark (OHWM) of rivers and streams.

2. Scenic Protections: Development near rivers in the Landscape Management Combining Zone must be reviewed for aesthetic compatibility.
3. Wetland Protections: Prohibition of fill or removal of any material or wetland vegetation, regardless of the amount, within the bed and banks of any stream or river or in any wetland unless approved as a conditional use.
4. Mitigation Protections: Impacts to any wetland or riverbank impacts to be fully mitigated, as evaluated by Oregon Department of Fish and Wildlife (ODFW).
5. Flood Plain Protections: All new construction, expansion or substantial improvement of an existing dwelling, an agricultural related structure, a commercial, industrial or other non-residential structure, or an accessory building in a designated Flood Plain must obtain a conditional use permit.
6. Combining Zone Requirements: Deer Migration Corridor, Deer Winter Range, Elk Habitat, and Sensitive Bird and Mammal Habitat have site specific requirements including development setbacks and/or seasonal construction requirements to prevent impacts to sensitive species and habitat.

## Required Steps and Discretionary Review

Local governments are required to comply with Goal 5 when a PAPA allows a new use and the new use “could be” a conflicting use with a particular Goal 5 resource site on an acknowledged resource list.<sup>6</sup> Deschutes County is amending the MUA-10, RR-10, SR 2.5, UAR-10 and WTZ zoning chapters to allow ADUs consistent with SB 391 (2021).

ADUs have the potential to generate a certain level of noise and habitat alteration. As this new use could potentially impact Goal 5 resources, Deschutes County is conducting an ESEE Analysis to identify potential consequences and protections related to the amendments. ADUs will be added as a new permitted use in the MUA-10, RR-10, SR 2.5, UAR-10 and WTZ zones. As shown below, only two of those zones, MUA-10 and RR-10 contain Goal 5 resources and are being reviewed as part of this ESEE analysis.

**Table 2: Zones Containing Goal 5 Resources**

Contain Goal 5 Resources	Do Not Contain Goal 5 Resources
<ul style="list-style-type: none"> <li>• DCC Chapter 18.32, Multiple Use Agricultural Zone</li> <li>• DCC Chapter 18.60, Rural Residential Zone</li> </ul>	<ul style="list-style-type: none"> <li>• DCC Chapter 19.12, Urban Area Reserve Zone</li> <li>• DCC Chapter 19.20, Suburban Low Density Residential Zone</li> <li>• DCC Chapter 19.22, Westside Transect Zone</li> </ul>

<sup>6</sup> OAR 660-023-0250(3)(b)

ESEEs are meant to be analytical tools. The content of the ESEE is discretionary and is intended to be conducted by planning staff using existing information. An ESEE is not meant to focus exclusively on environmental impacts such as an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA). Additionally, Goal 5 explains “the ESEE analysis need not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected.”<sup>7</sup> In utilizing this analytical tool, there are a few steps jurisdictions must include and address in accordance with OAR 660-023 – *Procedures and Requirements for Complying with Goal 5*:

1. Identify Conflicting Uses – Does the land use or activity negatively impact natural resources?
2. Determine Impact Area – What is the geographic extent to which land uses or activities adjacent to natural resources could negatively impact those resources?
3. Analyze ESEE Consequences – What are the positive and negative consequences (both for development and natural resources) of a decision to fully protect natural resources, fully allow conflicting uses, or limit conflicting uses?
4. Develop a program – How and to what extent will the natural resources be protected based on the ESEE analysis?

A response to each of these steps is included throughout this report. The relevant page and chapter can be found in the table of contents.

---

<sup>7</sup> OAR 660-023-0040(1)

## Chapter 2: Deschutes County Goal 5 Inventory and Methodology

### **660-23-0030 – Inventory Goal 5 Resources**

Stemming from periodic review, Deschutes County adopted inventories for a variety of Goal 5 natural resources (Attachment 1). Some of these resources have mapped geographic boundaries such as Deer Winter Range, whereas others are described as being located in general areas – such as furbearer habitat in riparian corridors. The inventories were produced at a countywide scale, with additional detail for the Deschutes River and its tributaries through the Deschutes County/City of Bend River Study. County staff digitized these habitat boundaries into Geographic Information Systems (GIS) shape files in the 2000s for public awareness. The shape files were created from hard copy maps and descriptions found in the ordinances establishing the County's Goal 5 program, in consultation with the Oregon Department of Fish and Wildlife (ODFW).

Maps provided in this document include inventoried habitat that spatially overlaps with the MUA-10 and RR-10 zones impacted by the proposed text amendments (Attachment 2). The habitat areas include: deer migration corridor, deer winter range, elk habitat, flood plain, and wetlands. Staff utilized the County's WA Combining Zone layers to determine the general extent of habitat for big game species as the Combining Zone was designed to cover a larger area than the habitat itself (Ordinance 92-046). Inventoried streams and rivers are shown on the map, as well as wetlands and flood plains. Goal 5 Riparian areas (flood plain, wetlands and 100 feet measured from ordinary high water mark) associated with these water bodies is also the habitat area for fish, furbearers, waterfowl, and upland game birds (Ordinance 92-041, 94-007). As the proposed text amendments are legislative and do not impact any specific properties, staff did not review Goal 5 impacts on an individual parcel level basis. Instead staff identified the following potential resource sites in which the allowance of ADUs could potentially intersect with Goal 5 resources:

Riverine Resources: Some properties in the MUA-10 and RR-10 zones are located in relative proximity to the Deschutes River, Little Deschutes River, Paulina Creek, and Whychus Creek and its associated Goal 5 Riparian Area.<sup>8</sup> Ordinance 92-041 stated the following additional Goal 5 resources depend on riparian corridors for habitat: furbearer, waterfowl, and upland game bird habitat. As the extent of the habitat locations for these species are not detailed in a boundary description or on a map, staff assumes the species habitat is found entirely inside the Riparian Area boundary shown in Attachment 2.

Wildlife Area Combining Zone: The WA Combining Zone was adopted as a protection measure for antelope, deer, and elk in Deschutes County. As an overlay zone, the mapped area conservatively identified typical habitat and migration areas and provided additional development requirements to ensure impacts to wildlife are properly mitigated alongside the underlying base zone regulations. The zone encompasses the previously inventoried area for Antelope Range, Deer Migration

---

<sup>8</sup> There are 386 RR-10 tax lots, two acres or greater that abut the Little Deschutes River or Deschutes River and 505 tax lots that are split-zoned RR-10 or MUA-10 with the Flood Plain Zone. The Flood Plain Zone is not recognized as a rural residential exception area. RR-10 and MUA-10 split zoned properties will be required to contain the minimum lot or parcel area to qualify for an ADU.



Corridor, Deer Winter Range, and Significant Elk Habitat. The proposed amendments add a conflicting use, ADUs which affect three habitat ranges in MUA-10 and RR-10: Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat. These habitat ranges are shown in Attachment 2. The maps include federal land. However, these properties are not subject to Deschutes County land use regulations.

The Deschutes County Goal 5 inventory also includes scenic and open space sites such as Landscape Management Rivers and Streams, State Scenic Waterways and Federal Wild and Scenic Rivers, and Ecologically and Scientifically Significant Natural Areas – Little Deschutes River / Deschutes Confluence (Attachment 1). As these are resources associated with mitigating visual impacts and do not impact development potential, they are not impacted by the proposed amendments and therefore are not reviewed in this document.

## Chapter 3: Conflicting Use Analysis

**660-023-0040(2): Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and in its impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site.**

Deschutes County is proposing to add ADUs in the MUA-10 and RR-10 zones in the WA Combining Zone. ADUs could be a conflicting use to significant Goal 5 resources as they generate vehicle trips, buildable footprints, and noise. Other uses that are allowed in the two zones are shown below.

**Table 3: Allowed Uses**

Zoning	Outright Uses	Conditional Uses
MUA-10	Agricultural uses Single family dwelling or manufactured home Harvesting a forest product Class I and II road or street projects subject to land division standards Class III road or street project Noncommercial horse stables Horse events Operation, maintenance and piping of canals Type I Home occupation Historic accessory dwelling units	Public use Semipublic use Dude ranch Kennel and/or veterinary clinic Guest house Manufactured home as a secondary accessory farm dwelling Exploration for minerals Private parks Personal use airstrip Golf course Type 2 or 3 Home occupation Destination resorts Planned developments Cluster developments Landfills Timeshare Hydroelectric facility Storage, crushing and processing of minerals Bed and breakfast inn Excavation, grading and fill Religious institutions Private or public schools Utility facility Cemetery Commercial horse stables Horse events Manufactured home park or RV park Wireless telecommunication facilities Guest lodge Surface mining in conjunction with operation and maintenance of irrigation system

Zoning	Outright Uses	Conditional Uses
RR-10	Single family dwelling or manufactured home Utility facility Community center Agricultural use Class I and II road or street projects subject to land division standards Class III road or street project Noncommercial horse stables Horse events Operation, maintenance and piping of canals Type I Home occupation Historic accessory dwelling units	Public park Dude ranch Personal use airstrip Planned developments Cluster developments Recreation-oriented facility Landfills Cemetery Timeshare Hydroelectric facility Bed and breakfast inn Golf course Excavation, grading and fill Religious institutions Public use Semipublic use Commercial horse stables Private or public schools Manufactured home park or RV park Wireless telecommunication facilities Surface mining in conjunction with operation and maintenance of irrigation system

### General Impacts of Conflicting Uses

The proposed amendments would allow ADUs in inventoried Goal 5 resources. As part of the ESEE review “a local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning”.<sup>9</sup> In reviewing the proposed amendments, Deschutes County finds that the impacts from ADUs in the MUA-10 and RR-10 zones as they relate to Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat are of such a similar nature that the impacts for these areas may be reviewed together via the general impacts described below.

- *Noise and Light*

ADUs as a secondary dwelling may distress inventoried wildlife, as they seek to avoid noise and light.

- *Habitat Removal*

ADUs would likely require removal of upland vegetation, grading, and soil compaction that could alter drainage and runoff patterns. This could increase peak runoff, cause bank erosion, flooding, or increase the flow of sediment into water bodies. The removal of upland vegetation could also reduce tree canopy and understory vegetation which could be utilized by wildlife, outside of their primary habitat.

<sup>9</sup> OAR 660-023-0040(4)

- *Introduction of Invasive, Nonnative Plants*

ADUs may contribute to the spread of invasive, nonnative plants which could replace and degrade native vegetation of which many species depend.

- *Habitat Fragmentation*

Additional human development may result in fences, roads, traffic and other barriers to the movement of terrestrial wildlife that is critical to their survival.

Greater detail on these potential conflicts and their consequences are provided below.

## Chapter 4: Impact Areas

**660-023-0040(3): Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site.**

This step is discretionary and allows for the local jurisdiction to define which areas are the most vulnerable and/or most likely to be affected by the proposed amendments. The impact area for this ESEE analysis are properties that are within the Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat in the MUA-10 and RR-10 zones. As this ESEE is not for any specific property, but instead reflects changes to the code generally, there is no individual property specific data.

Properties in this impact area can be found in Attachment 2 – *Impact Area Maps*

### Impact Area Methodology

To understand the impact of the proposed amendments, an estimate of the number of parcels is shown in Table 4 below.

**Table 4: Number of Affected Non-Federal Properties in Impact Area <sup>10</sup>**

Zone	Deer Migration	Deer Winter	Elk
Multiple Use Agricultural Zone	0	9	0
Rural Residential Zone	1,293	446	39
<b>Total</b>	<b>1,293</b>	<b>455</b>	<b>39</b>

<sup>10</sup> See footnote #8.

## Chapter 5: ESEE Analysis

**660-023-0040(4): Analyze the ESEE consequences. Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation.**

### Background

Deschutes County is choosing to conduct a single analysis for all resource sites as the impacts from ADUs could have very similar impacts to both riparian areas and fish and wildlife that depend on the riparian for their habitat, and for big game including deer and elk.

As described above, the potential impacts fall into four general areas:

- *Noise and Light*

ADUs as a secondary dwelling may distress inventoried wildlife, as they seek to avoid noise and light.

- *Habitat Removal*

ADUs would likely require removal of upland vegetation, grading, and soil compaction that could alter drainage and runoff patterns. This could increase peak runoff, cause bank erosion, flooding, or increase the flow of sediment into water bodies. The removal of upland vegetation could also reduce tree canopy and understory vegetation which could be utilized by wildlife, outside of their primary habitat.

- *Introduction of Invasive, Nonnative Plants*

ADUs may the spread of invasive, nonnative plants which could replace and degrade native vegetation of which many species depend.

- *Habitat Fragmentation*

Additional human development may result in fences, roads, traffic and other barriers to the movement of terrestrial wildlife that is critical to their survival.

This step is discretionary. The purpose of an ESEE analysis is to provide a qualitative exercise for local governments to weigh the positive and negative consequences of three scenarios in order to determine a preferred outcome. Governments may choose to use quantitative data as necessary, but are not required to gather new information or hire wildlife biologists, economists, sociologists, or energy consultants.

### **ESEE Scenario Descriptions**

#### *Scenario (A) – Allow the Conflicting Use*

In this scenario, the local government may decide that a conflicting use should be allowed fully, without any restrictions, no matter the potential impacts on the inventory site(s). In this instance, the Goal 5 rule would require the government to determine the conflicting use is of such importance compared to the site that the use should be allowed without any protections or limitations. In choosing this scenario, the local government could still use other tools to protect the inventories that are currently in place.

#### *Scenario (B) – Prohibit the Conflicting Use*

In this scenario, the local government may decide that the inventory site is of such importance or the conflicting use has the potential to be so detrimental to the inventory site(s), that the conflicting use should be entirely prohibited.

#### *Scenario (C) – Limit the Conflicting Use*

In this scenario, the local government may decide that the inventory site and the conflicting use are both important when compared to each other, and the use should be allowed with limitations to balance the impacts to the inventory site(s).

### **Accessory Dwelling Unit ESEE Analysis**

#### **Scenario (A) Allow the Conflicting Use**

In this scenario, Deschutes County would allow ADUs in MUA-10 and RR-10 zones without any additional requirements to protect the inventoried resources.

#### ***Economic Consequences:***

Permitting ADUs would have positive consequences by allowing a second dwelling on a property. Deschutes County is experiencing a housing shortage. Allowing ADUs, which are limited to 900 square feet of livable floor area and cannot be used as vacation rentals, could help address work force housing shortages in the region. It could reduce commuting costs for those workers that live in adjoining Crook, Jefferson and Klamath counties, and coupled with other work force housing strategies, attract businesses and employment opportunities in Central Oregon.

Allowing ADUs could also have negative consequences. The development of ADUs in MUA-10 and RR-10 zones could significantly increase land value, which could price out low and middle-income residents from the opportunity to own a home. Previous testimony from ODFW estimates that hunting and wildlife viewing contributed more than \$50 million to the Deschutes County economy annually. Deschutes County is proposing to allow ADUs in some areas that contain riparian areas

and species that rely on the riparian area for habitat including fish, furbearers, upland game birds, and waterfowl. Allowing for ADUs near these areas could reduce income associated with wildlife viewing and hunting of these species.

Based on previous ODFW testimony, mule deer populations have declined in recent years and are currently at about 40% of management objectives for the areas in Central OR managed out of the ODFW Bend office. This reduction represents an approximately 55% population decline since 1998. There are many factors that have contributed to the decline of mule deer populations in Central Oregon, some of which can be directly tied to increased human presence, including habitat alteration, habitat conversion and loss, roadkill, and illegal harvest. Other contributing factors may include increased predation and increased disease amount mule deer populations. By allowing ADUs in Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat, there is the potential for greater disturbance of deer and elk populations that could reduce hunting and viewing opportunities.

***Social Consequences:***

Permitting ADUs could have positive consequences by allowing property owners with an existing single family dwelling to build an ADU that accommodates aging parents or family members, farm help for those that are working on MUA-10 zoned agricultural properties or nearby Exclusive Farm Use zoned properties. By providing affordable housing, it could help lift people out of poverty and increase economic mobility. It could bring a positive impact on the surrounding community, encouraging social connections and lowering crime rates.

It could also have negative consequences by allowing ADUs in rural areas with inadequate access to employment, schools, food markets, medical facilities and parks. This could lead to higher automobile-dependence and vehicle emissions caused by more people driving to and from rural areas. Based on previous testimony from ODFW, there could also be negative impacts due to the potential loss of wildlife habitat. Many residents, advocacy organizations, and wildlife agencies continue to express concerns regarding the loss of fish and wildlife habitat due to the region's rapid growth and development. There is a recognition that increases in human activity, especially in rural areas, displace habitat and diminish, incrementally, Deschutes County's rural character and quality of life. The proposed amendments could have negative consequences due to increased human presence and infrastructure near the inventoried Goal 5 resources, which could lead to a reduced level of access and enjoyment for recreationalists.

***Environmental Consequences:***

In this scenario, ADUs would be permitted outright. As stated previously, ADUs could present negative impacts as they have the potential to increase noise and light near fish and wildlife habitats, and in turn cause distress to inventoried Goal 5 species.

Developing an ADU would likely require removal of upland vegetation, grading, and soil compaction that could alter drainage and runoff patterns. This could increase peak runoff, cause bank erosion, flooding, or increase the flow of sediment into water bodies. The removal of upland vegetation could also reduce tree canopy and understory vegetation which could be utilized by wildlife, outside of their primary habitat. Permitting ADUs could create negative impacts to designated habitat for Deer



Migration Corridor, Deer Winter Range, and Significant Elk Habitat. Based on previous ODFW testimony, mule deer populations have declined in recent years and are currently at about 40% of management objectives for the areas in Central OR managed out of the ODFW Bend office. This reduction represents an approximately 55% population decline since 1998. There are many factors that have contributed to the decline of mule deer populations in Central Oregon, some of which can be directly tied to increased human presence, including habitat alteration, habitat conversion and loss, roadkill, and illegal harvest. Other contributing factors may include increased predation and increased disease amount mule deer populations.

As previously stated, the following Goal 5 protections established during the creation of the initial inventory would remain in place:

1. Setback Protections: 100-foot structural setback from the ordinary high water mark of rivers or streams.
2. Scenic Protections: Development near rivers in the Landscape Management Combining Zone must be reviewed for aesthetic compatibility.
3. Wetland Protections: Prohibition of fill or removal of any material or wetland vegetation, regardless of the amount, within the bed and banks of any stream or river or in any wetland unless approved as a conditional use.
4. Mitigation Protections: Impacts to any wetland or riverbank impacts to be fully mitigated, as evaluated by ODFW.
5. Flood Plain Protections: All new construction, expansion or substantial improvement of an existing dwelling, an agricultural related structure, a commercial, industrial or other non-residential structure, or an accessory building in a designated Flood Plain shall obtain a conditional use permit.
6. Combining Zone Requirements: Deer Migration Corridor, Deer Winter Range, Significant Elk Habitat and Sensitive Bird and Mammal Habitat have site specific requirements including development setbacks and seasonal construction requirements to prevent impact to sensitive species and habitat.

Existing protections would prevent riparian areas from being developed with ADUs established near them. As the existing Goal 5 measures in place today protect riparian areas and the fish and wildlife within that habitat area, the addition of ADUs near these areas will be neutral.

***Energy Consequences:***

ADUs are unlikely to cause any major energy consequences. Per SB 391, the ADU must be within 100 feet of the existing dwelling. It must utilize the existing onsite system if there is no pre-existing centralized wastewater treatment system. It can also rely on an existing domestic well.

A potential negative consequence of the proposed amendments could be additional development in rural Deschutes County. Depending on the location of the ADU, it could lead to additional Vehicle Miles Traveled and greater congestion on county owned roads for employment, education, and basic services.

**Scenario (B) Prohibit the Conflicting Use**

In this scenario, Deschutes County would not allow ADUs in the MUA-10 and RR-10 zones associated with the WA Combining Zone and Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat.

***Economic Consequences:***

Prohibiting ADUs could have negative economic consequences, as it prevents certain property owners from using their land and building a secondary dwelling unit. This could contribute to work force housing deficiencies in the region and compel residents to commute from adjoining areas in Crook, Jefferson, and Klamath counties.

It could also have neutral consequences based on previous testimony from ODFW. Prohibiting ADUs could contribute to stabilizing mule deer populations, thereby maintaining economic benefits from wildlife viewing or hunting. Wildlife viewing, hunting, and fishing experiences in Deschutes County is a major economic asset to the region. Continuing with the current regulations could minimize further habitat fragmentation and help maintain wildlife viewing, hunting, and fishing revenues in Deschutes County.

***Social Consequences:***

Prohibiting ADUs could have negative consequences. Many residents and multi-generational families in Deschutes County need affordable housing and are rent-burdened. Limiting the potential supply of ADUs could exacerbate Central Oregon's housing crisis by forcing some residents to pay higher rents, commute longer distances for basic services, or relocate. Those circumstances could lead to further mental and physical stress.

It could also have positive consequences. Many residents express their appreciation for undisturbed landscapes because they contribute to Deschutes County's rural character and quality of life. Prohibiting ADUs, which generate noise and light would continue to limit disturbance to existing fish and wildlife habitats.

***Environmental Consequences:***

There are 386 RR-10 tax lots, two acres or greater that abut the Little Deschutes River or Deschutes River and 505 tax lots that are split-zoned RR-10 or MUA-10 with Flood Plain. These properties contain a Goal 5 Riparian Area which is also the habitat for Goal 5 inventoried waterfowl, upland game bird, furbearers, and fish. The WA Combining Zone contains Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat. By prohibiting ADUs and maintaining the status quo, these

species will continue to be protected against habitat fragmentation and distress from second dwellings. The environmental consequences are therefore neutral.

***Energy Consequences:***

Energy consumption would have neutral consequences as this scenario maintains the status quo. Development associated with ADUs may be displaced to other areas of rural Deschutes County, which could still have demands on utilities.

**Scenario (C) Limit the Conflicting Use**

In this scenario, Deschutes County would allow ADUs in the MUA-10 and RR-10 zones, with additional limitations to protect the inventoried resources, outside of existing protections. The existing limitation would require the entire ADU to be within a 100 feet of the existing dwelling.

***Economic Consequences:***

Permitting ADUs would have positive consequences by allowing a second dwelling on a property. Deschutes County is experiencing a housing shortage. Allowing ADUs, which are limited to 900 square feet of livable floor area and cannot be used as vacation rentals, could help address work force housing shortages in the region. It could reduce commuting costs for those workers that live in adjoining Crook, Jefferson and Klamath counties and coupled with other work force housing strategies, attract businesses and employment opportunities in Central Oregon.

Compared to scenario (a) in which only a portion of the ADU must be within a 100 feet of the existing dwelling, the addition of limitations could lessen the impact by minimizing the buildable footprint and ultimately, the number of eligible properties, recognizing that some may not have enough area to accommodate an ADU. This could positively impact the hunting and wildlife viewing economy in Central Oregon, valued at \$50 million annually. While such measures could lessen impacts, the overall burden caused by allowing ADUs nevertheless may still overall impact wildlife and thereby impact revenue generated from the recreation economy.

In comparison to scenario (a), which would allow the use outright, Deschutes County finds that this scenario would provide a limitation to reduce the amount of impacts, even if those impacts still exist.

***Social Consequences:***

The positive social consequences in this scenario are very similar to scenario (a). Permitting ADUs could have positive consequences by allowing property owners with an existing single family dwelling to build an ADU that accommodates aging parents or family members, farm help for those that are working on MUA-10 zoned agricultural properties or nearby Exclusive Farm Use zoned properties. By providing affordable housing, it could help lift people out of poverty and increase economic mobility. It could bring a positive impact on the surrounding community, encouraging social connections and lowering crime rates.

The existing limitation would require the entire ADU to be within a 100 feet of the existing dwelling. Even adding a limitation (or others), there could be a negative consequence of ADUs in rural areas

with inadequate access to employment, schools, food markets, medical facilities and parks. This could lead to higher automobile-dependence and vehicle emissions caused by more people driving to and from rural areas. Based on previous testimony from ODFW, there could also be negative impacts due to the potential loss of wildlife habitat stemming from the possible removal of habitat areas and the establishment of structures and their associated human presence. Many residents, advocacy organizations, and wildlife agencies continue to express concerns regarding the loss of fish and wildlife habitat due to the region's rapid growth and development. There is a recognition that increases in human activity, especially in rural areas, displace habitat and diminish, incrementally, Deschutes County's rural character and quality of life. The proposed amendments could have negative consequences due to increased human presence and infrastructure near or within the inventoried Goal 5 resources, which could lead to a reduced level of access and enjoyment for recreationalists.

***Environmental Consequences:***

ADUs could present negative consequences as they have the potential to increase activity, noise, and light near fish and wildlife habitats, and in turn cause distress to inventoried Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat.

Development of an ADU would likely require removal of upland vegetation, grading, and soil compaction that could alter drainage and runoff patterns. This could increase peak runoff, cause bank erosion, flooding, or increase the flow of sediment into water bodies. The removal of upland vegetation could also reduce tree canopy and understory vegetation which could be utilized by fish and wildlife species, outside of their primary habitat. Permitting ADUs could result in further negative impacts to the Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat. Based on previous ODFW testimony, mule deer populations have declined in recent years and are currently at about 40% of management objectives for the areas in Central OR managed out of the ODFW Bend office. This reduction represents an approximately 55% population decline since 1998. There are many factors that have contributed to the decline of mule deer populations in Central Oregon, some of which can be directly tied to increased human presence, including habitat alteration, habitat conversion and loss, roadkill, and illegal harvest. Other contributing factors may include increased predation and increased disease amount mule deer populations.

Existing protections in place today (discussed above) would prevent Goal 5 riparian areas from being developed when ADUs are nearby. The establishment of ADUs in these areas would likely be neutral.

By limiting the entire ADU within a 100 feet of the existing dwelling, the negative environmental consequences associated with ADU could be mitigated to a certain extent.

***Energy Consequences:***

The energy consequences in this scenario are the same as in scenario (a). Limiting the entire ADU to within a 100 feet of the existing dwelling could decrease the amount of energy used to operate the ADU.

## Chapter 6: ESEE Decision

**660-023-0040(5): Develop a program to achieve Goal 5. Local governments shall determine whether to allow, limit, or prohibit identified conflicting uses for significant resource sites. This decision shall be based upon and supported by the ESEE analysis. A decision to prohibit or limit conflicting uses protects a resource site. A decision to allow some or all conflicting uses for a particular site may also be consistent with Goal 5, provided it is supported by the ESEE analysis. One of the following determinations shall be reached with regard to conflicting uses for a significant resource site:**

**(c) A local government may decide that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site, and must indicate why measures to protect the resource to some extent should not be provided, as per subsection (b) of this section.**

The graphic below is meant to be a simplified representation to balance each of the ESEE factors. As stated in the ESEE analysis, there are a variety of positive, negative, and neutral consequences associated with each scenario. Deschutes County finds that the issue of allowing an ADU in MUA-10 and RR-10 zones are both a social and economic issue that outweighs the other ESEE consequences. The County considered allowing the use with limitations by limiting the entire ADU within a 100 feet of the existing dwelling, but this practice could limit the number of affordable housing opportunities. Therefore the County is choosing scenario (a) which will allow the use fully notwithstanding the possible impacts on the resource sites.

**Table 5: ESEE Factors**

<b>ESEE Factors</b>	<b>Support habitat functions (Environmental, economic, social)</b>	<b>Support Affordable Housing (Social, economic)</b>	<b>Support Recreational Economy (Economic, Social)</b>	<b>Preserves Rural Character (Social, economic)</b>	<b>Transportation (Energy)</b>
<b>Prohibit conflict</b> (No code change)	<b>0</b>	<b>-</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Allow conflict</b> Allow ADUs with no additional requirements	<b>-</b>	<b>+</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Limit conflict</b> Allow ADUs with additional limitation	<b>-</b>	<b>+</b>	<b>-</b>	<b>-</b>	<b>-</b>

## Chapter 7: Program to Achieve Goal 5

**660-023-0050(1):** *For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-023-0040(5). The plan shall describe the degree of protection intended for each significant resource site. The plan and implementing ordinances shall clearly identify those conflicting uses that are allowed and the specific standards or limitations that apply to the allowed uses. A program to achieve Goal 5 may include zoning measures that partially or fully allow conflicting uses (see OAR 660-023-0040(5)(b) and (c)).*

**660-023-0050(2):** *When a local government has decided to protect a resource site under OAR 660-023-0040(5)(b), implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards. For purposes of this division, a standard shall be considered clear and objective if it meets any one of the following criteria:*

- (a) It is a fixed numerical standard, such as a height limitation of 35 feet or a setback of 50 feet;*
- (b) It is a nondiscretionary requirement, such as a requirement that grading not occur beneath the dripline of a protected tree; or ...*

Deschutes County has determined that allowing ADUs within the MUA-10 and RR-10 zones and within the Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat should be allowed fully, notwithstanding the possible impacts on the inventoried resources. The implementing measures do not include alternative, discretionary procedures for compliance.

## Attachment 1 - Deschutes County Significant Goal 5 Resources

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<b>Fish Habitat</b> (Inventory – Ord. No. 92-041, page 18; creeks, rivers and lakes)	Yes	Major conflicts are removal of riparian vegetation, fill and removal activities within the bed and banks of streams or wetlands, hydroelectric, rural residential development and water regulation	Floodplain zone recognized as program to achieve the goal to conserve fish habitat (Ordinance Nos. 88-030, 88-031, 89-009).  Others include: fill and removal permits, wetland removal regulations, hydro prohibitions, rimrock setbacks, 100' setback from OHW, conservation easements and restrictions on boats and docks.	Ordinance Nos. 86-018, 86-053, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041
<b>Deer Winter Range</b> (Inventory – Ord. No. 92-041, page 22; Metolius, Tumalo, North Paulina, and Grizzly ranges identified by ODFW)	Yes	Major conflicts are dwellings, roads, and dogs. Activities which cause deterioration of forage quality and quantity or cover are conflicting uses. Fences which impede safe passage are also a conflicting use.	Floodplain zone recognized as a program to achieve the goal to protect deer winter range (Ordinance Nos. 88-030, 88-031, 89-009).  Others include Wildlife Area Combining Zone. Requires 40-acre minimum lot size for all new residential land divisions. Underlying zoning in most of the deer winter range is: EFU, Forest, and Floodplain. These zones provide for large lot sizes and limit uses that are not compatible with farm or forest zones.	Ordinance Nos. 88-030, 88-031, 89-009, 92-040, 92-041, 92-042, 92-046
<b>Deer Migration Corridor</b> (Inventory – Ord. No. 92-041, page 26; Bend-La Pine migration corridor identified by ODFW)	Yes	Major conflicts are dwellings, roads, and dogs. Fences which impede safe passage are also a conflicting use.	Wildlife Area Combining Zone was recognized as the only program to achieve the goal to protect the deer migration corridor. Underlying zoning is RR-10. It was amended to require cluster development for all land divisions in the RR-10 zone in the Bend/La Pine migration corridor (92-042). A 20-acre parcel is the minimum size required for a cluster development. Siting and fencing standards also apply in the deer migration corridor. Migration corridor includes some EFU, Forest, and Floodplain zoned land. These resource zones provide for large lot sizes and limit uses that are not compatible with farm or forest zones.	Ordinance Nos. 92-040, 92-041, 92-042, 92-046

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<p><b>Elk Habitat</b> (Inventory – Ord. No. 92-041 – page 32; identified by USFS and ODFW)</p>	<p><b>Yes</b></p>	<p>Major conflict is the loss of habitat due to increased residential densities in the habitat areas. Increased human disturbance can cause conflict with elk. The use of land which necessitates the removal of large amounts of vegetative cover can also alter the quality of elk habitat.</p>	<p>Wildlife Area Combining Zone was recognized as the only program to achieve the goal to protect the elk habitat.</p> <p>It was amended to require a 160-acre minimum lot size for areas identified as significant elk habitat. Siting standards are required to minimize conflicts of residences with habitat protection.</p> <p>Underlying zoning in the elk habitat areas is either Floodplain, Forest, or Open Space and Conservation. These resource zones restrict high density residential development and prohibit industrial and commercial uses.</p> <p>* Some lands are zoned RR10, including lots that are split zoned with flood plain. They are already parcelized, preventing future land divisions.</p>	<p>Ordinance Nos. 88-030, 88-031, 89-009, 92-040, 92-041, 92-042, 92-046</p>
<p><b>Antelope Habitat</b> (Inventory – Ord. No. 92-041 – page 38; identified by ODFW)</p>	<p><b>No</b></p>	<p>Land use or development activities which would result in the loss of habitat, and animal harassment and disturbance associated with human activity.</p>	<p>To achieve the goal to conserve antelope habitat, uses conflicting with antelope habitat are limited to the Wildlife Area Combining Zone. In antelope range, the minimum lot size is 320 acres. Except for rural service centers, the antelope habitat is zoned EFU or F1.</p>	<p>Ordinance Nos. 92-040, 92-041, 92-042, 92-046</p>
<p><b>Habitat for Sensitive Birds</b> (Inventory – Ord. No. 92-041 – page 41 and Table 5; identified by ODFW, ODF, OSU, Oregon Natural Heritage Data Bases).</p> <p>The area required for each nest site varies between species.</p>	<p><b>No</b></p>	<p>Nest sites are found in Forest, EFU and Open Space and Conservation zones. Uses that could conflict with the habitat site are surface mining, residential use, recreation facilities, roads, logging, and air strips.</p> <p>Any activity which would disturb the nesting birds, including intensive recreational use or removal of trees or</p>	<p>The Sensitive Bird and Mammal Combining Zone achieves the goal to protect sensitive bird sites.</p>	<p>Ordinance Nos. 92-040, 92-041, 92-042, 92-046</p>



Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
		vegetation could conflict with the habitat site.		
<b>(UPDATE -</b> Inventory – Ord. No. 94-004 –pages 3 to 140 Site specific ESEE analysis and decisions follow each site.	<b>No</b>	See above.	Habitat areas for sensitive birds of the Fish and Wildlife Element, adopted in No. 92-041 is repealed and replaced by inventories in Exhibit 1. Area required around each nest site needed to protect the nest from conflict varies between species. It's called "sensitive habitat area."  Note: Northern bald eagle, osprey, golden eagle, prairie falcon, and great blue heron rookeries are located on federal land. Classified as "2A" Goal 5 Resources. Great Grey owl site no longer exists. Some bald eagle, golden eagle sites are controlled by the Sensitive Bird and Mammal Combining Zone.	Ordinance Nos. 94-004, 94-005 and 94-021
<b>Waterfowl Habitat</b> (Inventory – Ord. No. 92-041 – page 56; includes all rivers, streams, lakes and perennial wetlands and ponds identified on the 1990 US Fish and Wildlife Wetland Inventory Maps; ODFW provided lists of all bird species; Co/City of Bend River Study provides additional information)	<b>Yes</b>	Future resort and vacation home development, human activity associated with recreation along rivers and lakes, timber-cutting around sensitive habitats, fill and removal of material in wetlands and within the bed and banks of rivers and streams, and removal of riparian vegetation are conflicting uses.	Floodplain zone recognized as program to achieve the goal to conserve waterfowl habitat (Ordinance Nos. 88-030, 88-031, 89-009).  Others include: fill and removal permits, wetland removal regulations, rimrock setbacks, 100' setback from OHW, conservation easements, restrictions on boats and docks, landscape management, state and federal scenic water regulations. In addition, the Forest and EFU zones require large minimum lot size which limits the potential density of development in the areas adjacent to many of the rivers, streams, wetlands, and ponds used for waterfowl habitat.	Ordinance Nos. 86-018, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041, 92-042- 92-045, 92-046

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<p><b>Upland Game Bird Habitat</b> (Inventory – Ord. No. 92-041 – page 60; ODFW did not identify critical habitat for any of the upland game species except for the sage grouse; habitat for upland game birds is dispersed throughout the county in riparian, forest, agricultural, and rangeland areas)</p>	<p><b>Yes</b></p>	<p>Pheasant and quail are affected whenever agricultural land is taken out of production through urban sprawl, road construction, industrial development and other land clearing activities.</p> <p>Farming practices on existing agricultural lands also have an impact. Fence row, woodlots, and riparian vegetation are constantly being removed at the expense of upland bird use.</p> <p>Chapter 6 of County/City of Bend River Study identifies conflicting uses with upland bird habitat.</p>	<p>For all of the upland game birds except sage grouse, the habitat is adequately protected by the existing EFU and Forest zoning and the provisions to protect wetlands and riparian areas to achieve the goal of protecting upland game birds.</p> <p>County provisions to protect riparian areas and wetlands protect one of the most significant components of upland game habitat.</p> <p>Note: conflicts with sage grouse are limited by EFU zoning with a 320 acre minimum parcel size. Sensitive Bird and Mammal Combining Zone pertaining to sage grouse and leks have been repealed due to LCDC enacted rules in OAR 660, Division 23.</p>	<p>Ordinance Nos. 86-018, 86-053, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041, 92-042, 92-046</p>
<p><b>UPDATE</b> - Inventory – Ord. No. 94-004 – pages 156-201.</p>	<p><b>Yes</b></p>	<p>See above.</p>	<p>Habitat areas for Upland Game Bird Habitat, adopted in No. 92-041 is repealed and replaced and further amended in Exhibit 4 with the ESEE Analysis and inventory for upland game bird habitat.</p> <p>Conflicts with sage grouse are reduced by the limitations on uses in the EFU and Floodplain zone, by the 320 acre minimum lot size and predominance of BLM lands.</p> <p>Note: conflicts with sage grouse are limited by EFU zoning with a 320 acre minimum parcel size. Sensitive Bird and Mammal Combining Zone pertaining to sage grouse and leks have been repealed due to LCDC enacted rules in OAR 660, Division 23.</p>	<p>Ordinance Nos. 94-004 and 94-021</p>

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<p><b>Furbearer Habitat</b> (Inventory – Ord. No. 92-041 – page 65; ODFW has not identified any specific habitat sites other than riparian and wetland areas that are critical for the listed species.</p>	<p><b>Yes</b></p>	<p>The conflicting uses are those activities or development which would degrade or destroy habitat, or disturb the animals causing them to relocate.</p> <p>Conflicts between furbearers and other land uses are minimal in the county.</p>	<p>Furbearer habitat is adequately protected by the existing EFU and Forest zoning and the provisions to protect farm use and forest zoning, and the provisions to protect wetlands and riparian areas to achieve the goal to protect furbearers.</p> <p>The farm and forest zones require large minimum lot sizes and many uses are permitted only as conditional uses. The measures to protect riparian and wetland habitat are detailed in this plan in the Riparian and Wetland Habitat section.</p>	<p>Ordinance Nos. 86-018, 86-053, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041</p>
<p><b>Habitat Areas for Townsend’s Big-Eared Bats</b> (Inventory – Ord. No. 92-041 – page 69; identified by ODFW, ODF, OSU, Oregon Natural Heritage Data Bases)</p>	<p><b>No</b></p>	<p>Caves located in EFU zones. Uses permitted in those zones that could conflict with the habitat site are surface mining, recreation facilities including golf courses and destination resorts, roads, logging, and air strips.</p>	<p>Program to achieve the goal is Sensitive Bird and Mammal Combining Zone</p>	<p>Ordinance No. 92-041 and 042</p>
<p><b>UPDATE</b> - Inventory – Ord. No. 94-004 – pages 140 to 155 Site specific ESEE analysis and decisions follow each site.</p>	<p><b>No</b></p>	<p>See above.</p>	<p>Habitat areas for Townsend Bats, adopted in No. 92-041 is repealed and replaced and further amended in Exhibit 2. The ESEE for Townsend’s big-eared bats is amended for additional bat sites in Exhibit 3.</p>	<p>Ordinance Nos. 94-004 and 94-021</p>

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<p><b>Wetlands and Riparian Areas</b> (Inventory – Ord. No. 92-041 – page 73; identified on USFWS NWI)</p>	<p><b>Yes</b></p>	<p>Conflicting uses include fill and removal of material, including vegetation which could cause a reduction in the size or quality or function of a wetland, or cause destruction or degradation of the riparian habitat and vegetation.</p> <p>Structural development in wetlands or riparian areas would reduce the habitat and the use of the structure could cause conflicts such as harassment or disturbance or wildlife dependent on the habitat. Cutting of riparian vegetation can remove important shade for streams, eliminate habitat for various waterfowl, furbearers, and nongame bird species, and can increase the potential for erosion or bank instability in riparian areas.</p>	<p>Floodplain zone recognized as program to achieve the goal to conserve wetland and riparian habitat (Ordinance Nos. 88-030, 88-031, 89-009).</p> <p>Others include: fill and removal permits, wetland removal regulations, hydro prohibitions, 100' setback from OHW, conservation easements, restrictions on boats and docks, and landscape management.</p>	<p>Ordinance Nos. 86-018, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041, 92-045</p>

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<p><b>UPDATE – Riparian inventory</b> – Ord. No. 94-007; Significant riparian habitat is located in three areas:</p> <p>Area within 100’ of OHW of an inventoried stream or river;</p> <p>Area adjacent to an inventoried river or stream and located within a flood plain mapped by FEMA and zoned Floodplain by the county (Deschutes River, Little Deschutes River, Paulina Creek, Fall River, Indian Ford Creek, Tumalo Creek, Squaw (Whychus) Creek, and Crooked River</p> <p>Area adjacent to a river or stream and inventoried as a wetland on the NWI</p>	<p>Yes</p>	<p>Conflicting uses:</p> <p>Locating septic systems in riparian area could cause pollution of ground and surface water systems. The potential for this conflict depends on the characteristics of the soil.</p> <p>Locating structural development in riparian areas can reduce the habitat and the use of structures could cause conflicts such as harassment or disturbance of wildlife dependent on habitat.</p> <p>Recreational use of the riparian area including boat landing areas, formal and informal trails, and camping areas can alter soil composition and cause destruction of vegetation.</p> <p>Increase in density of residential lots in or adjacent to riparian areas could result in a decrease of habitat effectiveness because of disturbance to wildlife.</p>	<p>Riparian Areas inventory and ESEE analysis adopted by Ordinance No. 92-041 is deleted and replaced by an inventory and ESEE contained in Exhibit A.</p> <p>New parcels meeting the minimum lot size in the resource zones (EFU, Forest, non-exception flood plain) will not cause an increase in residential density that would conflict with riparian habitat values.</p> <p>In RR10, MUA-10, and Floodplain zones found adjacent to inventoried riparian areas, the creation of new 10 acre parcels would not significantly increase the overall density of residential use adjacent to riparian areas because the areas where new parcels could be created, with the exception of Tumalo Creek, are already divided into lots considerably smaller than 10 acres.</p> <p>Program to achieve Goal 5 for Riparian Habitat: fill and removal regulations to protect wetlands, 100’ setback from OHW, Floodplain zone (regulates docks too), Landscape Management zone, Conservation easements, State Scenic Waterway</p>	<p>Ordinance Nos. 94-007</p>

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<p><b>UPDATE – Wetland Inventory</b> – Ord. No. 94-007, Exhibit B – inventory is NWI (Ord. No. 92-045)</p>	<p><b>Yes</b></p>	<p>Conflicting uses include fill and removal of material, including vegetation, which could cause reduction in the size, quality or function of a wetland.</p> <p>Locating structural development in wetlands could reduce the habitat and the use of the structure could cause conflicts such as harassment or disturbance of wildlife dependent on the habitat.</p> <p>Draining wetlands for agriculture or other development purposes destroys the hydrological function of the wetland and alters the habitat qualities that certain wildlife depend on.</p> <p>Cutting wetland vegetation adjacent to streams can remove important shade for streams, eliminate habitat for various waterfowl, furbearers, and nongame bird species, and can also increase the potential for erosion or bank instability in riparian areas.</p>	<p>Wetlands Inventory and ESEE analysis adopted by Ordinance No. 92-041 is deleted and replaced by an inventory and ESEE contained in Exhibit B, Wetlands.</p> <p>Program to achieve Goal 5 for Wetland Habitat:</p> <ul style="list-style-type: none"> <li>• Fill and removal regulations to protect wetlands</li> <li>• 100’ setback from OHW</li> <li>• Flood plain zone (regulates docks too)</li> <li>• DSL Removal / Fill law</li> </ul>	<p>Ordinance Nos. 94-007</p>

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<p><b>Ecologically and Scientifically Significant Natural Areas * Little Deschutes River / Deschutes River Confluence</b> (Inventory – Ord. No. 92-052, Exhibit B, Page 1; identified by Oregon Natural Heritage Program); Analysis of Pringle Falls and Horse Ridge Research Areas, West Hampton Butte and Davis Lakes excluded b/c they're on federal land and/or not related to flood plains.</p>	<p><b>Yes</b></p>	<p>Resort and vacation home development, recreational uses, livestock grazing, and fill and removal in wetlands are conflicting uses.</p>	<p>Programs for resource protection include the zoning of the property, the provisions of the flood plain, wetlands and the river corridor.</p> <p>The implementing measures which protect and regulate development in the confluence area are: EFU zoning, Floodplain zoning, conservation easements, and fill and removal permits.</p> <p>The confluence area is located in the undeveloped open space area of the Sunriver development (Crosswater). 80% of the property is retained as open space.</p> <p>Today, zoning is Floodplain and Forest Use.</p>	<p>Ordinance Nos. 86-018, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041, 92-045</p>
<p><b>Landscape Management Rivers and Streams</b> (Inventory – Ord. No. 92-052, Exhibit C, Page 3; identified by state and federal wild and scenic corridors; and within 660' of OHW of portions of Deschutes River, Little Deschutes River, Paulina Creek, Fall River, Spring river, Tumalo Creek, Squaw (Whychus) Creek, and Crooked River not on the state or federal scenic designations)</p>	<p><b>Yes</b></p>	<p>Uses conflicting with open space and scenic resources along the designated Landscape Management rivers and streams include land management activities that result in habitat loss or development within river or stream corridors which would excessively interfere with the scenic or natural appearance of the landscape as seen from the river or stream or alteration of existing natural landscape by removal of vegetative cover.</p>	<p>Program for resource protection includes: Floodplain zone and restrictions, fill and removal permits, wetland removal regulations, hydro prohibitions, rimrock setbacks, conservation easements, restrictions on boats and docks, and landscape management.</p>	<p>Ordinance Nos. 86-018, 86-053, 86-054, 86-056, 88-030, 88-031, 89-009, 92-033, 93-034</p>

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<b>Lakes and Reservoirs</b> (Inventory – Ord. No. 92-052, Exhibit C, Page 10; includes Upper Tumalo Reservoir; remaining are on federal land	No	Conflicting uses with the open space and scenic values of the land adjacent to the inventoried lakes include development which would cause a loss of open space or a decrease in the aesthetic and scenic resources, and land management activities resulting in the removal of natural vegetation which provides wildlife habitat and scenic value.	Conflicting uses around Tumalo Reservoir are specifically limited by Title 18.48, Open Space Conservation Zone and a 100’ setback for any structure from OHW.	Ordinance No. 91-020
<b>State Scenic Waterways and Federal Wild and Scenic Rivers</b> (Inventory – Ord. No. 92-052, Exhibit E, Page 1;	Yes	See County / City of Bend River Study and 1986 River Study Staff Report. Both referenced in Ord. 92-005, Exhibit E.	Program for resource protection includes: Floodplain zone and restrictions, fill and removal permits, wetland removal regulations, hydro prohibitions, rimrock setbacks, conservation easements, restrictions on boats and docks, and landscape management.	Ordinance Nos. 86-018, 86-053, 86-054, 86-056, 88-030, 88-031, 89-009, 92-033, 93-034
<b>Wilderness Areas, Areas of Special Concern, Energy Sources (Ord. No 92-052), and Groundwater Resources (Ord. No. 94-003)</b> not analyzed because they’re on federal land or don’t relate to flood plains.	No	N/A	N/A	N/A



**Attachment 2 - Inventory Site Maps**







1" = 10,000'

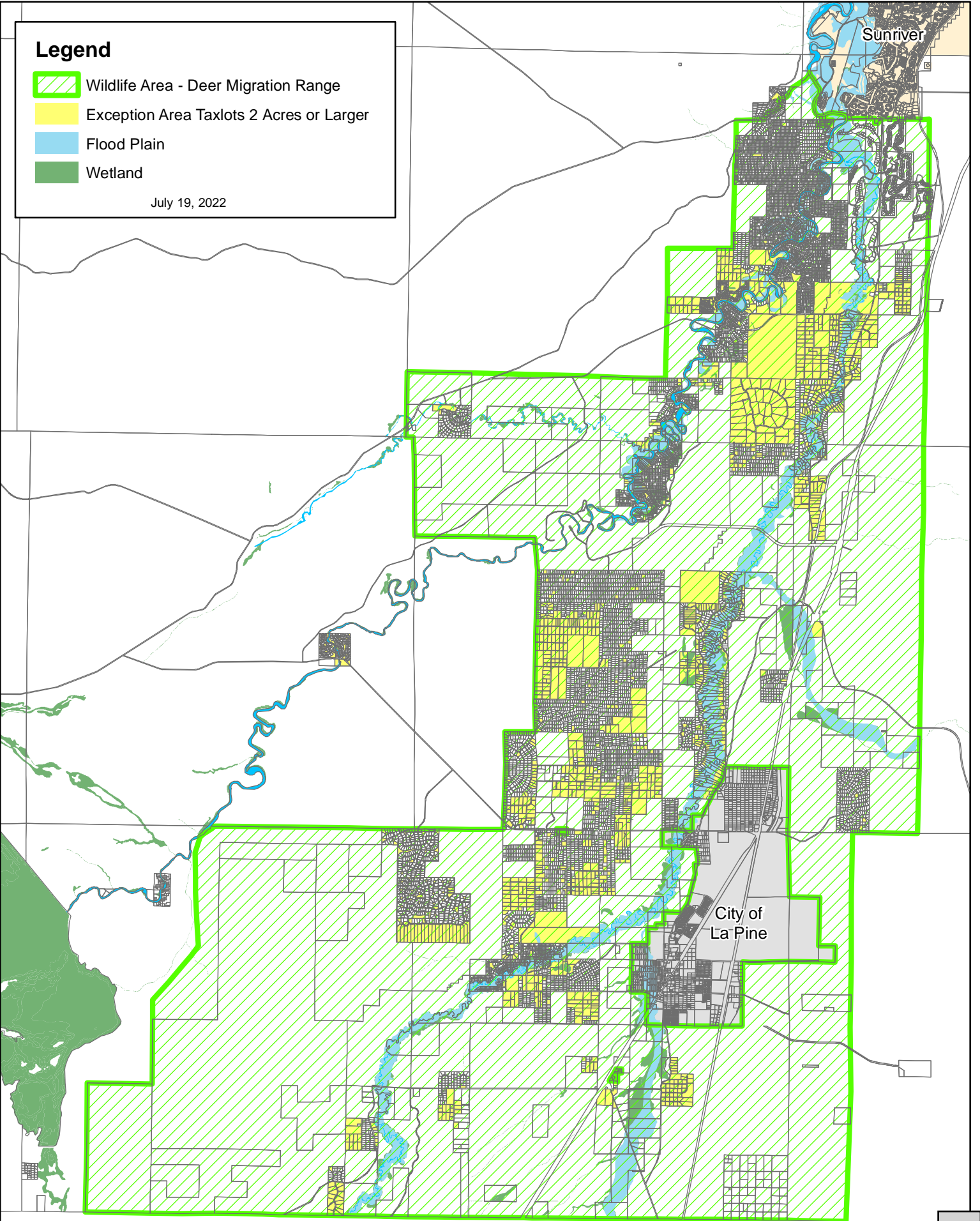
# Exception Area Taxlots 2 Acres or Larger - Deer Migration Range

Item #IV.1.

## Legend

-  Wildlife Area - Deer Migration Range
-  Exception Area Taxlots 2 Acres or Larger
-  Flood Plain
-  Wetland

July 19, 2022

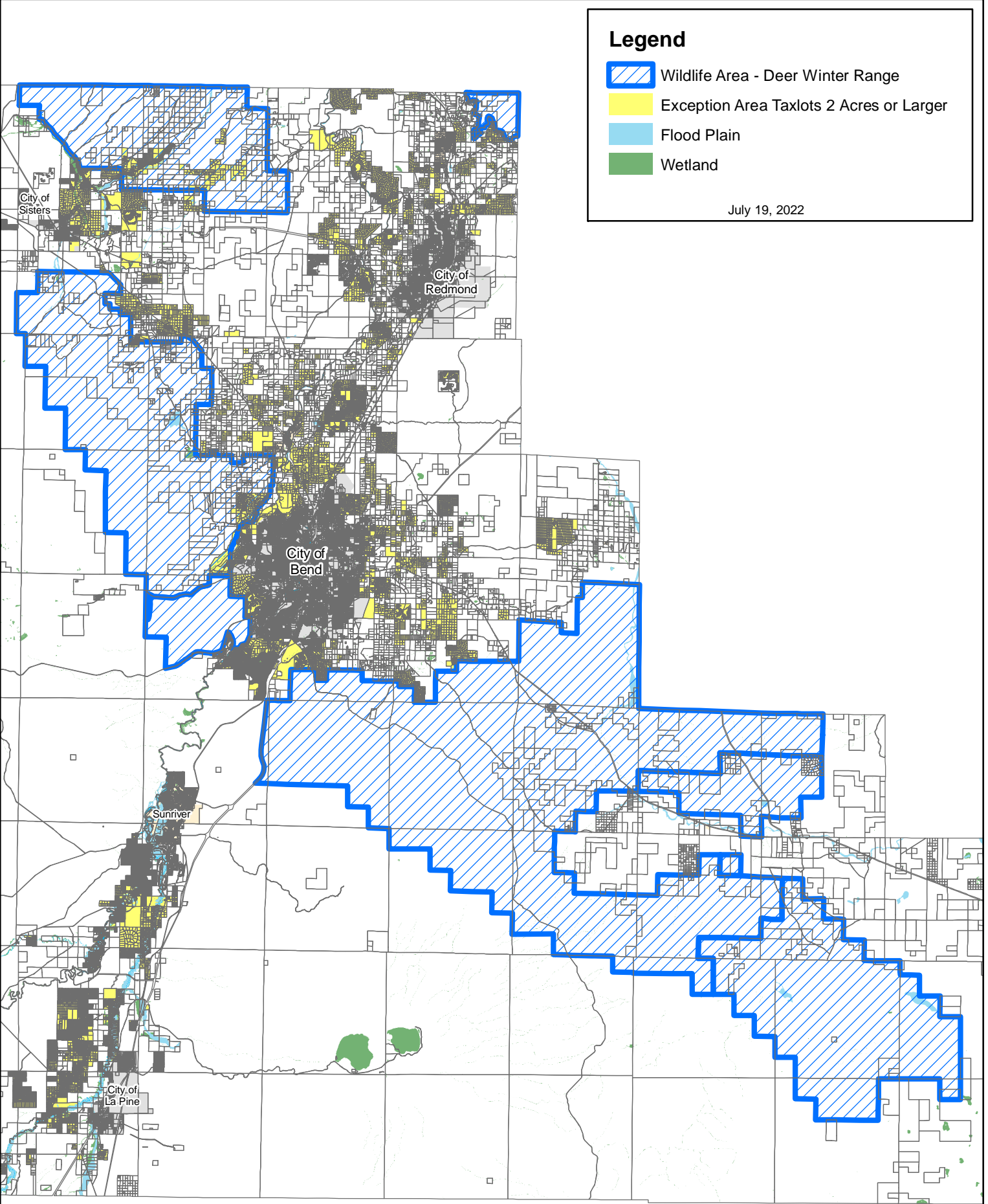








1" = 6 mi.

# Exception Area Taxlots 2 Acres or Larger - Deer Winter Range

Item #IV.1.



## Legend

-  Wildlife Area - Deer Winter Range
-  Exception Area Taxlots 2 Acres or Larger
-  Flood Plain
-  Wetland

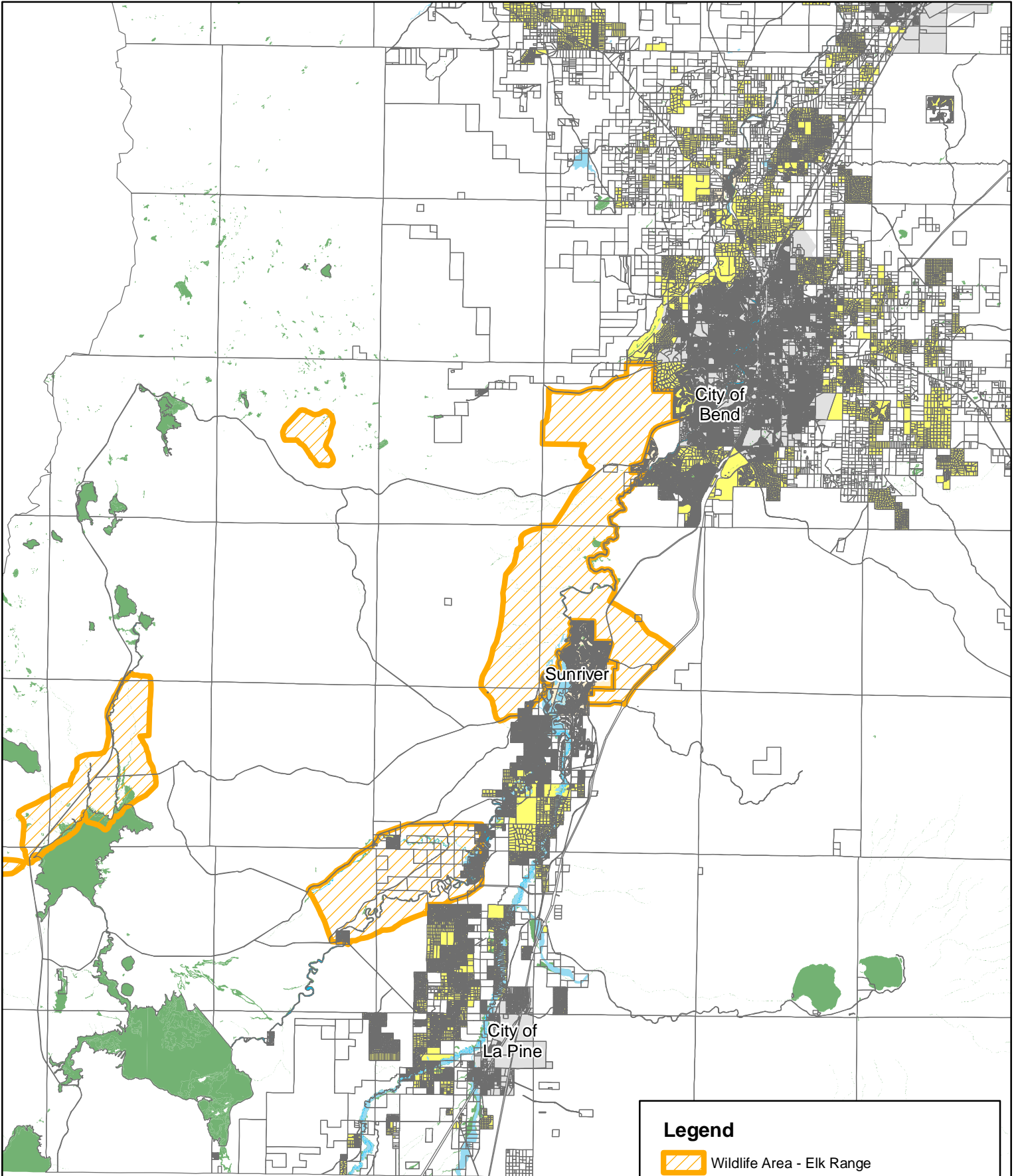
July 19, 2022







1" = 2.2 mi.

# Exception Area Taxlots 2 Acres or Larger - Elk Range

Item #IV.1.



## Legend

-  Wildlife Area - Elk Range
-  Exception Area Taxlots 2 Acres or Larger
-  Flood Plain
-  Wetland

July 19, 2022

**Attachment 3 - Proposed Text Amendments**

## CHAPTER 18.32 MULTIPLE USE AGRICULTURAL ZONE; MUA

### 18.32.020 Uses Permitted Outright

\* \* \*

### 18.32.020 Uses Permitted Outright

The following uses and their accessory uses are permitted outright:

- A. Agricultural uses as defined in DCC Title 18.
- B. A single family dwelling, or a manufactured home subject to DCC 18.116.070.
- C. Propagation or harvesting of a forest product.
- D. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.
- E. Class III road or street project.
- F. Noncommercial horse stables, excluding horse events.
- G. Horse events, including associated structures, involving:
  - 1. Fewer than 10 riders;
  - 2. Ten to 25 riders, no more than two times per month on nonconsecutive days; or
  - 3. More than 25 riders, no more than two times per year on nonconsecutive days. Incidental musical programs are not included in this definition. Overnight stays by participants, trainers or spectators in RVs on the premises is not an incident of such horse events.
- H. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
- I. Type 1 Home Occupation, subject to DCC 18.116.280.
- J. Historic Accessory Dwelling Units, subject to DCC 18.116.350.
- K. Residential Accessory Dwelling Units, subject to DCC 18.116.370.

#### HISTORY

*Adopted by Ord. PL-15 on 11/1/1979*

*Amended by Ord. 91-002 §6 on 2/6/1991*

*Amended by Ord. 91-005 §18 on 3/4/1991*

*Amended by Ord. 91-020 §1 on 5/29/1991*

*Amended by Ord. 91-038 §1 on 9/30/1991*

*Amended by Ord. 93-001 §1 on 1/27/1993*  
*Amended by Ord. 93-043 §4 on 8/25/1993*  
*Amended by Ord. 94-008 §10 on 6/8/1994*  
*Amended by Ord. 2001-016 §2 on 3/28/2001*  
*Amended by Ord. 2001-039 §2 on 12/12/2001*  
*Amended by Ord. 2004-002 §3 on 4/28/2004*  
*Amended by Ord. 2019-009 §1 on 9/3/2019*  
*Recorded by Ord. 2019-009 §1 on 9/3/2019*  
*Amended by Ord. 2022-00x §x on [date]*

DRAFT

## CHAPTER 18.60 RURAL RESIDENTIAL ZONE; RR-10

### 18.60.020 Uses Permitted Outright

\* \* \*

### 18.60.020 Uses Permitted Outright

The following uses and their accessory uses are permitted outright.

- A. A single-family dwelling, or a manufactured home subject to DCC 18.116.070.
- B. Utility facilities necessary to serve the area including energy facilities, water supply and treatment and sewage disposal and treatment.
- C. Community center, if shown and approved on the original plan or plat of the development.
- D. Agricultural use as defined in DCC Title 18.
- E. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.
- F. Class III road or street project.
- G. Noncommercial horse stables as defined in DCC Title 18, excluding horse events.
- H. Horse events, including associated structures, involving:
  - 1. Fewer than 10 riders;
  - 2. Ten to 25 riders, no more than two times per month on nonconsecutive days; or
  - 3. More than 25 riders, no more than two times per year on nonconsecutive days.  
Incidental musical programs are not included in this definition. Overnight stays by participants, trainers or spectators in RVs on the premises is not an incident of such horse events.
- I. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
- J. Type 1 Home Occupation, subject to DCC 18.116.280.
- K. Historic Accessory Dwelling Units, subject to DCC 18.116.350.
- L. Residential Accessory Dwelling Units, subject to DCC 18.116.370.

#### HISTORY

*Adopted by Ord. PL-15 on 11/1/1979*

*Amended by Ord. 91-005 §§30 & 31 on 3/4/1991*

*Amended by Ord. 91-020 §1 on 5/29/1991*



*Amended by Ord. 93-043 §8 on 8/25/1993*  
*Amended by Ord. 94-008 §12 on 6/8/1994*  
*Amended by Ord. 2001-016 §2 on 3/28/2001*  
*Amended by Ord. 2001-039 §5 on 12/12/2001*  
*Amended by Ord. 2004-002 §7 on 4/28/2004*  
*Amended by Ord. 2019-009 §2 on 9/3/2019*  
*Recorded by Ord. 2019-009 §2 on 9/3/2019*  
*Amended by Ord. 2022-00x §x on [date]*

DRAFT

## CHAPTER 18.116 SUPPLEMENTARY PROVISIONS

18.116.350 Historic Accessory Dwelling Units In RR10 And MUA Zones

18.116.370 Residential Accessory Dwelling Units in RR10 and MUA 10 Zones

\* \* \*

### 18.116.350 Historic Accessory Dwelling Units In RR10 And MUA Zones

A. As used in this section:

1. "Historic Accessory dwelling unit" means a residential structure that is used in connection with or that is auxiliary to a single-family dwelling historic home. For the purposes of DCC Title 18, the term "auxiliary" shall be synonymous with the terms "incidental and subordinate to."
  2. "Area zoned for rural residential use" means land that is not located inside an urban growth boundary as defined in ORS 195.060 and that is subject to an acknowledged exception to a statewide land use planning goal relating to farmland or forestland and planned and zoned by the county to allow residential use as a primary use.
  3. "Historic home" means a single-family dwelling constructed between 1850 and 1945.
  4. "New" means that the dwelling being constructed did not previously exist in residential or nonresidential form. "New" does not include the acquisition, alteration, renovation or remodeling of an existing structure.
  5. "Place a manufactured home" means the placement of a manufactured home that did not previously exist on the subject lot of record; it may include the placement of a manufactured home that was previously used as a dwelling on another lot and moved to the subject lot of record.
  6. "Single-family dwelling" means a residential structure designed as a residence for one family and sharing no common wall with another residence of any type.
- B. An owner of a lot or parcel within an area zoned for rural residential use (RR10 and MUA zones) may construct a new single-family dwelling or place a manufactured home on the lot or parcel, provided:
1. The lot or parcel is not located in an area designated as an urban reserve as defined in ORS 195.137;
  2. The lot or parcel is at least two acres in size;
  3. A historic home is sited on the lot or parcel;
  4. The owner converts the historic home to an accessory dwelling unit upon completion of the new single-family dwelling or placement of a manufactured home; and

5. The accessory dwelling unit may be required to comply with all applicable laws and regulations relating to sanitation and wastewater disposal and treatment.
- C. The construction of an accessory dwelling under subsection (B) of this section is a land use action subject to DCC 22.20.
  - D. An owner that constructs a new single-family dwelling or places a manufactured home under subsection (B) of this section may not:
    1. Subdivide, partition or otherwise divide the lot or parcel so that the new single-family dwelling or manufactured home is situated on a different lot or parcel from the accessory dwelling unit.
    2. Alter, renovate or remodel the accessory dwelling unit so that the square footage of the accessory dwelling unit is more than 120 percent of the historic home's square footage at the time construction of the new single-family dwelling commenced.
    3. Rebuild the accessory dwelling unit if the structure is deemed a dangerous building due to fire or other natural disaster, pursuant to the Uniform Code for the Abatement of Dangerous Buildings, which defines "dangerous building" as "Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or location."
    4. Construct an additional accessory dwelling unit on the same lot or parcel.
  - E. A new single-family dwelling constructed or a manufactured home placed under this section may be required to be served by the same water supply source as the accessory dwelling unit.
  - F. Owner occupancy of either the accessory dwelling unit or the new single-family dwelling is not required. However, the new single-family dwelling and the accessory dwelling unit may not be used simultaneously for short-term rentals of thirty (30) consecutive days or less.

#### HISTORY

Adopted by Ord. [2019-009 §3](#) on 9/3/2019

Recorded by Ord. [2019-009 §3](#) on 9/3/2019

*Amended by Ord. 2022-00x §x on [date]*

#### **18.116.370 Residential Accessory Dwelling Units in RR10 and MUA Zones**

##### A. As used in this section:

1. "Accessory dwelling unit" means a residential structure that is used in connection with or that is auxiliary to an existing single-family dwelling or manufactured home. For the purposes of DCC Title 18, the term "auxiliary" shall be synonymous with the terms "incidental and subordinate to."

2. “Right-of-way” means either a public road maintained by the county, a private road with a public access easement, a public road maintained by a road district, or an unmaintained road.
  3. “Rural residential use” means a lot or parcel located in the RR-10 or MUA-10 zones, consistent with the definition in ORS 215.501.
  4. “Safe evacuation plan” means an identifiable route on a right(s)-of-ways from the rural accessory dwelling unit to the staged evacuation area.
  5. “Single-family dwelling” or “manufactured home” means a residential structure designed as a residence for one family and sharing no common wall with another residence of any type.
  6. “Staged evacuation area” means a public or private location that occupants of the rural accessory dwelling unit may evacuate to reorganize.
  7. “Useable floor area” means the area of the accessory dwelling unit included within the surrounding insulated exterior walls, exclusive of garages, carports, decks and porch covers.
  8. “Vacation occupancy” means occupancy in a dwelling unit, not including transient occupancy in a hotel or motel, that has all of the following characteristics:
    - a. The occupant rents the unit for vacation purposes only, not as a principal residence;
    - b. The occupant has a principal residence other than at the unit; and
    - c. The period of authorized occupancy does not exceed 45 days.
- B. One accessory dwelling unit is permitted outright on a lot or parcel zoned for RR-10 or MUA-10, provided:
1. One single-family dwelling is sited on the lot or parcel;
  2. The lot or parcel is not located within the Redmond Urban Reserve Area, consistent with ORS 195.137.
  3. No portion of the lot or parcel is within the Metolius Area of Critical State Concern, as defined in ORS 197.416.
  4. The lot area or parcel area is at least two acres in size, with the exception of those unsewered areas between Sunriver and the Klamath County border; defined as those unincorporated portions of Deschutes County contained in Townships 19S, 20S, 21S, and 22S and Ranges 9E, 10E and 11E, the minimum lot or parcel size must be at least five acres in size.
  5. The accessory dwelling unit will have a minimum setback of 100 feet between the accessory dwelling unit and adjacent land zoned F-1, F-2, or EFU and meet the other minimum setback requirements of the underlying zone and combining zones.

6. The accessory dwelling unit will not include more than 900 square feet of useable floor area.
7. The accessory dwelling unit will be located no farther than 100 feet from the existing ~~single-family~~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.
  - a. A garage may be constructed to incorporate the accessory dwelling unit as long as the wall of the single-family dwelling is no farther than 100 feet to the nearest part of the useable floor area of the accessory dwelling unit.
8. The accessory dwelling unit shall meet the siting standards of DCC 18.88.060.
9. For all properties located within the Wildlife Area Combining Zone, all fences shall comply with DCC 18.88.070.
10. The accessory dwelling unit receives approval from a sewer authority or Deschutes County Environmental Soils for onsite wastewater disposal and treatment.
11. The lot or parcel is served by a fire protection service provider with professionals who have received training or certification described in ORS 181A.410.
12. Adequate access for firefighting equipment, safe evacuation and staged evacuation areas are met by providing:
  - a. Written certification from a fire protection service provider with professionals who have received training or certification described in ORS 181A.410~~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;
  - b. A safe evacuation plan; and
  - c. 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.
13. The lot or parcel and accessory dwelling unit comply with rules of the State Board of Forestry under ORS 477.015, 477.025 and 477.027.
  - a. If the accessory dwelling unit is not subject to ORS 477.015, 477.025 and 477.027, the accessory dwelling unit has defensible space and fuel break standards as developed in consultation with local fire protection service providers.
14. Statewide wildfire risk maps, described in ORS 477.490, have been approved. Pursuant to the Statewide wildfire risk maps, the following requirements shall apply:
  - a. For extreme and high wildfire risk classes in the wildland-urban interface that are identified pursuant to ORS 477.490, the wildfire hazard mitigation building code standards as described in section R327 of the 2021 Oregon Residential Specialty Code;

- b. For extreme and high wildfire risk classes in the wildland-urban interface that are identified pursuant to ORS 477.490, the minimum defensible space rules established by the State Fire Marshal as described in ORS 476.392.
- c. If the accessory dwelling unit is not subject to ORS 477.015, 477.025 and 477.027, the accessory dwelling unit has defensible space and fuel break standards as developed in consultation with local fire protection service providers.
15. The existing single-family dwelling property on the lot or parcel is not subject to an order declaring it a nuisance or subject to any pending action under ORS 105.550 to 105.600.
16. A lot or parcel with an accessory dwelling unit approved under this section is not authorized for:
- a. A subdivision, partition, or other division of the lot or parcel so that the existing single-family dwelling is situated on a different lot or parcel than the accessory dwelling unit.
- b. Construction of a second accessory dwelling unit or a medical hardship dwelling in conjunction with the existing accessory dwelling unit.
17. If the accessory dwelling unit is served by a well, the construction of the accessory dwelling unit shall maintain all setbacks from the well required by the Water Resources Commission or Water Resources Department.
18. An existing single-family dwelling and an accessory dwelling unit allowed under this section are considered a single unit for the purposes of calculating [ground water right](#) exemptions under ORS 537.545(1).
19. The applicant shall sign and record with the County Clerk, prior to the issuance of a building permit, a restrictive covenant stating an accessory dwelling unit allowed under this section cannot be used for vacation occupancy, as defined in DCC 18.116.370(A)(8) and consistent with ORS 90.100.

## HISTORY

Adopted by Ord. 2022-00x §x on [date]

## CHAPTER 19.12 URBAN AREA RESERVE ZONE UAR-10

### 19.12.020 Permitted Uses

\* \* \*

### 19.12.020 Permitted Uses

The following uses are permitted:

- A. Farm uses as defined in DCC Title 19.
- B. Single-family dwelling.
- C. Home occupation subject to DCC 19.88.140.
- D. Other accessory uses and accessory buildings and structures customarily appurtenant to a permitted use subject to DCC 19.92.020.
- E. Day care center facilities subject to site review, DCC 19.76 and DCC 19.88.160.
- F. Farm stands subject to DCC 19.76 and DCC 19.88.290.
- G. Historic Accessory Dwelling Units, subject to DCC 19.92.150.
- H. Residential Accessory Dwelling Units, subject to DCC 19.92.160

#### HISTORY

*Adopted by Ord. PL-11 on 7/11/1979*

*Amended by Ord. 88-042 §4 on 12/19/1988*

*Repealed & Reenacted by Ord. 90-038 §1,2 on 10/3/1990*

*Amended by Ord. 91-001 §2 on 1/28/1991*

*Amended by Ord. 2008-014 §3 on 3/31/2008*

*Repealed & Reenacted by Ord. 2009-002 §1,2 on 2/11/2009*

*Amended by Ord. 2019-009 §4 on 9/3/2019*

*Recorded by Ord. 2019-009 §4 on 9/3/2019*

*Amended by Ord. 2022-00x §x on [date]*

## CHAPTER 19.20 SUBURBAN LOW DENSITY RESIDENTIAL ZONE; SR 2 1/2

### 19.20.020 Permitted Uses

\* \* \*

### 19.20.020 Permitted Uses

The following uses are permitted:

- A. Single-family dwelling.
- B. Agriculture, excluding the keeping of livestock.
- C. Home occupations subject to DCC 19.88.140.
- D. Other accessory uses and accessory buildings and structures customarily appurtenant to a permitted use subject to DCC 19.92.020.
- E. Historic Accessory Dwelling Units, subject to DCC 19.92.150.
- F. Child care facility and/or preschool.
- G. Residential Accessory Dwelling Units, subject to DCC 19.92.160.

#### HISTORY

*Adopted by Ord. PL-11 on 7/11/1979*

*Amended by Ord. 88-042 §6 on 12/19/1988*

*Repealed & Reenacted by Ord. 90-038 §1,2 on 10/3/1990*

*Amended by Ord. 91-001 §4 on 1/28/1991*

*Amended by Ord. 93-018 §3 on 5/19/1993*

*Repealed & Reenacted by Ord. 2009-002 §1,2 on 2/11/2009*

*Amended by Ord. 2019-009 §5 on 9/3/2019*

*Recorded by Ord. 2019-009 §5 on 9/3/2019*

*Amended by Ord. 2020-001 §20 on 4/21/2020*

*Amended by Ord. 2020-010 §9 on 7/3/2020*

*Amended by Ord. 2022-00x §x on [date]*



## CHAPTER 19.22 WESTSIDE TRANSECT ZONE; WTZ

### 19.22.020 Permitted Uses

\* \* \*

### 19.22.020 Permitted Uses

The following uses and their accessory uses are permitted outright:

- A. Single-family dwelling.
- B. Home occupation subject to DCC 19.88.140.
- C. Other accessory uses and accessory buildings and structures customarily appurtenant to a permitted use subject to DCC 19.92.020.
- D. Residential Accessory Dwelling Units, subject to DCC 19.92.160.

#### HISTORY

*Adopted by Ord. 2019-001 §8 on 4/16/2019*

*Amended by Ord. 2022-00x §x on [date]*

## CHAPTER 19.92 INTERPRETATIONS AND EXCEPTIONS

\* \* \*

19.92.150 Accessory Dwelling Units In UAR-10 And SR-2 1/2 Zones

19.92.160 Residential Accessory Dwelling Units in UAR-10, SR-2 ½, and WTZ Zones

19.92.150 Historic Accessory Dwelling Units In UAR-10 And SR-2 1/2 Zones

- A. As used in this section:
1. “Historic Accessory dwelling unit” means a residential structure that is used in connection with or that is auxiliary to a ~~single-family dwelling~~ historic home. For the purposes of DCC Title 19, the term "auxiliary" shall be synonymous with the terms "incidental and subordinate to."
  2. “Area zoned for rural residential use” means land that is not located inside an urban growth boundary as defined in ORS 195.060 and that is subject to an acknowledged exception to a statewide land use planning goal relating to farmland or forestland and planned and zoned by the county to allow residential use as a primary use.
  3. “Historic home” means a single-family dwelling constructed between 1850 and 1945.
  4. “New” means that the dwelling being constructed did not previously exist in residential or nonresidential form. “New” does not include the acquisition, alteration, renovation or remodeling of an existing structure.
  5. “Single-family dwelling” means a residential structure designed as a residence for one family and sharing no common wall with another residence of any type.
- B. An owner of a lot or parcel within an area zoned for rural residential use (UAR-10 and SR-2 1/2 zones) may construct a new single-family dwelling on the lot or parcel, provided:
1. The lot or parcel is not located in an area designated as an urban reserve as defined in ORS 195.137;
  2. The lot or parcel is at least two acres in size;
  3. A historic home is sited on the lot or parcel;
  4. The owner converts the historic home to an accessory dwelling unit upon completion of the new single-family dwelling; and
  5. The accessory dwelling unit may be required to comply with all applicable laws and regulations relating to sanitation and wastewater disposal and treatment.
- C. The construction of an accessory dwelling under subsection (B) of this section is a land use action subject to DCC 22.20.

- D. An owner that constructs a new single-family dwelling under subsection (B) of this section may not:
1. Subdivide, partition or otherwise divide the lot or parcel so that the new single-family dwelling is situated on a different lot or parcel from the accessory dwelling unit.
  2. Alter, renovate or remodel the accessory dwelling unit so that the square footage of the accessory dwelling unit is more than 120 percent of the historic home's square footage at the time construction of the new single-family dwelling commenced.
  3. Rebuild the accessory dwelling unit if the structure is deemed a dangerous building due to fire or other natural disaster, pursuant to the Uniform Code for the Abatement of Dangerous Buildings, which defines "dangerous building" as "Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or location."
  4. Construct an additional accessory dwelling unit on the same lot or parcel.
- E. A new single-family dwelling constructed under this section may be required to be served by the same water supply source as the accessory dwelling unit.
- F. Owner occupancy of either the accessory dwelling unit or the new single-family dwelling is not required. However, the new single-family dwelling and the accessory dwelling unit may not be used simultaneously for short-term rentals of thirty (30) consecutive days or less.

#### HISTORY

Adopted by Ord. [2019-009 §6](#) on 9/3/2019

Recorded by Ord. [2019-009 §6](#) on 9/3/2019

*Amended by Ord. 2022-00x §x on [date]*

#### **19.92.160 Residential Accessory Dwelling Units in UAR-10, SR-2 ½, and WTZ Zones**

##### A. As used in this section:

1. "Accessory dwelling unit" means a residential structure that is used in connection with or that is auxiliary to an existing single-family dwelling or manufactured home. For the purposes of DCC Title 19, the term "auxiliary" shall be synonymous with the terms "incidental and subordinate to."
2. "Right-of-way" means either a public road maintained by the county, a private road with a public access easement, a public road maintained by a road district, or an unmaintained road.
3. "Rural residential use" means a lot or parcel located in the UAR-10, SR-2 ½, and WTZ zones, consistent with the definition in ORS 215.501.
4. "Safe evacuation plan" means an identifiable route on a right(s)-of-way from the rural accessory dwelling unit to the staged evacuation area.

5. “Single-family dwelling” or “manufactured home” means a residential structure designed as a residence for one family and sharing no common wall with another residence of any type.
  6. “Staged evacuation area” means a public or private location that occupants of the rural accessory dwelling unit may evacuate to reorganize.
  7. “Useable floor area” means the area of the accessory dwelling unit included within the surrounding insulated exterior walls, exclusive of garages, carports, decks and porch covers.
  8. “Vacation occupancy” means occupancy in a dwelling unit, not including transient occupancy in a hotel or motel, that has all of the following characteristics:
    - a. The occupant rents the unit for vacation purposes only, not as a principal residence;
    - b. The occupant has a principal residence other than at the unit; and
    - c. The period of authorized occupancy does not exceed 45 days.
- B. One accessory dwelling unit is permitted outright on a lot or parcel zoned for UAR-10, SR-2 ½, and WTZ, provided:
1. One single-family dwelling is sited on the lot or parcel;
  2. The lot area or parcel area is at least two acres in size.
  3. The accessory dwelling unit will have a minimum setback of 100 feet between the accessory dwelling unit and adjacent land zoned F-1, F-2, or EFU and meet the other minimum setback requirements of the underlying zone and combining zones.
  4. The accessory dwelling unit will not include more than 900 square feet of useable floor area.
  5. The accessory dwelling unit will 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.
    - a. A garage may be constructed to incorporate the accessory dwelling unit as long as the wall of the single-family dwelling is no farther than 100 feet to the nearest part of the useable floor area of the accessory dwelling unit.
  6. The accessory dwelling unit receives approval from a sewer authority or Deschutes County Environmental Soils for onsite wastewater disposal and treatment.
  7. The lot or parcel is served by a fire protection service provider with professionals who have received training or certification described in ORS 181A.410.
  8. Adequate access for firefighting equipment, safe evacuation and staged evacuation areas are met by providing:
    - a. Written certification from a fire protection service provider with professionals who

- have received training or certification described in ORS 181A.410, on a form prepared by Deschutes County, that access to the property meets minimum fire district requirements to provide emergency services to the property;
- b. A safe evacuation plan; and
  - c. 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.
9. The lot or parcel and accessory dwelling unit comply with rules of the State Board of Forestry under ORS 477.015, 477.025 and 477.027.
- a. If the accessory dwelling unit is not subject to ORS 477.015, 477.025 and 477.027, the accessory dwelling unit has defensible space and fuel break standards as developed in consultation with local fire protection service providers.
10. Statewide wildfire risk maps, described in ORS 477.490, have been approved. Pursuant to the Statewide wildfire risk maps, the following requirements shall apply:
- a. For extreme and high wildfire risk classes in the wildland-urban interface that are identified pursuant to ORS 477.490, the wildfire hazard mitigation building code standards as described in section R327 of the 2021 Oregon Residential Specialty Code;
  - b. For extreme and high wildfire risk classes in the wildland-urban interface that are identified pursuant to ORS 477.490, the minimum defensible space rules established by the State Fire Marshal as described in ORS 476.392.
  - c. If the accessory dwelling unit is not subject to ORS 477.015, 477.025 and 477.027, the accessory dwelling unit has defensible space and fuel break standards as developed in consultation with local fire protection service providers
11. The existing single-family dwelling property on the lot or parcel is not subject to an order declaring it a nuisance or subject to any pending action under ORS 105.550 to 105.600.
12. A lot or parcel with an accessory dwelling unit approved under this section is not authorized for:
- a. A subdivision, partition, or other division of the lot or parcel so that the existing single-family dwelling is situated on a different lot or parcel than the accessory dwelling unit.
  - b. Construction of a second accessory dwelling unit or a medical hardship dwelling in conjunction with the existing accessory dwelling unit.
13. If the accessory dwelling unit is served by a well, the construction of the accessory dwelling unit shall maintain all setbacks from the well required by the Water Resources Commission or Water Resources Department.

14. An existing single-family dwelling and an accessory dwelling unit allowed under this section are considered a single unit for the purposes of calculating exemptions under ORS 537.545(1).

15. The applicant shall sign and record with the County Clerk, prior to the issuance of a building permit, a restrictive covenant stating an accessory dwelling unit allowed under this section cannot be used for vacation occupancy, as defined in DCC 18.116.370(A)(8) and consistent with ORS 90.100.

HISTORY

Adopted by Ord. 2022-00x §x on [date]

DRAFT

## CHAPTER 22.04 INTRODUCTION AND DEFINITIONS

### 22.04.040 Verifying Lots of Record

\* \* \*

### 22.04.040 Verifying Lots of Record

- A. Purpose; scope. Concurrent with or prior to the issuance of certain permits, a lot or parcel shall be verified pursuant to this section to reasonably ensure compliance with the zoning and land division laws in effect on the date the lot or parcel was created. Not all permits require verification. If required, verifying that the lot or parcel was lawfully created is a threshold issue that should be addressed before the permit may be issued, but does not supersede or nullify other permit requirements. This section 22.04.040 provides an applicant the option to concurrently verify a lot or parcel as part of applying for a permit that requires verification, or preliminarily apply for a declaratory ruling to thereby determine the scope of available permits.
- B. Permits Requiring Verification.
1. Unless an exception applies pursuant to subsection (B)(2) below, verifying a lot or parcel pursuant to subsection (C) shall be required prior to the issuance of the following permits:
    - a. Any land use permit for a unit of land in the Exclusive Farm Use Zones (DCC Chapter 18.16), Forest Use Zone – F1 (DCC Chapter 18.36), or Forest Use Zone – F2 (DCC Chapter 18.40);
    - b. Any permit for a lot or parcel that includes wetlands as shown on the Statewide Wetlands Inventory;
    - c. Any permit for a lot or parcel subject to wildlife habitat special assessment;
    - d. In all zones, a land use permit relocating property lines that reduces in size a lot or parcel;
    - e. In all zones, a land use, structural, or non-emergency on-site sewage disposal system permit if the lot or parcel is smaller than the minimum area required in the applicable zone;
    - f. In all zones, a permit for a Historic Accessory Dwelling Unit as defined in DCC 18.116.350 or DCC 19.92.150
    - e.g. In all zones, a permit for a Rural Accessory Dwelling Unit as defined in DCC 18.116.370 or DCC 19.92.160.
- C. Verified Lots of Record. Permits that require verification shall only be issued to lots or parcels that meet the “lot of record” definition in 18.04.030.
- D. Findings; Declaratory Ruling. If an applicant is applying for a land use permit listed in subsection (B)(1), the County shall include a finding verifying that the lot or parcel meets the “lot of record” definition in 18.04.030, a finding noting that the lot or parcel does not meet the “lot of record”

definition in 18.04.030, or a finding noting that verification was not required because the lot or parcel qualified for an exception pursuant to subsection (B)(2). If an applicant is applying for a permit listed in subsection (B)(1) that does not require public notice, or prior to applying for any permit, an applicant may request a declaratory ruling pursuant to DCC Chapter 22.40. If the lot or parcel meets the “lot of record” definition in 18.04.030, the County shall issue the declaratory ruling determining that the lot or parcel qualifies for all permits listed in subsection (B)(1). If the lot or parcel does not meet the “lot of record” definition in 18.04.030, the County shall not issue the declaratory ruling and instead shall provide the applicant information on permit options that do not require verification and information on verification exceptions that may apply pursuant to subsections (B)(2).

#### HISTORY

*Adopted by Ord. 2017-015 §3 on 11/1/1979*

*[Amended by Ord. 2022-00x §x on \[date\]](#)*

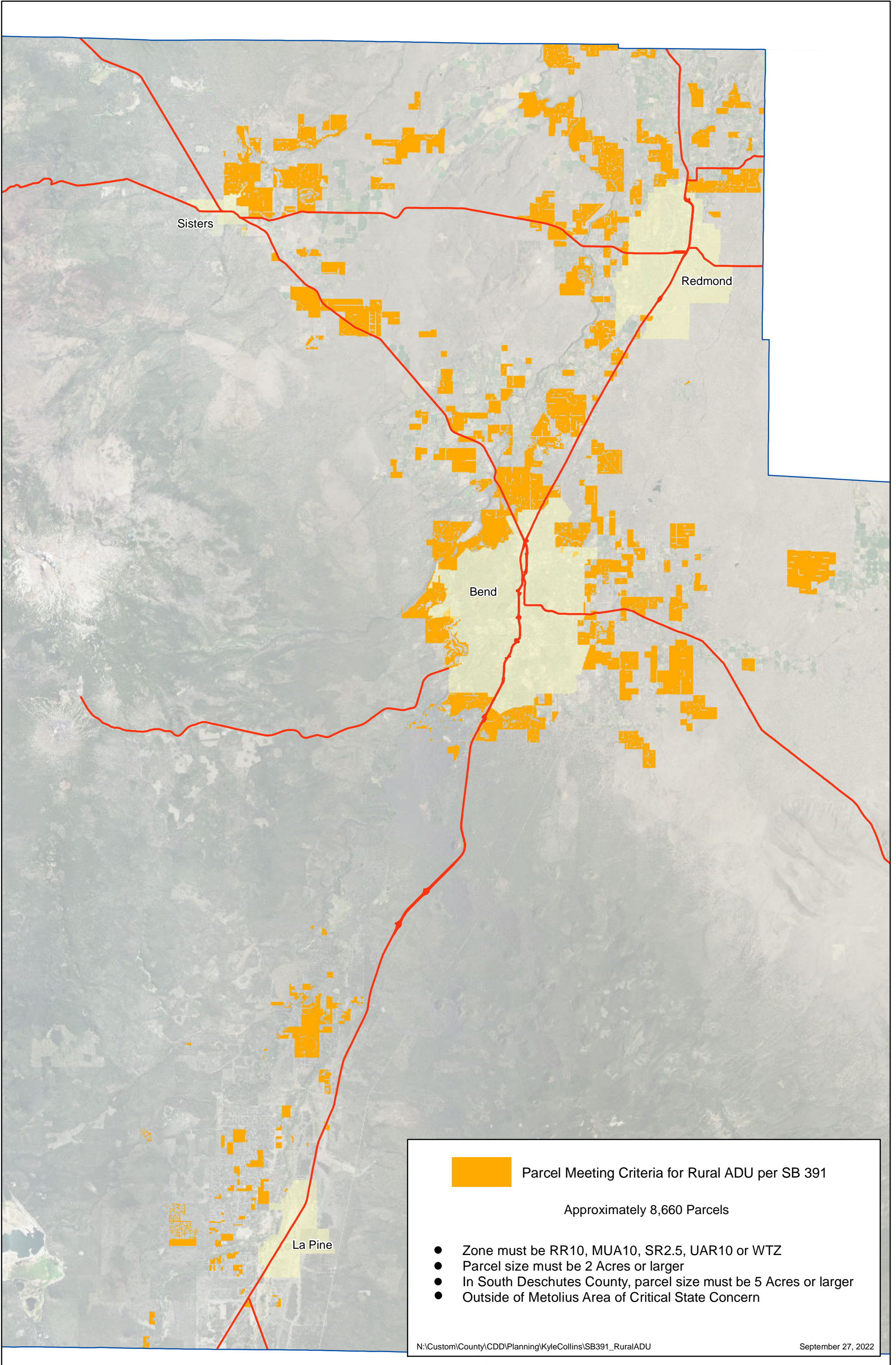
DRAFT





1" = 3.5 Miles

# Parcels Meeting Initial Criteria for Rural ADUs per SB 391





## MEMORANDUM

**TO:** Deschutes County Planning Commission

**FROM:** Tanya Saltzman, AICP, Senior Planner  
Will Groves, Planning Manager

**DATE:** October 20, 2022

**SUBJECT:** Deliberations – Psilocybin TPM Amendments

On October 27, 2022 the Deschutes County Planning Commission will conduct deliberations to consider legislative text amendments for time, place, and manner (TPM) regulations for psilocybin (File no. 247-22-000676-TA).

Staff submitted a 35-day Post-Acknowledgement Plan Amendment (PAPA) notice to the Department of Land Conservation and Development (DLCD) on August 25, 2022. Staff presented the proposed amendments to the Planning Commission at a work session on September 8, 2022.<sup>1</sup> The initial public hearing was held on September 29, 2022,<sup>2</sup> at which time the Planning Commission voted to continue the hearing to October 13 in order to receive additional oral and written testimony.<sup>3</sup> At the conclusion of the October 13 public hearing continuation, the oral record was closed and the written record was left open until October 14, 2022. Background information and a summary of the amendments was provided in the agenda packet for the initial public hearing.

The record, which contains all memoranda, notices, and written testimony received, is available for inspection at the Planning Division and at the following website: <https://www.deschutes.org/cd/page/247-22-000676-ta-psilocybin-time-place-and-manner-tpm-text-amendments>.

Attached to this memorandum are the proposed text amendments and findings. Within the proposed amendments, added language is shown underlined and deleted shown as ~~strikethrough~~.

### I. WRITTEN TESTIMONY

A total of 32 individuals provided written testimony concerning the proposed amendments, spanning the timeframe between initial 35-day DLCD notice on August 25 to the conclusion of the open record period

<sup>1</sup> <https://www.deschutes.org/bc-pc/page/planning-commission-16>

<sup>2</sup> <https://www.deschutes.org/bc-pc/page/planning-commission-19>

<sup>3</sup> <https://www.deschutes.org/bc-pc/page/planning-commission-20>

on October 14, 2022. Comments are generally grouped as follows:

20 individuals were in favor of psilocybin as a treatment option for conditions such as PTSD (particularly for veterans), trauma and addiction.

- General support of psilocybin as a treatment option
- Many comments stated the proposed regulations are too restrictive. Specifically:
  - Service centers should be allowed to have overnight/multi-day stays owing to the nature of psilocybin treatment, which ideally involves an initial intake/consultation, a facilitated experience, and then follow-up integration.
  - Service centers should be placed in rural, nature-based settings owing to the sensitivity of clients either from the issues they are seeking to address (i.e. PTSD) and the heightened sensitivity to surroundings/sensations during the treatment itself. The proposed locations of commercial and retail/service zones therefore were not appropriate.
  - Increased access to psilocybin services in general is important, for reasons both financial and societal/cultural (for instance, some veterans prefer maximum privacy)
  - Proposed hours of service centers are too limited and should match OHA guidelines
  - The County should consider allowing service centers in destination resorts
  - The County should consider allowing psilocybin manufacturing in forest zones in addition to EFU zones.

8 individuals were against psilocybin in the rural county:

- Several comments directed the Planning Commission to vote yes to Measure 9-152 (prohibiting psilocybin manufacturing and service centers). It was apparent that many citizens conflated this hearing—which is considering potential zoning if the opt out is overturned—with the opt-out ballot measure in November. During the hearing, staff attempted to clarify this distinction and noted that the voters of the county, not the Planning Commission, will determine if the county opts out of psilocybin altogether.
- Concerns about rural compatibility, orderly growth, safety, and water usage, and a subsequent desire to put psilocybin businesses in cities first.

Additional items from the open record period include:

- Questions and answers regarding the psilocybin program and rulemaking between the Oregon Health Authority (OHA) and the Association of Oregon Counties Planning Directors group (AOC PD).
- Correspondence between Planning Commissioner Altman and Senior Planner Tanya Saltzman concerning more detailed maps of the areas around service center zones as well as discussion regarding options for overnight stays.
- Central Oregon LandWatch (COLW) testified that the proposed amendments should be subject to Goal 5.

In addition to comments from the general public, staff received two written comments from the Department of Land Conservation and Development (DLCD); both were responses to requests from staff concerning DLCD's interpretation of a component of ORS 475A.570, which addresses psilocybin service

centers in relation to farmland.

## II. HEARING TESTIMONY

Approximately one dozen individuals testified at the September 29 public hearing, and a dozen more testified on October 13. The majority of in-person testimony focused on similar themes as the written testimony:

- General support of psilocybin as a treatment option, including first-hand testimony from veterans and first responders
- The proposed regulations are too restrictive:
  - Nature-based/rural service centers are critical to a successful experience
  - The more access to the treatment (i.e. not limiting potential locations as much) the better
  - Service centers should allow overnight stays
  - Service center hours should match those of the OHA
  - Given the possible difficulties of siting service centers on EFU land, allowing them in destination resorts could make the most sense
- Opposition to siting any psilocybin businesses in the rural county. Given the uncertainties at this point in time as well as rural and environmental sensitivities, let the cities address these businesses first.

## III. AGENCY TESTIMONY

As noted previously, DLCD provided written testimony concerning its interpretation along with that of the Department of Justice, of ORS 475A.570(3), which states “(3) The operation of a psilocybin service center may be carried on in conjunction with a psilocybin-producing fungi crop.” In addition to the agency’s written comments, Hilary Foote, Farm/Forest Specialist from DLCD, provided verbal testimony that further explained the legal mechanisms behind designated uses on Exclusive Farm Use land.

Ultimately, DLCD’s interpretation of the statute is that psilocybin service centers would not be permitted as a stand-alone use on EFU land. However, it is possible that a service center could be permitted as a part of another use that is allowed in EFU—namely, a home occupation or a commercial activity in conjunction with farm use. These avenues are not without their own criteria and restrictions, and DLCD noted in its follow-up written testimony that Deschutes County’s current code is more restrictive than state law concerning commercial activity in conjunction with farm use (DCC 18.16.040(B) requires that the commercial activity be related to an on-property farm use).

## IV. PROHIBITION OF PSILOCYBIN BUSINESSES IN THE RURAL COUNTY

As noted above, approximately 8 individuals provided testimony stating their opposition to psilocybin businesses in rural, unincorporated Deschutes County; as noted above, the majority of this testimony focused on the upcoming ballot measure to opt out of psilocybin businesses rather than the TPM amendments currently at hand, but some did urge to write TPM to the same effect. Reasons for prohibition included general opposition to psilocybin; the lack of completed rulemaking and therefore a

desire to focus psilocybin in cities first; public safety; land use issues including compatibility, orderly growth, and water usage.

It is important to note that the mechanism to prohibit psilocybin manufacturing and service center businesses is Ballot Measure 9-152. This will allow citizens to vote on an opt out. The proposed TPM amendments are designed to become effective if—and only if—the voters reject Ballot Measure 9-152, thereby overturning the opt out and allowing psilocybin manufacturing businesses to occur on rural lands. As such, the prohibition of psilocybin manufacturing and service center businesses is not a topic for deliberation before the Planning Commission.

Per Measure 109, which enacted the psilocybin program in Oregon, the ballot measure does not include psilocybin testing laboratories. The Planning Commission could potentially recommend prohibiting psilocybin testing laboratories via this TPM process if it chose.

#### **IV. QUESTIONS FOR DELIBERATION**

Based on testimony received throughout the public process, staff has highlighted several areas for the Planning Commission to consider.

##### **1. What hours should psilocybin service centers be permitted to operate?**

The proposed amendments currently allow service center hours as 7:00 am to 7:00 pm. A significant amount of testimony requested that service center hours match those of Oregon Health Authority's: 6:00 a.m. to 11:59 p.m., with allowances beyond this for extenuating circumstances based on the determination of the facilitator.

##### Options:

- a. Keep hours as written;
- b. Change hours to match OHA's;
- c. Change hours to other option

##### **2. Should psilocybin service centers in be permitted in destination resorts?**

The proposed amendments currently do not allow service centers in destination resorts. However, some testimony (C. Celko/Emerge Law Group, 2022-10-13 and 2022-9-29) recommended that service centers are in fact suitable for destination resorts, assuming the use is approved in the final master plan. The testimony noted that siting service centers within destination resorts could potentially be an easier fit with respect to state and local land use law, given its natural setting without potential conflicts. The testimony cited DCC 18.113.010(B), which states the DR zone “will ensure resort development that complements the natural and cultural attractiveness of the area without significant adverse effect on commercial farming and forestry, environmental and natural features, cultural and historic resources and their settings and other significant resources.” The same testimony also noted the existing overnight accommodations and other ancillary uses in destination resorts.

On the other hand, testimony against siting service centers in destination resorts (J. Guild, 2022-10-14) cited the requirement in a destination resort (in this case Pronghorn Resort, where both pieces of testimony are focusing upon) of CCRs requiring HOA Board approval. Concerning compatibility, Guild noted that “Pronghorn has a 3 mile Right of Way across Federal land and is surrounded by BLM land where shooting and hunting is allowed.” Other concerns cited included compatibility, liability, and public safety.

Options:

- a. Keep amendments as written, thereby not allowing service centers in destination resorts;
- b. Recommend allowing service centers in destination resorts and psilocybin manufacturing as an accessory use as long as it is in conjunction with a service center. This would require modifying DCC 18.113.030, Uses in Destination Resorts.

**3. Should psilocybin manufacturing as farm and processing uses be allowed in forest zones (F1 and F2) in addition to EFU?**

Some testimony requested that areas permitting psilocybin manufacturing be expanded to forest uses, citing ORS 475A.571(1), which declares psilocybin-producing fungi as a crop for the purposes of “Farm” use and “farming practice.” ORS 475A.570(4) states “A county may allow the manufacture of psilocybin products as a farm use on land zoned for farm or forest use in the same manner as the manufacture of psilocybin products is allowed in exclusive farm use zones under this section and ORS 215.213, 215.283 and 475C.053.” The proposed amendments currently only allow manufacturing in EFU zones.

Options:

- a. Keep amendments as written, thereby not allowing psilocybin manufacturing in forest zones
- b. Recommend adding F1 and F2 to zones that allow psilocybin manufacturing.

**4. Should psilocybin service centers be prohibited as home occupations or as commercial activities in conjunction with farm use?**

It’s staff’s understanding based on the testimony provided by the Department of Land Conservation and Development (DLCD) that psilocybin service centers could not be a stand-alone use in EFU zones, but could potentially be allowed on EFU land through two paths: home occupations and commercial activity in conjunction with farm use (H. Foote, 2022-10-14, 2022-9-28, and verbal testimony). Each of those uses are subject to their own regulations and criteria in Deschutes County Code. Specifically:

- Commercial activities that are in conjunction with farm use are conditional uses subject to DCC 18.16.040, Limitations On Conditional Uses, and 18.128.015 and
- Home Occupations are conditional uses subject to DCC 18.16.0030(M), Limitations On Conditional Uses, and DCC 18.116.280, Home Occupations.

Some individuals testified that they did not believe EFU lands are appropriate for psilocybin service centers for various reasons noted above. The Planning Commission could choose to specifically preclude psilocybin service centers from utilizing these two pathways for being sited on EFU land.

Options:

- a. Keep amendments as written, maintaining the potential option of service centers utilizing either home occupations or commercial activities in conjunction with farm use as a way to be sited on EFU land;
- b. Recommend prohibiting psilocybin service centers as either home occupations or commercial activities in conjunction with farm use;
- c. Recommend placing limitations on the service centers approved as home occupations or commercial activity in conjunction with farm use (for instance, prohibit home occupations but allow commercial activity in conjunction with farm use or prescribe additional TPM regulations specific to service centers beyond those generic to these use categories.).

**5. Should overnight accommodations be allowed as an accessory use to psilocybin service centers?**

A significant amount of testimony—as well as Planning Commissioners’ clarifying questions—focused on the possibility of allowing psilocybin service centers to allow overnight/multi-day stays due to reasons ranging from safety concerns to promoting a better, more complete therapeutic experience.

If the Planning Commission is interested in pursuing this aspect of service centers, Oregon state land use law presents challenges when trying to achieve this, as discussed in some written testimony as well as during the hearing. Currently there remains significant uncertainty, as expressed in testimony between Oregon Health Authority (OHA) and Association of Oregon Counties Planning Directors (AOCPD) dated October 5. This testimony consisted of a collection of questions from planning directors across the state for OHA. The first question sought to address overnight stays:

*Q: Can patients stay overnight at a service center?*

*A: This will be determined by the definition of licensed premises. Most likely guests will not be allowed to stay overnight at a licensed premises, but we may license the service center portion of a building while allowing the guest rooms and other areas to remain unlicensed under M109. Again, we are still in the rulemaking process so final rules have not yet been adopted.*

Given the above testimony, staff finds that it is unable to provide guidance at this time regarding overnight accommodations. However, if the Planning Commission supports overnight accommodations as accessory uses to service centers, the Commission may make a recommendation to the Board of County Commissioners stating such, and that overnight accommodations be explored further as additional information is received.

**6. Should ancillary uses be allowed as an accessory use to psilocybin service centers?**

Similarly, some testimony focused on the potential for ancillary uses with psilocybin service center. Testimony regarding this was provided by OHA in the same document noted above:

*Q: Are ancillary uses (mediation, yoga, etc.) allowed at a service center?*

*A: Yes. We will not necessarily license the entire building or property. Ancillary uses on the licensed portion of the property are an open question. If these activities are included as part of an*

*administration session they will definitely be allowed. Again, we are still in the rulemaking process so final rules have not yet been adopted.*

As for the previous item above, given the above testimony, staff finds that it is unable to provide guidance at this time regarding ancillary uses, but the Commission may choose to recommend to the Board that staff continues to explore this topic as OHA rulemaking continues.

## **7. Are the proposed amendments subject to Goal 5?**

Testimony received from Central Oregon LandWatch (R. Isbell, 2022-9-29) suggested that the proposed amendments must demonstrate compliance with Goal 5. Given the proposed uses and their locations staff currently maintains that the proposed uses for psilocybin will not be subject to Goal 5:

- Psilocybin manufacturing is considered a farm crop/farm/use/farming practice per ORS 475A.570
- The areas in which service centers are currently proposed (retail/commercial zones) are not subject to the current WA combining zone
- Service centers on EFU may be allowed not as new conflicting, stand-alone uses but under existing uses within EFU (home occupations/commercial activity in conjunction with farm use)

Staff will amend the findings document to reflect these explanations for the Board public hearing process.

## **V. NEXT STEPS**

At the conclusion of the meeting, the Commission can:

- Continue deliberations to a date certain;
- Close deliberations and propose a recommendation during this meeting.

Ultimately, the Planning Commission will provide a recommendation to the Board of County Commissioners. Options include:

- Recommend approval of amendments as drafted;
- Recommend approval of amendments with suggested edits or recommendations;
- Recommend denial of amendments;
- Other.

### Attachments:

1. Proposed Text Amendments and Findings



## CHAPTER 18.04 TITLE, PURPOSE AND DEFINITIONS

### 18.04.030 Definitions

\* \* \*

"Psilocybin" means psilocybin or psilocin.

"Psilocybin manufacture as a farm use" means the manufacture, planting, cultivation, growing, harvesting, production, preparation, propagation, any packaging or repackaging of psilocybin-producing fungi or labeling or relabeling of its container, provided that the psilocybin manufacturer is licensed by the Oregon Health Authority with a psilocybin manufacturing endorsement for fungi cultivation. It does not include psilocybin manufacture as a processing use.

"Psilocybin manufacture as a processing use" means the compounding, conversion, or processing of a psilocybin product, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, provided that the psilocybin manufacturer is licensed by the Oregon Health Authority with a psilocybin manufacturing endorsement for psilocybin extraction and/or edible psilocybin production.

"Psilocybin premises" includes the following areas of a location licensed under ORS 475A.210 to 475A.722:

- A. All public and private enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms;
- B. All areas outside a building that the Oregon Health Authority has specifically licensed for the manufacturing of psilocybin products or the operation of a psilocybin service center; and
- C. For a location that the authority has specifically licensed for the operation of a psilocybin service center outside a building, that portion of the location used to operate the psilocybin service center and provide psilocybin services to clients.

"Psilocybin premises" does not include a primary residence.

"Psilocybin-producing fungi" is:

- A. A crop for the purposes of "farm use" as defined in ORS 215.203;
- B. A crop for purposes of a "farm" and "farming practice," both as defined in ORS 30.930;
- C. A product of farm use as described in ORS 308A.062; and
- D. The product of an agricultural activity for purposes of ORS 568.909.

"Psilocybin products" means psilocybin-producing fungi, mycelium and mixtures or substances containing a detectable amount of psilocybin, including whole fungi, homogenized fungi, psilocybin extract and edible psilocybin products. "Psilocybin products" does not include psilocybin services.

"Psilocybin service center" means an establishment licensed by the Oregon Health Authority:

- A. At which administration sessions are held; and
- B. At which other psilocybin services may be provided.

#### HISTORY

Adopted by Ord. [PL-15](#) on 11/1/1979

Amended by Ord. [82-013 §1](#) on 5/25/1982

Amended by Ord. [83-037 §2](#) on 6/1/1983

Amended by Ord. [83-033 §1](#) on 6/15/1983

Amended by Ord. [84-023 §1](#) on 8/1/1984

Amended by Ord. [85-002 §2](#) on 2/13/1985

Amended by Ord. [86-032 §1](#) on 4/2/1986

Amended by Ord. [86-018 §1](#) on 6/30/1986

Amended by Ord. [86-054 §1](#) on 6/30/1986

Amended by Ord. [86-056 §2](#) on 6/30/1986

Amended by Ord. [87-015 §1](#) on 6/10/1987

Amended by Ord. [88-009 §1](#) on 3/30/1988

Amended by Ord. [88-030 §3](#) on 8/17/1988

Amended by Ord. [88-030 §4](#) on 8/17/1988

Amended by Ord. [89-004 §1](#) on 3/24/1989

Amended by Ord. [89-009 §2](#) on 11/29/1989

Amended by Ord. [90-014 §2](#) on 7/12/1990

Amended by Ord. [91-002 §11](#) on 2/6/1991

Amended by Ord. [91-005 §1](#) on 3/4/1991

Amended by Ord. [92-025 §1](#) on 4/15/1991

Amended by Ord. [91-020 §1](#) on 5/29/1991

Amended by Ord. [91-038 §§3 and 4](#) on 9/30/1991

Amended by Ord. [92-004 §§1 and 2](#) on 2/7/1992

Amended by Ord. [92-034 §1](#) on 4/8/1992

Amended by Ord. [92-065 §§1 and 2](#) on 11/25/1992

Amended by Ord. [92-066 §1](#) on 11/25/1992

Amended by Ord. [93-002 §§1, 2 and 3](#) on 2/3/1993

Amended by Ord. [93-005 §§1 and 2](#) on 4/21/1993

Amended by Ord. [93-038 §1](#) on 7/28/1993

Amended by Ord. [93-043 §§1, 1A and 1B](#) on 8/25/1993

Amended by Ord. [94-001 §§1, 2, and 3](#) on 3/16/1994

Amended by Ord. [94-008 §§1, 2, 3, 4, 5, 6, 7 and 8](#) on 6/8/1994  
Amended by Ord. [94-041 §§2 and 3](#) on 9/14/1994  
Amended by Ord. [94-038 §3](#) on 10/5/1994  
Amended by Ord. [94-053 §1](#) on 12/7/1994  
Amended by Ord. [95-007 §1](#) on 3/1/1995  
Amended by Ord. [95-001 §1](#) on 3/29/1995  
Amended by Ord. [95-075 §1](#) on 11/29/1995  
Amended by Ord. [95-077 §2](#) on 12/20/1995  
Amended by Ord. [96-003 §2](#) on 3/27/1996  
Amended by Ord. [96-082 §1](#) on 11/13/1996  
Amended by Ord. [97-017 §1](#) on 3/12/1997  
Amended by Ord. [97-003 §1](#) on 6/4/1997  
Amended by Ord. [97-078 §5](#) on 12/31/1997  
Amended by Ord. [2001-037 §1](#) on 9/26/2001  
Amended by Ord. [2001-044 §2](#) on 10/10/2001  
Amended by Ord. [2001-033 §2](#) on 10/10/2001  
Amended by Ord. [2001-048 §1](#) on 12/10/2001  
Amended by Ord. [2003-028 §1](#) on 9/24/2003  
Amended by Ord. [2004-001 §1](#) on 7/14/2004  
Amended by Ord. [2004-024 §1](#) on 12/20/2004  
Amended by Ord. [2005-041 §1](#) on 8/24/2005  
Amended by Ord. [2006-008 §1](#) on 8/29/2006  
Amended by Ord. [2007-019 §1](#) on 9/28/2007  
Amended by Ord. [2007-020 §1](#) on 2/6/2008  
Amended by Ord. [2007-005 §1](#) on 2/28/2008  
Amended by Ord. [2008-015 §1](#) on 6/30/2008  
Amended by Ord. [2008-007 §1](#) on 8/18/2008  
Amended by Ord. [2010-018 §3](#) on 6/28/2010  
Amended by Ord. [2010-022 §1](#) on 7/19/2010  
Amended by Ord. [2011-009 §1](#) on 10/17/2011  
Amended by Ord. [2012-004 §1](#) on 4/16/2012  
Amended by Ord. [2012-007 §1](#) on 5/2/2012  
Amended by Ord. [2013-008 §1](#) on 7/5/2013  
Amended by Ord. [2014-009 §1](#) on 8/6/2014  
Amended by Ord. [2015-004 §1](#) on 4/22/2015  
Amended by Ord. [2016-015 §1](#) on 7/1/2016  
Amended by Ord. [2016-026 §1](#) on 11/9/2016  
Amended by Ord. [2016-006 §1](#) on 2/27/2017  
Amended by Ord. [2017-015 §1](#) on 11/1/2017  
Repealed by Ord. [2018-005 §8](#) on 10/10/2018  
Amended by Ord. [2018-006 §4](#) on 11/20/2018  
Amended by Ord. [2019-010 §1](#) on 5/8/2019  
Amended by Ord. [2019-016 §1](#) on 2/24/2020  
Amended by Ord. [2020-001 §1](#) on 4/21/2020

Amended by Ord. [2020-010 §1](#) on 7/3/2020  
Amended by Ord. [2020-007 §7](#) on 10/27/2020  
Amended by Ord. [2021-013 §3](#) on 4/5/2022  
Amended by Ord. 2022-xxx §x on x/x/2022

## **CHAPTER 18.65 RURAL SERVICE CENTER; UNINCORPORATED COMMUNITY ZONE**

[18.65.020 RSC; Commercial/Mixed Use District \(Brothers, Hampton, Millican, Whistlestop And Wildhunt\)](#)

[18.65.021 Alfalfa RSC; Commercial/Mixed Use District](#)

### **18.65.020 RSC; Commercial/Mixed Use District (Brothers, Hampton, Millican, Whistlestop And Wildhunt)**

- A. Uses Permitted Outright. The following uses and their accessory uses are permitted outright, subject to applicable provisions of this chapter:
1. Single-family dwelling.
  2. Manufactured home, subject to DCC 18.116.070.
  3. Type 1 Home Occupation, subject to DCC 18.116.280.
  4. Residential home and residential facility.
  5. Two-family dwelling or duplex.
  6. Agricultural uses, as defined in Title 18, and excluding livestock feed lot or sales yard, and hog or mink farms.
  7. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.
  8. Class III road and street project.
  9. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
- B. Uses Permitted Subject to Site Plan Review. The following uses and their accessory uses are permitted, subject to applicable provisions of this chapter, DCC 18.116, Supplementary Provisions, and DCC 18.124, Site Plan Review, of this title:
1. Retail store, business office and/or commercial establishment in a building or buildings each not exceeding 4,000 square feet of floor space. The aggregate area for any one type of use that takes place in multiple buildings may not exceed 4,000 square feet.
  2. Residential use in conjunction with a permitted commercial use.
  3. Park or playground.
  4. Community building.
  5. Public or semipublic building or use.

6. Highway maintenance facility.
  7. Marijuana wholesaling, office only. There shall be no storage of marijuana items or products at the same location.
  8. Religious institutions or assemblies.
- C. Conditional Uses Permitted. The following uses and their accessory uses are permitted subject to applicable provisions of this chapter, DCC 18.116, Supplementary Provisions, DCC 18.124, Site Plan Review, and DCC 18.128, Conditional Use, of this title:
1. Multi-family dwelling with three or more units.
  2. School.
  3. Cemetery.
  4. Type 2 or Type 3 Home Occupation, subject to DCC 18.116.280.
  5. Medical clinic or veterinary clinic.
  6. Community Center.
  7. Manufactured home park.
  8. Recreational vehicle or trailer park.
  9. Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A).
  10. Marijuana retailing, subject to the provisions of DCC 18.116.330.
  11. Psilocybin service centers, subject to the provisions of DCC 18.116.380.

#### HISTORY

*Adopted by Ord. [2002-002 §2](#) on 6/5/2002*

*Amended by Ord. [2002-028 §1](#) on 7/24/2002*

*Amended by Ord. [2004-002 §11](#) on 4/28/2004*

*Amended by Ord. [2015-004 §2](#) on 4/22/2015*

*Amended by Ord. [2016-015 §4](#) on 7/1/2016*

*Amended by Ord. [2018-006 §8](#) on 11/20/2018*

*Amended by Ord. [2020-001 §6](#) on 4/21/2020*

*[Amended by Ord. 2022-xxx §x on x/x/2022](#)*

#### **18.65.021 Alfalfa RSC; Commercial/Mixed Use District**

In Alfalfa, the following uses and their accessory uses are permitted:

- A. Uses Permitted Outright.
  1. Single-family dwelling.

2. Manufactured home, subject to DCC 18.116.070
  3. Type 1 Home Occupation, subject to DCC 18.116.280.
  4. Residential home and residential facility.
  5. Two-family dwelling or duplex.
  6. Agricultural uses, as defined in Title 18, and excluding livestock feed lot or sales yard, and hog or mink farms.
  7. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.
  8. Class III road and street project.
  9. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
- B. Uses Permitted Subject to Site Plan Review. The following uses and their accessory uses are permitted, subject to applicable provisions of this chapter, DCC 18.116, Supplementary Provisions and DCC 18.124, Site Plan Review, of this title:
1. Retail store, business office and/or commercial establishment in a building or buildings each not exceeding 4,000 square feet of floor space. The aggregate area for any one type of use that takes place in multiple buildings may not exceed 4,000 square feet.
  2. Residential use in conjunction with a permitted commercial use.
  3. Park or playground.
  4. Community building.
  5. Public or semipublic building or use.
  6. Marijuana wholesaling, office only. There shall be no storage of marijuana items or products at the same location.
  7. Religious institutions or assemblies.
- C. Conditional Uses Permitted. The following uses and their accessory uses are permitted subject to applicable provisions of this chapter, DCC 18.116, Supplementary Provisions, DCC 18.124, Site Plan Review, and DCC 18.128, Conditional Use, of this title:
1. School.
  2. Cemetery.
  3. Type 2 or Type 3 Home Occupation, subject to DCC 18.116.280.
  4. Medical clinic or veterinary clinic.
  5. Community Center.

6. Recreational vehicle or trailer park.
7. Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A).
8. Marijuana retailing, subject to the provisions of DCC 18.116.330.
9. Psilocybin service centers, subject to the provisions of DCC 18.116.380.

HISTORY

*Adopted by Ord. [2002-002 §2](#) on 6/5/2002*

*Amended by Ord. [2018-006 §8](#) on 11/20/2018*

*Amended by Ord. [2020-001 §6](#) on 4/21/2020*

*[Amended by Ord. 2022-xxx §x on x/x/2022](#)*



## CHAPTER 18.66 TERREBONNE RURAL COMMUNITY ZONING DISTRICTS

### 18.66.040 Commercial (TeC) District

#### 18.66.040 Commercial (TeC) District

The Terrebonne Commercial District is intended to allow a range of commercial and limited industrial uses to serve the community and surrounding rural area.

- A. Permitted Uses. The following uses and their accessory uses are permitted outright and do not require site plan review:
1. Single-family dwelling or two-family on a lot or parcel existing on June 4, 1997.
  2. Manufactured home on a lot or parcel existing on June 4, 1997, subject to DCC 18.116.070.
  3. Type 1 Home Occupation, subject to DCC 18.116.280.
  4. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards of DCC 18.66.070 and 18.116.230.
  5. Class III road or street project.
  6. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
- B. Uses Permitted Subject to Site Plan Review. The following uses and their accessory uses are permitted subject to the applicable provisions of DCC 18.66, 18.116 and 18.1248:
1. A building or buildings not exceeding 4,000 square feet of floor space to be used by any combination of the following uses:
    - a. Retail or service business.
    - b. Eating or drinking establishment.
    - c. Offices.
    - d. Veterinary clinic and kennel entirely within an enclosed building.
    - e. Residential use in the same building as a use permitted by DCC 18.66.040(B)(1).
    - f. Marijuana wholesaling, office only. There shall be no storage of marijuana items or products at the same location.

2. Any of the uses allowed under DCC 18.66.040 proposing to occupy more than 4,000 square feet of floor area in a building or buildings, subject to provisions of DCC 18.66.040(E).
  3. Child care facility and/or preschool.
- C. Conditional Uses. The following uses and their accessory uses are permitted subject to the applicable provisions of DCC 18.66, 18.116, 18.124 and 18.128:
1. Motel, with a maximum of 35 units, only if served by a community sewer system as defined in OAR 660-22-010(2).
  2. Recreational vehicle park.
  3. Religious institutions or assemblies.
  4. Type 2 or Type 3 Home Occupation, subject to DCC 18.116.280.
  5. Public or private school.
  6. Park.
  7. Public or semi-public building.
  8. Medical center in a building or buildings not exceeding 4,000 square feet of floor space.
  9. Utility facility.
  10. Water supply or treatment facility.
  11. Vehicle and trailer sales, service, repair or rental in a building or buildings not exceeding 4,000 square feet of floor space.
  12. Uses listed below carried on in a building or buildings not exceeding 4,000 square feet of floor space with no exterior displays or storage of industrial equipment, industrial vehicles or industrial products:
    - a. Manufacturing and production.
    - b. Wholesale sales.
    - c. Mini-storage.
  13. Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).
  14. Surface mining of mineral and aggregate resources in conjunction with the operation and maintenance of irrigation systems operated by an Irrigation District, including the excavation and mining for facilities, ponds, reservoirs, and the off-site use, storage, and sale of excavated material.
  15. Marijuana retailing, subject to the provisions of DCC 18.116.330.
  16. Psilocybin service centers, subject to the provisions of DCC 18.116.380.

## HISTORY

Adopted by Ord. [97-003 §2](#) on 6/4/1997

Amended by Ord. [97-063 §3](#) on 11/12/1997

Amended by Ord. [2004-002 §15](#) on 4/28/2004

Amended by Ord. [2015-004 §3](#) on 4/22/2015

Amended by Ord. [2016-015 §5](#) on 7/1/2016

Amended by Ord. [2020-001 §7](#) on 4/21/2020

Amended by Ord. [2020-010 §3](#) on 7/3/2020

Amended by Ord. [2021-004 §3](#) on 5/27/2021

*Amended by Ord. [2022-xxx §x](#) on x/x/2022*

## CHAPTER 18.67 TUMALO RURAL COMMUNITY ZONING DISTRICTS

18.67.040 Commercial (TuC) District

18.67.060 Industrial (Tul) District

### 18.67.040 Commercial (TuC) District

The Tumalo Commercial District is intended to allow a range of limited commercial and industrial uses to serve the community and surrounding area.

- A. Permitted Uses. The following uses and their accessory uses are permitted outright and do not require site plan review.
  1. Single-family dwelling or duplex.
  2. Manufactured home subject to DCC 18.116.070.
  3. Type 1 Home Occupation, subject to DCC 18.116.280.
  4. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards of DCC 18.67.060 and 18.116.230.
  5. Class III road or street project.
  6. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
- B. Uses Permitted, Subject to Site Plan Review. The following uses and their accessory uses are permitted subject to the applicable provisions of DCC 18.67, 18.116 and 18.124:
  1. A building or buildings, none of which exceeds 4,000 square feet of floor space to be used by any combination of the following uses:
    - a. Retail or service business.
    - b. Eating and/or drinking establishment.
    - c. Offices.
    - d. Residential use in the same building as a use permitted in DCC 18.67.040.
    - e. Marijuana wholesaling, office only. There shall be no storage of marijuana items or products at the same location.
  2. Any of the uses listed under DCC 18.67.040 proposing to occupy more than 4,000 square feet of floor area in a building subject to the provisions of DCC 18.67.040(E).
  3. Child care facility and/or preschool.

- C. Conditional Uses. The following uses and their accessory uses are permitted subject to the applicable provisions of DCC 18.116, 18.124, and 18.128:
1. Religious institutions or assemblies.
  2. Bed and breakfast inn.
  3. Type 2 or Type 3 Home Occupation, subject to DCC 18.116.280.
  4. Park.
  5. Public or semi-public building.
  6. Utility facility.
  7. Water supply or treatment facility.
  8. Manufactured home/RV park on a parcel in use as a manufactured home park or recreational vehicle park prior to the adoption of PL-15 in 1979 and being operated as of June 12, 1996 as a manufactured home park or recreational vehicle park, including any expansion of such uses on the same parcel as configured on June 12, 1996.
  9. The following uses and their accessory uses may be conducted in a building or buildings not to exceed 4,000 square feet of floor space.
    - a. Farm equipment, sales, service or repair.
    - b. Trailer sales, service or repair.
    - c. Vehicle service or repair.
    - d. Veterinary clinic.
  10. The following uses may be conducted in a building or buildings not to exceed 10,000 square feet of floor space:
    - a. Manufacturing or production.
    - b. Wholesale sales.
    - c. Marijuana retailing, subject to the provisions of DCC 18.116.330.
  11. Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).
  12. Surface mining of mineral and aggregate resources in conjunction with the operation and maintenance of irrigation systems operated by an Irrigation District, including the excavation and mining for facilities, ponds, reservoirs, and the off-site use, storage, and sale of excavated material.
  13. Psilocybin service centers, subject to the provisions of DCC 18.116.380.

## HISTORY

Adopted by Ord. [97-033 §2](#) on 6/25/1997

Amended by Ord. [97-063 §3](#) on 11/12/1997

Amended by Ord. [2000-033 §11](#) on 12/6/2000

Amended by Ord. [2001-016 §2](#) on 3/28/2001

Amended by Ord. [2001-039 §8](#) on 12/12/2001

Amended by Ord. [2004-002 §19](#) on 4/28/2004

Amended by Ord. [2004-013 §7](#) on 9/21/2004

Amended by Ord. [2015-004 §5](#) on 4/22/2015

Amended by Ord. [2016-015 §6](#) on 7/1/2016

Amended by Ord. [2020-001 §8](#) on 4/21/2020

Amended by Ord. [2020-010 §4](#) on 7/3/2020

Amended by Ord. [2021-004 §4](#) on 5/27/2021

Amended by Ord. [2021-013 §8](#) on 4/5/2022

[Amended by Ord. 2022-xxx §x on x/x/2022](#)

### **[18.67.060 Industrial \(Tul\) District](#)**

The purpose of the Industrial District is to allow a limited range of industrial uses to serve the community and the surrounding area.

- A. Uses permitted outright. The following uses and their accessory uses are permitted outright:
1. Industrial uses in existence on the date of adoption of the Unincorporated Communities rule, OAR 660-022 (October 28, 1994);
  2. Office buildings associated with industrial uses in existence on the date of adoption of the Unincorporated Communities rule, OAR 660-022 (October 28, 1994);
  3. Restaurants and cafeteria facilities associated with industrial uses in existence on the date of adoption of the Unincorporated Communities rule, OAR 660-022 (October 28, 1994);
  4. Residence for caretaker or night watchman on property with industrial uses in existence on the date of adoption of the Unincorporated Communities rule, OAR 660-022 (October 28, 1994);
  5. Equipment storage associated with industrial uses in existence on the date of adoption of the Unincorporated Communities rule, OAR 660-022 (October 28, 1994);
  6. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards of DCC 18.67.080 and 18.116.230.
  7. Class III road or street project.
  8. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.

- B. Uses Permitted, Subject to Site Plan Review. The following uses and their accessory uses are permitted in a building or buildings not to exceed 40,000 square feet of floor area, subject to the applicable provisions of DCC 18.67, 18.116, and 18.124.
1. Expansion or replacement of uses allowed under DCC 18.67.060(A);
  2. Office buildings associated with industrial uses;
  3. Restaurant and cafeteria facilities associated with industrial uses;
  4. Residence for caretaker or night watchman on property with industrial uses;
  5. Equipment storage associated with industrial uses;
  6. Primary processing, packaging, treatment, bulk storage and distribution of the following products:
    - a. Agricultural products, including foodstuffs, animal and fish products, and animal feeds.
    - b. Ornamental horticultural products and nurseries.
    - c. Softwood and hardwood products excluding pulp and paper manufacturing.
    - d. Sand, gravel, clay and other mineral products.
  7. Freight depot, including the loading, unloading, storage and distribution of goods and materials by railcar or truck;
  8. Contractor's or building materials business and other construction-related business including plumbing, electrical, roof, siding, etc.;
  9. Welding, sheet metal, or machine shop provided such is wholly enclosed within a building or all outside storage is enclosed by site-obscuring fencing.
  10. Mini-storage facility.
  11. Manufacturing, storage, sales, rental, repair and servicing of equipment and materials associated with farm and forest uses, logging, road maintenance, mineral extraction, construction or similar rural activities;
  12. Any industrial use proposing to occupy more than 40,000 square feet of floor area in a building or buildings is subject to the provisions of DCC 18.67.060(C) and (D).
- C. Conditional Uses. The following uses and their accessory uses are permitted subject to the applicable provisions of DCC 18.116, 18.124, and 18.128:
1. Any use permitted by DCC 18.67.060(B) which will exceed 40,000 square feet of floor area;
  2. Concrete or ready mix plant;

3. Stockpiling, storage, crushing and processing of minerals, including the processing of aggregate into asphaltic concrete or Portland Cement Concrete;
4. Buildings, structures, apparatus, equipment and appurtenances necessary for the above uses to be carried on.
5. Marijuana retailing, subject to the provisions of DCC 18.116.330.

6. Psilocybin testing laboratories.

HISTORY

*Adopted by Ord. [2005-016 §1](#) on 4/27/2005*

*Amended by Ord. [2015-004 §6](#) on 4/22/2015*

*Amended by Ord. [2016-015 §6](#) on 7/1/2016*

*Amended by Ord. [2021-004 §4](#) on 5/27/2021*

*[Amended by Ord. 2022-xxx §x on x/x/2022](#)*



## **CHAPTER 18.74 RURAL COMMERCIAL ZONE**

[18.74.020 Uses Permitted; Deschutes Junction And Deschutes River Woods Store](#)

[18.74.027 Uses Permitted; Pine Forest And Rosland](#)

### **18.74.020 Uses Permitted; Deschutes Junction And Deschutes River Woods Store**

- A. Uses Permitted Outright. The following uses and their accessory uses are permitted outright and do not require site plan review:
1. Single-family dwelling.
  2. Manufactured home subject to DCC 18. 1 16. 070.
  3. Two-family dwelling.
  4. Type 1 Home Occupation, subject to DCC 18. 1 16. 280.
  5. Agricultural uses.
  6. Class I and II road or street project subject to approval as part of a land partition or subdivision, or subject to the standards and criteria established in DCC 18.116.230.
  7. Class III road or street project.
  8. A lawfully established use existing as of 11/05/02, the date this chapter was adopted, not otherwise permitted by this chapter.
- B. Uses Permitted Subject to Site Plan Review. The following uses and their accessory uses are permitted subject to the applicable provisions of this chapter and DCC 18.116 and 18.124:
1. A building or buildings not exceeding 2,500 square feet of floor space to be used by any combination of the following uses.
    - a. Restaurant, café or delicatessen.
    - b. Grocery store.
    - c. Tavern.
    - d. Retail sporting goods and guide services.
    - e. Barber and beauty shop.
    - f. General store.
    - g. Video store.



2. Recreational vehicle park
3. Mini-storage facilities limited to 35,000 square feet in size.
4. Marijuana retailing, subject to the provisions of DCC 18.116.330.
5. Psilocybin service centers, subject to the provisions of DCC 18.116.380.

#### HISTORY

*Adopted by Ord. [2002-019 §2](#) on 8/7/2002*

*Amended by Ord. [2004-002 §20](#) on 4/28/2004*

*Amended by Ord. [2008-008 §1](#) on 3/18/2008*

*Amended by Ord. [2015-004 §7](#) on 4/22/2015*

*Amended by Ord. [2016-015 §7](#) on 7/1/2016*

*Amended by Ord. [2020-001 §9](#) on 4/21/2020*

*Amended by Ord. [2020-010 §5](#) on 7/3/2020*

*Amended by Ord. [2021-013 §9](#) on 4/5/2022*

*[Amended by Ord. 2022-xxx §x on x/x/2022](#)*

#### 18.74.027 Uses Permitted; Pine Forest And Rosland

- A. Uses Permitted Outright. Any use listed as a use permitted outright by DCC 18.74.020(A).
- B. Uses Permitted subject to Site Plan Review. The following uses and their accessory uses are permitted subject to the applicable provisions of this chapter and DCC 18.116 and 18.124:
  1. A building or buildings each not exceeding 2,500 square feet of floor space to be used by any combination of the following uses that serve the surrounding rural area or the travel needs of persons passing through the area:
    - a. Eating and drinking establishments.
    - b. Retail store, office and service establishments.
    - c. Marijuana wholesaling, office only. There shall be no storage of marijuana items or products at the same location.
  2. Expansion of a nonconforming use existing as of 11/05/2002 shall be limited to 2,500 square feet or 25 percent of the size of the building (or portion of the building) housing the nonconforming use as of said date, whichever is greater.
  3. A building or buildings each not exceeding 3,500 square feet of floor space to be used by any combination of the following uses:
    - a. Sales of agricultural or farm products.
    - b. Farm machinery sales and repair.

- c. Kennel or veterinary clinic.
  - d. Automobile service station, repair garage, towing service, fuel storage and fuel sales.
  - e. Public or semi-public use.
  - f. Residential use in the same building as a use permitted in this chapter.
  - g. Park or playground.
4. Expansion of a nonconforming use existing as of 11/05/2002 shall be limited to 3,500 square feet each or 25 percent of the size of the building (or portion of the building) housing the nonconforming use as of said date, whichever is greater.
  5. Child care facility and/or preschool.
- C. Conditional Uses. The following uses and their accessory uses are permitted subject to the applicable provisions of this chapter and DCC 18.116, 18.124 and 18.128:
1. A building or buildings each not exceeding 3,500 square feet of floor space to be used by any of the following uses:
    - a. Home occupation as defined in DCC 18.04.
    - b. Utility facility.
    - c. Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).
    - d. Religious institutions or assemblies.
    - e. School.
    - f. Marijuana retailing, subject to the provisions of DCC 18.116.330.
  2. Recreational vehicle park.
  3. Mini-storage facilities limited to 35,000 square feet in size.
  4. Psilocybin service centers, subject to the provisions of DCC 18.116.380.

#### HISTORY

Adopted by Ord. [2003-080 §1](#) on 1/6/2004  
 Amended by Ord. [2007-007 §1](#) on 3/5/2007  
 Amended by Ord. [2008-008 §1](#) on 3/18/2008  
 Amended by Ord. [2015-004 §7](#) on 4/22/2015  
 Amended by Ord. [2016-015 §7](#) on 7/1/2016  
 Amended by Ord. [2020-001 §9](#) on 4/21/2020  
 Amended by Ord. [2020-010 §5](#) on 7/3/2020  
 Amended by Ord. [2022-xxx §x on x/x/2022](#)

## CHAPTER 18.100 RURAL INDUSTRIAL ZONE; R-I

### 18.100.020 Conditional Uses

#### 18.100.020 Conditional Uses

The following uses may be allowed subject to DCC 18.128:

- A. Any use permitted by DCC 18.100.010, which is located within 600 feet of a residential dwelling, a lot within a platted subdivision or a residential zone.
- B. Any use permitted by DCC 18.100.010, which involves open storage.
- C. Concrete or ready-mix plant.
- D. Petroleum products storage and distribution.
- E. Storage, crushing and processing of minerals, including the processing of aggregate into asphaltic concrete or Portland Cement Concrete.
- F. Commercial feedlot, stockyard, sales yard, slaughterhouse and rendering plant.
- G. Railroad trackage and related facilities.
- H. Pulp and paper manufacturing.
- I. Any use permitted by DCC 18.100.010, which is expected to exceed the following standards:
  - 1. Lot coverage in excess of 70 percent.
  - 2. Generation of any odor, dust, fumes, glare, flashing lights or noise that is perceptible without instruments 500 feet from the property line of the subject use.
- J. Manufacture, repair or storage of articles manufactured from bone, cellophane, cloth, cork, feathers, felt, fiber, glass, stone, paper, plastic, precious or semiprecious stones or metal, wax, wire, wood, rubber, yarn or similar materials, provided such uses do not create a disturbance because of odor, noise, dust, smoke, gas, traffic or other factors.
- K. Processing, packaging and storage of food and beverages including those requiring distillation and fermentation.
- L. Public Landfill Transfer Station, including recycling and other related activities.
- M. Mini-storage facility.
- N. Automotive wrecking yard totally enclosed by a sight-obscuring fence.
- O. Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).
- P. Utility facility.

- Q. Manufacturing, storage, sales, rental, repair and servicing of equipment and materials associated with farm and forest uses, logging, road maintenance, mineral extraction, construction or similar rural activities.
- R. Electrical substations.
- S. Marijuana retailing, subject to the provisions of DCC 18.116.330.

T. Psilocybin testing laboratories.

HISTORY

*Adopted by Ord. [PL-15](#) on 11/1/1979*

*Amended by Ord. [86-018](#) §15 on 6/30/1986*

*Amended by Ord. [90-014](#) §38 on 7/12/1990*

*Amended by Ord. [91-020](#) §1 on 5/29/1991*

*Amended by Ord. [91-038](#) §1 on 9/30/1991*

*Amended by Ord. [97-063](#) §3 on 11/12/1997*

*Amended by Ord. [2001-016](#) §2 on 3/28/2001*

*Amended by Ord. [2001-039](#) §12 on 12/12/2001*

*Amended by Ord. [2002-126](#) §1 on 12/11/2002*

*Amended by Ord. [2004-013](#) §10 on 9/21/2004*

*Amended by Ord. [2016-015](#) §8 on 7/1/2016*

*Amended by Ord. [2018-006](#) §12 on 11/20/2018*

*Amended by Ord. [2021-004](#) §5 on 5/27/2021*

*Amended by Ord. [2022-xxx](#) §x on x/x/2022*

**CHAPTER 18.108 URBAN UNINCORPORATED COMMUNITY ZONE; SUNRIVER**

[18.108.050 Commercial; C District](#)

[18.108.055 Town Center; TC District](#)

**18.108.050 Commercial; C District**

- A. Uses Permitted Outright. Any combination of the following uses and their accessory uses are permitted outright in the C district.
1. Recreational path.
  2. Ambulance service.
  3. Library.
  4. Religious institutions or assemblies.
  5. Bus stop.
  6. Community center.
  7. A building or buildings each not exceeding 8,000 square feet of floor space housing any combination of:
    - a. Retail/rental store, office and service establishment.
    - b. Art galleries
    - c. Dry cleaner and/or self-service laundry establishment.
    - d. Radio and television sales and service.
    - e. Radio and television broadcasting studios and facilities, except towers.
    - f. Restaurant, bar and cocktail lounge, including entertainment.
    - g. Automobile service station.
    - h. Technical and business school.
    - i. Catering establishment.
    - j. Crafts in conjunction with retail sales (occurring on premises, such as stained glass/pottery, etc.).
    - k. Medical and dental clinic, office and laboratory.
    - l. Theater not exceeding 4,000 square feet of floor area.

- m. Marijuana wholesaling, office only. There shall be no storage of marijuana items or products at the same location.
  8. Multiple-family residential dwelling units, subject to the provisions of DCC 18.108.050(C)(1).
  9. Residential dwelling units constructed in the same building as a commercial use, subject to the provisions of DCC 18.108.050(C)(2).
  10. Post Office.
  11. Administrative and office facility associated with a community association or community use.
  12. Police facility.
- B. Conditional Uses Permitted. The following conditional uses may be permitted subject to DCC 18.128 and a conditional use permit.
1. Public buildings and public utility buildings and structures.
  2. Club, lodge or fraternal organization.
  3. Commercial off-street parking lot.
  4. Bus passenger station.
  5. Interval ownership and/or time-share unit or the creation thereof.
  6. Miniature golf.
  7. Bed and breakfast inn.
  8. Inn.
  9. Residential facility.
  10. A building or buildings each not exceeding 8,000 square feet of floor space housing any combination of:
    - a. Bowling alley.
    - b. Car wash.
    - c. Dancing or music school, nursery school, kindergarten and day-care facility.
    - d. Theater exceeding 4,000 square feet in floor area.
    - e. Veterinary clinic or kennel operated entirely within an enclosed building.
    - f. Automotive repair and maintenance garage, or tire store, provided the business is wholly conducted within an enclosed building.
    - g. Marijuana retailing, subject to the provisions of DCC 18.116.330.



11. Psilocybin service centers, subject to the provisions of DCC 18.116.380.

HISTORY

*Repealed & Reenacted by Ord. [97-078 §2](#) on 12/31/1997*

*Amended by Ord. [98-016 §1](#) on 3/11/1998*

*Amended by Ord. [2003-026 §1](#) on 7/9/2003*

*Amended by Ord. [2015-004 §9](#) on 4/22/2015*

*Amended by Ord. [2016-015 §9](#) on 7/1/2016*

*Amended by Ord. [2020-001 §12](#) on 4/21/2020*

*[Amended by Ord. 2022-xxx §x on x/xx/2022](#)*

18.108.055 Town Center; TC District

A. Uses Permitted Outright. The following uses and their accessory uses are permitted outright in the TC District.

1. Park or plaza.
2. Library.
3. Community center.
4. Visitors center.
5. A building, or buildings each not exceeding 8,000 square feet of floor space, unless approved as a Large Scale Use pursuant to DCC 18.108.055(C), including any of the following uses:
  - a. Retail/rental store, office, civic and service establishment.
  - b. Grocery store.
  - c. Art gallery.
  - d. Restaurant, bakery, delicatessen, pub, cocktail lounge, including entertainment.
  - e. Health care service including medical and dental clinic, office, pharmacy, and laboratory but excluding nursing homes.
  - f. Health & fitness facility.
  - g. Barber, beauty shop or spa.
  - h. Child care center, preschool and daycare facility.
  - i. Bank.
  - j. Post office.
  - k. Veterinary clinic (without animal boarding facilities).

- l. Crafts in conjunction with retail sales (occurring on premises such as sculpture, stained glass, pottery, etc.).
    - m. Meeting room, convention and banquet facility.
    - n. Property sales, mortgage, management or rental office.
    - o. Movie theater.
6. Multi-family Residential, subject to paragraphs (E)(1) and (2).
7. Developed recreational facilities, outdoors or in a building or buildings each not exceeding 8,000 square feet of floor space, unless approved as a Large Scale Use pursuant to DCC 18.108.055(C), including, but not limited to the following facilities:
  - a. Indoor and outdoor swimming pools.
  - b. Ice skating rink.
  - c. Indoor and outdoor tennis courts.
  - d. Indoor and outdoor basketball court or other ball field.
  - e. Physical fitness facilities.
  - f. Park, playground and picnic and barbeque area.
  - g. Walkways, bike paths, jogging paths.
  - h. Bowling alley.
  - i. Arcade.
8. Hotel with up to 100 hotel units in a single building.
9. Mixed Use Structure, subject to the rules of DCC 18.108.055(E)(3) and a limit of 8,000 square feet of floor space for commercial uses listed in DCC 18.108.055(A)(5) or recreational uses listed in DCC 18.108.055(A)(7), unless said uses are approved as large scale uses pursuant to DCC 18.108.055(C).
10. Residential Facility.
11. Senior housing/assisted living or active adult development, excluding nursing homes.
12. Townhomes, subject to paragraphs (E)(1) and (2).
13. Accessory uses to uses permitted outright, including, but not limited to, parking facilities, private roads, storage facilities, trash receptacles and recycling areas.
14. Similar uses to those allowed outright, provided they are approved by the County in the decision approving the Conceptual Site Plan described in DCC 18.108.055(K).
15. Religious institutions or assemblies.

B. Conditional Uses Permitted. The following conditional uses may be permitted pursuant to the provisions of DCC 18.128, Conditional Use Permits.

1. Public buildings and public utility buildings and structures.
2. Bed and breakfast inn.
3. Ambulance service.
4. Fire station.
5. Police station.
6. Bus passenger station.
7. Live/work residence.
8. Stand-alone parking structure.
9. Accessory uses to the above-listed conditional uses.
10. Marijuana retailing, subject to the provisions of DCC 18.116.330.

11. Psilocybin service centers, subject to the provisions of DCC 18.116.380.

#### HISTORY

*Adopted by Ord. [2008-015 §2](#) on 6/30/2008*

*Amended by Ord. [2015-004 §9](#) on 4/22/2015*

*Amended by Ord. [2016-015 §9](#) on 7/1/2016*

*Amended by Ord. [2020-001 §12](#) on 4/21/2020*

*[Amended by Ord. 2022-xxx §xx on x/xx/2022](#)*

**CHAPTER 18.116 SUPPLEMENTARY PROVISIONS**18.116.380 Psilocybin Manufacturing, Service Centers, and Testing Laboratories**18.116.380 Psilocybin Manufacturing, Service Centers, and Testing Laboratories****A. Applicability. Section 18.116.380 applies to:**

1. Psilocybin Manufacture as a Farm Use in the EFU zone.
2. Psilocybin Manufacture as a Processing Use in the EFU zone.
3. Psilocybin Service Centers in the RC, RSC, SUC, SUTC, TeC, and TuC zones.
4. Psilocybin Testing Laboratories in the Tul zone.

**B. Psilocybin Manufacture as a Farm Use. Psilocybin manufacture as a farm use shall be subject to the following standards:**

1. Indoor Fungi Cultivation. Psilocybin-producing fungi must be grown indoors. Fungi cultivation is prohibited in any outdoor area.
2. Setbacks. Setback requirements shall be applied from the underlying zone.
3. Separation distances.

**a. Psilocybin manufacture as a farm use shall be located a minimum of 1,000 feet from:**

- (1) A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or
- (2) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030 (1)(a)

**b. Notwithstanding DCC 18.116.380(D)(3)(a), psilocybin manufacture as a farm use may be located within 1,000 feet of a school if:**

- (1) The psilocybin service center is not located within 500 feet of:
  - i. A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or
  - ii. A private or parochial elementary or secondary school, teaching children as described in ORS 339.030 (1)(a); and
- (2) The Oregon Health Authority determines that there is a physical or geographic barrier capable of preventing children from traversing to the premises of the psilocybin manufacture as a farm use.

4. Prohibited Uses.

a. In the EFU zone, the following uses are prohibited:

- (1) A new dwelling used in conjunction with a psilocybin-producing fungi crop;
- (2) A farm stand, as described in DCC 18.16.038(C), used in conjunction with a psilocybin-producing fungi crop; and

C. Psilocybin Manufacture as a Processing Use. Psilocybin manufacture as a processing use shall be subject to the standards in DCC 18.16.025(I).

D. Psilocybin service centers. Psilocybin service centers shall be subject to the following standards:

1. Co-Location. The operation of a psilocybin service center may be carried on in conjunction with a psilocybin-producing fungi crop.

2. Separation distances.

a. Psilocybin service centers shall be located a minimum of 1,000 feet from:

- (1) A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or
- (2) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030 (1)(a)

b. Notwithstanding DCC 18.116.380(D)(3)(a), a psilocybin service center may be located within 1,000 feet of a school if:

- (1) The psilocybin service center is not located within 500 feet of:
 
  - i. A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or
  - ii. A private or parochial elementary or secondary school, teaching children as described in ORS 339.030 (1)(a); and

(2) The Oregon Health Authority determines that there is a physical or geographic barrier capable of preventing children from traversing to the premises of the psilocybin service center.

3. Setbacks. Setback requirements shall be applied from the underlying zone.

4. Hours of Operation. Hours of operation shall be no earlier than 7:00 a.m. and no later than 7:00 p.m. on the same day.

HISTORY

Adopted by Ord. 2022-xxx §x on x/x/2022

## FINDINGS

### I. PROPOSAL

This is a legislative text amendment to Deschutes County Code (DCC), Title 18, County Zoning. The primary purpose of the amendments is to create time, place, and manner regulations concerning psilocybin manufacturing, service centers, and testing laboratories. A brief summary of the amendments are as follows:

- DCC 18.04.030: Adds new definitions for terms relating to psilocybin.
- DCC 18.65, 18.66, 18.67, 18.74, 18.108: Adds psilocybin service centers as a conditional use with site plan review
- DCC 18.116.380: Adds a new chapter creating time, place, and manner criteria for psilocybin manufacture as farm use; psilocybin manufacture as a processing use; psilocybin service centers.

### II. BACKGROUND

On November 3, 2020, Oregon voters approved Ballot Measure 109, the Psilocybin Program Initiative, which legalized psilocybin in Oregon subject to the criteria noted in the measure and subsequent rulemaking.

Measure 109 automatically opts cities and counties into the psilocybin program, which first underwent a two-year development period, 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 June 1, 2022, staff provided the Board of County Commissioners (Board) with an overview of Measure 109.<sup>1</sup> During the discussion, staff noted the compressed timeline: Oregon Health Authority (OHA), which administers the program and the licensing system, was engaged in rulemaking throughout late 2021 and all of 2022, with completion anticipated by December 2022, yet OHA is due to begin accepting applications for licenses on January 2, 2023. OHA licenses will require a Land Use Compatibility Statement (LUCS) to be issued by the County. This timeline placed the Board—as well as the industry and the public—in a difficult position of not knowing key aspects of the program in advance of the program beginning.

On July 13, 2022, the Board of County Commissioners 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.<sup>2</sup> The Board deliberated on the matter on July 20 and adopted a first reading of Ordinance No. 2022-

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

<sup>2</sup> <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-63>

009; second reading occurred on August 8. The opt-out measure will be subject to Deschutes County voters for the November 8, 2022 General Election. If the voters overturn the opt out, these TPM amendments will proceed to adoption.

Measure 109—and the corresponding Oregon Revised Statute 475A.530—allows cities and counties to adopt “reasonable regulations” for time, place, and manner (TPM) concerning psilocybin businesses. 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.<sup>3</sup>

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. 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.

### III. REVIEW CRITERIA

Deschutes County lacks specific criteria in DCC Titles 18, 22, or 23 for reviewing a legislative text amendment. Nonetheless, since Deschutes County is initiating one, the County bears the responsibility for justifying that the amendments are consistent with Statewide Planning Goals and its existing Comprehensive Plan.

### IV. FINDINGS

#### CHAPTER 22.12, LEGISLATIVE PROCEDURES

##### Section 22.12.010.

##### ***Hearing Required***

**FINDING:** This criterion will be met because a public hearing was held before the Deschutes County Planning Commission and Board of County Commissioners.

##### Section 22.12.020, Notice

##### ***Notice***

##### ***A. Published Notice***

---

<sup>3</sup> <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-65>

1. ***Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.***
2. ***The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.***

**FINDING:** This criterion will be met as notice was published in the Bend Bulletin newspaper for the Planning Commission public hearing, and the Board of County Commissioners' public hearing.

- B. *Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.***

**FINDING:** Posted notice was determined by the Planning Director not to be necessary.

- C. *Individual notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.***

**FINDING:** Given the proposed legislative amendments do not apply to any specific property, no individual notices were sent.

- D. *Media notice. Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.***

**FINDING:** Notice was provided to the County public information official for wider media distribution. This criterion is met.

Section 22.12.030 Initiation of Legislative Changes.

***A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of County Commissioners.***

**FINDING:** The application was initiated by the Deschutes County Planning Division at the direction of the Board of County Commissioners, and has received a fee waiver. This criterion is met.

Section 22.12.040. Hearings Body

- A. *The following shall serve as hearings or review body for legislative changes in this order:***
1. ***The Planning Commission.***
  2. ***The Board of County Commissioners.***
- B. *Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.***



**FINDING:** The Deschutes County Planning Commission held the initial public hearing on September 29, 2022. The Board then held a public hearing on [TBD]. These criteria are met.

Section 22.12.050 Final Decision

***All legislative changes shall be adopted by ordinance***

**FINDING:** The proposed legislative changes will be implemented by Ordinance No. [number TBD] upon approval and adoption by the Board of County Commissioners. This criterion will be met.

**A. Statewide Planning Goals and Guidelines**

Goal 1: Citizen Involvement: The amendments do not propose to change the structure of the County's citizen involvement program. Notice of the proposed amendments were provided to the *Bulletin* for each public hearing.

Goal 2: Land Use Planning: This goal is met because ORS 197.610 allows local governments to initiate post acknowledgments plan amendments (PAPA). An Oregon Land Conservation and Development Department 35-day notice was initiated on August 25, 2021. The Planning Commission held a public hearing on September 29, 2022 and the Board of County Commissioners held a public hearing on [TBD]. This Findings document provides the adequate factual basis for the amendments.

Goal 3: Agricultural Lands: Measure 109 and the corresponding Oregon Revised Statute 475A.570(2) specify that psilocybin-producing fungi is:

- (a) A crop for the purposes of "farm use" as defined in ORS 215.203;
- (b) A crop for purposes of a "farm" and "farming practice," both as defined in ORS 30.930;
- (c) A product of farm use as described in ORS 308A.062; and
- (d) The product of an agricultural activity for purposes of ORS 568.909.

The statute clearly permits the production of psilocybin-producing fungi in Exclusive Farm Use zones. DCC 18.16.025 allows small-scale processing of farm crops, provided that the facility uses less than 10,000 square feet for its processing area and complies with all applicable siting standards. Processing facilities smaller than 2,500 square feet are exempt from any applicable siting standards.

ORS 475A.570(2) also prohibits psilocybin-related farm dwellings, psilocybin-related farm stands and commercial activities in conjunction with a psilocybin farm use. The proposed amendments to the County Code are consistent with these provisions of state law and are therefore consistent with Goal 3.

Goal 4: Forest Lands: No changes related to forest lands are proposed as part of the text amendments. This goal does not apply.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources: Goal 5 is to protect natural resources and conserve scenic and historical areas and open spaces. OAR 660-023-0250(3) states that local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. The proposed text amendments do not create or amend a resource list or any portion of the County's acknowledged Comprehensive Plan or land use regulations adopted to protect a significant Goal 5 resource or to address specific requirements of Goal 5. The proposed text amendments do not allow new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list because the County's LM and WA overlay zones are not changed in these proposed amendments. For these reasons, the proposed text amendments are in compliance with Goal 5.

Goal 6: Air, Water and Land Resources Quality: The proposed text amendments do not propose to change the County's Plan policies or implementing regulations for compliance with Goal 6. The text amendments will not impact the quality of the air, water, and land resources of the County given the fact that psilocybin farm use is required to take place fully indoors, is not odorous and is not a water-intensive use. Psilocybin service centers are proposed to be limited to commercially-zoned areas and therefore will not impact the quality of land resources. For these reasons, the proposed text amendments are in compliance.

Goal 7: Areas Subject to Natural Disasters and Hazards: The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding natural disasters and hazards; therefore, they are in compliance.

Goal 8: Recreational Needs: The text amendments do not propose to change the County's Plan or implementing regulations regarding recreational needs; therefore, they are in compliance.

Goal 9: Economic Development: Goal 9 and its implementing regulations focus on economic analysis and economic development planning required in urban Comprehensive Plans to ensure there is adequate land available to realize economic growth and development opportunities. The proposed amendments apply to rural lands and do not propose to amend the Comprehensive Plan. The proposed text amendments will encourage economic development in the County as they will provide new business and economic development opportunities. Because these new businesses will be taxed, the public will benefit, as well. For these reasons, the proposed text amendments are in compliance with Goal 9.

Goal 10: Housing: This goal is not applicable because, unlike municipalities, unincorporated areas are not obligated to fulfill certain housing requirements.

Goal 11: Public Facilities and Services: Complies because the text amendments do not propose to change the County's Plan or implementing regulations regarding public facilities and services.

Goal 12: Transportation: Goal 12 is to provide and encourage a safe, convenient and economic transportation system. The proposed text amendments will not change the functional classification of any existing or planned transportation facility or standards implementing a functional classification system. The proposed text amendments will not allow any new uses expected to result

in transportation system impacts that differ in degree or severity from other allowed or allowable uses in the zones in which psilocybin manufacture and/or psilocybin service centers could be sited.

Goal 13: Energy Conservation: The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding energy conservation. Therefore, compliance with Goal 13 is established.

Goal 14: Urbanization: The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding urbanization. Therefore, compliance with Goal 14 is established.

Goals 15 through 19 are not applicable to the proposed text amendments because the County does not contain these types of lands.

#### **D. Deschutes County Comprehensive Plan**

Chapter 1, Comprehensive Planning: This chapter sets the Goals and Policies of how the County will involve the community and conduct land use planning. As described above, the proposed regulations will be discussed at work sessions with the Board of County Commissioners, as well as to the Planning Commission, which is the County's official committee for public involvement. Both will conduct separate public hearings.

These actions also satisfy the Goals and relevant Policies of Section 1.3, Land Use Planning Policies. Goal 1 of this section is to "maintain an open and public land use process in which decisions are based on the objective evaluation of facts." Staff, the Planning Commission, and the Board reviewed the text amendments.

Chapter 2, Resource Management: This chapter sets the Goals and Policies of how the County will protect resource lands, including but not limited to, Agriculture and Forest as well as Water Resources and Environmental Quality.

Section 2.2, Agricultural Lands Policies, states that Goal 1 is to "preserve and maintain agricultural lands and the agricultural industry."

As noted above, Measure 109 and the corresponding Oregon Revised Statute 475A.570(2) specify that psilocybin-producing fungi is:

- (a) A crop for the purposes of "farm use" as defined in ORS 215.203;
- (b) A crop for purposes of a "farm" and "farming practice," both as defined in ORS 30.930;
- (c) A product of farm use as described in ORS 308A.062; and
- (d) The product of an agricultural activity for purposes of ORS 568.909.

The statute clearly permits the production of psilocybin-producing fungi in Exclusive Farm Use zones. DCC 18.16.025 allows small-scale processing of farm crops, provided that the facility uses less than 10,000 square feet for its processing area and complies with all applicable siting standards. Processing facilities smaller than 2,500 square feet are exempt from any applicable siting standards. The proposed text amendments allow a new state-recognized agricultural use on agricultural lands.

Goal 2 promotes a diversified, sustainable, revenue-generating agricultural sector. Policy 2.2.10 calls for the promotion of economically viable opportunities and practices while Policy 2.2.11 encourages small farming enterprises including but not limited to, niche markets and organic farming and value-added projects. The proposed text amendments allow a new state-recognized agricultural use on agricultural lands, thereby satisfying this goal.

Goal 3 specifies the Exclusive Farm Use (EFU) policies, classifications, and codes are consistent with local and emerging agricultural conditions and markets. The proposed amendments are a direct response to changes in state law, which pursuant to Measure 109, recognize psilocybin-producing fungi as a farm crop. Resource lands devoted to agricultural use in Deschutes County will thereby permit the production of psilocybin-producing fungi, ensuring consistency between local code, emerging markets, and state law.