



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS MEETING

9:00 AM, WEDNESDAY, NOVEMBER 1, 2023

Barnes Sawyer Rooms - Deschutes Services Building - 1300 NW Wall Street – Bend
(541) 388-6570 | www.deschutes.org

AGENDA

MEETING FORMAT: In accordance with Oregon state law, this meeting is open to the public and can be accessed and attended in person or remotely, with the exception of any executive session.

Members of the public may view the meeting in real time via YouTube using this link: <http://bit.ly/3mmlnzy>. To view the meeting via Zoom, see below.

Citizen Input: The public may comment on any topic that is not on the current agenda. Alternatively, comments may be submitted on any topic at any time by emailing citizeninput@deschutes.org or leaving a voice message at 541-385-1734.

When in-person comment from the public is allowed at the meeting, public comment will also be allowed via computer, phone or other virtual means.

Zoom Meeting Information: This meeting may be accessed via Zoom using a phone or computer.

- To join the meeting via Zoom from a computer, use this link: <http://bit.ly/3h3oqdD>.
- To join by phone, call 253-215-8782 and enter webinar ID # 899 4635 9970 followed by the passcode 013510.
- If joining by a browser, use the raise hand icon to indicate you would like to provide public comment, if and when allowed. If using a phone, press *6 to indicate you would like to speak and *9 to unmute yourself when you are called on.



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, call (541) 388-6572 or email brenda.fritsvold@deschutes.org.

Time estimates: The times listed on agenda items are estimates only. Generally, items will be heard in sequential order and items, including public hearings, may be heard before or after their listed times.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

CITIZEN INPUT: Citizen Input may be provided as comment on any topic that is not on the agenda.

Note: In addition to the option of providing in-person comments at the meeting, citizen input comments may be emailed to citizeninput@deschutes.org or you may leave a brief voicemail at 541.385.1734.

CONSENT AGENDA

1. Approval of minutes of the BOCC October 16 and 18, 2023 meetings

ACTION ITEMS

- [2.](#) **9:10 AM** Proclamation: National Hospice & Palliative Care Month
- [3.](#) **9:20 AM** Public Hearing: Historic Landmarks Commission Legislative Text Amendments
- [4.](#) **9:50 AM** Presentation: Healthy Schools 2022-2023 Annual Report
- [5.](#) **10:30 AM** Central Oregon Health Council Opportunity Grant
- [6.](#) **10:45 AM** Second Reading and Adoption of Ordinance No. 2023-022 amending Deschutes County Code section 6.12
- [7.](#) **10:50 AM** Economic Development Loan Conversion and Repayment Plan for Broken Top Candle Company
- [8.](#) **11:00 AM** Second reading of Ordinance No. 2023-014 - Rural Accessory Dwelling Unit Text Amendments
- [9.](#) **11:05 AM** Consideration to hear an appeal of the Hearings Officer's remand decision approving a single-family dwelling in the Forest Use Zone at 59770 Scale House Road, Bend
- [10.](#) **11:20 AM** Consideration to hear an appeal of a Hearings Officer's decision conditionally approving an outdoor motocross facility in the Rural Residential Zone at 7505 NW Eagle Dr in Redmond

- [11.](#) **11:35 AM** Bend UGB Expansion, Plan Amendment, and Zone Change – Stevens Road Tract

LUNCH RECESS

OTHER ITEMS

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

EXECUTIVE SESSION

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

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

12. Executive Sessions under ORS 192.660 (2) (e) Real Property Negotiations and ORS 192.660 (2) (d) Labor Negotiations

ADJOURN



For Recording Stamp Only

BEFORE THE BOARD OF COMMISSIONERS OF DESCHUTES COUNTY, OREGON

PROCLAMATION

Whereas, Deschutes County in partnership with Partners In Care acknowledges the importance of hospice and palliative care in providing compassionate end-of-life care and support to individuals and their families facing serious illnesses; and

Whereas, during National Hospice and Palliative Care Month, we recognize the invaluable services offered by hospice and palliative care programs across our County and region, and we honor the commitment of the professionals, volunteers, and organizations that make these services available to those in need; and

Whereas, by promoting conversations about end-of-life care preferences and ensuring early access to hospice and palliative care services, we can empower individuals to make informed decisions about their care and enhance the overall health and well-being of our communities; and

Whereas, hospice and palliative care providers in Deschutes County are dedicated to enhancing the quality of life for individuals with life-limiting illnesses, addressing their physical, emotional, and spiritual needs, and ensuring that they can live their remaining days with dignity and comfort; and

Whereas, Deschutes County is committed to ensuring equitable access to healthcare services, acknowledging the importance of social equity and inclusivity in the delivery of care.

Now, therefore be it resolved that the Deschutes County Board of Commissioners proclaims the month of November, 2023 to be

“Hospice & Palliative Care Month”

in Deschutes County in partnership with Partners In Care, and encourages community members across Central Oregon to start the conversation sooner and elect to use palliative care or hospice earlier when diagnosed with a serious or

terminal illness, so that both they and their loved ones can benefit from the holistic physical, emotional, and spiritual care support provided by hospice and palliative care teams.

Dated this ____ day of _____ 2023 by the Deschutes County Board of Commissioners.

Anthony DeBone, Chair

Patti Adair, Vice Chair

ATTEST:

Recording Secretary

Phil Chang, Commissioner



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: November 1, 2023

SUBJECT: Public Hearing: Historic Landmarks Commission Legislative Text Amendments

RECOMMENDED MOTION:

At the conclusion of the public hearing, the Board may:

- Continue the hearing to a date certain;
- Close the hearing and leave the written record open to a date certain; or
- Close the hearing and commence deliberations.

BACKGROUND AND POLICY IMPLICATIONS:

The Board of County Commissioners will conduct a public hearing on November 1 for Ordinance No. 2023-023, legislative text amendments to Deschutes County Code (DCC), Title 2, Administration, Chapter 2.28, Historic Preservation and Historic Landmarks Commission and to Chapter 2 of the Deschutes County Comprehensive Plan. The primary purpose of the amendments is to provide the option to suspend the Historic Landmarks Commission (HLC) upon Board order, and for review authority as described in DCC 2.28 to be vested in the Planning Divisions of Deschutes County or the City of Sisters as applicable. The amendments retain the ability for the Historic Landmarks Commission to be reinstated at any time.

BUDGET IMPACTS:

None

ATTENDANCE:

Tanya Saltzman, AICP, Senior Planner



MEMORANDUM

DATE: October 25, 2023

TO: Deschutes County Board of Commissioners

FROM: Tanya Saltzman, AICP, Senior Planner

RE: Public Hearing: Historic Landmarks Commission Amendments

The Board of County Commissioners will conduct a public hearing on November 1 for Ordinance No. 2023-023, legislative text amendments to Deschutes County Code (DCC), Title 2, Administration, Chapter 2.28, Historic Preservation and Historic Landmarks Commission and to Chapter 2 of the Deschutes County Comprehensive Plan. The primary purpose of the amendments is to provide the option to suspend the Historic Landmarks Commission (HLC) upon Board order, and for review authority as described in DCC 2.28 to be vested in the Planning Divisions of Deschutes County or the City of Sisters as applicable. The amendments retain the ability for the Historic Landmarks Commission to be reinstated at any time by the Board of County Commissioners (Board).

As detailed below, the Historic Landmarks Commission has been experiencing a slowdown in activity and currently lacks a quorum. Staff provided an update to the Board and received direction to proceed on August 30, 2023. 35-day Post-Acknowledgement Plan Amendment (PAPA) notice was provided to the Department of Land Conservation and Development (DLCD) on September 27, 2023. A work session was held with the Planning Commission on October 12, 2023.¹ A work session was held with the Board of County Commissioners on October 25, 2023.²

A. Historic Preservation and County Code

Historic resources are recognized by Statewide Planning Goal 5, Natural Resources, Scenic Views and Historic Areas and Open Spaces, and Oregon Administrative Rule (OAR) 660-023-0200. The Statewide Goal and OAR require basic protections for sites listed on the National Register of Historic Places and recommend the County to inventory and protect other historic or cultural sites.

¹ <https://www.deschutes.org/bc-pc/page/planning-commission-41>

² <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-133>

The Board of County Commissioners (Board) adopted Ordinance PL-21 on September 17, 1980 to establish the Deschutes County Historic Landmarks Commission and create a process to evaluate, designate and regulate historic resources throughout the rural county. The resulting local inventory of historical resources and National Register of Historic Places can be found in the County Comprehensive Plan. Deschutes County Code (DCC) Chapter 2.28 – Historic Preservation and Historic Landmarks Commission – provides procedures for protecting designated local and National Register historic resources. Chapter 2.28 also provides the basis for the establishment and duties of the Historic Landmarks Commission.

B. HLC Overview

Since 2011, the HLC has served as an advisory body for issues concerning historic and cultural resources for unincorporated Deschutes County and the City of Sisters and reviews development applications for alterations to designated historic sites and structures. The cities of Redmond and Bend have independent historic preservation review bodies. The Deschutes County Comprehensive Plan Section 2.11 Cultural and Historic Resources and Deschutes County Code (DCC) Chapter 2.28, Historic Preservation and Historic Landmarks Commission, establish the legal basis for the HLC.

Deschutes County, together with Sisters, is a Certified Local Government (CLG). The Certified Local Government program is designed to promote historic preservation at the local level. It is a federal program (National Park Service) that is administered by the Oregon State Historic Preservation Office (SHPO). Local governments must meet certain qualifications to become "certified" and thereby qualify to receive federal grants through SHPO and additional technical assistance. These requirements include:

- Establish a historic preservation commission;
- Pass a preservation ordinance that outlines how the local government will address historic preservation issues;
- Agree to participate in updating and expanding the state’s historic building inventory program;
- Agree to review and comment on any National Register of Historic Places nominations of properties within the local government boundaries.

CLGs are eligible for non-competitive grants that fund work that supports the promotion of historic preservation including surveys, nominations to the National Register of Historic Places, public education, training, etc. The grants, which require a 50/50 in-kind match, have typically been in the \$5,000-\$15,000 range in recent years. Deschutes County has applied for and received CLG grants since 2009. Most recently, Deschutes County HLC applied and was approved for a smaller grant amount (\$5,500) owing to capacity issues and lack of projects that fit the grant funding parameters.

Until recently, the HLC had five voting members and one ex-officio member. In spring of 2023, two committee members—including the then-Chair—resigned and another, longtime Commissioner Sharon Leighty, passed away. Staff initiated recruitments for all three positions to coincide with May Preservation Month. Low interest caused staff to extend the recruitment one month until the end of June, and then again until August 15. Recruitments were posted on the HLC website and social

media, the CDD e-newsletter, and promoted via staff's professional networks. Ultimately only two applications were submitted for the three open positions.

It has become increasingly apparent that there is not currently robust interest in the HLC to keep it sustainable. This is not for a lack of residents' appreciation of the rich history of Deschutes County or a lack of historic resources; however, the structure and role of the HLC does have some inherent limitations. County historic sites are generally spread out, often more difficult to access, and lack the "critical mass" of historic sites that cities can offer, an example being a downtown historic district. Most historic sites are private property and require owner consent to either nominate, rehabilitate, or provide access. As such, Deschutes County has not reviewed a property for the nomination of a local historic resource in several decades.³

Recently, the HLC has focused on being a "connector," directing people to sources of potential grant funds, education, processes, or local resources, since the HLC lacks the ability to directly participate in (or fund) physical rehabilitation. CLG grant funds have recently been used either directly by the City of Sisters (last year's primary project was to update its StoryMap of historic resources, for instance) or for staff time in developing guiding documents such as the Strategic Plan and the Policies and Procedures Manual. Participation in May Preservation Month has been limited for various reasons, with the brunt of the planning being undertaken by local groups such as the Deschutes County Historical Society and Three Sisters Historical Society & Museum, both of which have reputations for lively and informative events, workshops, and tours.

C. Legislative Proposal

Given this trajectory and the constraints noted above, staff offered the following path for Board consideration at a work session on August 30, 2023. The Board supported moving forward through a public process for proposed legislative amendments, which include the following:

- Suspend the Historic Landmarks Commission as it currently exists.
- Amend DCC Chapter 2.28 to allow suspension of the HLC by Board order. In this scenario, review of alterations to historic resources or nominations of local significance is vested in the Planning Division. Review of alterations of historic sites or structures would be processed as a land use decision; local nominations of historic sites would be processed legislatively, starting with the Planning Commission.
- DCC Chapter 2.28 retains its references to the HLC with an amendment acknowledging that if the HLC is not appointed, review authority rests with the Planning Division.
- Deschutes County/Sisters would no longer be a CLG and therefore would not be eligible for CLG funding. For this grant cycle, no funding has yet been spent and staff would coordinate with SHPO to ensure compliance.

³ Since 2011, there have been three successful nominations to the National Register of Historic Places: Deedon Homestead, Pilot Butte Canal Historic District, and Central Oregon Canal Historic District.

- Amend Policy 2.11 of the current Comprehensive Plan to acknowledge this path. In addition, staff recognizes that the new draft Comprehensive Plan, which is scheduled for its first hearing before the Planning Commission on October 26, may require additional amendments to align with the proposed changes of this proposal.
- Going forward, the City of Sisters would need to address their own responsibilities as it pertains to their historic structures.
- In the future, if the community galvanizes and expresses support for appointing an HLC, staff can coordinate with the Board during CDD’s annual workplan to discuss the opportunity.
- In a separate section, the amendments remove DCC 2.28(new B)(5) that refers to the selection of a commissioner representing the Pioneer Association. The Pioneer Association is no longer a separate not-for-profit Oregon entity and as such this provision is no longer applicable.

D. Next Steps

At the conclusion of the public hearing, the Board may:

- Continue the hearing to a date certain;
- Close the hearing and leave the written record open to a date certain; or
- Close the hearing and commence deliberations.

Attachments:

Ordinance No. 2023-023

- Exhibit A – DCC 23.01, Comprehensive Plan
- Exhibit B – Comprehensive Plan Section 2.11, Cultural and Historic Resources Policies
- Exhibit C – Comprehensive Plan Section 5.12, Legislative History
- Exhibit D – DCC 2.28, Historic Preservation and Historic Landmarks Commission
- Exhibit E – Findings

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code *
Title 2, Chapter 28, and Title 23, Deschutes County *
Comprehensive Plan, to Allow for Suspension of the * ORDINANCE NO. 2023-023
Historic Landmarks Commission and for the *
Planning Division to Assume Review Authority. *

WHEREAS, the Board of County Commissioners directed Deschutes County Community Development Department staff to initiate amendments (Planning Division File No. 247-23-000693-TA) to Deschutes County Code Title 2, Chapter 28, Historic Preservation and Historic Landmarks Commission, and Title 23 – Deschutes County Comprehensive Plan Chapter 2 and Chapter 5; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on October 12, 2023; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on November 1, 2023 and concluded that the public will benefit from the proposed changes to the Deschutes County Code Title 2 and Deschutes County Comprehensive Plan Title 23; now, therefore,

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

Section 1. AMENDMENT. DCC Title 23.01, Comprehensive Plan, is amended to read as described in Exhibit “A”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 2. AMENDMENT. Deschutes County Comprehensive Plan Chapter 2.11, Cultural and Historic Resources Policies, is amended to read as described in Exhibit “B”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 3. AMENDMENT. Deschutes County Comprehensive Plan Chapter 5.12, Legislative History, is amended to read as described in Exhibit “C”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 4. AMENDMENT. Chapter 2.28, Historic Preservation and Historic Landmarks Commission, is amended to read as described in Exhibit “D”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 5. FINDINGS. The Board adopts as its findings, Exhibit "E" attached and incorporated by reference herein.

Dated this _____ of _____, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHILIP CHANG

Date of 1st Reading: _____ day of _____, 2023.

Date of 2nd Reading: _____ day of _____, 2023.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Anthony DeBone	___	___	___	___
Patti Adair	___	___	___	___
Philip Chang	___	___	___	___

Effective date: _____ day of _____, 2023.

TITLE 23 COMPREHENSIVE PLAN

CHAPTER 23.01 COMPREHENSIVE PLAN

CHAPTER 23.01 COMPREHENSIVE PLAN

- A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.
- B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.
- C. [Repealed by Ordinance 2013-001, §1]
- D. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-005, are incorporated by reference herein.
- E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.
- F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.
- G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.
- H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.
- I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.
- J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.
- K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.
- L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.
- M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.
- N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.

- O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.
- P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.
- Q. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-029, are incorporated by reference herein.
- R. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-018, are incorporated by reference herein.
- S. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-010, are incorporated by reference herein.
- T. [Repealed by Ordinance 2016-027 §1]
- U. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-022, are incorporated by reference herein.
- V. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-005, are incorporated by reference herein.
- W. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-027, are incorporated by reference herein.
- X. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-029, are incorporated by reference herein.
- Y. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2017-007, are incorporated by reference herein.
- Z. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-002, are incorporated by reference herein.
- AA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-006, are incorporated by reference herein.
- AB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-011, are incorporated by reference herein.
- AC. [repealed by Ord. 2019-010 §1, 2019]
- AD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-008, are incorporated by reference herein.
- AE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-002, are incorporated by reference herein.
- AF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-001, are incorporated by reference herein.

- AG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-003, are incorporated by reference herein.
- AH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-004, are incorporated by reference herein.
- AI. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-011, are incorporated by reference herein.
- AJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-006, are incorporated by reference herein.
- AK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-019, are incorporated by reference herein.
- AL. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-016, are incorporated by reference herein.
- AM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-001, are incorporated by reference herein.
- AN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-002, are incorporated by reference herein.
- AO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-003, are incorporated by reference herein.
- AP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-008, are incorporated by reference herein.
- AQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-007, are incorporated by reference herein.
- AR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-006, are incorporated by reference herein.
- AS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-009, are incorporated by reference herein.
- AT. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-013, are incorporated by reference herein.
- AU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-002, are incorporated by reference herein.
- AV. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-005, are incorporated by reference herein.
- AW. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-008, are incorporated by reference herein.

AX. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-001, are incorporated by reference herein.

AY. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-003, are incorporated by reference herein.

AZ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-006, are incorporated by reference herein.

BA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-010, are incorporated by reference herein.

BB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-001, are incorporated by reference herein.

BC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-010, are incorporated by reference herein

[BD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-023, are incorporated by reference herein.](#)

Click here to be directed to the Comprehensive Plan (<http://www.deschutes.org/compplan>)

HISTORY

- Amended by Ord. [2011-027](#) §10 on 11/9/2011*
- Adopted by Ord. [2011-003](#) §2 on 11/9/2011*
- Amended by Ord. [2011-017](#) §5 on 11/30/2011*
- Amended by Ord. [2012-012](#) §1, 2, 3, 4 on 8/20/2012*
- Amended by Ord. [2012-005](#) §1 on 11/19/2012*
- Amended by Ord. [2013-002](#) §1 on 1/7/2013*
- Repealed by Ord. [2013-001](#) §1 on 1/7/2013*
- Amended by Ord. [2013-005](#) §1 on 1/23/2013*
- Amended by Ord. [2012-016](#) §1 on 3/4/2013*
- Amended by Ord. [2013-009](#) §1 on 5/8/2013*
- Amended by Ord. [2013-012](#) §1 on 8/8/2013*
- Amended by Ord. [2013-007](#) §1 on 8/28/2013*
- Amended by Ord. [2014-005](#) §2 on 2/26/2014*
- Amended by Ord. [2014-006](#) §2 on 3/15/2014*
- Amended by Ord. [2014-012](#) §1 on 8/6/2014*
- Amended by Ord. [2014-021](#) §1 on 11/26/2014*
- Amended by Ord. [2015-029](#) §1 on 11/30/2015*
- Amended by Ord. [2015-010](#) §1 on 12/21/2015*
- Amended by Ord. [2015-021](#) §1 on 2/22/2016*
- Amended by Ord. [2015-018](#) §1 on 3/28/2016*
- Amended by Ord. [2016-001](#) §1 on 4/5/2016*
- Amended by Ord. [2016-022](#) §1 on 9/28/2016*
- Repealed & Reenacted by Ord. [2016-027](#) §1, 2 on 12/28/2016*
- Amended by Ord. [2016-005](#) §1 on 2/27/2017*

Amended by Ord. [2016-029](#) §1 on 3/28/2017
Amended by Ord. [2017-007](#) §1 on 11/1/2017
Amended by Ord. [2018-002](#) §1 on 1/25/2018
Amended by Ord. [2018-005](#) §2 on 10/10/2018
Amended by Ord. [2018-008](#) §1 on 10/26/2018
Amended by Ord. [2018-006](#) §1 on 11/20/2018
Amended by Ord. [2018-011](#) §1 on 12/11/2018
Amended by Ord. [2019-004](#) §1 on 3/14/2019
Amended by Ord. [2019-003](#) §1 on 3/14/2019
Amended by Ord. [2019-002](#) §1 on 4/2/2019
Amended by Ord. [2019-001](#) §1 on 4/16/2019
Amended by Ord. [2019-010](#) §1 on 5/8/2019
Amended by Ord. [2019-011](#) §1 on 5/17/2019
Amended by Ord. [2019-006](#) §1 on 6/11/2019
Amended by Ord. [2019-019](#) §2 on 12/11/2019
Amended by Ord. [2020-001](#) §26 on 4/21/2020
Amended by Ord. [2020-003](#) §1 on 5/26/2020
Amended by Ord. [2020-002](#) §1 on 5/26/2020
Amended by Ord. [2020-008](#) §5 on 9/22/2020
Amended by Ord. [2020-007](#) §1 on 10/27/2020
Amended by Ord. [2020-006](#) §1 on 11/10/2020
Amended by Ord. [2020-009](#) §4 on 11/17/2020
Amended by Ord. [2020-013](#) §1 on 11/24/2020
Amended by Ord. [2021-002](#) §3 on 4/27/2021
Amended by Ord. [2021-005](#) §1 on 6/16/2021
Amended by Ord. [2021-008](#) §1 on 6/30/2021
Amended by Ord. [2022-001](#) §2 on 7/12/2022
Amended by Ord. [2022-003](#) §2 on 7/19/2022
Amended by Ord. [2022-006](#) §2 on 7/22/2022
Amended by Ord. [2022-010](#) §3 on 10/25/2022
Amended by Ord. [2023-001](#) §19 on 5/30/2023
Amended by Ord. [2023-010](#) §3 on 9/19/2023
Amended by Ord. [2023-023](#) §1 on 11/1/2023

Section 2.11 Cultural and Historic Resources Policies

Goal and Policies

Goal I Promote the preservation of designated historic and cultural resources through education, incentives and voluntary programs.

- Policy 2.11.1 The Historic Landmarks Commission shall take the lead in promoting historic and cultural resource preservation as defined in DCC 2.28.
- a. Support incentives for private landowners to protect and restore historic resources.
 - b. Support the Historic Landmarks Commission to promote educational programs to inform the public of the values of historic preservation.
 - c. Support improved training for the Historic Landmarks Commission.
- Policy 2.11.2 Coordinate cultural and historic preservation with the Oregon State Historic Preservation Office.
- a. Maintain Deschutes County as a Certified Local Government when the Historic Landmarks Commission is not suspended.
 - b. Encourage private property owners to coordinate with the State Historic Preservation Office.
- Policy 2.11.3 Encourage the preservation of lands with significant historic or cultural resources.
- a. Develop and maintain a comprehensive list of sites on the National Register of Historic Places.
 - b. Review County Code and revise as needed to provide incentives and adequate regulations to preserve sites listed on the Statewide Goal 5 historic and cultural inventory.
- Policy 2.11.4 Goal 5 historic inventories, ESEEs and programs are retained and not repealed, except for the amendment noted in Ordinance 2011-003

Section 5.12 Legislative History

Background

This section contains the legislative history of this Comprehensive Plan.

Table 5.12.1 Comprehensive Plan Ordinance History

Ordinance	Date Adopted/ Effective	Chapter/Section	Amendment
2011-003	8-10-11/11-9-11	All, except Transportation, Tumalo and Terrebonne Community Plans, Deschutes Junction, Destination Resorts and ordinances adopted in 2011	Comprehensive Plan update
2011-027	10-31-11/11-9-11	2.5, 2.6, 3.4, 3.10, 3.5, 4.6, 5.3, 5.8, 5.11, 23.40A, 23.40B, 23.40.065, 23.01.010	Housekeeping amendments to ensure a smooth transition to the updated Plan
2012-005	8-20-12/11-19-12	23.60, 23.64 (repealed), 3.7 (revised), Appendix C (added)	Updated Transportation System Plan
2012-012	8-20-12/8-20-12	4.1, 4.2	La Pine Urban Growth Boundary
2012-016	12-3-12/3-4-13	3.9	Housekeeping amendments to Destination Resort Chapter
2013-002	1-7-13/1-7-13	4.2	Central Oregon Regional Large-lot Employment Land Need Analysis
2013-009	2-6-13/5-8-13	1.3	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2013-012	5-8-13/8-6-13	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Bend Urban Growth Boundary
2013-007	5-29-13/8-27-13	3.10, 3.11	Newberry Country: A Plan for Southern Deschutes County

2013-016	10-21-13/10-21-13	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Sisters Urban Growth Boundary
2014-005	2-26-14/2-26-14	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Bend Urban Growth Boundary
2014-012	4-2-14/7-1-14	3.10, 3.11	Housekeeping amendments to Title 23.
2014-021	8-27-14/11-25-14	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Sunriver Urban Unincorporated Community Forest to Sunriver Urban Unincorporated Community Utility
2014-021	8-27-14/11-25-14	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Sunriver Urban Unincorporated Community Forest to Sunriver Urban Unincorporated Community Utility
2014-027	12-15-14/3-31-15	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Industrial
2015-021	11-9-15/2-22-16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Surface Mining.
2015-029	11-23-15/11-30-15	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Tumalo Residential 5-Acre Minimum to Tumalo Industrial
2015-018	12-9-15/3-27-16	23.01.010, 2.2, 4.3	Housekeeping Amendments to Title 23.

2015-010	12-2-15/12-2-15	2.6	Comprehensive Plan Text and Map Amendment recognizing Greater Sage-Grouse Habitat Inventories
2016-001	12-21-15/04-5-16	23.01.010; 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial (exception area)
2016-007	2-10-16/5-10-16	23.01.010; 5.10	Comprehensive Plan Amendment to add an exception to Statewide Planning Goal II to allow sewers in unincorporated lands in Southern Deschutes County
2016-005	11-28-16/2-16-17	23.01.010, 2.2, 3.3	Comprehensive Plan Amendment recognizing non-resource lands process allowed under State law to change EFU zoning
2016-022	9-28-16/11-14-16	23.01.010, 1.3, 4.2	Comprehensive plan Amendment, including certain property within City of Bend Urban Growth Boundary
2016-029	12-14-16/12/28/16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial
2017-007	10-30-17/10-30-17	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-002	1-3-18/1-25-18	23.01, 2.6	Comprehensive Plan Amendment permitting churches in the Wildlife Area Combining Zone

2018-006	8-22-18/11-20-18	23.01.010, 5.8, 5.9	Housekeeping Amendments correcting tax lot numbers in Non-Significant Mining Mineral and Aggregate Inventory; modifying Goal 5 Inventory of Cultural and Historic Resources
2018-011	9-12-18/12-11-18	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-005	9-19-18/10-10-18	23.01.010, 2.5, Tumalo Community Plan, Newberry Country Plan	Comprehensive Plan Map Amendment, removing Flood Plain Comprehensive Plan Designation; Comprehensive Plan Amendment adding Flood Plain Combining Zone purpose statement.
2018-008	9-26-18/10-26-18	23.01.010, 3.4	Comprehensive Plan Amendment allowing for the potential of new properties to be designated as Rural Commercial or Rural Industrial
2019-002	1-2-19/4-2-19	23.01.010, 5.8	Comprehensive Plan Map Amendment changing designation of certain property from Surface Mining to Rural Residential Exception Area; Modifying Goal 5 Mineral and Aggregate Inventory; Modifying Non-Significant Mining Mineral and Aggregate Inventory
2019-001	1-16-19/4-16-19	1.3, 3.3, 4.2, 5.10, 23.01	Comprehensive Plan and Text Amendment to add a new zone to Title 19: Westside Transect Zone.

2019-003	02-12-19/03-12-19	23.01.010, 4.2	Comprehensive Plan Map Amendment changing designation of certain property from Agriculture to Redmond Urban Growth Area for the Large Lot Industrial Program
2019-004	02-12-19/03-12-19	23.01.010, 4.2	Comprehensive Plan Map Amendment changing designation of certain property from Agriculture to Redmond Urban Growth Area for the expansion of the Deschutes County Fairgrounds and relocation of Oregon Military Department National Guard Armory.
2019-011	05-01-19/05-16/19	23.01.010, 4.2	Comprehensive Plan Map Amendment to adjust the Bend Urban Growth Boundary to accommodate the refinement of the Skyline Ranch Road alignment and the refinement of the West Area Master Plan Area I boundary. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB.
2019-006	03-13-19/06-11-19	23.01.010,	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2019-016	11-25-19/02-24-20	23.01.01, 2.5	Comprehensive Plan and Text amendments incorporating language from DLCD's 2014 Model Flood Ordinance and Establishing a purpose statement for the Flood Plain Zone.

2019-019	12-11-19/12-11-19	23.01.01, 2.5	Comprehensive Plan and Text amendments to provide procedures related to the division of certain split zoned properties containing Flood Plain zoning and involving a former or piped irrigation canal.
2020-001	12-11-19/12-11-19	23.01.01, 2.5	Comprehensive Plan and Text amendments to provide procedures related to the division of certain split zoned properties containing Flood Plain zoning and involving a former or piped irrigation canal.
2020-002	2-26-20/5-26-20	23.01.01, 4.2, 5.2	Comprehensive Plan Map Amendment to adjust the Redmond Urban Growth Boundary through an equal exchange of land to/from the Redmond UGB. The exchange property is being offered to better achieve land needs that were detailed in the 2012 SB 1544 by providing more development ready land within the Redmond UGB. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB.
2020-003	02-26-20/05-26-20	23.01.01, 5.10	Comprehensive Plan Amendment with exception to Statewide Planning Goal II (Public Facilities and Services) to allow sewer on rural lands to serve the City of Bend Outback Water Facility.

2020-008	06-24-20/09-22-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add roundabouts at US 20/Cook-O.B. Riley and US 20/Old Bend-Redmond Hwy intersections; amend Tables 5.3.T1 and 5.3.T2 and amend TSP text.
2020-007	07-29-20/10-27-20	23.01.010, 2.6	Housekeeping Amendments correcting references to two Sage Grouse ordinances.
2020-006	08-12-20/11-10-20	23.01.01, 2.11, 5.9	Comprehensive Plan and Text amendments to update the County's Resource List and Historic Preservation Ordinance to comply with the State Historic Preservation Rule.
2020-009	08-19-20/11-17-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add reference to J turns on US 97 raised median between Bend and Redmond; delete language about disconnecting Vandeventer Road from US 97.
2020-013	08-26-20/11/24/20	23.01.01, 5.8	Comprehensive Plan Text And Map Designation for Certain Properties from Surface Mine (SM) and Agriculture (AG) To Rural Residential Exception Area (RREA) and Remove Surface Mining Site 461 from the County's Goal 5 Inventory of Significant Mineral and Aggregate Resource Sites.
2021-002	01-27-21/04-27-21	23.01.01	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)

2021-005	06-16-21/06-16-21	23.01.01, 4.2	Comprehensive Plan Map Amendment Designation for Certain Property from Agriculture (AG) To Redmond Urban Growth Area (RUGA) and text amendment
2021-008	06-30-21/09-28-21	23.01.01	Comprehensive Plan Map Amendment Designation for Certain Property Adding Redmond Urban Growth Area (RUGA) and Fixing Scrivener’s Error in Ord. 2020-022
2022-001	04-13-22/07-12-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2022-003	04-20-22/07-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2022-006	06-22-22/08-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area
2022-010	07-27-22/10-25-22 (superseded by Ord. 2023-015)	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)
2022-013	12-14-22/03-14-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)

2023-001	03-01-23/05-30-23	23.01.010, 5.9	Housekeeping Amendments correcting the location for the Lynch and Roberts Store Advertisement, a designated Cultural and Historic Resource
2023-007	04-26-23/6-25-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-010	06-21-23/9-17-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-018	08-30-23/11-29-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2023-015	09-13/23/12-12-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI)
<u>2023-023</u>	<u>11-1-23/1/30/24</u>	<u>2.11, 23.01.010</u>	<u>Comprehensive Plan Text Amendment to acknowledge Board option to suspend Historic Landmarks Commission</u>

CHAPTER 2.28 HISTORIC PRESERVATION AND HISTORIC LANDMARKS COMMISSION

2.28.040 Administration

* * *

2.28.040 Administration

A. ~~The Board may suspend the Landmarks Commission at any time, pursuant to Board Order. Review authority under this Chapter shall be vested in the Planning Divisions of Deschutes County or the City of Sisters, as applicable, during any time the Landmarks Commission is suspended by the Board.~~

~~A-B.~~ The Landmarks Commission is composed of five voting and an undetermined number of ex-officio members.

1. The voting members must reside within the County.
2. The membership of the Landmarks Commission shall, to the extent possible, be representative of the various geographic areas of the County.
3. The Mayor of Sisters may appoint one Commissioner to represent the City of Sisters or delegate it to Deschutes County.
4. The Board shall appoint at least four Landmarks Commissioners.

~~5.~~ ~~Upon recommendation of the Deschutes County Pioneer Association, the Board shall appoint one representative from the Deschutes County Pioneer Association as one of the four Landmarks Commissioners.~~

~~6-5.~~ If the City of Sisters delegates their appointment to Deschutes County, the Board shall appoint a fifth Landmarks Commissioner.

~~7-6.~~ The ex-officio members shall be appointed by the Board.

~~B-C.~~ Landmarks Commissioners: To the extent they are available, at least some of the commission members should meet professional qualifications in the disciplines of history, architecture, architectural history, archaeology, or related fields.

~~C-D.~~ Landmarks Commissioners serve four-year terms. Any vacancy occurring in a position for any reason other than expiration of a term shall be filled by appointment for the remainder of the term.

~~D-E.~~ Ex-Officio Members.

1. In addition to the five voting members, there shall be an undetermined number of Commissioners called "ex officio members" who will act in a non-voting, advisory capacity to the Landmarks Commission and County staff.

- 2. These ex officio members shall not be entitled to vote and are not required to reside within Deschutes County.
- 3. These persons shall be representative of organizations including, but not limited to, the United States Forest Service, United States Bureau of Land Management, the County building division, the American Institute of Architects, the Confederated Tribes of Warm Springs, Bums Paiute Tribe, and Klamath Tribes.

~~E.F.~~ The officers of the Landmarks Commission shall consist of a chairperson and vice-chairperson, each elected by a majority vote of the Commission.

~~F.G.~~ The regular time, place and manner of notice of meetings shall be fixed by rules of the Landmarks Commission. However, the Landmarks Commission shall meet at least on a quarterly basis.

~~G.H.~~ _____ The Landmarks Commission shall submit an annual report to the Board.

~~H.I.~~ Any clerical and staff assistance necessary shall be provided by the County Planning Division staff or as otherwise delegated by the Board.

~~I.J.~~ The Landmarks Commission shall serve as a hearings body for matters concerning Significant Historic Resources within the County and the City of Sisters.

~~J.K.~~ The Landmarks Commission shall serve as the initial hearings body for matters concerning applications to designate a historic resource as a Locally Significant Historic Resource. The Board of County Commissioners shall consider the decision of the Landmarks Commission and serve as the final hearings body.

~~K.L.~~ The Landmarks Commission shall review nominations to the National Register of Historic Places at the direction of the State Historic Preservation Office.

~~L.M.~~ _____ The Landmarks Commission may act upon requests by any community member, by owners of structures, objects, districts, or sites, or on its own motion concerning the designation of particular districts, objects, or sites.

~~M.N.~~ _____ The Landmarks Commission shall have authority to inspect or investigate any district, structure, object or site in the County which it is requested to designate, or which it has reason to believe is an architectural and/or historical landmark.

~~N.O.~~ _____ The Landmarks Commission shall review all information which it has and shall hold hearings as prescribed in DCC 22.24.050 through 22.24.190.

~~O.P.~~ The Landmarks Commission shall have authority to coordinate historical preservation programs of the county, state and federal governments, as they relate to property within the County.

~~P.Q.~~ The Landmarks Commission may recommend to the Board or the State Legislature any changes of law which it finds appropriate.

~~Q.R.~~ _____ Current Resource.

1. The Landmarks Commission shall compile and maintain a current Resource List that includes the applicable tax lots and addresses, the date of designation, and a brief description of the resource and reasons for inclusion.
2. Disclosure of the locations and descriptions of designated Archaeological Resources are subject to appropriate state and federal laws.

~~R.S.~~ The Landmarks Commission shall notify all owners of a historic resource recommended for designation of such recommendation. The historic resource will not be approved for a historic designation unless the property owners at the time of designation support the local designation of their property as a Locally Significant Historic Resource.

~~S.T.~~ The Landmarks Commission shall have authority to take such steps as it finds appropriate or necessary to make available to the public information concerning its activities and various Historic Resources to be designated pursuant to DCC 2.28.

~~T.U.~~ The Landmarks Commission shall perform such other duties relating to historical matters as the Board of County Commissioners may request.

~~U.V.~~ Landmark Commissioners shall serve without compensation.

~~V.W.~~ _____ The Landmark Commission shall support the enforcement of all federal and state laws relating to the protection of National Register Resources, Archaeological Sites, and Archaeological Objects regardless if they are designated to the Resource List.

HISTORY

Adopted by Ord. [PL-21](#) §2,3 on 9/17/1980

Amended by Ord. [88-008](#) §§3, 4 and 5 on 1/27/1988

Amended by Ord. [95-027](#) §1 on 5/17/1995

Amended by Ord. [2005-029](#) §1 on 6/6/2005

Amended by Ord. [2010-019](#) §1 on 8/23/2010

Amended by Ord. [2012-003](#) §1 on 3/14/2012

Amended by Ord. [2012-001](#) §1 on 4/4/2012

Amended by Ord. [2020-006](#) §5 on 11/10/2020

[Amended by Ord. 2023-023 §4 on 11/1/2023](#)

FINDINGS

I. PROPOSAL

This is a legislative text amendment to Deschutes County Code (DCC), Title 2, Administration, Chapter 2.28, Historic Preservation and Historic Landmarks Commission and to Chapter 2 of the Deschutes County Comprehensive Plan. The primary purpose of the amendments is to provide the option to suspend the Historic Landmarks Commission (HLC) upon Board order, and for review authority as described in DCC 2.28 to be vested in the Planning Divisions of Deschutes County or the City of Sisters as applicable. The amendments retain the ability for the Historic Landmarks Commission to be reinstated at any time by the Board of County Commissioners (Board).

II. BACKGROUND

A. Historic Preservation and County Code

Historic resources are recognized by Statewide Planning Goal 5, Natural Resources, Scenic Views and Historic Areas and Open Spaces, and Oregon Administrative Rule (OAR) 660-023-0200. The Statewide Goal and OAR require basic protections for sites listed on the National Register of Historic Places and recommend the County to inventory and protect other historic or cultural sites.

The Board of County Commissioners (Board) adopted Ordinance PL-21 on September 17, 1980 to establish the Deschutes County Historic Landmarks Commission and create a process to evaluate, designate and regulate historic resources throughout the rural county. The resulting local inventory of historical resources and National Register of Historic Places can be found in the County Comprehensive Plan. Deschutes County Code (DCC) Chapter 2.28 – Historic Preservation and Historic Landmarks Commission – provides procedures for protecting designated local and National Register historic resources. Chapter 2.28 also provides the basis for the establishment and duties of the Historic Landmarks Commission.

B. HLC Overview

Since 2011, the HLC has served as an advisory body for issues concerning historic and cultural resources for unincorporated Deschutes County and the City of Sisters and reviews development applications for alterations to designated historic sites and structures. The cities of Redmond and Bend have independent historic preservation review bodies. The Deschutes County Comprehensive Plan Section 2.11 Cultural and Historic Resources and Deschutes County Code (DCC) Chapter 2.28, Historic Preservation and Historic Landmarks Commission, establish the legal basis for the HLC.

Deschutes County, together with Sisters, is a Certified Local Government (CLG). The Certified Local Government program is designed to promote historic preservation at the local level. It is a federal program (National Park Service) that is administered by the Oregon State Historic Preservation Office (SHPO). Local governments must meet certain qualifications to become "certified" and thereby qualify to receive federal grants through SHPO and additional technical assistance. These requirements include:

- Establish a historic preservation commission;
- Pass a preservation ordinance that outlines how the local government will address historic preservation issues;
- Agree to participate in updating and expanding the state’s historic building inventory program;
- Agree to review and comment on any National Register of Historic Places nominations of properties within the local government boundaries.

CLGs are eligible for non-competitive grants that fund work that supports the promotion of historic preservation including surveys, nominations to the National Register of Historic Places, public education, training, etc. The grants, which require a 50/50 in-kind match, have typically been in the \$5,000-\$15,000 range in recent years. Deschutes County has applied for and received CLG grants since 2009. Most recently, Deschutes County HLC applied and was approved for a smaller grant amount (\$5,500) owing to capacity issues and lack of projects that fit the grant funding parameters.

Until recently, the HLC had five voting members and one ex-officio member. In spring of 2023, two committee members—including the then-Chair—resigned and another, longtime Commissioner Sharon Leighty, passed away. Staff initiated recruitments for all three positions to coincide with May Preservation Month. Low interest caused staff to extend the recruitment one month until the end of June, and then again until August 15. Recruitments were posted on the HLC website and social media, the CDD e-newsletter, and promoted via staff’s professional networks. Ultimately only two applications were submitted for the three open positions.

It has become increasingly apparent that there is not currently robust interest in the HLC to keep it sustainable. This is not for a lack of residents’ appreciation of the rich history of Deschutes County; however, the structure and role of the HLC does have some inherent limitations. County historic sites are generally spread out, often more difficult to access, and lack the “critical mass” of historic sites that cities can offer, an example being a downtown historic district. Most historic sites are private property and require owner consent to either nominate, rehabilitate, or provide access. As such, Deschutes County has not reviewed a property for the nomination of a local historic resource in several decades.¹

¹ Since 2011, there have been three successful nominations to the National Register of Historic Places: Deedon Homestead, Pilot Butte Canal Historic District, and Central Oregon Canal Historic District.

Recently, the HLC has focused on being a “connector,” directing people to sources of potential grant funds, education, processes, or local resources, since the HLC lacks the ability to directly participate in (or fund) physical rehabilitation. CLG grant funds have recently been used either directly by the City of Sisters (last year’s primary project was to update its StoryMap of historic resources, for instance) or for staff time in developing guiding documents such as the Strategic Plan and the Policies and Procedures Manual. Participation in May Preservation Month has been limited for various reasons, with the brunt of the planning being undertaken by local groups such as the Deschutes County Historical Society and Three Sisters Historical Society & Museum, both of which have reputations for lively and informative events, workshops, and tours.

Given this trajectory and the constraints noted above, staff offered the following path for Board consideration at a work session on August 30, 2023. The Board supported moving forward through a public process for proposed legislative amendments, which include the following:

- Disband the Historic Landmarks Commission as it currently exists.
- Amend DCC Chapter 2.28 to allow suspension of the HLC by Board order. In this scenario, review of alterations to historic resources or nominations of local significance is vested in the Planning Division. Review of alterations of historic sites or structures would be processed as a land use decision; local nominations of historic sites would be processed legislatively, starting with the Planning Commission.
- DCC Chapter 2.28 retains its references to the HLC with an amendment acknowledging that if the HLC is not appointed, review authority rests with the Planning Division.
- Deschutes County/Sisters would no longer be a CLG and therefore would not be eligible for CLG funding. For this grant cycle, no funding has yet been spent and staff would coordinate with SHPO to ensure compliance.
- Amend Policy 2.11 of the current Comprehensive Plan to acknowledge this path.
- Going forward, the City of Sisters would need to address their own responsibilities as it pertains to their historic structures.
- In the future, if the community galvanizes and expresses support for appointing an HLC, staff can coordinate with the Board during CDD’s annual workplan to discuss the opportunity.
- In a separate section, the amendments remove DCC 2.28(new B)(5) that refers to the selection of a commissioner representing the Pioneer Association. The Pioneer Association is no longer a separate not-for-profit Oregon entity and as such this provision is no longer applicable.

III. REVIEW CRITERIA

Deschutes County lacks specific criteria in DCC Titles 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: The Planning Commission reviewed the proposed amendments on October 12, 2023. The Board of County Commissioners will hold a public hearing on November 1, 2023. This criterion will be met.

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 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: The Planning Division mailed notice to all property owners with a designated historic or cultural resource on their property. This criterion is met.

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 reviewed the proposed amendments on October 12, 2023. The Board then held a public hearing on November 1, 2023. 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. 2023-023 upon approval and adoption by the Board of County Commissioners. This criterion will be met.

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, and the Planning Commission, which acts as the citizen involvement committee for Deschutes County, reviewed the proposed amendments at a work session. This goal is met.

Goal 2: Land Use Planning: This goal is met because ORS 197.610 allows local governments to initiate post acknowledgment plan amendments (PAPA). An Oregon Land Conservation and Development Department 35-day notice was initiated on September 27, 2023. The Planning Commission reviewed the amendments at a work session on October 12, 2023 and the Board of County Commissioners held a public hearing on November 1, 2023. The Findings document provides the adequate factual basis for the amendments.

Goal 3: Agricultural Lands and Goal 4, Forest Lands: No changes related to agricultural or forest lands are proposed as part of the text amendments. The proposed amendments impact the administration of historic resource protection; they do not modify allowed uses or where uses can be located. This goal does not apply.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources: The proposed amendments address the administration of historic resource protection, giving the option of review by the Planning Division if the Historic Landmarks Commission is suspended at the time. The protections themselves and the list of resources remain unchanged and remain in compliance with the State Historic Preservation Rule under Goal 5, OAR 660-023-0200. More specifically, OAR 660-023-0200 (5)(b) states “Local governments may delegate the determination of locally significant historic resources to a local planning commission or historic resources commission.” This goal is met.

Goal 6: Air, Water and Land Resources Quality and Goal 7, Natural Hazards: The proposed text amendments do not propose changes to the County’s Comprehensive Plan policies or implementing regulations for compliance with Goal 6. The County has proposed amendments that address the administration of historic resource preservation; the historic preservation ordinance does not regulate uses or where a structure can be located. No development or land use changes are proposed that impact air, water and land resource qualities or natural hazards. Thus, Goal 6 is not applicable.

Goal 8: Recreational Needs: This Goal is not applicable because the County is proposing amendments to the County’s administration of historic preservation. No development or land use changes are being proposed that impact lands designated with recreational resources.

Goal 9: Economic Development: This Goal is not applicable because the proposed amendments do not impact the ability of cities or counties to have enough land available to realize economic growth and development opportunities. The amendments pertain to the administration of historic preservation.

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: This goal is not applicable because the County is proposing amendments to the administration of historic preservation. No development or land use changes are being proposed that impact public facilities.

Goal 12: Transportation: This Goal is not applicable because the County is proposing amendments to the administration of historic preservation. No development or land use changes are being proposed that impact transportation facilities.

Goal 13: Energy Conservation: This Goal is not applicable because the County is proposing amendments to the administration of historic preservation. No development or land use changes are being proposed that impact energy conservation.

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.

OAR 660-023 PROCEDURES AND REQUIREMENTS FOR COMPLYING WITH GOAL 5

OAR 660-023-0200 Historic Preservation Rule

(2) Relationship of Historic Resource Protection to the Standard Goal 5 Process.

(a) Local governments are not required to amend acknowledged plans or land use regulations in order to provide new or amended inventories, resource lists or programs regarding historic resources, except as specified in section (8). Local governments are encouraged to inventory and designate historic resources and must adopt historic preservation regulations to protect significant historic resources.

FINDING: Deschutes County has an adopted historic preservation ordinance.² The purpose of the proposed amendments is to provide an option for Planning Division review pursuant to DCC 2.28 if the Historic Landmarks Commission is suspended by Board order.

(b) The requirements of the standard Goal 5 process in OAR 660-023-0030 through 660-023-0050, in conjunction with the requirements of this rule, apply when local governments choose to amend acknowledged historic preservation plans and regulations.

(c) Local governments are not required to apply the ESEE process pursuant to OAR 660-023-0040 in order to determine a program to protect historic resources.

FINDING: The County’s response to the requirements of the standard Goal 5 process in OAR 660-023-0030 through 660-023-0050 are provided below.

OAR 660-023-0030

This section speaks to the inventory process to locate, evaluate, and potential adoption of significant resources. The proposed amendments are unique in regard to this section because they are intended to address the administration of the County’s historic preservation code. There will be no collection or survey of potential resources because the County already has an adopted historic or cultural resource list.³ Thus, there is no need to evaluate potential resources for their significance. The adopted resource list has already been deemed significant. The proposed amendments seek to amend the historic preservation ordinance to apply changes to the administration of the historic preservation code, not change the Goal 5 resources themselves.

² See DCC 2.28

³ Comprehensive Plan Section 5.9

OAR 660-023-0040

Not applicable as provided above in (c).

OAR 660-023-0050

This section speaks to the various programs to achieve Goal 5 and refers to OAR 660-023-0040. This section is not applicable because the proposed amendments do not modify conflicting uses. The amendments pertain to the administration of historic preservation.

(3) Comprehensive Plan Contents. Local comprehensive plans should foster and encourage the preservation, management, and enhancement of significant historic resources within the jurisdiction in a manner conforming with, but not limited by, the provisions of ORS 358.605. In developing local historic preservation programs, local governments should follow the recommendations in the Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation, produced by the National Park Service. Local governments should develop a local historic context statement and adopt a historic preservation plan and a historic preservation ordinance in conjunction with inventorying historic resources.

FINDING: The County has maintained policies and provisions to encourage historic preservation since 1980 (i.e., a historic preservation ordinance). The County’s historic preservation ordinance is in compliance with ORS 358.605, which speaks to the importance of preventing the destruction of historic or cultural resources and the recommended development of preservation plans. The County’s historic preservation ordinance requires coordinated review with the Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation. This requirement does not change in the proposed amendments. While the County does not have a formally adopted local historic context statement, it is not a requirement in this situation.

(4) Inventorying Historic Resources. When a local government chooses to inventory historic resources, it must do so pursuant to OAR 660-023-0030, this section, and sections (5) through (7). Local governments are encouraged to provide opportunities for community-wide participation as part of the inventory process. Local governments are encouraged to complete the inventory in a manner that satisfies the requirements for such studies published by the Oregon State Historic Preservation Office and provide the inventory to that office in a format compatible with the Oregon Historic Sites Database.

(5) Evaluating and Determining Significance...

FINDING: The County is not proposing to inventory historic resources and, thus, is not required to evaluate or determine the significance of a resource. The proposed amendments pertain to the administration of historic preservation.

(6) Designating Locally Significant Historic Resources...

FINDING: The County is not proposing to designate a Locally Significant Historic Resource. The proposed amendments pertain to the administration of historic preservation.

(7) Historic Resource Protection Ordinances. Local governments must adopt land use regulations to protect locally significant historic resources designated under section (6). This section replaces OAR 660-023-0050. Historic protection ordinances should be consistent with standards and guidelines recommended in the Standards and Guidelines for Archeology and Historic Preservation published by the U.S. Secretary of the Interior, produced by the National Park Service.

FINDING: The County has had a historic resource ordinance since 1980. DCC 2.28, formerly PL-21, protects Locally Significant Historic Resources. As stated above, the existing proposal does not include the designation of additional Locally Significant Historic Resources. The proposed amendments pertain to the administration of historic preservation.

(8) National Register Resources are significant historic resources. For these resources, local governments are not required to follow the process described in OAR 660-023-0030 through 660-023-0050 or sections (4) through (6). Instead, a local government:

(a) Must protect National Register Resources, regardless of whether the resources are designated in the local plan or land use regulations, by review of demolition or relocation that includes, at minimum, a public hearing process that results in approval, approval with conditions, or denial and considers the following factors: condition, historic integrity, age, historic significance, value to the community, economic consequences, design or construction rarity, and consistency with and consideration of other policy objectives in the acknowledged comprehensive plan. Local jurisdictions may exclude accessory structures and non-contributing resources within a National Register nomination;

FINDING: The proposed amendments do not affect or address National Register Resources, which are already addressed in DCC 2.28. The proposed amendments pertain to the administration of historic preservation.

(b) May apply additional protection measures. For a National Register Resource listed in the National Register of Historic Places after the effective date of this rule, additional protection measures may be applied only upon considering, at a public hearing, the historic characteristics identified in the National Register nomination; the historic significance of the resource; the relationship to the historic context statement and historic preservation plan contained in the comprehensive plan, if they exist; the goals and policies in the comprehensive plan; and the effects of the additional protection measures on the ability of property owners to maintain and modify features of their property. Protection measures applied by a local government to a National Register resource listed before the effective date of this rule continue to apply until the local government amends or removes them; and

FINDING: The proposed amendments do not affect or address National Register Resources, which are already addressed in DCC 2.28. The proposed amendments pertain to the administration of historic preservation.

(c) Must amend its land use regulations to protect National Register Resources in conformity with subsections (a) and (b). Until such regulations are adopted, subsections (a) and (b) shall apply directly to National Register Resources.

FINDING: The proposed amendments do not affect or address National Register Resources, which are already addressed in DCC 2.28. The proposed amendments pertain to the administration of historic preservation.

(9) Removal of a historic resource from a resource list by a local government is a land use decision and is subject to this section

...

FINDING: The proposal does not involve the removal of a historic resource form the resource list. The proposed amendments pertain to the administration of historic preservation.

(10) A local government shall not issue a permit for demolition or modification of a locally significant historic resource during the 120-day period following:

FINDING: The proposal does not involve the demolition or modification of a historic resource from the resource list. The proposed amendments pertain to the administration of historic preservation.

DESCHUTES COUNTY COMPREHENSIVE PLAN

Chapter 2, Resource Management

Section 2.11, Cultural and Historic Resources

Goal 1 Promote the preservation of designated historic and cultural resources through education, incentives and voluntary programs.

Policy 2.11.1 The Historic Landmarks Commission shall take the lead in promoting historic and cultural resource preservation as defined in DCC 2.28.

- a. Support incentives for private landowners to protect and restore historic resources.***
- b. Support the Historic Landmarks Commission to promote educational programs to inform the public of the values of historic preservation.***
- c. Support improved training for the Historic Landmarks Commission.***

FINDING: The proposed amendments continue to promote historic and cultural resource preservation by providing a clear process for administering historic resource designations and protections, which themselves remain unchanged; through these amendments, that process now will have the option to utilize the Planning Division in the case where the Board chooses to suspend

the Historic Landmarks Commission for reasons noted in the Background section of this Findings document. The proposed amendments are consistent with Comprehensive Plan Policy 2.11.1.

Policy 2.11.2 Coordinate cultural and historic preservation with the Oregon State Historic Preservation Office.

- a. Maintain Deschutes County as a Certified Local Government.***
- b. Encourage private property owners to coordinate with the State Historic Preservation Office.***

FINDING: The proposed amendments provide an option for the Board to suspend the HLC and for the Planning Division to serve as the review body for nominations or alterations to historic resources; the amendments modify the above language to acknowledge this option. As noted in the Background section above, reasons for suspending the HLC lie with the ability to achieve a quorum of active commissioners as well as develop preservation-related tasks within the relatively narrow purview of the HLC. If the HLC is suspended for those reasons, Deschutes County would no longer be able to function as a Certified Local Government, but review and protection of historic resources would continue pursuant to DCC 2.28—in this scenario, by the Planning Division. Regardless of which County body holds review authority, the County would continue to coordinate with the Oregon State Historic Preservation Office (SHPO) for preservation matters. SHPO has been notified of this proposal. The proposed text amendments are consistent with Policy 2.11.2.

The sub-policy to encourage private property owners to coordinate with the State Historic Preservation Office will not be impacted by the proposed amendments.

Policy 2.11.3 Encourage the preservation of lands with significant historic or cultural resources.

- a. Develop and maintain a comprehensive list of sites on the National Register of Historic Places.***
- b. Review County Code and revise as needed to provide incentives and adequate regulations to preserve sites listed on the Statewide Goal 5 historic and cultural inventory.***

FINDING: The proposed text amendments are not proposing any changes to County Code regarding incentives or regulations concerning either the list of National Register sites, sites listed on the Statewide Goal 5 historic and cultural inventory, or the procedures governing their protection. The proposed amendments are consistent with Policy 2.11.3.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: November 1, 2023

SUBJECT: Presentation: Healthy Schools 2022-2023 Annual Report

RECOMMENDED MOTION:

None; information only.

BACKGROUND AND POLICY IMPLICATIONS:

The Healthy Schools program has released its 2022-23 Annual Report, a synopsis of its second year of operations involving nine Bend-La Pine schools. County staff and students and principals from the Bend-La Pine Schools district (BLS) will share results and highlights.

The Healthy Schools program embeds Deschutes County Public Health Specialists (PHSs) into the school system to provide students with essential public health services. PHSs serve as a coordinator to ensure that schools promote health and prevent student health issues from ever starting or worsening. PHSs do not take over the roles of school staff, but guide staff to use more effective practices.

Schools are a logical and efficient setting for public health interventions for youth. Children and adolescents spend nearly half of their waking hours at school for 13 years of their critical developmental life. In BLS, 50% of middle and high school students report feeling stressed, anxious, or depressed as a barrier to learning.1 Additionally, about a quarter report their health or their family's health (28%) and their personal relationships (23%) as a barrier to learning.1

This high rate of youth mental health issues exceeds the capacity of treatment providers alone and requires partnerships between public health, schools, youth and family, health care, and other organizations to address the causes and link those in need to services. Healthy Schools programming enables these partnerships to support our students, families, teachers, and communities.

BUDGET IMPACTS:

None

ATTENDANCE:

Jessica Jacks, Deschutes County, Prevention and Health Promotion Program Manager

Aimee Snyder, Deschutes County, Prevention and Health Promotion Supervisor

Scott Olszewski, Principal, La Pine High School

Chris Reese, Principal, Bend High School

¹ YouthTruth Student Survey (2023). Bend-La Pine Schools Middle and High School Student Survey Data Reports.



Connecting education, health, & community

RESULTS

As of June 30, 2023

The *Healthy Schools* partnership between Deschutes County and Bend-La Pine Schools (BLS) embeds Public Health Specialists (PHSs) into BLS middle and high schools. PHSs provide schools with essential public health services to assure prevention and health promotion practices are working in schools. These are the results following two years of phasing in the program, with PHSs working in 9 middle and high schools by the end of the 2022-2023 school year. All 13 BLS middle and high schools will have their PHS by 2023-2024.



Improved Engagement, Communication, Coordination

9

BLS schools have a PHS as a designated coordinator, a school health team, collaborative planning process, and an action plan.

391

Students and parents were involved in the process to improve prevention and health promotion in schools.

33

Community partners were involved in the process to improve prevention and health promotion in schools.



Improved Capacity for Positive, Inclusive Climate

11

BLS middle and high schools have *Sources of Strength* for 2023-2024 (up from 1 in previous years).

45

School admin, counselors, teachers, and other staff trained to implement *Sources of Strength*.

\$113,800

in grants brought in to fund schools' prevention programs, centering *Sources of Strength*.

Sources of Strength is a research-tested program effective at preventing suicide, substance use, and violence by increasing belonging, connection, and help-seeking.



Improved Effective Prevention Education in Schools

5,327

BLS adolescents reached with effective prevention education through Health teachers.

95%

Health teachers now use effective skills-based prevention programs in Health classes (up from 31%).

100%

Health teachers now have a comprehensive plan and materials needed to prevent suicide, substance use, risky sex, and violence.



Improved Family Engagement in Health Promotion

9

Schools have consistent school-to-family health communications: about student health issues, resources, and upcoming events.

8

Schools hosted *Parent Connect Workshops* to increase parents' confidence and connection to resources.

30%

Increase in schools' family engagement scores after 2 years with a PHS on staff (using CDC School Health Index).

Parent Connect Workshops increase parents' confidence and resources to help them start conversations with their child about substance use before it starts.



Improved Linkages to Health and Help Resources

100%

BLS middle and high schools have referral systems for student mental health and substance use issues.

50%

CareSolace referrals resulted in behavioral healthcare appointments (out of 305, 12-17 year olds).

59%

Students eligible for *UpShift* completed the screening and brief intervention portion (out of 224 students).

CareSolace is a navigation service that assesses the type of behavioral healthcare needed and navigates the student/family to their first appointment.

UpShift is a screening, brief intervention, and referral to treatment program used as an alternative to out-of-school suspension for substance use violations.

Healthy Schools



Connecting education, health, & community



Presentation Content

- **Introductions - Who's here**
- **Why do we need Healthy Schools?**
- **Healthy Schools Results**
- **Feedback from Principal Olszewski and Reese**
- **Questions**

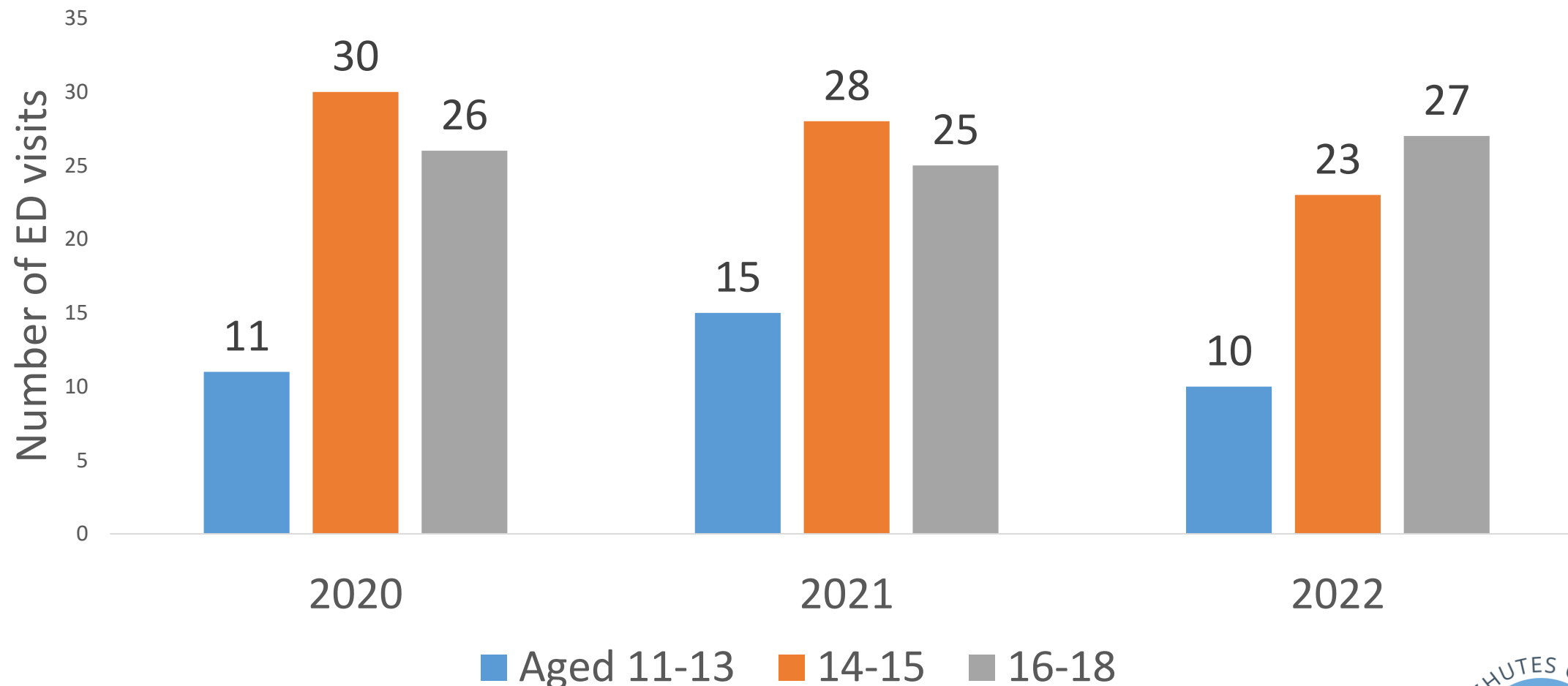
For more info on Healthy Schools go to: www.Deschutes.org/healthyschools



Indicator Data: Why do we need Healthy Schools?



Indicator Data: ED Visits for Suicide Attempt in BLS



2022 Oregon Student Health Survey
BLS=Bend-La Pine Schools
ED=Emergency Department



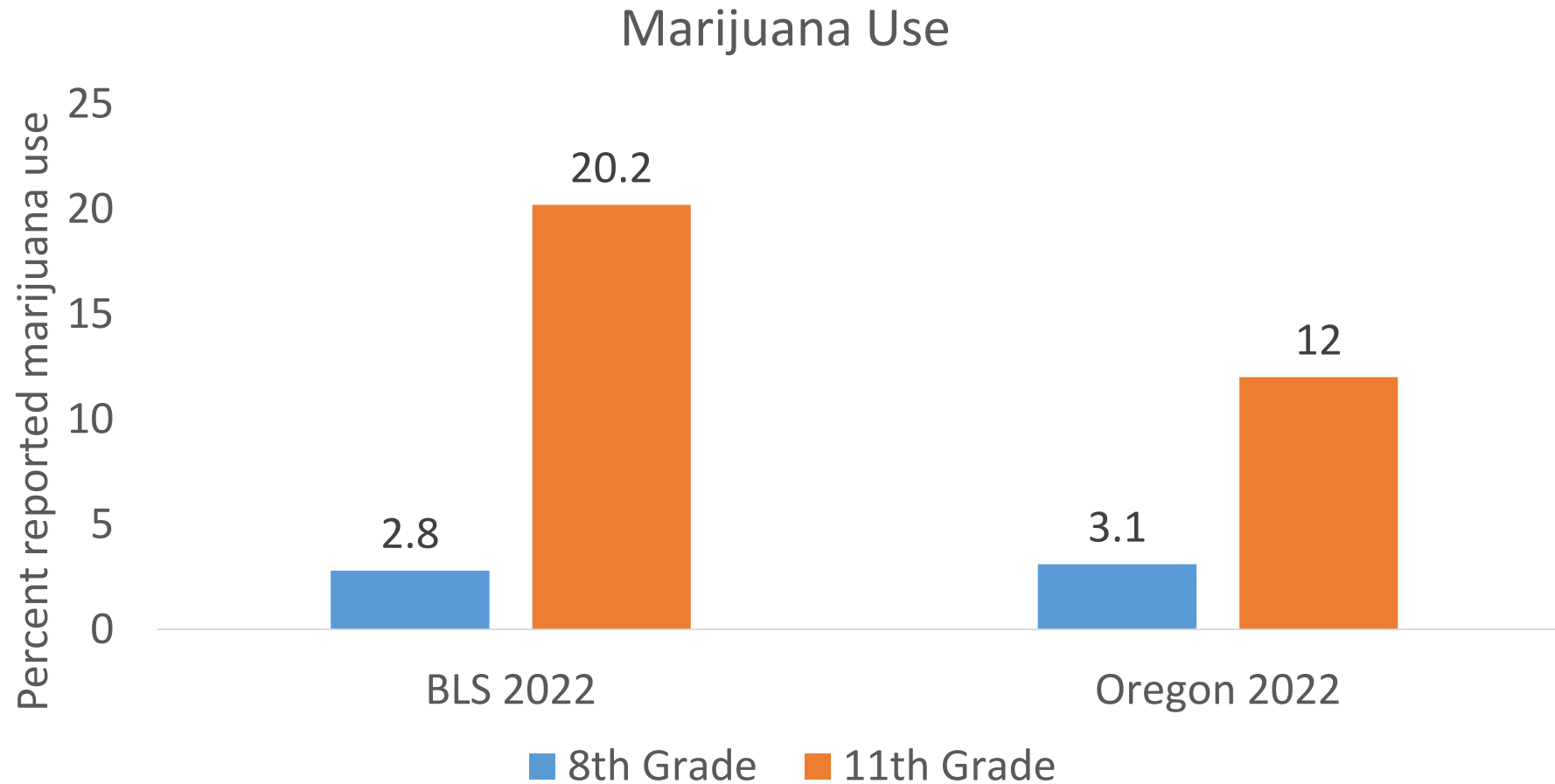
YOUTH
VOICE

What do you think
are the top stressors
for high school
students in Bend?

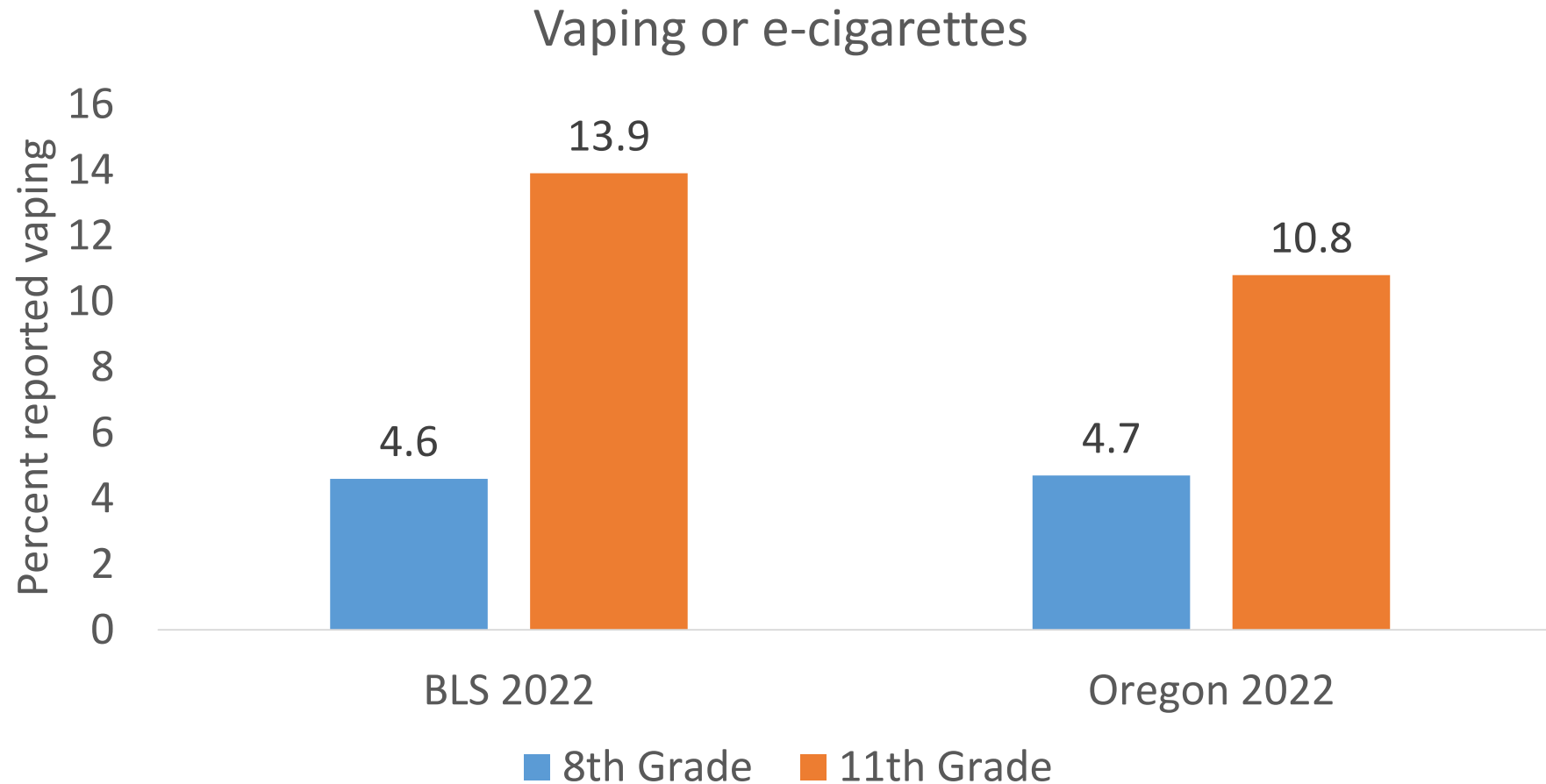
Bend, Caldera, and Summit High School student responses



Indicator Data: 30-day Marijuana Use



Indicator Data: 30-day Vaping Use



YOUTH
VOICE

Why do you think
teens might use
marijuana or vape?

Bend, Caldera, and Summit High School student responses



YOUTH
VOICE

Is there anything you would like the adults in your community to know regarding any of these issues?

Bend, Caldera, and Summit High School student responses



Healthy Schools Program Phase-In

La Pine Cluster

Bend High Cluster

Mountain View Cluster

Summit Cluster

Caldera Cluster

Year 1

Pilot Schools Started Fall 2021



Year 2

Started Fall 2022

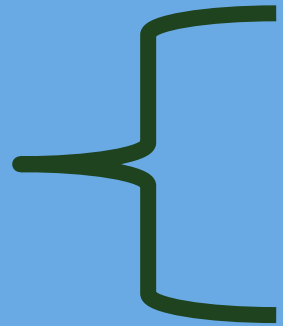


Started Spring 2023



Year 3

Starts Fall 2023



Starts Spring 2024



Starts Spring 2024



HEALTHY



[Amanda Armstrong](#)



[Lindsay Seibel](#)



[Aimee Snyder](#)

11/01/2023 Item #4.



SCHOOLS



[Lani McQuilkin](#)



[Monica Desmond](#)

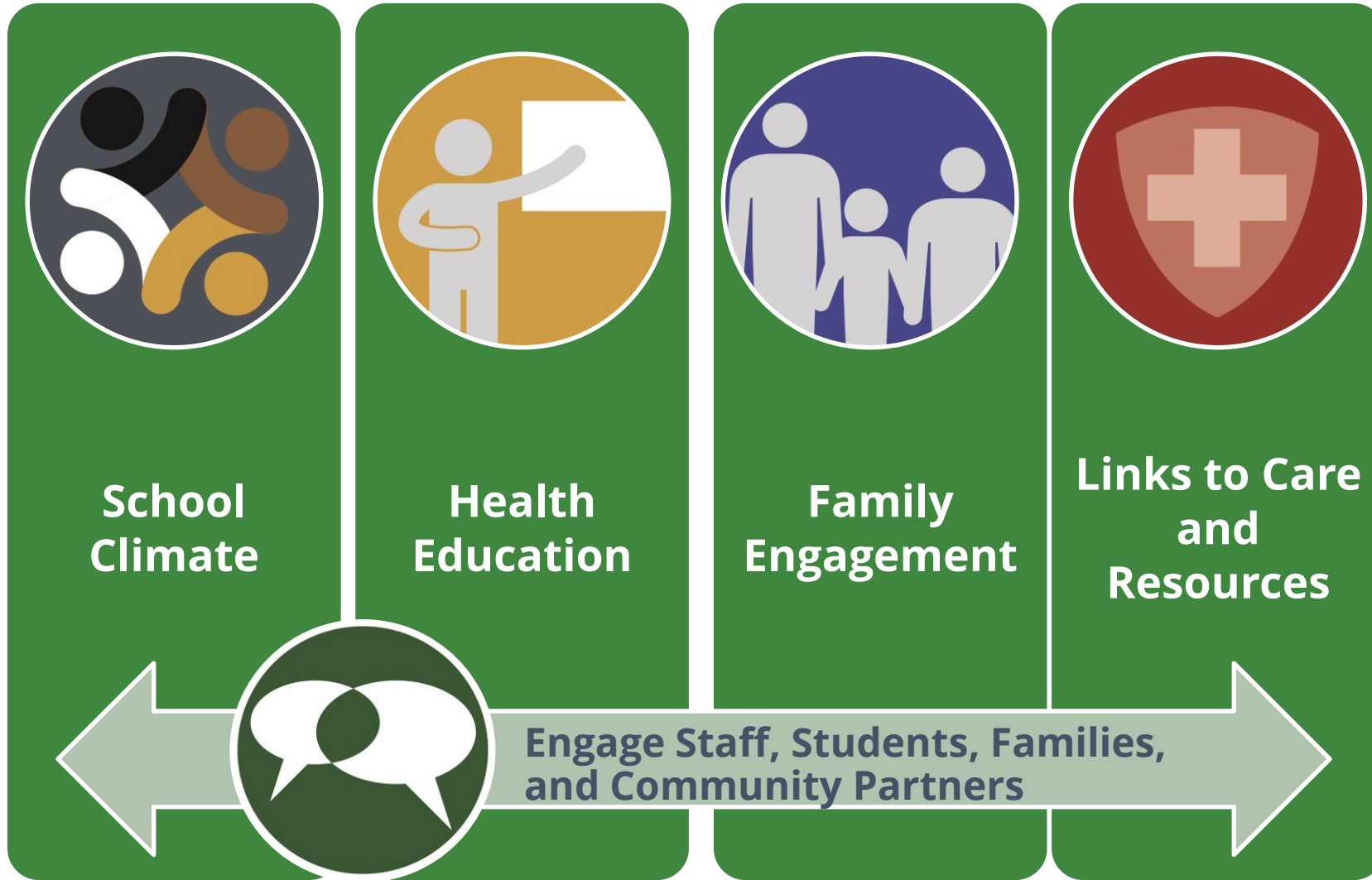


[Hailey Barth](#)



Healthy Schools Program Results

Our Program Areas and Process



Healthy Schools



Connecting education, health, & community

Improved Engagement, Communication, Coordination



**Staff,
Student,
Family,
Partner
Engagement**

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BLS schools have a PHS as a designated coordinator, a school health team, collaborative planning process, and an action plan.

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Improved Capacity for Positive, Inclusive Climate



School Climate

11

BLS middle and high schools have *Sources of Strength* for 2023-2024 (up from 1 in previous years).

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\$113,800

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Improved Effective Prevention Education in Schools



Health Education

5,327

BLS adolescents reached with effective prevention education through Health teachers.

95%

Health teachers now use effective skills-based prevention programs in Health classes (up from 31% since 2021).

100%

Health teachers now have a comprehensive plan and materials needed to prevent suicide, substance use, risky sex, and violence.



Improved Family Engagement in Health Promotion



Family Engagement

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Schools have consistent school-to-family health communications: about student health issues, resources, and upcoming events.

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Schools hosted *Parent Connect Workshops* to increase parents' confidence and connection to resources.

30%

Increase in schools' family engagement scores after 2 years with a PHS on staff (using CDC School Health Index).



Improved Linkages to Health and Help Resources



Links to Care and Resources

100%

BLS middle and high schools have referral systems for student mental health and substance use issues.

50%

CareSolace referrals resulted in behavioral healthcare appointments (out of 305 for 12-17 year olds).

59%

Students eligible for *UpShift* completed the screening and brief intervention portion (out of 224 students).



Program Spotlight: Sources of Strength



11 schools with Sources (up from 1)

- **80+** school admin and staff trained
- **20-40** students trained per site
- Almost all starting as a class
- \$100,000+ grant funds
- Linking to:
 - Health, Life/Career Readiness
 - Family nights
 - School newsletters



What is Sources of Strength?

An evidence-based program (EBP):

- Increase connection to adults
- Increase engagement in school
- Increase likelihood to refer a peer considering suicide to an adult
- Increase positive perception of adult support
- Increase acceptability of seeking help

([Sources of Strength, 2023](#))



Above: Trusted Adult Tree



Principal Feedback



Scott Olszewski

La Pine High School



Chris Reese

Bend High School



Acknowledgements





BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: November 1, 2023

SUBJECT: Central Oregon Health Council Opportunity Grant

RECOMMENDED MOTIONS:

- 1) Move approval of Document No. 2023-925 accepting a Central Oregon Health Council Opportunity grant;
- 2) Move approval of Board Order No. 2023-046, designating signing authority for this grant to Public Health Program Manager Jessica Jacks;
- 3) Move approval of Resolution no. 2023-061 extending 1.0 limited duration FTE from September 29, 2025 to September 30, 2026.

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County Health Services (DCHS) is seeking Board approval to accept a Central Oregon Health Council (COHC) 2023 Opportunity Grant award in the amount of \$150,000 and to extend 1.0 limited duration FTE from September 29, 2025 to September 30, 2026.

The COHC 2023 opportunity grant funds projects which have already been awarded funding from another grantor and that align with the Regional Health Improvement Plan (RHIP) Future State Measures. This \$150,000 grant will assist in enhancing and sustaining the Drug Free Community (DFC) grant funded program.

DCHS' current DFC grant, awarded by the Centers for Disease Control and Prevention (CDC), addresses the geographic area of the City of Bend with a focus on preventing youth under 18 years from consuming alcohol, e-cigarettes and vape pens, and increasing their perception of risk for underage cannabis use. DFC required goals include:

1. Increase community collaboration – including engagement and coalition sustainability.
2. Reduce youth substance use- including Information dissemination, education problem identification and referral, and environmental strategies

The DFC grant expires September 29, 2025. The COHC Opportunity Grant will allow DCHS Public Health (PH) to expand the DFC grant timeline through September 30, 2026, expand the service area from Bend only to broader Deschutes County, and expand service

population from youth under 18 only to include young adults (18-25 year olds) while strengthening the sustainability of recent projects.

DCHS intends to use all funding to support a current 1.0 FTE Community Health Specialist II (limited duration currently ending September 29, 2025). Total cost of salary and benefits for the proposed 12-month timeframe is \$149,902. Additionally, it should be noted that the COHC grant opportunity does not allow for indirect costs. The loss of indirect revenue from the DFC grant is \$9,000. In recognition of this loss, DCHS will consider multiple options to address the shortfall in future budget periods; this may include reprioritization of current resources or reduction of FTE.

BUDGET IMPACTS:

\$150,000 revenue for the term September 30, 2025 through September 30, 2026. There are no budget impacts for the current fiscal year.

ATTENDANCE:

Jessica Jacks, Public Health Program Manager
Jess Neuwirth, Public Health Supervisor
Dan Emerson, Budget & Financial Planning Manager



Form Name:

Letter of Agreement/Approval Letter (RHIP Projects)

Deschutes County Health Services
Drug Free Communities Expansion

FollowUp Snapshot	
Amount Requested	\$200,000.00
Contact Name	Lauren Wood
Contact Phone	541-385-1748
Contact Email	Lauren.Wood@deschutes.org
Organization Address	2577 NE Courtney Dr. Bend, OR 97701
Website	http://cohealthcouncil.org/
Project Lead	
Project Lead email	

RHIP Workgroup:

Future State Measure:

Note: * indicates required questions

Terms & Conditions

Project Name

Drug Free Communities Expansion

Timeline - Project Start Date

The effective date of your contract begins on the project start date that you indicated on your application.

09/30/2023

Timeline - Project End Date

*I. **Term.** This LOA shall commence on the Effective Date and shall terminate on the date indicated below. The COHC may terminate this LOA, without cause, by providing You with written notice at least five (5) business days in advance.*

12/31/2026

Amount Requested

The total amount of funds requested from the Central Oregon Health Council for this project.

\$200,000.00

Amount Awarded

\$150,000.00

Invoice*

Please upload an invoice to enable COHC to disperse your funds. If you do not want to invoice us now, please upload an invoice of \$0.

W-9*

Please upload a completed W-9.

ACCEPTANCE OF TERMS & CONDITIONS*

This grant is conditional upon Grantee's acceptance of the terms and conditions set forth herein. By selecting the

Name*

Title*

LOA execution date*

Please enter today's date

FollowUp Files

Applicant File Uploads

No files were uploaded

REVIEWED

LEGAL COUNSEL

11/01/2023 Item #5.

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order designating Jessica Jacks, Manager *
Public Health Program, as the Deschutes County *
Representative for the purpose of signing the *
Central Oregon Health Council (COHC) Letter of *
Agreement for the 2023 Opportunity grant.

ORDER NO. 2023-046

WHEREAS, the Board of County Commissioners of Deschutes County has authorized the acceptance of COHC grant funds in the amount of \$150,000; and

WHEREAS, in order to receive the funds, the Letter of Agreement must be signed electronically on the COHC grant system; now, therefore,

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

Section 1. Jessica Jacks, Manager, Public Health Program, is designated as the Deschutes County representative for the purpose of signing the Central Oregon Health Council Letter of Agreement for the 2023 Opportunity grant.

Dated this _____ of _____, 20__

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DeBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY,
OREGON

A Resolution Extending *
FTE * RESOLUTION NO. 2023-061
*

WHEREAS, Health Services presented to the Board of County Commissioners on 11/1/23, with regards to the Central Oregon Health Council Opportunity grant along with the extension of 1.00 limited duration FTE position, and

WHEREAS, Deschutes County Policy HR-1 requires that the creation of or increase in FTE outside the adopted budget be approved by the Board of County Commissioners; now, therefore,

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, as follows:

Section 1. That the following position’s duration be extended:

Job Class	Position Number	Type	Duration if Limited Duration
Community Health Specialist II (1158)	2351	1.00 LTD	Extend duration from 09/29/25 to 09/30/26
Total FTE		1.00 LTD	

Section 2. That the Human Resources Director make the appropriate entries in the Deschutes County FTE Authorized Positions Roster to reflect the above FTE changes.

DATED this _____ day of November, 2023.

BOARD OF COUNTY COMMISSIONERS OF
DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

ATTEST:

PATTI ADAIR, Vice-Chair

Recording Secretary

PHIL CHANG, Commissioner



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: November 1, 2023

SUBJECT: Second Reading and Adoption of Ordinance No. 2023-022 amending Deschutes County Code section 6.12

RECOMMENDED ACTIONS:

1. Move second reading of Ordinance No. 2023-022 by title only.
2. Move adoption of Ordinance No. 2023-022.

BACKGROUND AND POLICY IMPLICATIONS:

Following a public hearing on October 18th, the Board deliberated and approved first reading of Ordinance No. 2023-022. The amendment to DCC 6.12 clarifies the required conditions for chickens to be treated as "livestock" for purposes of county code.

BUDGET IMPACTS:

None

ATTENDANCE:

Legal

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 6.12, Livestock Kills, *
of the Deschutes County Code. * ORDINANCE NO. 2023-022
*

WHEREAS, the Deschutes County Code (DCC) contains rules and regulations duly enacted through ordinance by Deschutes County and the Deschutes County Board of Commissioners; and

WHEREAS, from time-to-time the need arises to make amendments, including new enactments to the DCC; and

WHEREAS, staff from the Sheriff's Office have identified a need to amend DCC 6.12 to further define domesticated fowl as livestock; and

WHEREAS, the Board of County Commissioners of Deschutes County considered this matter at a duly noticed Board meeting on October 18, 2023, and determined that DCC 6.12 should be amended; now therefore,

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

Section 1. AMENDMENT. DCC 6.12 is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strike~~through.

Section 2. ADOPTION. This Ordinance takes effect 90 days after second reading.

///

Dated this _____ of _____, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DeBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

Date of 1st Reading: 18th day of October, 2023.

Date of 2nd Reading: 1st day of November, 2023.

<u>Commissioner</u>	<u>Yes</u>	<u>No</u>	<u>Record of Adoption Vote</u>	
			<u>Abstained</u>	<u>Excused</u>
Patti Adair				
Phil Chang				
Anthony DeBone				

Effective date: 1st day of February, 2024.

EXHIBIT A

(To Ordinance 2023-022)

CHAPTER 6.12 LIVESTOCK KILLS

6.12.010 Definitions

6.12.012 Definition; Animal Control Officer

6.12.015 Definition; Board

6.12.018 Definition; Chasing

6.12.019 Definition; Injury, Injures Or Injuring

6.12.020 Definition; Livestock

6.12.025 Definition; Domesticated Fowl

6.12.030 Killing, Wounding Or Injuring Livestock; Nuisance

6.12.040 Harboring Of Livestock Killing Dogs Prohibited

6.12.050 Killing, Wounding, Injuring Or Chasing Livestock; Evidence

6.12.060 Hearing

6.12.065 Payment Of Costs And Penalties; Liens

6.12.070 Killing, Wounding Or Injuring Of Livestock; Disputable Presumption

6.12.080 Owner Of Livestock; Damage Claims

6.12.090 Damage Claims Hearing

6.12.100 Damage Claims; Collection

6.12.110 Civil Right Of Action

6.12.120 Microchip Identification Of Dog

6.12.130 Release Of Dog Found To Have Harmed Domesticated Fowl

6.12.010 Definitions

As used in DCC 6.12, the words and phrases are defined as set forth in DCC 6.12.012 through DCC 6.12.025.

HISTORY

Adopted by Ord. [95-031](#) §1 on 5/17/1995

Amended by Ord. [2012-015](#) §1 on 10/3/2012

6.12.012 Definition; Animal Control Officer

"Animal control officer" means the Deschutes County Animal Control Officer or any Deschutes County Sheriff's Deputy performing the functions of the Deschutes County Animal Control Officer.

HISTORY

Adopted by Ord. [97-011](#) §1 on 3/19/1997

6.12.015 Definition; Board

"Board" means the board of supervisors, as defined under DCC 2.50.

HISTORY

Adopted by Ord. [90-019](#) §1 on 6/6/1990

Amended by Ord. [95-014](#) §1 on 3/29/1995

6.12.018 Definition; Chasing

"Chasing" means causing livestock to move from a place or remain in a place involuntarily.

HISTORY

Adopted by Ord. [97-011](#) §1 on 3/19/1997

6.12.019 Definition; Injury, Injures Or Injuring

“Injury, injures or injuring” means abrasion or laceration of skin or hide, fracture of bones, impairment of normal gait, and aborting of fetus.

HISTORY

Adopted by Ord. [97-011](#) §1 on 3/19/1997

6.12.020 Definition; Livestock

“Livestock” means ratiites, psittacines, horses, mules, jackasses, cattle, llamas, alpacas, sheep, goats, and swine. For purposes of this section 6.12 of the Deschutes County Code, “Livestock” also includes; domesticated fowl, and any fur-bearing animal bred and maintained commercially provided that the domesticated fowl or fur-bearing animal bred and maintained commercially is located wholly on private property that is not also the premises of subject dog(s) owner or keeper. or otherwise within a pen, cage or hutch.

HISTORY

Adopted by Ord. [90-019](#) §1 on 6/6/1990

Amended by Ord. [2012-015](#) §1 on 10/3/2012

Amended by Ord. [2020-005](#) §1 on 1/1/2021

Amended by Ord. [2023-022](#) §1 on 11/1/2023

6.12.025 Definition; Domesticated Fowl

“Domesticated Fowl” means chickens, geese, ducks, peafowl, guinea fowl and turkeys.

HISTORY

Adopted by Ord. [2012-015](#) §1 on 10/3/2012

6.12.030 Killing, Wounding Or Injuring Livestock; Nuisance

- A. Except as provided in DCC 6.12.030(C), any dog, whether licensed or not, that, while off the premises of its owner or keeper, kills, wounds, or injures any livestock not belonging to the owner or keeper of such dog, is a public nuisance and may be killed immediately by any person. However, nothing in DCC 6.12.030 applies to any dog acting under the direction of its owner or keeper, or the agents or employees of such owner or keeper.
- B. If any dog, not under the control of its owner or keeper, is found feeding upon the warm carcass of livestock not the property of such owner or keeper it shall be deemed prima facie, as engaged in killing, wounding or injuring livestock for purposes of this section 6.12.030.
- C. No person shall kill any dog for killing, wounding or chasing chickens upon a public place, highway or within the corporate limits of any city.
- D. Violation of DCC 6.12.030 shall be a class B violation.

HISTORY

Adopted by Ord. [90-019](#) §1 on 6/6/1990

Amended by Ord. [95-031](#) §1 on 5/17/1995

Amended by Ord. [2012-015](#) §1 on 10/3/2012

Amended by Ord. [2020-005](#) §1 on 1/1/2021

6.12.040 Harboring Of Livestock Killing Dogs Prohibited

- A. No person shall own, harbor, or keep any dog with knowledge that it has killed or wounded any livestock except as permitted by the Board, a court of competent jurisdiction, or pursuant to adoption or relocation of the dog as approved by the County or its designee.
- B. Notwithstanding the foregoing, no person shall be liable for harboring or keeping such dog with knowledge that it has killed or wounded domesticated fowl, unless the owner fails to pay full damages for the domesticated fowl killed or wounded within three days after receipt of a demand for such damages from the owner.
- C. Violation of DCC 6.12.040 shall be a class B violation.

HISTORY

Adopted by Ord. [90-019](#) §1 on 6/6/1990

Amended by Ord. [95-031](#) §1 on 5/17/1995

Amended by Ord. [2012-015](#) §1 on 10/3/2012

Amended by Ord. [2020-005](#) §1 on 1/1/2021

6.12.050 Killing, Wounding, Injuring Or Chasing Livestock; Evidence

- A. Upon observing a dog engaged in killing, wounding, injuring or chasing livestock or upon receipt from a complainant of a written complaint supported by evidence that a dog has been so engaged, the dog control officer or other law enforcement officer shall impound the dog.
 - 1. The written complaint referenced in subsection (A), above, shall be made on a form prepared by the Deschutes County Sheriff’s Office.
 - 2. Such form shall clearly state that:
 - a. The complaint is made upon declaration of the complainant of the truth of the statements contained therein, and
 - b. If the dog is ultimately determined to have not engaged in chasing, killing, injuring or wounding livestock, the complainant may be liable for the impoundment fee and/or the costs of keeping and testing the dog pursuant to DCC 6.12.060(B).
- B. If there is reason to believe that reasonable testing of a dog impounded pursuant to DCC 6.12.050(A), including, but not limited to, a fecal examination or examination of the teeth of the dog, will provide substantial further evidence as to whether the dog has been engaged in killing, wounding, injuring or chasing livestock, the County may order administration of tests by a licensed veterinarian.

- C. The decision whether to order any such testing shall be wholly within the discretion of the County, and the County’s failure to order such testing shall not be considered as evidence by the Board.

HISTORY

Adopted by Ord. [90-019](#) §1 on 6/6/1990

Amended by Ord. [95-031](#) §1 on 5/17/1995

Amended by Ord. [2012-015](#) §1 on 10/3/2012

6.12.060 Hearing

- A. If a dog is impounded pursuant to DCC 6.12.050, the owner or keeper of the dog shall be entitled to a hearing as follows:
 - 1. At the time the dog is impounded, or as soon as practicable thereafter, the County shall provide the dog’s owner or keeper notice of the right to request a hearing before the Board.
 - 2. Notice of the right to request a hearing shall be provided in a manner reasonably calculated, under all the circumstances, to apprise the owner or keeper of the specific behavior and incident alleged and the possible penalties, and to provide the owner or keeper with a fair opportunity for making the hearing request.
 - 3. A dog’s owner or keeper shall cause a hearing request to be delivered to the County not later than the 14th day after notice is provided under subsection (A)(1), above.
 - 4. If the owner or keeper does not make a timely request for hearing, the owner or keeper may be conclusively presumed to have admitted the matter alleged and the County may immediately take action under subsection (C), below.
 - 5. If the dog’s owner or keeper timely request hearing, the Board shall schedule a hearing for the first reasonably available date.
 - a. The owner or keeper of a dog shall be provided with notice of the hearing not less than three days prior to the hearing.
 - b. If the owner or keeper of the dog cannot be found, notice shall be given by mailing a certified or registered letter to the owner’s or keeper’s last known address at least five days before the date of the hearing, or, if no last known address is known to the County, by publication at least five days before the date of the hearing.
 - c. If the County has ordered that the dog be tested under DCC 6.12.050(B), the hearing shall be convened after completion of those tests.
 - 6. The owner shall be afforded the opportunity to present evidence to the Board during such hearing. Other individuals may present evidence at the hearing. The owner or keeper of the dog shall have a final opportunity to rebut any evidence submitted by others and shall be entitled to cross examine witnesses.

7. The hearing conducted by the Board pursuant to DCC 6.12.060 shall be informal and open to the public.
 8. All relevant evidence shall be considered by the Board.
 9. The Board may establish reasonable parameters for the conduct of the hearing to ensure an orderly and complete presentation of the evidence. The Board, on reasonable grounds, shall continue the hearing to allow the owner or keeper of a dog sufficient opportunity to prepare a defense.
 10. The person presiding at the hearing shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary to determine the matter alleged.
 11. A determination made by the Board shall be supported by reliable, probative and substantial evidence.
- B. If, after hearing, the Board determines that the dog has not engaged in killing, wounding, injuring or chasing livestock, the dog shall be released to its owner. In such cases, if the dog was impounded upon receipt of a complaint from a complainant, the complainant may be required to pay the impoundment fee and/or the costs of keeping and testing of the dog during its impoundment.
- C. If, after hearing, the Board determines that a dog has engaged in killing, wounding, injuring or chasing livestock, the Board shall take action in accordance with the following guidelines:
1. If the dog has engaged in chasing livestock and has not previously killed, wounded, injured or chased livestock:
 - a. The Board shall take reasonable measures to prevent a recurrence. Reasonable measures include, but are not limited to, requiring that the dog owner take specific measures to adequately confine the dog and provide a notarized written pledge that the owner will prevent the dog from chasing livestock again; and
 - b. The Board may impose a civil penalty of not more than \$500.
 2. If the dog has engaged in chasing livestock and has previously killed, wounded, injured or chased livestock, or if the dog has engaged in wounding or injuring livestock and has not previously killed, wounded, injured or chased livestock, the Board shall impose a civil penalty of not less than \$250 and not more than \$1,000.
 3. In addition to imposing the civil penalty, the board may:
 - a. Require the dog owner to surrender the dog for adoption by a new owner approved by the Board; or
 - b. Require the owner to remove the dog to a location where, in the opinion of the Board, the dog does not present a threat to livestock; or require that the dog be put to death in a humane manner.

4. Before requiring that a dog be put to death under this subparagraph, the Board shall make specific findings on the record that other measures are not available, are not adequate to remedy the problem or are otherwise unsuitable.
 5. If the dog has engaged in wounding or injuring livestock and has previously killed, wounded, injured or chased livestock, or if the dog has engaged in killing livestock and has not previously killed livestock, the Board shall impose a civil penalty of not less than \$500 and not more than \$1,000.
 6. In addition to imposing the civil penalty, the Board shall:
 - a. Require the dog owner to remove the dog to a location where, in the opinion of the Board, the dog does not present a threat to livestock; or
 - b. Require that the dog be put to death in a humane manner.
 7. If the dog has engaged in killing livestock and the dog has previously killed livestock, the Board shall impose a civil penalty of not less than \$500 and not more than \$1,000.
 8. In addition to imposing the civil penalty, the Board shall require that the dog be put to death in a humane manner.
 9. In establishing the history of a dog for purposes of this section, or the history of an owner for purposes of ORS 609.163, the Board shall consider all known determinations involving the dog or owner by any court, or by a governing body, official or agency of any local or state government, without regard to where or when the incident occurred.
- D. Notwithstanding any civil penalty imposed upon a dog's keeper or owner under this section, the owner or keeper of a dog that is determined to have chased, injured, wounded or killed livestock shall be responsible for paying the impoundment fee, the cost of implanting a microchip pursuant to 6.12.120, and all costs of keeping and testing the dog during the impounding.
- E. In lieu of payment of a penalty under DCC 6.12.060(C), the Board may consider a petition of indigence and all other relevant circumstances and allow credit for community service at a rate of \$10 per hour for each hour of community service performed. However, credit for community service shall not be allowed with regard to payment of the impoundment fee, the costs of microchip implantation, or the costs of keeping and testing the dog.
- F. Notwithstanding DCC 6.16.010, a dog impounded pursuant to DCC 6.16.060(A) or DCC 6.16.060(C) shall not be released until a determination is made by the Board pursuant to DCC 6.12.060.
- G. The County shall notify the dog's owner or keeper and the livestock owner of its determination and of any civil penalties or other measures imposed, by delivering or mailing a copy of the Board's written decision to the dog's owner or keeper and the livestock owner.

HISTORY

Adopted by Ord. [90-019](#) §:1 on 6/6/1990

Amended by Ord. [95-031](#) §:1 on 5/17/1995

Amended by Ord. [97-011](#) §:1 on 3/19/1997

Amended by Ord. [2002-036](#) §1 on 11/13/2002

Amended by Ord. [2012-015](#) §1 on 10/3/2012

6.12.065 Payment Of Costs And Penalties; Liens

- A. When the Board assesses any civil penalty, costs and/or fees against a complainant or a dog’s owner or keeper under DCC 16.12.060, if the full amount of the financial obligation is not paid within 21 days after delivery or mailing of the Board’s determination the County may record the obligation with the county clerk of any county of this state.
 - 1. The County Clerk shall thereupon record in the County Clerk Lien Record the name of the person incurring the obligation.
 - 2. The County Clerk shall not record an obligation while a request for Board of County Commissioner reconsideration or a petition for judicial review is pending.
 - 3. Immediately upon receipt, Deschutes County Legal Counsel shall provide the County Clerk with a copy of any reconsideration or petition for judicial review.
- B. In addition to any other remedy provided by law, recording an obligation in the County Clerk Lien Record pursuant to this section has the effect provided for in ORS 205.125 and 205.126, and can be enforced as provided in ORS 205.125 and ORS 205.126.
- C. When a civil penalty is assessed against a dog’s owner under this section, the county shall supply the State Department of Agriculture (“Department”) with information identifying the dog owner on forms provided by the Department for this purpose.

HISTORY

Adopted by Ord. [2012-015](#) §1 on 10/3/2012

6.12.070 Killing, Wounding Or Injuring Of Livestock; Disputable Presumption

A disputable presumption shall arise that a dog has been engaged in killing, wounding, injuring or chasing livestock within the meaning of DCC 6.12.050 if:

- A. The dog is found chasing livestock not the property of the owner or keeper of the dog in an area where freshly damaged livestock are found;
- B. The dog is found feeding upon a warm carcass of a livestock animal;
- C. An examination of the dog's feces indicates ingestion of portions or covering of the anatomy of livestock; or
- D. Portions of the anatomy or covering of the anatomy of livestock is found on the teeth of the dog, unless the dog is regularly used for the purpose of herding sheep.

HISTORY

Adopted by Ord. [90-019](#) §1 on 6/6/1990

Amended by Ord. [95-013](#) §1 on 3/29/1995

6.12.080 Owner Of Livestock; Damage Claims

- A. The owner of any livestock killed, wounded, chased or injured by any dog may, within ten (10) days after the killing, wounding, chasing or injuring occurred, or became known to him, present to the Board a verified statement containing a full account of the incident, stating in detail the amount of damage claimed on account thereof, and the name and address of the owner or keeper of the dog, if known.
- B. The livestock owner’s claim shall be supported by the affidavit of at least one disinterested person to all material facts contained in it. The affidavit shall be submitted to the Board at the same time as the verified statement.

HISTORY

Adopted by Ord. [90-019](#) §1 on 6/6/1990

Amended by Ord. [95-031](#) §1 on 5/17/1995

Amended by Ord. [2012-015](#) §1 on 10/3/2012

6.12.090 Damage Claims Hearing

- A. All claims presented as provided by DCC 6.12.080 shall be heard promptly.
- B. If the Board determines that any livestock has been damaged by being injured, chased, wounded or killed, the Board may award the livestock owner compensation for such damage in an amount not to exceed a total of \$100.00.
- C. The Board shall state on the record the basis for its award, and shall order a warrant drawn for the amount of damages awarded, to be paid by the County Treasurer out of the dog fund.
- D. If the Board determines the claim unjust, it shall disallow it and enter that fact upon its record.
- E. No claim for damages shall be allowed where it appears that the injury or damage complained of was caused by a dog owned or controlled by the claimant or his agent.

HISTORY

Adopted by Ord. [90-019](#) §1 on 6/6/1990

Amended by Ord. [95-014](#) §2 on 3/29/1995

Amended by Ord. [95-031](#) §1 on 5/17/1995

Amended by Ord. [2012-015](#) §1 on 10/3/2012

6.12.100 Damage Claims; Collection

- A. In each case where a claim against the dog fund has been paid by the County, the County shall be subrogated to all the rights of the owner of the livestock killed, wounded, chased or injured against the owner of the dog for damages, and may proceed in a lawful way to collect any amount paid.
- B. Any money so collected shall be paid over immediately to the County Treasurer and credited to the dog fund.

HISTORY

Adopted by Ord. [90-019](#) §1 on 6/6/1990

Amended by Ord. [95-031](#) §1 on 5/17/1995
Amended by Ord. [2012-015](#) §1 on 10/3/2012

6.12.110 Civil Right Of Action

Nothing in DCC 6.12 shall be construed to prohibit a livestock owner from pursuing civil redress for the injury or death of livestock through any other available means, including, but not limited to, a civil court action for damages.

HISTORY

Adopted by Ord. [97-011](#) §1 on 3/19/1997

6.12.120 Microchip Identification Of Dog

- A. When a dog is determined to have chased, injured, wounded or killed any livestock under DCC 6.12.060, the County shall require that a microchip be implanted into any such dog that is not put to death. Implantation shall be done prior to release, relocation or adoption of the dog.
- B. The dog’s owner or keeper shall be responsible for paying the reasonable costs of such implementation.
- C. The County shall forward the microchip information to the State Department of Agriculture.

HISTORY

Adopted by Ord. [2012-015](#) §1 on 10/3/2012

6.12.130 Release Of Dog Found To Have Harmed Domesticated Fowl

- A. Notwithstanding DCC 6.12.060(C), a dog found to have killed domesticated fowl may be released back to its owner or keeper if the Board finds by a preponderance of the evidence that:
 - 1. The livestock owner did not make reasonable efforts, under all of the circumstances, to protect the fowl from predation;
 - 2. The dog’s owner or keeper made reasonable efforts, under all of the circumstances, to maintain the dog on the owner’s or keeper’s property;
 - 3. The dog has not previously engaged in chasing, injuring, wounding or killing any livestock; and
 - 4. The dog’s owner or keeper will take necessary measures to prevent a reoccurrence.
- B. This section shall not exempt the dog’s owner or keeper from paying a civil penalty, taking necessary measures to prevent a reoccurrence, or satisfying any other obligations reasonably imposed upon the owner or keeper under DCC Chapter 6.12, which obligations may be imposed as a condition to release of the dog.
- C. In addition to any other penalties, fees or obligations imposed upon a dog owner under this subsection, the Board may order that the dog owner pay reasonable compensation to the livestock owner for the domesticated fowl killed, and may make payment of such compensation a condition to release of the dog.

HISTORY

Adopted by Ord. [2012-015](#) §1 on 10/3/2012

Amended by Ord. [2014-019](#) §1 on 6/30/2014



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: November 1, 2023

SUBJECT: Economic Development Loan Conversion and Repayment Plan for Broken Top Candle Company

RECOMMENDED MOTIONS:

1. Move to authorize the County Administrator to convert \$14,400 in Economic Development Loan Program funds issued to the Broken Top Candle Company into a grant.
2. Move to authorize a repayment plan for \$1,800 plus interest for the remaining loan amount that did not meet the terms of the original loan agreement.

BACKGROUND AND POLICY IMPLICATIONS:

The Deschutes County Economic Development Loan Program was initiated to encourage and assist companies seeking to relocate to and/or create new jobs in Deschutes County. To receive a loan, companies must agree to create a specific number of jobs within a defined period, then maintain this level of employment for an additional set period of time.

Broken Top Candle Company (BTCC) is a consumer home products company founded in 2015 in Bend. In 2021, BTCC was approved for a \$16,200 Economic Development Loan which is forgivable upon the following conditions:

1. Create at least nine new full-time positions by December 31, 2021;
2. Maintain these new positions for a 12-month period; and
3. Provide wages of at least \$41,767 per year (excluding commissions) for each new position.

As EDCO has certified that BTCC has created eight new jobs meeting the requirements for conditions 2 & 3, the recommendation is to convert \$14,400 of the original loan into a grant and require repayment of the remaining \$1,800.

BUDGET IMPACTS:

No anticipated budget impact as the loan was accounted for in the previous year's budget.

ATTENDANCE:

Jen Patterson, Deschutes County, Strategic Initiatives Manager
Afton Coffelt, Broken Top Candle Co, Founder
Don Myll, EDCO, Bend Area Director

October 11, 2023

Deschutes County Board of County Commissioners
1300 NW Wall Street
Bend, OR 97702

RE: Deschutes County Economic Development Loan Program - Proposal for Forgiveness and Repayment of Broken Top Candle Company (BTCC or Broken Top Brands) Loan.

Board of County Commissioners:

With respect to Broken Top Candle’s loan \$16,200 loan from the Deschutes County Economic Development Loan Program, Economic Development for Central Oregon (EDCO) recommends that the Deschutes County Board of Commissioners approve conversion to a grant (\$14,400) and repayment (\$1,800) plus interest by the Company.

Summary of Agreement and Support for Recommendation

Agreement Date:	April 1, 2021
Loan amount:	\$16,200
Agreement #:	DC: 2021-287
Employment Requirement:	From base of 11 full-time employees, create 9 full-time jobs between January 14, 2021, and December 31, 2021, and maintain 20 full-time employees through December 31, 2022.
Average Wage for New Jobs:	\$41, 767

Company Background:

Broken Top Candle Company (BTCC) is a growing consumer home products company. Founded in 2015, BTCC offers a wide variety of home and beauty products including candles, diffusers, lotions, soaps, and perfumes. All products are manufactured and /or packaged in Bend, using natural and organic based ingredients. The Company’s customers include 2,000 independent US and Canadian boutique retailers, large retailers, and direct-to-consumer online sales. The Company has grown from a one-woman kitchen operation to its current 17,700 square foot manufacturing and warehousing facility in Bend.



The Company has grown rapidly and expects to continue to grow, although at a slower rate than the rapid annual growth experienced over the last several years. The Company's more improved production processes in its new Bend facility combined with labor workforce shortages have forced the Company to become more efficient,

suppressing new job growth. While BTCC exceeded its employment requirement for a part of 2022, it fell one job short late in 2022. New job average wages during 2022 of over \$64,000, exceeded the required \$41,767. Employment has remained constant since the end of 2022 and is expected to grow, but at a slower rate.

BTCC believes that the pace of new job growth is unpredictable and has decided that it would prefer to repay the loan according to paragraph 3.3.3 of the Agreement rather than request to renegotiate the agreement and extend its terms. The Agreement provides partial conversion whereby BTCC repays \$1,800 for every full-time employee below 20 as of December 31, 2022. As of December 31, 2022, BTCC had 19 full time employees resulting in conversion of \$14,400 to a grant, and repayment of \$1,800 plus interest at 5% from April 21, 2021.

Below is a summary of full-time employees:

Beginning, January 14, 2021	11
Required new jobs	9
Total required, December 31, 2022	20

Actual full-time employees reported by quarter:

Q1	26
Q2	23
Q3	19
Q4	19

Attached is the certification prepared by Economic Development for Central Oregon regarding the information above.

EDCO recommends conversion to a grant of \$14,400 and repayment of \$1,800 plus interest from April 21, 2021.

Don Myll
Bend Area Director

**Economic Development
for Central Oregon**

705 SW Bonnett Way, Suite 1000
Bend, OR 97702

541.388.3236
www.edcoinfo.com

**DESCHUTES COUNTY
Economic Development Forgivable Loan Program**

Loan Recipient: Broken Top Candle Company (Broken top Brands or BTCC)
2491 Twin Knolls Dr.
Bend, OR 97701

Agreement No.: DC: 2021-287

Date of Agreement: April 1, 2021

On behalf of Economic Development for Central Oregon, I hereby certify that Broken Top Candle Company has met all conditions of the Deschutes County Economic Development Forgivable Loan Program as specified in Agreement DC: 2021-287 (attached), except as follows:

The Company did not add and retain 9 new jobs for a total of 20 full-time employees for the period December 31, 2021, through December 31, 2022. Instead, the Company's actual full-time employees by quarter were as follows:

Full-time Employees - 2021

Q1	26
Q2	23
Q3	19
Q4	19

I further attest that a representative of Economic Development for Central Oregon has reviewed employment and payroll records furnished by BTCC and that such records confirm that the company:

- a) Created within and/or relocated to Deschutes County at least 8 new full-time, family wage positions by or before December 31, 2021, and
- b) Maintained these new positions in Deschutes County for a 12-month period beyond the creation/relocation date through December 31, 2022, and
- c) Provided wages of at least \$41,767 per year for each new position.

I therefore request that the Deschutes County Board of County Commissioners authorize that the business development loan made to BTCC be converted to a grant in accordance with the terms of the attached Agreement as follows:

Convert to a grant	\$14,400
Repayment by BTCC	\$1,800 plus interest from April 1, 2021

Economic Development for Central Oregon

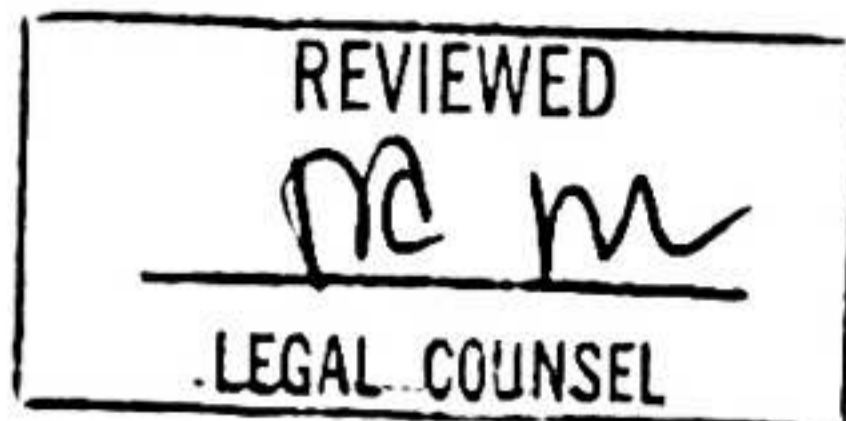


By: _____

Name: Don Myll

Title: Bend Area Director

Date: October 11, 2023



**DESCHUTES COUNTY
ECONOMIC DEVELOPMENT LOAN PROGRAM
DC: 2021-287**

AGREEMENT WITH Broken Top Candle Company

This Economic Development Loan Agreement ("Agreement") is entered into:

BETWEEN: Deschutes County (*hereinafter referred to as "County"*)
PO Box 6005
Bend, OR 97708-6005
541-330-4640

AND: Broken Top Candle Company (*hereinafter referred to as "Company"*)
62980 Boyd Acres Road, Building B
Bend, OR 97701
541-306-3079

RECITALS

WHEREAS, County finds that the program set forth in this Agreement will promote state and local economic activity by creating new jobs and investment; and

WHEREAS, Company wishes to expand its existing equipment and business operations within Bend, Oregon by increasing employment and investing in equipment and building improvements; and

WHEREAS, the said expansion in Bend, Oregon will create at least nine (9) new full-time, jobs between January 14, 2021 and December 31, 2021 for total employment by Company of 20 full-time equivalent employees; and

WHEREAS, once filled, the new full-time jobs will be maintained for an additional consecutive 12-month period to occur on or before December 31, 2022; and

WHEREAS, County desires to promote the expansion of Company's facility by loaning funds in the amount of \$16,200 for certain hiring and training expenses and such loan will later be converted to a grant upon the condition that Company satisfy certain requirements; and

WHEREAS, County has engaged Economic Development for Central Oregon (EDCO) to assist in administering and implementing the loan;

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to as follows:

**SECTION 1
DEFINITIONS**

- Section 1.1** Dollars and \$ shall mean lawful money of the United States of America.
- Section 1.2** Loan shall mean funds loaned by County to Company as provided under Section 3.
- Section 1.3** Project shall mean expansion of Company employment in Deschutes County, Oregon.
- Section 1.4** Full-Time Employee shall mean any employee who has been hired with the expectation that the job will last for at least one (1) year and who will work at least forty (40) hours per week or the equivalent of 2,080 hours per year.

**SECTION 2
TERM**

This Agreement shall be effective as of the date of execution by all parties and continue until the loan is paid in full or the loan is converted to a grant as provided in Section 3.3 below.

**SECTION 3
LOAN**

Section 3.1 Loan

County agrees to loan Company the sum of \$16,200 no later than 30 days following delivery of this signed Agreement to County.

Section 3.2 Loan Purpose and Representations of the Company

The purpose of the loan is to carry out the project, and for no other purposes. Company represents and warrants that it will diligently pursue and complete the following:

- 3.2.1** Company will employ at least thirteen (9) additional full time employees between January 14, 2021 and December 31, 2021 for a total of 20 full-time employees.
- 3.2.2** Company will maintain these new positions from the date all are filled for an additional consecutive 12-month period to occur on or before December 31, 2022.
- 3.2.3** Wages for the new positions will average \$41,767 per year excluding commissions, per annum.
- 3.2.4** Company will submit quarterly and annual progress reports to EDCO with documentation for job creation, capital investment relating to new facilities, and equipment associated with the project.
- 3.2.5** Company shall comply with all applicable federal, state, regional, and local laws, regulations, and ordinances.

- 3.2.6** Company shall timely pay all Deschutes County real and personal property tax when due and shall satisfy all delinquent property tax accounts in full.

Section 3.3 Loan Repayment or Conversion to Grant

- 3.3.1** Unless the loan is converted to a grant as provided below, Company agrees to pay to the order of County the full amount of the loan as well as interest at the rate of 5% per annum beginning from the date County releases funds to Company until the earlier of: (a) the occurrence of an event of default, as defined below, or (b) December 31, 2022.
- 3.3.2** County agrees to convert the loan to a grant that does not need to be repaid, if and when County determines in its sole discretion that Company has satisfied all of the obligations in Section 3.2 and its other obligations under this Agreement. Such conversion shall only be effective upon written verification by the County Administrator that the loan has been converted to a grant.
- 3.3.3** County may, in its sole discretion, convert a portion of the loan to a grant if all of the obligations under Section 3.2 and this Agreement have been fulfilled to the reasonable satisfaction of County. In the event of such partial conversion of the loan, the loan shall continue to be payable on a pro-rated basis in an amount determined by multiplying \$1,800 by the difference between twenty (20) and the number of full-time employees employed in Deschutes County by Company as of December 31, 2022. Interest will accrue on this portion of the loan at a rate of five percent (5%) per annum from the time the Company received the loan monies to the time they are repaid.

SECTION 4 DEFAULT

Section 4.1 Events of Default

The following shall be considered events of default:

- 4.1.1** Company fails to complete, or County reasonably determines that Company will not be able to complete, the obligations described in Section 3.2 and its other obligations under this Agreement; provided, however, that upon such failure or determination, County shall first provide to Company written notice of such failure or determination, and Company shall have thirty (30) days to correct the matter. If the matter has not been corrected by Company within such thirty (30) day period to the reasonable satisfaction of County, County shall be entitled to declare Company in default of its obligations under this Agreement and the loan and accrued interest shall be payable in full.
- 4.1.2** Company effects a change of ownership or change of control of its business which results in dissolution or conversion of the original business entity or relocates its business operations outside of Deschutes County, Oregon on or before the end of

the contract period. Change of ownership and/or change of control of the business will not be deemed a default if Company notifies County which may then condition consent on any reasonable term(s) necessary to adequately secure the loan. A change in majority stock ownership will not constitute a default if all other provisions in this agreement are met.

- 4.1.3 The occurrence of any event that has or may reasonably be expected to have a material adverse effect on Company's financial condition or Company's ability to make any payment required by this Agreement.
- 4.1.4 Company fails to pay, becomes insolvent or unable to pay, or admits in writing an inability to pay Company's debts as they become due, or makes a general assignment for the benefit of creditors.
- 4.1.5 A proceeding with respect to Company is commenced under any applicable law for the benefit of creditors, including, but not limited to, any bankruptcy or insolvency law, or an order for the appointment of a receiver, liquidator, trustee, custodian, or other officer having similar powers over Company is entered.

SECTION 5 MISCELLANEOUS

Section 5.1 Right to Inspect

Company agrees that County, their agents, and employees shall be entitled, upon reasonable prior notice to Company, to access and inspect the property and employment records of Company and its affiliates in order to insure that Company is complying with the terms of this Agreement and all applicable federal, state, and local laws and regulations. The right to inspection shall also include any property or employment records that are in the possession of any affiliate of Company. The right of inspection shall continue until all of the obligations of Company under this Agreement have been satisfied.

Section 5.2 Attorney's Fee Provision

In the event suit or action is instituted to enforce any of the terms or conditions of this Agreement, the unsuccessful party shall pay to the prevailing party, in addition to the costs and disbursements allowed by statute, such sum as the court may adjudge reasonable as attorney fees in such suit or action, in both trial court and appellate courts.

Section 5.3 Indemnification

Company shall defend, indemnify and hold harmless County and EDCO, their officers, agents, employees, and members from all claims, suits, and causes of action, including attorney's fees, of any nature whatsoever relating to claims by third parties resulting from or arising out this Agreement or funds provided to Company under this Agreement.

Except as otherwise provided in this Section 5.3, County and EDCO shall defend, indemnify, and hold harmless Company, their officers, agents, employees, and members from all claims, suits, and causes of action, including attorney's fees, relating to claims by third parties as to the validity

under public finance law of this Agreement or funds provided to the Company under this Agreement.

Section 5.4 Entire Agreement

This Agreement constitutes the entire agreement between the parties regarding the matters herein.

Section 5.6 Titles and Subtitles

The titles in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provision of this Agreement.

Section 5.7 Notice

All notices, requests demands, and other communications to or upon the parties hereto shall be in writing and shall be deemed to have been duly given or made: Upon actual receipt, if delivered personally or by fax or an overnight delivery service; and at the end of the third business day after the date of deposit in the United States mail, postage pre-paid, certified, return receipt requested; and to the addresses set forth on page 1 of this Agreement or at such other address of which such party shall have notified in writing the other parties hereto.

Section 5.8 Time is of the Essence

All parties agree that time is of the essence under this Agreement.

Section 5.9 Applicable Law

This Agreement is made, and shall be construed and interpreted under the laws of the State of Oregon without regard to the principles of conflicts of law. Venue shall lie in state courts located in Deschutes County, Oregon, provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

Section 5.10 Disclosure

Under Oregon law, most agreements, promises, and commitments made by a lender after October 3, 1989 concerning loans and other credit extensions which are not for personal, family, or household purposes or secured solely by borrower's residence must be in writing, express consideration, and be signed by the lender to be enforceable.

Section 5.11 No Waiver

No failure or delay of County in exercising any right, power or remedy under this Agreement shall operate as a waiver of such right, power or remedy of County, or of any other right. A waiver of any provision of this Agreement shall not constitute a waiver of or prejudice County's right otherwise to demand strict compliance with that provision or any other provision. Any waiver, permit, consent or approval of any kind or character on the part of County must be in writing and shall be effective only to the extent specifically set forth in such writing.

Section 5.12 No Assignment by Company

No obligation or right under this Agreement may be assigned by the Company without the prior consent of County, which consent may be withheld, conditioned, or delayed in the sole discretion of County.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be duly executed as of the dates set forth below their respective signatures.

Deschutes County

Broken Top Candle Company

By: 
Tom Anderson, County Administrator

By: 
Afton Coffelt | CEO + Founder

Date: 3-29-21

Date: 4-1-21



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: November 1, 2023

SUBJECT: Ordinance No. 2023-014 - Rural Accessory Dwelling Unit Text Amendments

RECOMMENDED MOTIONS:

Staff recommends the Board conduct second reading of Ordinance No. 2023-014. With a unanimous vote, the Board can adopt the proposed amendments by emergency, with an effective date of 30 days after adoption. Should the Board choose to identify a different emergency adoption timeline, staff can modify the proposed ordinance based on Board direction. Alternatively, the Board can choose to follow standard procedure with an effective date of 90 days after adoption.

BACKGROUND AND POLICY IMPLICATIONS:

The Board held first reading of Ordinance 2023-014 on October 18, 2023. If adopted by emergency with a 30-day effective date, the new amendments would become effective December 1, 2023. If adopted by standard procedure with a 90-day effective date, the new amendments would become effective January 30, 2024.

BUDGET IMPACTS:

None

ATTENDANCE:

Will Groves, Planning Manager
Kyle Collins, Associate Planner



COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Kyle Collins, Associate Planner

DATE: October 24, 2023

SUBJECT: Consideration of Second Reading – Rural Accessory Dwelling Unit (ADU) Amendments

On November 1, 2023, staff will present Ordinance No. 2023-014 to the Board of County Commissioners (Board) for consideration of second reading. The Board conducted first reading on October 18, 2023¹ following deliberations on August 9, 2023². Ordinance No. 2023-014 outlines legislative text amendments concerning local provisions for rural accessory dwelling units (ADUs) as identified in Senate Bills (SBs) 391³ and 644⁴ (file no. 247-22-000671-TA). The ordinance provided here reflects the decisions made during the Board's deliberations and subsequent work sessions.

Staff submitted an initial 35-day Post-Acknowledgement Plan Amendment (PAPA) notice to the Department of Land Conservation and Development (DLCD) on August 17, 2022. A public hearing was held with the Deschutes County Planning Commission (Commission) on September 22, 2022⁵. The Commission held deliberations and provided recommendations on October 27, 2022⁶.

Subsequently, legislation was passed by the Oregon Legislature which required several changes to the original proposed amendments to maintain compliance with state standards. Specifically, SB 644 was passed in May 2023 and provides direction to local jurisdictions looking to adopt rural ADU standards prior to formal release of the Statewide Wildfire Hazard Map required by SBs 762 and 80. Additionally, SB 80⁷ was passed which alters the original standards and terminology used within the forthcoming Statewide Wildfire Hazard Map. Per Board direction, staff submitted a revised 35-day PAPA notice to DLCD on June 7, 2023 and held a new work session with the Commission on July 13, 2023⁸.

¹ See Deschutes County Planning Commission October 18, 2023 Agenda for more information:

<https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-132>

² See Deschutes County Planning Commission August 9, 2023 Agenda for more information:

<https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-118>

³ <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB0391/A-Engrossed>

⁴ <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB644/Enrolled>

⁵ <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB80/Enrolled>

⁶ See Deschutes County Planning Commission October 27, 2022 Agenda for more information: <https://www.deschutes.org/bc-pc/page/planning-commission-21>

⁷ <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB80/Enrolled>

⁸ See Deschutes County Planning Commission July 13, 2023 Agenda for more information: <https://www.deschutes.org/bc-pc/page/planning-commission-29>

Following a Board work session on July 24, 2023⁹ and public hearing on July 26, 2023¹⁰, the Board voted to keep the written record open until Wednesday August 9th, 2023 with deliberations scheduled for the same day.

I. RECORD

The record, which contains all memoranda, notices, and written testimony received, is available at the following website: <https://www.deschutes.org/adu>

II. OVERVIEW OF ORDINANCE

During deliberations, staff presented several decision points for Board consideration. A brief summary of the Board decisions and subsequent modifications to the draft amendments is provided below. For a more in-depth overview of each of these issues, please refer to the staff memorandum from deliberations on August 9, 2023.¹¹

Primary Modifications

1. How should “Useable Floor Area” be defined?

- “Useable floor area” is defined as “the area of the accessory dwelling unit included within the surrounding exterior walls, exclusive of garages, carports, decks and porch covers.”
- Based on staff’s understanding of the Board’s legislative intent and discussions during deliberations, language has been removed from the “useable floor area” definition to clarify that accessory components of ADUs such as garages can also be insulated without counting towards the 900 square-foot size limitation.

2. How should the 100-Foot Siting Distance requirement be interpreted?

- 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.
- Based on Board direction, staff has added the following exception language to the siting distance standard: “An existing structure converted to an accessory dwelling unit must be located no farther than 100 feet from the existing single-family dwelling, measured from existing single-family dwelling to the nearest part of the accessory dwelling unit structure. For the purposes of this section, “existing” means the structure was lawfully established on or before

⁹ See Board of County Commissioners July 24, 2023 Agenda for more information: <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-115>

¹⁰ See Board of County Commissioners July 26, 2023 Agenda for more information: <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-116>

¹¹ See Board of County Commissioners August 9, 2023 Agenda for more information: <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-118>

November 1, 2023.” As currently defined, the “accessory dwelling unit structure” can include any portion of an ADU, including garages and any other components not included in the “useable floor area” definition.

3. To maintain Southern Deschutes County Groundwater Protection efforts, should rural ADUs in Southern Deschutes County be limited to properties 5 acres or larger?

- Based on Board direction during first reading of the proposed Ordinance, staff has modified the code to only allow ADU development on qualifying properties 5 acres or larger in Southern Deschutes County. All remaining qualifying properties must be 2 acres or larger based on state statute.

4. Should rural ADU development be allowed in designated Goal 5 areas such as the Wildlife Area Combining Zone, subject to existing standards and requirements?

- The code allows ADU development in designated Goal 5 areas subject to existing standards and requirements.

5. Do the current amendments adequately address Senate Bill 762, Senate Bill 80, and Wildfire Mitigation?

- Based on concerns from Community Development staff and local fire protection officials, certain features of the wildfire mitigation standards have been slightly modified. These modifications do not appreciably alter the original proposal, but rather provide greater direction and clarity for implementation purposes.
- For example, the dimensional standards for adequate access and onsite driveways have been modified from requiring a “20-foot minimum width, with minimum vertical clearance of 13.5 feet” to a “12-foot minimum width, a minimum horizontal clearance of 20 feet, and a minimum vertical clearance of 13.5 feet.” These standards align with best practices from other jurisdictions and minimum standards from several fire protection districts. All other components of the adequate access standards remain unchanged from the original proposal.
- Additionally, based on further discussion with Community Development staff, it has been concluded that “staged evacuation areas” are formally determined during specific emergency situations and thus it may be unnecessary or misleading to have potential future applicants identify specific evacuation sites prior to development of an ADU. Based on this interpretation and nuance, the code has been modified to only require formal “written authorization from the property owner(s) of the staged evacuation area” in the event that property owners would rather identify private parcels as staged evacuation areas instead of formal sites identified during a specific emergency event. All other applicants will be notified at the time of application that staged evacuation areas will be identified by emergency services personnel during an evacuation event

and applicants will be directed to emergency notification networks in Deschutes County such as Deschutes Alerts¹².

6. Should ADUs be allowed in the Westside Transect Zone?

- Based on Board direction, staff has modified the amendments to allow ADU development within the Westside Transect Zone.

7. Should Vacation Occupancy be prohibited in the existing residence, as well as the ADU?

- Based on Board direction, staff has modified the amendments to prohibit vacation occupancy within the ADU as well as the primary dwelling.

Secondary Modifications

After discussions with Community Development staff, a number of minor modifications have been made to the previous amendments which are intended to facilitate implementation of the ADU program and provide clear direction for both staff and applicants. These minor modifications do not change the legislative intent of the previous amendments, but add clarifying standards or new definitions when previous language may have offered competing interpretations. These changes can be summarized as follows:

- Several amendments have been modified to clarify when application or verification materials are required during a formal ADU application process. For example, language has been included to require applicants to receive approval from a sewer authority or the Deschutes County Onsite Wastewater Division for onsite wastewater disposal and treatment, prior to an application for an ADU.
- A new definition for “accessory dwelling unit structure” has been added to provide guidance for standards which may affect areas of a proposed ADU outside of the “useable floor area,” such as setbacks or wildfire mitigation building standards. This new definition is as follows: “Accessory dwelling unit structure” means all areas of an accessory dwelling unit inclusive of garages, carports, decks, and porch covers.
- A clarification has been added to ensure that all structures which serve a primarily residential dwelling use, such as additional ADUs, guest houses, or temporary residences such as medical hardship dwellings will be disallowed on properties containing an approved ADU.

II. NEXT STEPS & STAFF RECOMMENDATION

Staff has prepared two versions of Ordinance No. 2023-014. The first version would allow the Board to adopt the ordinance by emergency, with an effective date of 30 days and after final acknowledgement

¹² <https://www.deschutes.org/911/page/sign-deschutes-alerts>

by the Department of Land Conservation and Development (DLCD), on December 1, 2023. The second version would follow standard adoption procedure, rather than by emergency. This means that the ordinance will be effective 90 days after the date of adoption and after final acknowledgement by the Department of Land Conservation and Development (DLCD), on January 30, 2024.

Attachments:

1. Ordinance No. 2023-014 and Corresponding Exhibits – Emergency
2. Ordinance No. 2023-014 and Corresponding Exhibits – Non-Emergency

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code *
Title 18, Zoning Ordinance, Title 19, Bend Urban *
Area Zoning Ordinance, and Title 22, Procedures * ORDINANCE NO. 2023-014
Ordinance, to Adopt Provisions for Rural Accessory *
Dwelling Units. *

WHEREAS, the Board of County Commissioners directed Deschutes County Community Development Department staff to initiate amendments (Planning Division File No. 247-22-000671-TA) to Deschutes County Code (“DCC”), Chapter 18.32 – Multiple Use Agricultural Zone, Chapter 18.60 – Rural Residential Zone, Chapter 18.116 – Supplementary Provisions, Chapter 18.132 – Variances, Chapter 19.12 – Urban Area Reserve Zone, Chapter 19.20 – Suburban Low Density Residential Zone, Chapter 19.22 – Westside Transect Zone, Chapter 19.76 – Site Plan Review, Chapter 19.92 – Interpretations and Exceptions, Chapter 19.108 – Variances, Chapter 22.04 – Introductions and Definitions; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on September 22, 2022 and forwarded to the Deschutes County Board of County Commissioners (“Board”) a 4-2 recommendation of approval; and

WHEREAS, the Deschutes County Planning Commission reviewed new edits to the proposed changes on and July 13, 2023, and forwarded to the Deschutes County Board of County Commissioners (“Board”) a 5-0 recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on July 26, 2023 and concluded that the public will benefit from the proposed changes to the Deschutes County Code Titles 18, 19, and 22; now, therefore,

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

Section 1. AMENDMENT. Deschutes County Code Chapter 18.32, Multiple Use Agricultural Zone, is amended to read as described in Exhibit “A”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 2. AMENDMENT. Deschutes County Code Chapter 18.60, Rural Residential Zone, is amended to read as described in Exhibit “B”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 3. AMENDMENT. Deschutes County Code Chapter 18.116, Supplementary Provisions, is amended to read as described in Exhibit “C”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 4. AMENDMENT. Deschutes County Code Chapter 18.132, Variances, is amended to read as described in Exhibit “D”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 5. AMENDMENT. Deschutes County Code Chapter 19.12, Urban Area Reserve Zone, is amended to read as described in Exhibit “E”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 6. AMENDMENT. Deschutes County Code Chapter 19.20, Suburban Low Density Residential Zone, is amended to read as described in Exhibit “F”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 7. AMENDMENT. Deschutes County Code Chapter 19.22, Westside Transect Zone, is amended to read as described in Exhibit “G”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 8. AMENDMENT. Deschutes County Code Chapter 19.76, Site Plan Review, is amended to read as described in Exhibit “H”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 9. AMENDMENT. Deschutes County Code Chapter 19.92, Interpretations and Exceptions, is amended to read as described in Exhibit “I”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 10. AMENDMENT. Deschutes County Code Chapter 19.108, Variances, is amended to read as described in Exhibit “J”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 11. AMENDMENT. Deschutes County Code Chapter 22.04, Introductions and Definitions, is amended to read as described in Exhibit “K”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 12. FINDINGS. The Board adopts as its findings Exhibit “L”, attached and incorporated by reference herein.

Section 13. EMERGENCY. This Ordinance being necessary for the public peace, health, and safety, an emergency is declared to exist, and this Ordinance becomes effective thirty (30) days after adoption and after final acknowledgement by the Oregon Department of Land Conservation and Development, unless this Ordinance is appealed.

Dated this _____ of _____, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHILIP CHANG

Date of 1st Reading: _____ day of _____, 2023.

Date of 2nd Reading: _____ day of _____, 2023.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Anthony DeBone	___	___	___	___
Patti Adair	___	___	___	___
Philip Chang	___	___	___	___

Effective date: _____ day of _____, 2023.

Exhibit A

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 Home Accessory Dwelling Units, subject to DCC 18.116.350.
- K. Residential Accessory Dwelling Units, subject to DCC 18.116.355.

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. 2023-014 §1 on 11/1/2023

Exhibit B

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 Home Accessory Dwelling Units, subject to DCC 18.116.350.
- L. Residential Accessory Dwelling Units, subject to DCC 18.116.355.

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. 2023-014 §2 on 11/1/2023

Exhibit C

CHAPTER 18.116 SUPPLEMENTARY PROVISIONS

18.116.350 Historic Home Accessory Dwelling Units In The RR-10 And MUA Zones

18.116.355 Residential Accessory Dwelling Units In The RR-10 And MUA Zones

* * *

18.116.350 Historic Home Accessory Dwelling Units In The RR-10 And MUA Zones

A. As used in this section:

1. "Historic Accessory-accessory dwelling unit" means a residential structure that is used in connection with or that is auxiliary to a single-family dwelling. For the purposes of this section, "auxiliary" means a use or structure incidental and subordinate to the single-family dwelling on the property, and located on the same lot as the single-family dwelling.
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 (RR_10 and MUA zonesZones) 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 a historic accessory dwelling unit upon completion of the new single-family dwelling or placement of a manufactured home; and
 - 5. The historic 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 a historic accessory dwelling unit 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 historic accessory dwelling unit.
 - 2. Alter, renovate or remodel the historic accessory dwelling unit so that the square footage of the historic 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 historic 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 historic accessory dwelling unit.
- F. Owner occupancy of either the historic accessory dwelling unit or the new single-family dwelling is not required. However, the historic accessory dwelling unit and the new single-family dwelling placed under this section 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. 2023-014 §3 on 11/1/2023

18.116.355 Residential Accessory Dwelling Units In The RR-10 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 a single-family dwelling. For the purposes of this section, “auxiliary” means a use or structure incidental and subordinate to the single-family dwelling on the property, and located on the same lot as the single-family dwelling.
 2. “Accessory dwelling unit structure” means all areas of an accessory dwelling unit inclusive of garages, carports, decks, and porch covers.
 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-way and any onsite driveways from the accessory dwelling unit to a staged evacuation area.
 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.
 6. “Staged evacuation area” means a public or private location that occupants of the accessory dwelling unit may evacuate to reorganize.
 7. “Useable floor area” means all areas of an accessory dwelling unit included within the surrounding 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; and
 - 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 RR-10 or MUA-10, provided all of the following standards are met:
1. One single-family dwelling is sited on the lot or parcel:
 - a. As used in this section, “sited” means established onsite or applied for prior to issuance of any building or land use permits for an accessory dwelling unit.
 - b. An existing single-family dwelling meeting all other criteria in this section may be converted to an accessory dwelling unit during construction of a new primary single-family dwelling.
 2. There is no guest house, temporary residence as identified in DCC 18.116.090, or additional dwelling units except the primary single-family dwelling established on the subject property.

- a. An existing lawfully established guest house, temporary residence as identified in DCC 18.116.090, or an additional dwelling unit meeting all other criteria in this section may be converted to an accessory dwelling unit.
3. The lot or parcel is not located within an Urban Reserve Area, consistent with ORS 195.137.
4. No portion of the lot or parcel is within the Metolius Area of Critical State Concern, as defined in ORS 197.416.
5. The lot 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. Within these exception areas, the lot area is at least five acres in size.
6. The accessory dwelling unit structure will have a minimum setback of 100 feet from adjacent properties zoned F-1, F-2, or EFU and meet any other minimum setback requirements of the underlying zone and combining zones.
7. The accessory dwelling unit will not include more than 900 square feet of useable floor area.
8. The accessory dwelling unit will be located no farther than 100 feet from the existing single-family dwelling, measured from a wall of the existing single-family dwelling to the nearest part of the useable floor area of the accessory dwelling unit.
 - a. An existing structure converted to an accessory dwelling unit must be located no farther than 100 feet from the existing single-family dwelling, measured from the existing single-family dwelling to the nearest part of the accessory dwelling unit structure. For the purposes of this section, "existing" means the structure was lawfully established on or before November 1, 2023.
9. Prior to application, the accessory dwelling unit receives approval from a sewer authority or the Deschutes County Onsite Wastewater Division for onsite wastewater disposal and treatment.
10. 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.
11. The accessory dwelling unit provides for all of the following:
 - a. Adequate access connecting an accessory dwelling unit with a fire protection service provider with professionals who have received training or certification described in ORS 181A.410. Adequate access is met by demonstrating compliance with section 11(a)i and 11(a)(ii), or section 11(a)(iii):
 - i. A continuous, minimum 20-foot width right(s)-of-way with an unobstructed vertical clearance of not less than 13.5 feet. For the purposes of this section, right(s)-of-way are defined as:

1. Public roads with maintenance responsibility accepted by a unit of local or state government or assigned to landowners or homeowners association by covenant or agreement; or
 2. Private roads, as permitted by DCC Title 18, with maintenance responsibility assigned to landowners or homeowners associations by covenant or agreement pursuant to ORS 105; and
 - ii. A continuous, minimum 12-foot width onsite driveway with an unobstructed horizontal clearance of not less than 20 feet and an unobstructed vertical clearance of not less than 13.5 feet, designed and maintained as follows:
 1. Composed of an all-weather surface including asphalt or concrete; or
 2. Designed and maintained to support a minimum gross vehicle weight (GVW) of 75,000 lbs as certified by a Professional Engineer, registered in Oregon;
 - iii. Written confirmation 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. For private properties utilized as staged evacuation areas, written authorization from the property owner(s) of the staged evacuation area that the occupants of the accessory dwelling unit may evacuate to the staged evacuation area.
12. Wildfire Hazard Mitigation Building Code Standards:
- a. If the Statewide Wildfire Hazard Map described in ORS 477.490 has been approved, the following requirements shall apply to the accessory dwelling unit structure:
 - i. For areas designated as high wildfire hazard that are identified pursuant to ORS 477.490:
 1. The Wildfire Hazard Mitigation building code standards as described in section R327 of the Oregon Residential Specialty Code.
 - b. If the Statewide Wildfire Hazard Map described in ORS 477.490 has not been approved, the following requirements shall apply to the accessory dwelling unit structure:
 - i. The Wildfire Hazard Mitigation building code standards as described in section R327 of the Oregon Residential Specialty Code.
13. Wildfire Hazard Mitigation Defensible Space Standards:
- a. If the Statewide Wildfire Hazard Map described in ORS 477.490 has been approved, the following requirements shall apply:

- i. For all wildfire hazard designations in the wildland-urban interface that are identified pursuant to ORS 477.490:
 - 1. The minimum defensible space rules established by the State Fire Marshal as described in ORS 476.392.
 - b. If the Statewide Wildfire Hazard Map described in ORS 477.490 has not been approved, then either the section 13(b)(i) or 13(b)(ii) requirements shall apply:
 - i. Prior to issuance of building permits, the property owner(s) shall construct and maintain the following firebreaks on land surrounding the accessory dwelling unit that is owned or controlled by the owner:
 - 1. Primary Firebreak. A primary firebreak, not less than 10 feet wide, shall be constructed containing nonflammable materials. This may include lawn, walkways, driveways, gravel borders or other similar materials; and
 - 2. Secondary Firebreak. A secondary firebreak of not less than 20 feet wide shall be constructed outside the primary firebreak. This firebreak need not be bare ground, but can include a lawn, ornamental shrubbery or individual or groups of trees separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed; and
 - 3. Fuel Break. A fuel break shall be maintained, extending a minimum of 100 feet in all directions around the secondary firebreak. Individual and groups of trees within the fuel break shall be separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed; and
 - 4. No portion of a tree or any other vegetation shall extend to within 15 feet of the outlet of a stovepipe or chimney.
 - ii. Prior to issuance of building permits, the property owner(s) shall construct and maintain defensible space and fuel breaks as developed in consultation with local fire protection service providers who have received training or certification described in ORS 181A.410. Applicable defensible space and fuel breaks shall be on land surrounding the accessory dwelling unit on land that is owned or controlled by the owner.
14. 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.

- 15. A lot or parcel with an accessory dwelling unit approved under this section is ineligible for:
 - a. A subdivision, partition, other division of the lot or parcel, or a property line adjustment where the result of such application would be to situate the existing single-family dwelling on a different lot or parcel than the accessory dwelling unit; and
 - b. Placement or construction of any additional dwelling unit, guest house, or any other temporary residence as identified in DCC 18.116.090.

- 16. 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.

- 17. At the time of application, a letter confirming that the supplier of water is “Willing and Able to Serve” the accessory dwelling unit shall be provided if the accessory dwelling unit is to be served by any water source other than an onsite domestic well.

- 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. If the water supply source for the accessory dwelling unit or associated lands or gardens will be a well using water under ORS 537.545 (1)(b) or (d), no portion of the lot or parcel is within an area in which new or existing ground water uses under ORS 537.545 (1)(b) or (d) have been restricted by the Water Resources Commission.

- 20. Prior to issuance of building permits, the applicant shall sign and record with the County Clerk, a restrictive covenant stating an accessory dwelling unit allowed under this section and the primary single-family dwelling cannot be used for vacation occupancy, as defined in DCC 18.116.355(A)(8) and consistent with ORS 90.100.

HISTORY

Adopted by Ord. 2023-014 §3 on 11/1/2023

Exhibit D

CHAPTER 18.132 VARIANCES18.132.020 Authority Of Hearings Body18.132.025 Minor Variances

18.132.020 Authority Of Hearings Body

A variance may be granted unqualifiedly or may be granted subject to prescribed conditions, provided that the Planning Director or Hearings Body shall make all of the following findings:

A. Area variance.

1. That the literal application of the ordinance would create practical difficulties resulting in greater private expense than public benefit.
2. That the condition creating the difficulty is not general throughout the surrounding area but is unique to the applicant's site.
3. That the condition was not created by the applicant. A self-created difficulty will be found if the applicant knew or should have known of the restriction at the time the site was purchased.
4. That the variance conforms to the Comprehensive Plan and the intent of the ordinance being varied.

B. Use variance.

1. That the literal application of the ordinance would result in unnecessary hardship to the applicant. An unnecessary hardship will be found when the site cannot be put to any beneficial use under the terms of the applicable ordinance.
2. Each of the findings listed in DCC 18.132.020(A)(1), (2) and (4).

C. Statutory Provisions.

1. Notwithstanding the provisions of this section, a variance may not be granted which amends any standards mandated by the Oregon Revised Statutes (ORS) or Oregon Administrative Rules (OAR).

HISTORY

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

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

Amended by Ord. [93-043](#) §24 on 8/25/1993

[Amended by Ord. 2023-014 §4 on 11/1/2023](#)

18.132.025 Minor Variances

A variance seeking to depart from on-site requirements of DCC Title 18, such as setbacks and area requirements, by no greater than 10 percent of the required distance or area may be granted by the Planning Director or Hearings Body in conformance with DCC 18.132.025.

- A. In the case of a setback or size variance, the applicant shall show that the approval will result in:
 - 1. More efficient use of the site;
 - 2. Preservation of natural features where appropriate;
 - 3. Adequate provision of light and privacy to adjoining properties; and
 - 4. Preservation of topographic, vegetative and drainage features which would be adversely affected by application of the standards otherwise required by DCC Title 18.
- B. A parcel that is smaller than the minimum lot size at the time of application may not be reduced by more than 10 percent from its current size without a variance.
- C. Notwithstanding B, above, a property may be reduced by more than 10 percent of its current size without a variance if :
 - 1. The property is located outside of a Farm (EFU) or Forest (F) zone;
 - 2. The long-standing occupation area is different than the legal description in the deed for the subject property;
 - 3. The purpose of the property line adjustment is to correct the deed description to match the long-standing occupation lines of the properties; and
 - 4. The discrepancy between the deed lines and the occupation lines is documented by submittal of a narrative and maps prepared by an Oregon Licensed Professional Surveyor.
 - 5. As used in this sub-section, “long-standing” means in excess of ten (10) years.

D. Statutory Provisions.

1. Notwithstanding the provisions of this section, a variance may not be granted which amends any standards mandated by the Oregon Revised Statues (ORS) or Oregon Administrative Rules (OAR).

HISTORY

- Adopted by Ord. [91-038](#) §3 on 9/30/1991*
- Amended by Ord. [2004-013](#) §15 on 9/21/2004*
- Amended by Ord. [2010-003](#) §1 on 7/6/2010*
- [Amended by Ord. 2023-014 §4 on 11/1/2023](#)*

Exhibit E

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 Home 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. 2023-014 §5 on 11/1/2023

Exhibit F

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 Home 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. 2023-014 §6 on 11/1/2023*

Exhibit G

CHAPTER 19.22 WESTSIDE TRANSECT ZONE; WTZ19.22.020 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. 2023-014 §7 on 11/1/2023

Exhibit H

CHAPTER 19.76 SITE PLAN REVIEW**19.76.070 Site Plan Criteria**

19.76.020 Site Plan Requirements

In all zones, except for a single-family, duplex or triplex unit, or an accessory dwelling unit, on one lot, all new uses, buildings, outdoor storage or sales areas and parking lots or alterations thereof shall be subject to the provisions of DCC 19.76.020. Site plan approval shall not be required where a proposed alteration of an existing building does not exceed 25 percent of the size of the original structure unless the Planning Director finds the original structure or proposed alteration does not meet the requirements of DCC Title 19 or other ordinances of the County.

HISTORY

Adopted by Ord. [PL-11](#) on 7/11/1979

Repealed & Reenacted by Ord. [90-038](#) §1 on 10/3/1990

[Amended by Ord. 2023-014 §8 on 11/1/2023](#)

Exhibit I

CHAPTER 19.92 INTERPRETATIONS AND EXCEPTIONS

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

19.92.160 Residential Accessory Dwelling Units In The UAR-10, SR-2 ½, And WTZ Zones

* * *

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

A. As used in this section:

1. "Historic Accessory-accessory dwelling unit" means a residential structure that is used in connection with or that is auxiliary to a single-family dwelling. For the purposes of this section, "auxiliary" means a use or structure incidental and subordinate to the single-family dwelling on the property, and located on the same lot as the single-family dwelling.
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~~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 a historic-accessory dwelling unit upon completion of the new single-family dwelling; and
5. The historic 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 a historic accessory dwelling unit 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 historic accessory dwelling unit.
 - 2. Alter, renovate or remodel the historic accessory dwelling unit so that the square footage of the historic 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 historic 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 historic accessory dwelling unit.
- F. Owner occupancy of either the historic accessory dwelling unit or the new single-family dwelling is not required. However, the historic accessory dwelling unit and the new single-family dwelling placed under this section ~~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. [2023-014 §9](#) on 11/1/2023

19.92.160 Residential Accessory Dwelling Units In The 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 a single-family dwelling. For the purposes of this section, “auxiliary” means a use or structure incidental and subordinate to the single-family dwelling on the property, and located on the same lot as the single-family dwelling.
- 2. “Accessory dwelling unit structure” means all areas of an accessory dwelling unit inclusive of garages, carports, decks, and porch covers.

3. “Rural residential use” means a lot or parcel located in the UAR-10, SR-2 ½, or WTZ Zones, consistent with the definition in ORS 215.501.
 4. “Safe evacuation plan” means an identifiable route on a right(s)-of-way and any onsite driveways from the accessory dwelling unit to a staged evacuation area.
 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.
 6. “Staged evacuation area” means a public or private location that occupants of the accessory dwelling unit may evacuate to reorganize.
 7. “Useable floor area” means all areas of an accessory dwelling unit included within the surrounding 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; and
 - 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 UAR-10, SR-2 ½, or WTZ, provided all of the following standards are met:
1. One single-family dwelling is sited on the lot or parcel:
 - a. As used in this section, “sited” means established onsite or applied for prior to issuance of any building or land use permits for an accessory dwelling unit.
 - b. An existing single-family dwelling meeting all other criteria in this section may be converted to an accessory dwelling unit during construction of a new primary single-family dwelling.
 2. There is no guest house, temporary residence as identified in DCC 19.88.090, or additional dwelling units except the primary single-family dwelling established on the subject property.
 - a. An existing lawfully established guest house, temporary residence as identified in DCC 19.88.090, or an additional dwelling unit meeting all other criteria in this section may be converted to an accessory dwelling unit.
 3. The lot or parcel is not located within an Urban Reserve Area, consistent with ORS 195.137.
 4. No portion of the lot or parcel is within the Metolius Area of Critical State Concern, as defined in ORS 197.416.

5. The lot 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. Within these exception areas, the lot area is at least five acres in size.
6. The accessory dwelling unit structure will have a minimum setback of 100 feet from adjacent properties zoned F-1, F-2, or EFU and meet any other minimum setback requirements of the underlying zone and combining zones.
7. The accessory dwelling unit will not include more than 900 square feet of useable floor area.
8. The accessory dwelling unit will be located no farther than 100 feet from the existing single-family dwelling, measured from a wall of the existing single-family dwelling to the nearest part of the useable floor area of the accessory dwelling unit.
 - a. An existing structure converted to an accessory dwelling unit must be located no farther than 100 feet from the existing single-family dwelling, measured from the existing single-family dwelling to the nearest part of the accessory dwelling unit structure. For the purposes of this section, "existing" means the structure was lawfully established on or before November 1, 2023.
9. Prior to application, the accessory dwelling unit receives approval from a sewer authority or the Deschutes County Onsite Wastewater Division for onsite wastewater disposal and treatment.
10. 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.
11. The accessory dwelling unit provides for all of the following:
 - a. Adequate access connecting an accessory dwelling unit with a fire protection service provider with professionals who have received training or certification described in ORS 181A.410. Adequate access is met by demonstrating compliance with section 11(a)i and 11(a)(ii), or section 11(a)(iii):
 - i. A continuous, minimum 20-foot width right(s)-of-way with an unobstructed vertical clearance of not less than 13.5 feet. For the purposes of this section, right(s)-of-way are defined as:
 1. Public roads with maintenance responsibility accepted by a unit of local or state government or assigned to landowners or homeowners association by covenant or agreement; or
 2. Private roads, as permitted by DCC Title 19, with maintenance responsibility assigned to landowners or homeowners associations by covenant or agreement pursuant to ORS 105; and

- ii. A continuous, minimum 12-foot width onsite driveway with an unobstructed horizontal clearance of not less than 20 feet and an unobstructed vertical clearance of not less than 13.5 feet, designed and maintained as follows:
 - 1. Composed of an all-weather surface including asphalt or concrete; or
 - 2. Designed and maintained to support a minimum gross vehicle weight (GVW) of 75,000 lbs as certified by a Professional Engineer, registered in Oregon;
- iii. Written confirmation 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. For private properties utilized as staged evacuation areas, written authorization from the property owner(s) of the staged evacuation area that the occupants of the accessory dwelling unit may evacuate to the staged evacuation area.

12. Wildfire Hazard Mitigation Building Code Standards:

- a. If the Statewide Wildfire Hazard Map described in ORS 477.490 has been approved, the following requirements shall apply to the accessory dwelling unit structure:
 - i. For areas designated as high wildfire hazard that are identified pursuant to ORS 477.490:
 - 1. The Wildfire Hazard Mitigation building code standards as described in section R327 of the Oregon Residential Specialty Code.
- b. If the Statewide Wildfire Hazard Map described in ORS 477.490 has not been approved, the following requirements shall apply to the accessory dwelling unit structure:
 - i. The Wildfire Hazard Mitigation building code standards as described in section R327 of the Oregon Residential Specialty Code.

13. Wildfire Hazard Mitigation Defensible Space Standards:

- a. If the Statewide Wildfire Hazard Map described in ORS 477.490 has been approved, the following requirements shall apply:
 - i. For all wildfire hazard designations in the wildland-urban interface that are identified pursuant to ORS 477.490:
 - 1. The minimum defensible space rules established by the State Fire Marshal as described in ORS 476.392.
- b. If the Statewide Wildfire Hazard Map described in ORS 477.490 has not been approved, then either the section 13(b)(i) or 13(b)(ii) requirements shall apply:

- i. Prior to issuance of building permits, the property owner(s) shall construct and maintain the following firebreaks on land surrounding the accessory dwelling unit on land that is owned or controlled by the owner:

 - 1. Primary Firebreak. A primary firebreak, not less than 10 feet wide, shall be constructed containing nonflammable materials. This may include lawn, walkways, driveways, gravel borders or other similar materials; and
 - 2. Secondary Firebreak. A secondary firebreak of not less than 20 feet wide shall be constructed outside the primary firebreak. This firebreak need not be bare ground, but can include a lawn, ornamental shrubbery or individual or groups of trees separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed; and
 - 3. Fuel Break. A fuel break shall be maintained, extending a minimum of 100 feet in all directions around the secondary firebreak. Individual and groups of trees within the fuel break shall be separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed; and
 - 4. No portion of a tree or any other vegetation shall extend to within 15 feet of the outlet of a stovepipe or chimney.
 - ii. Prior to issuance of building permits, the property owner(s) shall construct and maintain defensible space and fuel breaks as developed in consultation with local fire protection service providers who have received training or certification described in ORS 181A.410. Applicable defensible space and fuel breaks shall be on land surrounding the accessory dwelling unit that is owned or controlled by the owner.
14. 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.
15. A lot or parcel with an accessory dwelling unit approved under this section is ineligible for:
- a. A subdivision, partition, other division of the lot or parcel, or a property line adjustment where the result of such application would be to situate the existing single-family dwelling on a different lot or parcel than the accessory dwelling unit; and

- b. Placement or construction of any additional dwelling unit, guest house, or any other temporary residence as identified in DCC 19.88.090.
16. 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.
17. At the time of application, a letter confirming that the supplier of water is “Willing and Able to Serve” the accessory dwelling unit shall be provided if the accessory dwelling unit is to be served by any water source other than an onsite domestic well.
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. If the water supply source for the accessory dwelling unit or associated lands or gardens will be a well using water under ORS 537.545 (1)(b) or (d), no portion of the lot or parcel is within an area in which new or existing ground water uses under ORS 537.545 (1)(b) or (d) have been restricted by the Water Resources Commission.
20. Prior to issuance of building permits, the applicant shall sign and record with the County Clerk, a restrictive covenant stating an accessory dwelling unit allowed under this section and the primary single-family dwelling cannot be used for vacation occupancy, as defined in DCC 19.92.160(A)(8) and consistent with ORS 90.100.

HISTORY

Adopted by Ord. 2023-014 §9 on 11/1/2023

Exhibit J

CHAPTER 19.108 VARIANCES**19.108.020 Criteria**

19.108.020 Criteria

No variance shall be granted pursuant to the provisions of DCC 19.108.010 unless the applicant can establish:

- A. That special conditions exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, buildings or structures in the same zone; and
- B. That strict interpretation of the provisions of DCC Title 19 would deprive the applicant of rights commonly enjoyed by other properties in the same zone under the terms of DCC Title 19; and
- C. That the special conditions and circumstances do not result from the actions of the applicant and such conditions and circumstances do not merely constitute pecuniary hardship or inconvenience; and
- D. That granting the variance will be in harmony with the objectives of DCC Title 19 and not injurious to the neighborhood or otherwise detrimental to the public welfare.

~~D-E.~~ Notwithstanding the provisions of this section, a variance may not be granted which amends any standards mandated by the Oregon Revised Statutes (ORS) or Oregon Administrative Rules (OAR).

HISTORY

Adopted by Ord. [PL-11](#) on 7/11/1979

Repealed & Reenacted by Ord. [90-038](#) §1 on 10/3/1990

[Amended by Ord. 2023-014 §10 on 11/1/2023](#)

Exhibit K

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 Home Accessory Dwelling Unit as defined in DCC 18.116.350 or 19.92.150;
e.g. In all zones, a permit for a Residential Accessory Dwelling Unit as defined in DCC 18.116.355 or 19.92.160.
 2. Exceptions. Verification shall not be required if one of the following exceptions apply:
 - a. The lot or parcel was created by a subdivision plat, partition plat, condominium plat, or town plat so long as the plat was recorded and approved by the County, another political subdivision of the State of Oregon, or the State of Oregon;

- b. The lot or parcel was previously validated by the County and an applicable partition plat was subsequently recorded within 365 days as required by ORS 92.176(5);
 - c. The lot or parcel was previously determined to be a lot of record in a formal decision issued by the County or a finding in a land use action prior to November 1, 2017;
 - d. The lot or parcel was previously verified pursuant to subsection (C) and a finding was issued to that effect in a land use action or declaratory ruling; or
 - e. For permits listed in subsection (B)(1)(e) only, the lot or parcel previously received a land use or building permit prior to November 1, 2017, a structural permit after November 1, 2017, or a non-emergency on-site sewage disposal permit.
 - f. Notwithstanding DCC 22.04.040(B)(2)(b), if a unit of land has been validated by a city or county under ORS 92.176 before January 1, 2022, such unit of land becomes a lawfully established parcel, provided that the owner of the unit of land caused a partition plat to be recorded on or before December 31, 2022.
- 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. 2023-014 §11 on 11/1/2023](#)



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 Bills (SB) 391 and 644, 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. 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

1 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 1945.² 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. Senate Bill 644

On May 8, 2023, the Oregon Legislature adopted Senate Bill (SB) 644, which amends requirements relating to wildfire hazard mitigation for development of accessory dwelling units on lands zoned for rural residential use.³ Prior to adoption of SB 644, counties were required to wait for final adoption of the Statewide Map of Wildfire Risk (Statewide Wildfire Hazard Map) from the Oregon Department of Forestry (ODF) as identified in SB 762⁴ prior to adoption of any local administering rural ADU standards. SB 644 decouples adoption of the Statewide Map of Wildfire Risk (Statewide Wildfire Hazard Map) from the adoption of any local rules allowing rural ADUs. During any interim period where a local jurisdiction has adopted rules allowing ADUs and prior to the release of the final map, any constructed ADUs will be subject to the home hardening building codes as described in section R327 of the Oregon Residential Specialty Code.

C. 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.⁵ 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.

² House Bill 3012 (2017).

³ <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB644/Enrolled>

⁴ <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB762/Enrolled>

⁵ SB 1533 (2022) corrected broken links in SB 762 related to wildfire mapping.

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 and SB 644. 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 & SB 644 Requirements

Topic	SB 391/SB 644 Requirements	Comment
Single Family Dwelling	SB 644 Section 1(2)(c) requires one single-family dwelling to be located on the lot or parcel.	DCC 18.116.355(B)(1) and DCC 19.92.160(B)(1) are consistent with SB 391/SB 644.
Urban Reserve Area	SB 644 Section 1(2)(a) 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 18.116.355(B)(2) and DCC 19.92.160(B)(2) are consistent with SB 391/SB 644.
Nonresource Lands	SB 644 Section 1(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.
Areas of Critical State Concern	SB 644 Section 1(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 18.116.355(B)(4) and DCC 19.92.160(B)(4) are consistent with SB 391/SB 644.
Minimum Lot Size	SB 644 Section 1(2)(b) requires the subject lot or parcel be at least two acres in size.	DCC 18.116.355(B)(5) and DCC 19.92.160(B)(5) are consistent with SB 391/SB 644. DCC 18.116.355(B)(5) and DCC 19.92.160(B)(5) also require a minimum lot or parcel to be at least 5 acres in size south of Sunriver due to groundwater protection.

Topic	SB 391/SB 644 Requirements	Comment
Setbacks	SB 644 Section 1(2)(m)(A) requires that the ADU has adequate setbacks from adjacent lands zoned for resource use.	DCC 18.116.355(B)(6) and DCC 19.92.160(B)(6) are consistent with SB 391/644. Both require a minimum setback of 100 feet between the ADU and adjacent EFU and Forest Use zoned (F-1, F-2) properties.
ADU Size	SB 644 Section 1(2)(f) limits the size of the ADU to 900 square feet of useable floor area.	DCC 18.116.355(B)(7) and DCC 19.92.160(B)(7) are consistent with SB 391/SB 644. 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."
Distance from Dwelling	SB 644 Section 1(2)(g) requires the ADU to be located no farther than 100 feet from the single-family dwelling. ⁶	DCC 18.116.355(B)(8) and DCC 19.92.160(B)(8) are consistent with SB 391/SB 644. 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. An exception to this standard has been provided for pre-existing structures converted to ADUs by allowing measurements to be taken from non-useable floor area portions of the ADU.
Sanitation and Wastewater	SB 644 Section 1(2)(e) requires the ADU to comply with applicable sanitation and wastewater regulations.	DCC 18.116.355(B)(9) and DCC 19.92.160(B)(9) are consistent with SB 391/SB 644.
Fire Protection District Service	SB 644 Section 1(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 18.116.355(B)(10) and DCC 19.92.160(B)(10) are consistent with SB 391/SB 644.

⁶ 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/SB 644 Requirements	Comment
Access and Evacuation	SB 644 Section 1(2)(m)(B) requires that the ADU has adequate access for firefighting equipment and safe evacuation and staged evacuation areas.	DCC 18.116.355(B)(11) and DCC 19.92.160(B)(11) are consistent with SB 391/SB 644. As an alternative standard, both sections allow certification of access by the applicable fire protection district and that there are evacuation plans and staged evacuation areas.
Wildland Urban Interface (WUI) Defensible Space Requirements	SB 644 Section 1(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 the wildland-urban interface, the lot or parcel and accessory dwelling unit comply with any applicable minimum defensible space requirements for wildfire risk reduction established by the State Fire Marshal under ORS 476.392 and any applicable local requirements for defensible space established by a local government pursuant to ORS 476.392	DCC 18.116.355(B)(13) and DCC 19.92.160(B)(13) are consistent with SB 391/SB 644. Consistent with SB 644, the code sections identify alternatives for properties wishing to develop rural ADUs prior to and after the adoption of the Statewide Wildfire Hazard Map identified in SB 762/SB 80.
Wildland Urban Interface (WUI) Fire Hardening	SB 644 Section 1(2)(l)(A) requires that if the lot or parcel is in an area identified on the statewide map of wildfire risk described in ORS 477.490, the ADU must comply with R327 (fire hardening standards) in the Oregon Residential Specialty Code. SB 644 Section 1(2)(l)(B) requires that if no statewide map of wildfire risk has been adopted, the ADU must comply with R327 (fire hardening standards) in the Oregon Residential Specialty Code	DCC 18.116.355(B)(12) and DCC 19.92.160(B)(12) are consistent with SB 391/SB 644. Consistent with SB 644, the code sections identify alternatives for properties wishing to develop rural ADUs prior to and after the adoption of the Statewide Wildfire Hazard Map identified in SB 762/SB 80.
Nuisance	SB 644 Section 1(2)(d) requires 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.	DCC 18.116.355(B)(14) and DCC 19.92.160(B)(14) are consistent with SB 391/SB 644.
Subdivision and Other Accessory Dwelling Unit Limitations	SB 644 Section 1(2)(m)(C)(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 18.116.355(B)(15) and DCC 19.92.160(B)(15) are consistent with SB 391/SB 644.

Topic	SB 391/SB 644 Requirements	Comment
Water Supply	SB 644 Section 1(2)(m)(C)(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 18.116.355(B)(16) and DCC 19.92.160(B)(16) are consistent with SB 391/SB 644. While not requiring the same water source, DCC 18.116.355(B)(16) and DCC 19.92.160(B)(16) require setbacks from the well to be maintained from an ADU.
Water Right Exempt Use	SB 644 Section 1(2)(m)(C)(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.	DCC 18.116.355(B)(18) and DCC 19.92.160(B)(18) are consistent with SB 391/SB 644.
Water Right Restrictions	SB 644 Section 1(2)(h) requires that no ADUs be permitted in areas if the water supply source for the accessory dwelling unit or associated lands or gardens will be a well using water under ORS 537.545 (1)(b) or (d), no portion of the lot or parcel is within an area in which new or existing ground water uses under ORS 537.545 (1)(b) or (d) have been restricted by the Water Resources Commission ⁷ .	DCC 18.116.355(B)(18) and DCC 19.92.160(B)(18) are consistent with SB 391/SB 644.
Vacation Occupancy	SB 644 Section 1(2)(m)(C)(3) prevents an ADU from being used for vacation occupancy as defined in ORS 90.100.	DCC 18.116.355(B)(20) and DCC 19.92.160(B)(20) are consistent with SB 391/SB 644. Additional standards prohibit the primary single-family dwelling onsite from use as a vacation rental after construction of a lawful ADU Both require a restrictive covenant be recorded to ensure compliance.

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.

⁷ Deschutes County does not contain any critical groundwater areas as defined by the Water Resources Commission.

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 and subsequently reviewed the proposed amendments on July 13, 2023. The Board then held a public hearing on July 26, 2023. 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. 2023-014 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. An Oregon Land Conservation and Development Department 35-day notice was reinitiated on June 7, 2023 to capture amendments required by state legislative action. The Planning Commission held a public hearing on September 22, 2022 and the Board of County Commissioners held a public hearing on July 26, 2023. 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 and SB 644 in 2023, the Oregon Legislature added a new use, Accessory Dwelling Units (ADUs), to rural residential exception areas. Local governments can choose to allow this use by: 1) amending their zoning codes and complying with SB 391/SB 644'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 less than 5 acres. In the eligible zones south of Sunriver, there are 1,129 tax lots between 2 acres or larger, and 319 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/SB 644 and those constructed prior to adoption of the Statewide Wildfire Hazard Map, will be required to comply with Oregon Residential Specialty Code (R327) to fire harden the ADU and coordinate with the Oregon State Fire Marshal or local fire protection districts 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 and SB 644 in 2023, the Oregon Legislature added a new use, Accessory Dwelling Units (ADUs), to rural residential exception areas. Local governments can choose to allow this use by amending their zoning codes and complying with SB 391/SB 644’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 [sic].

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 and SB 644, 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 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.

Rural Accessory Dwelling Unit Text Amendment

Appendix A: ESEE Analysis Document to

File No. 247-22-000671-TA

Deschutes County Community Development

September 27, 2023

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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) and SB 644 (2023) 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.⁸ 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) and SB 644 (2023).

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"> DCC Chapter 18.32, Multiple Use Agricultural Zone DCC Chapter 18.60, Rural Residential Zone 	<ul style="list-style-type: none"> DCC Chapter 19.12, Urban Area Reserve Zone DCC Chapter 19.20, Suburban Low Density Residential Zone DCC Chapter 19.22, Westside Transect Zone

⁸ 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.”⁹ 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.

⁹ 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.¹⁰ 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

¹⁰ 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”.¹¹ 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.

¹¹ 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 ¹²

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

¹² 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 useable 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.

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. 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 testimony from ODFW, mule deer populations have declined up to 70% since 2000. Their testimony identified other elements contributing to reductions in mule deer populations tied to human caused habitat reduction, fragmentation, and disturbance on winter range.

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 and SB 644, the ADU must be within 100 feet of the existing dwelling. It must utilize the existing onsite system or an upgraded 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. For example, a limitation requiring 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.

Adding a limitation requiring the entire ADU to be within a 100 feet of the existing dwelling (or others), could establish 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 construction 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 recent testimony from ODFW, mule deer populations have declined up to 70% since 2000. Their testimony identified other elements contributing to reductions in mule deer populations tied to human caused habitat reduction, fragmentation, and disturbance on winter range.

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

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

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
<p>Fish Habitat (Inventory – Ord. No. 92-041, page 18; creeks, rivers and lakes)</p>	<p>Yes</p>	<p>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</p>	<p>Floodplain zone recognized as program to achieve the goal to conserve fish habitat (Ordinance Nos. 88-030, 88-031, 89-009).</p> <p>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.</p>	<p>Ordinance Nos. 86-018, 86-053, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041</p>
<p>Deer Winter Range (Inventory – Ord. No. 92-041, page 22; Metolius, Tumalo, North Paulina, and Grizzly ranges identified by ODFW)</p>	<p>Yes</p>	<p>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.</p>	<p>Floodplain zone recognized as a program to achieve the goal to protect deer winter range (Ordinance Nos. 88-030, 88-031, 89-009).</p> <p>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.</p>	<p>Ordinance Nos. 88-030, 88-031, 89-009, 92-040, 92-041, 92-042, 92-046</p>
<p>Deer Migration Corridor (Inventory – Ord. No. 92-041, page 26; Bend-La Pine migration corridor identified by ODFW)</p>	<p>Yes</p>	<p>Major conflicts are dwellings, roads, and dogs. Fences which impede safe passage are also a conflicting use.</p>	<p>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.</p>	<p>Ordinance Nos. 92-040, 92-041, 92-042, 92-046</p>

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<p>Elk Habitat (Inventory – Ord. No. 92-041 – page 32; identified by USFS and ODFW)</p>	<p>Yes</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>Antelope Habitat (Inventory – Ord. No. 92-041 – page 38; identified by ODFW)</p>	<p>No</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>Habitat for Sensitive Birds (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>No</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.		
<p>(UPDATE - Inventory – Ord. No. 94-004 –pages 3 to 140 Site specific ESEE analysis and decisions follow each site.</p>	No	See above.	<p>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.”</p> <p>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.</p>	Ordinance Nos. 94-004, 94-005 and 94-021
<p>Waterfowl Habitat (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)</p>	Yes	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.	<p>Floodplain zone recognized as program to achieve the goal to conserve waterfowl habitat (Ordinance Nos. 88-030, 88-031, 89-009).</p> <p>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.</p>	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>Upland Game Bird Habitat (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>Yes</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>UPDATE - Inventory – Ord. No. 94-004 – pages 156-201.</p>	<p>Yes</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>Furbearer Habitat (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>Yes</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>Habitat Areas for Townsend’s Big-Eared Bats (Inventory – Ord. No. 92-041 – page 69; identified by ODFW, ODF, OSU, Oregon Natural Heritage Data Bases)</p>	<p>No</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>UPDATE - Inventory – Ord. No. 94-004 – pages 140 to 155 Site specific ESEE analysis and decisions follow each site.</p>	<p>No</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>Wetlands and Riparian Areas (Inventory – Ord. No. 92-041 – page 73; identified on USFWS NWI)</p>	<p>Yes</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>UPDATE – Riparian inventory – 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>UPDATE – Wetland Inventory – Ord. No. 94-007, Exhibit B – inventory is NWI (Ord. No. 92-045)</p>	<p>Yes</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"> • Fill and removal regulations to protect wetlands • 100’ setback from OHW • Flood plain zone (regulates docks too) • DSL Removal / Fill law 	<p>Ordinance Nos. 94-007</p>

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<p>Ecologically and Scientifically Significant Natural Areas * Little Deschutes River / Deschutes River Confluence (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>Yes</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>Landscape Management Rivers and Streams (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>Yes</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
<p>Lakes and Reservoirs (Inventory – Ord. No. 92-052, Exhibit C, Page 10; includes Upper Tumalo Reservoir; remaining are on federal land)</p>	<p>No</p>	<p>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.</p>	<p>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.</p>	<p>Ordinance No. 91-020</p>
<p>State Scenic Waterways and Federal Wild and Scenic Rivers (Inventory – Ord. No. 92-052, Exhibit E, Page 1;</p>	<p>Yes</p>	<p>See County / City of Bend River Study and 1986 River Study Staff Report. Both referenced in Ord. 92-005, Exhibit E.</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>
<p>Wilderness Areas, Areas of Special Concern, Energy Sources (Ord. No 92-052), and Groundwater Resources (Ord. No. 94-003) not analyzed because they’re on federal land or don’t relate to flood plains.</p>	<p>No</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>

Attachment 2 - Inventory Site Maps







Exception Area Taxlots Meeting ADU Criteria - Deer Migration R

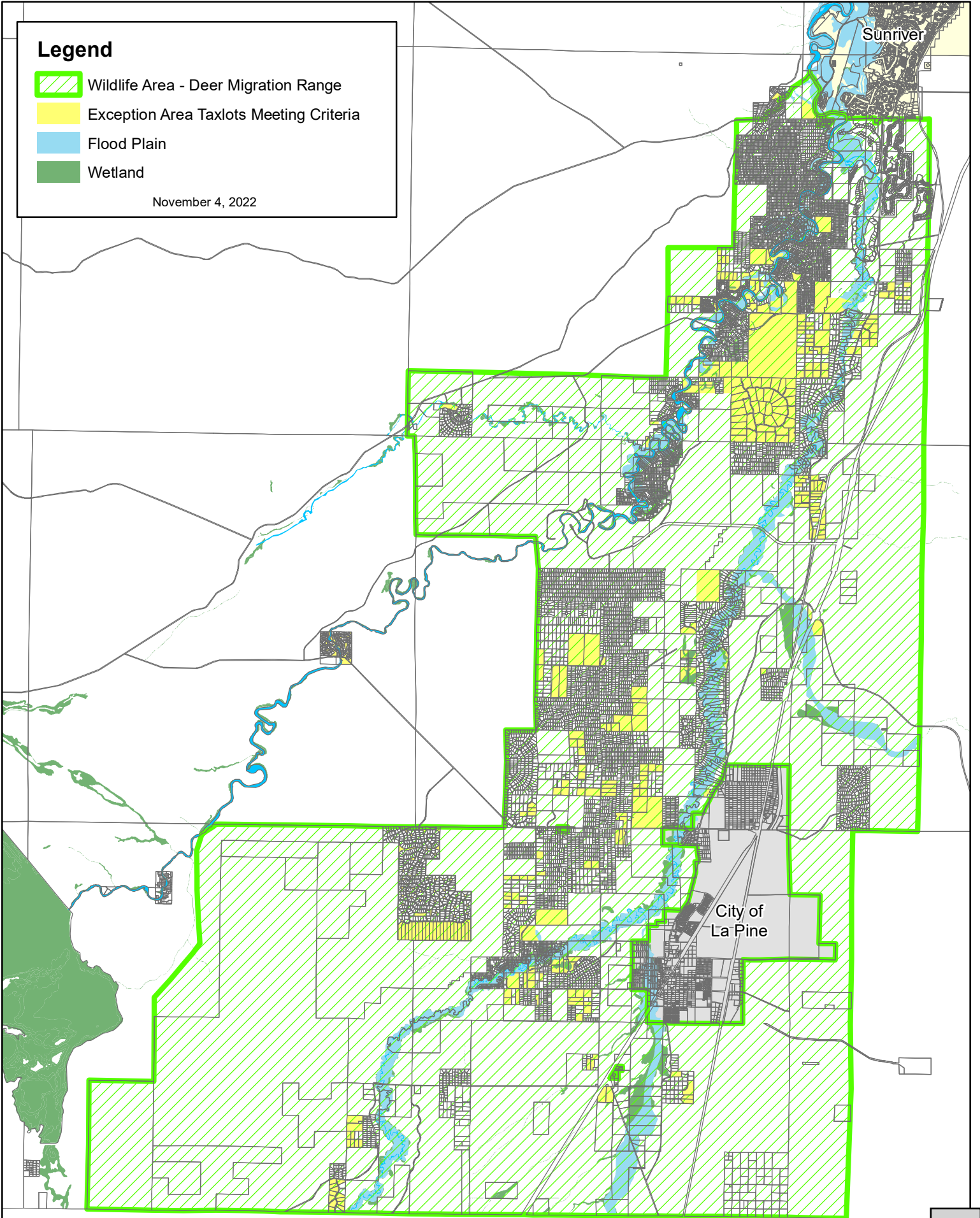
11/01/2023 Item #8.

1" = 10,000'

Legend

-  Wildlife Area - Deer Migration Range
-  Exception Area Taxlots Meeting Criteria
-  Flood Plain
-  Wetland

November 4, 2022

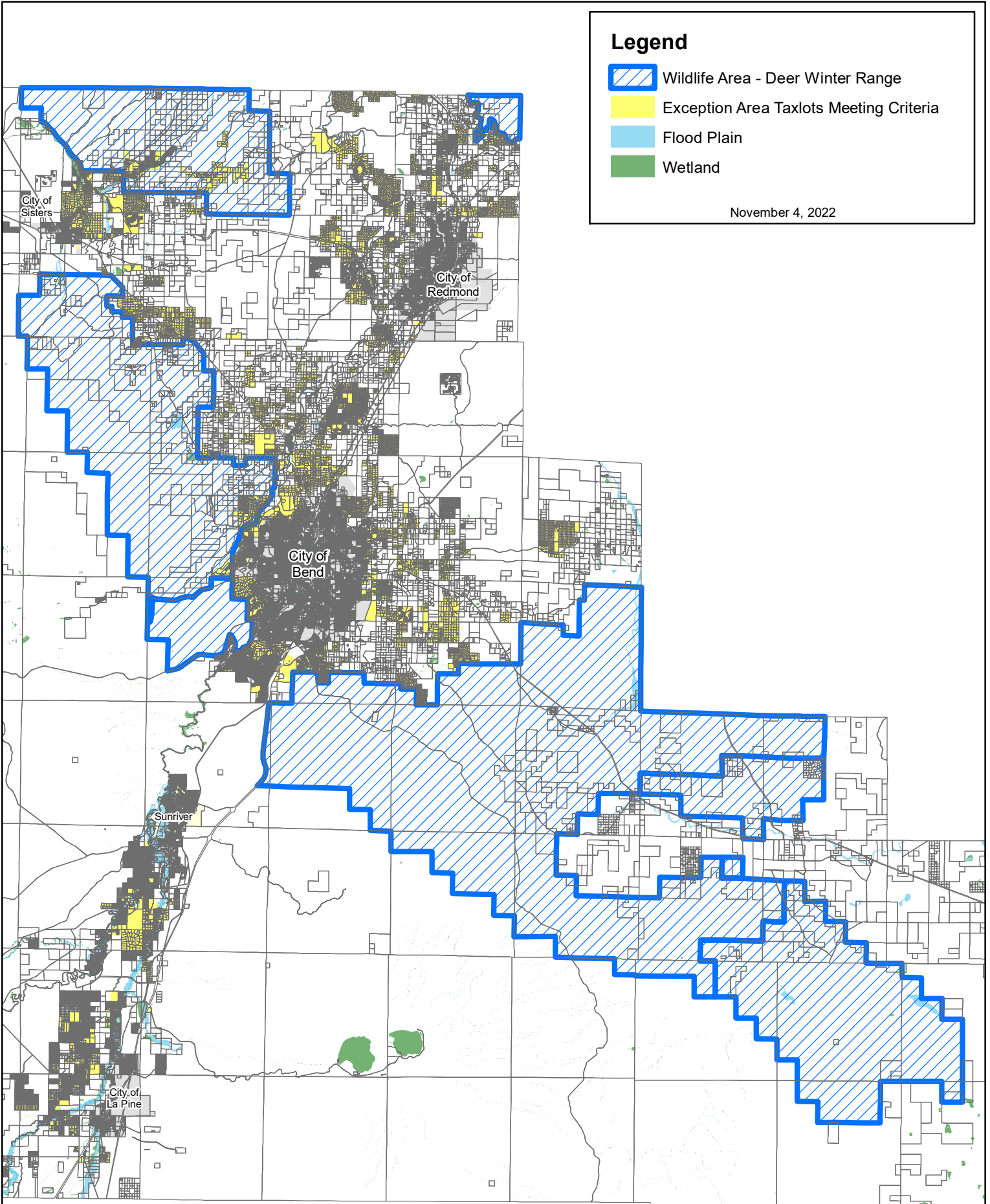




Exception Area Taxlots Meeting ADU Criteria - Deer Winter Range

11/01/2023 Item #8.

1" = 6 mi.

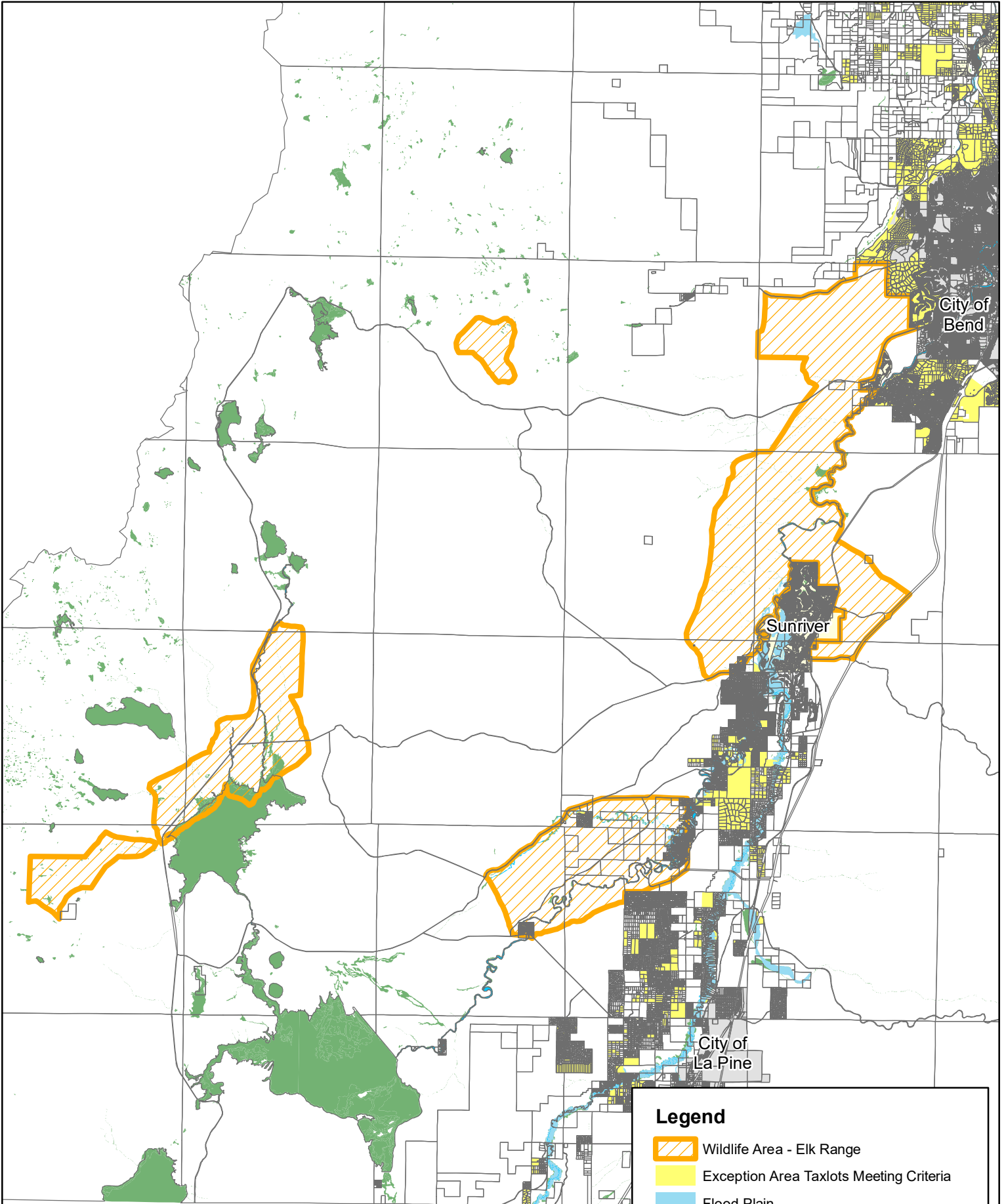








1" = 4 mi.

Exception Area Taxlots Meeting ADU Criteria - Elk Range

11/01/2023 Item #8.



Legend

-  Wildlife Area - Elk Range
-  Exception Area Taxlots Meeting Criteria
-  Flood Plain
-  Wetland

November 4, 2022

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code *
Title 18, Zoning Ordinance, Title 19, Bend Urban *
Area Zoning Ordinance, and Title 22, Procedures * ORDINANCE NO. 2023-014
Ordinance, to Adopt Provisions for Rural Accessory *
Dwelling Units. *

WHEREAS, the Board of County Commissioners directed Deschutes County Community Development Department staff to initiate amendments (Planning Division File No. 247-22-000671-TA) to Deschutes County Code (“DCC”), Chapter 18.32 – Multiple Use Agricultural Zone, Chapter 18.60 – Rural Residential Zone, Chapter 18.116 – Supplementary Provisions, Chapter 18.132 – Variances, Chapter 19.12 – Urban Area Reserve Zone, Chapter 19.20 – Suburban Low Density Residential Zone, Chapter 19.22 – Westside Transect Zone, Chapter 19.76 – Site Plan Review, Chapter 19.92 – Interpretations and Exceptions, Chapter 19.108 – Variances, Chapter 22.04 – Introductions and Definitions; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on September 22, 2022 and forwarded to the Deschutes County Board of County Commissioners (“Board”) a 4-2 recommendation of approval; and

WHEREAS, the Deschutes County Planning Commission reviewed new edits to the proposed changes on and July 13, 2023, and forwarded to the Deschutes County Board of County Commissioners (“Board”) a 5-0 recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on July 26, 2023 and concluded that the public will benefit from the proposed changes to the Deschutes County Code Titles 18, 19, and 22; now, therefore,

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

Section 1. AMENDMENT. Deschutes County Code Chapter 18.32, Multiple Use Agricultural Zone, is amended to read as described in Exhibit “A”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 2. AMENDMENT. Deschutes County Code Chapter 18.60, Rural Residential Zone, is amended to read as described in Exhibit “B”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 3. AMENDMENT. Deschutes County Code Chapter 18.116, Supplementary Provisions, is amended to read as described in Exhibit “C”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 4. AMENDMENT. Deschutes County Code Chapter 18.132, Variances, is amended to read as described in Exhibit “D”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 5. AMENDMENT. Deschutes County Code Chapter 19.12, Urban Area Reserve Zone, is amended to read as described in Exhibit “E”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 6. AMENDMENT. Deschutes County Code Chapter 19.20, Suburban Low Density Residential Zone, is amended to read as described in Exhibit “F”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 7. AMENDMENT. Deschutes County Code Chapter 19.22, Westside Transect Zone, is amended to read as described in Exhibit “G”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 8. AMENDMENT. Deschutes County Code Chapter 19.76, Site Plan Review, is amended to read as described in Exhibit “H”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 9. AMENDMENT. Deschutes County Code Chapter 19.92, Interpretations and Exceptions, is amended to read as described in Exhibit “I”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 10. AMENDMENT. Deschutes County Code Chapter 19.108, Variances, is amended to read as described in Exhibit “J”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 11. AMENDMENT. Deschutes County Code Chapter 22.04, Introductions and Definitions, is amended to read as described in Exhibit “K”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 12. FINDINGS. The Board adopts as its findings Exhibit “L”, attached and incorporated by reference herein.

Dated this _____ of _____, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHILIP CHANG

Date of 1st Reading: _____ day of _____, 2023.

Date of 2nd Reading: _____ day of _____, 2023.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Anthony DeBone	___	___	___	___
Patti Adair	___	___	___	___
Philip Chang	___	___	___	___

Effective date: _____ day of _____, 2023.

Exhibit A

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 Home Accessory Dwelling Units, subject to DCC 18.116.350.
- K. Residential Accessory Dwelling Units, subject to DCC 18.116.355.

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. 2023-014 §1 on 11/1/2023

Exhibit B

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 Home Accessory Dwelling Units, subject to DCC 18.116.350.
- L. Residential Accessory Dwelling Units, subject to DCC 18.116.355.

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. 2023-014 §2 on 11/1/2023

Exhibit C

CHAPTER 18.116 SUPPLEMENTARY PROVISIONS

18.116.350 Historic Home Accessory Dwelling Units In The RR-10 And MUA Zones

18.116.355 Residential Accessory Dwelling Units In The RR-10 And MUA Zones

* * *

18.116.350 Historic Home Accessory Dwelling Units In The RR-10 And MUA Zones

A. As used in this section:

1. "Historic Accessory-accessory dwelling unit" means a residential structure that is used in connection with or that is auxiliary to a single-family dwelling. For the purposes of this section, "auxiliary" means a use or structure incidental and subordinate to the single-family dwelling on the property, and located on the same lot as the single-family dwelling.
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 (RR_10 and MUA zonesZones) 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 a historic accessory dwelling unit upon completion of the new single-family dwelling or placement of a manufactured home; and
 - 5. The historic 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 a historic accessory dwelling unit 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 historic accessory dwelling unit.
 - 2. Alter, renovate or remodel the historic accessory dwelling unit so that the square footage of the historic 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 historic 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 historic accessory dwelling unit.
- F. Owner occupancy of either the historic accessory dwelling unit or the new single-family dwelling is not required. However, the historic accessory dwelling unit and the new single-family dwelling placed under this section 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. 2023-014 §3 on 11/1/2023

18.116.355 Residential Accessory Dwelling Units In The RR-10 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 a single-family dwelling. For the purposes of this section, “auxiliary” means a use or structure incidental and subordinate to the single-family dwelling on the property, and located on the same lot as the single-family dwelling.
 2. “Accessory dwelling unit structure” means all areas of an accessory dwelling unit inclusive of garages, carports, decks, and porch covers.
 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-way and any onsite driveways from the accessory dwelling unit to a staged evacuation area.
 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.
 6. “Staged evacuation area” means a public or private location that occupants of the accessory dwelling unit may evacuate to reorganize.
 7. “Useable floor area” means all areas of an accessory dwelling unit included within the surrounding 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; and
 - 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 RR-10 or MUA-10, provided all of the following standards are met:
1. One single-family dwelling is sited on the lot or parcel:
 - a. As used in this section, “sited” means established onsite or applied for prior to issuance of any building or land use permits for an accessory dwelling unit.
 - b. An existing single-family dwelling meeting all other criteria in this section may be converted to an accessory dwelling unit during construction of a new primary single-family dwelling.
 2. There is no guest house, temporary residence as identified in DCC 18.116.090, or additional dwelling units except the primary single-family dwelling established on the subject property.

- a. An existing lawfully established guest house, temporary residence as identified in DCC 18.116.090, or an additional dwelling unit meeting all other criteria in this section may be converted to an accessory dwelling unit.
3. The lot or parcel is not located within an Urban Reserve Area, consistent with ORS 195.137.
4. No portion of the lot or parcel is within the Metolius Area of Critical State Concern, as defined in ORS 197.416.
5. The lot 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. Within these exception areas, the lot area is at least five acres in size.
6. The accessory dwelling unit structure will have a minimum setback of 100 feet from adjacent properties zoned F-1, F-2, or EFU and meet any other minimum setback requirements of the underlying zone and combining zones.
7. The accessory dwelling unit will not include more than 900 square feet of useable floor area.
8. The accessory dwelling unit will be located no farther than 100 feet from the existing single-family dwelling, measured from a wall of the existing single-family dwelling to the nearest part of the useable floor area of the accessory dwelling unit.
- a. An existing structure converted to an accessory dwelling unit must be located no farther than 100 feet from the existing single-family dwelling, measured from the existing single-family dwelling to the nearest part of the accessory dwelling unit structure. For the purposes of this section, “existing” means the structure was lawfully established on or before November 1, 2023.
9. Prior to application, the accessory dwelling unit receives approval from a sewer authority or the Deschutes County Onsite Wastewater Division for onsite wastewater disposal and treatment.
10. 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.
11. The accessory dwelling unit provides for all of the following:
- a. Adequate access connecting an accessory dwelling unit with a fire protection service provider with professionals who have received training or certification described in ORS 181A.410. Adequate access is met by demonstrating compliance with section 11(a)i and 11(a)(ii), or section 11(a)(iii):
- i. A continuous, minimum 20-foot width right(s)-of-way with an unobstructed vertical clearance of not less than 13.5 feet. For the purposes of this section, right(s)-of-way are defined as:

1. Public roads with maintenance responsibility accepted by a unit of local or state government or assigned to landowners or homeowners association by covenant or agreement; or
 2. Private roads, as permitted by DCC Title 18, with maintenance responsibility assigned to landowners or homeowners associations by covenant or agreement pursuant to ORS 105; and
 - ii. A continuous, minimum 12-foot width onsite driveway with an unobstructed horizontal clearance of not less than 20 feet and an unobstructed vertical clearance of not less than 13.5 feet, designed and maintained as follows:
 1. Composed of an all-weather surface including asphalt or concrete; or
 2. Designed and maintained to support a minimum gross vehicle weight (GVW) of 75,000 lbs as certified by a Professional Engineer, registered in Oregon;
 - iii. Written confirmation 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. For private properties utilized as staged evacuation areas, written authorization from the [property](#) owner(s) of the staged evacuation area that the occupants of the accessory dwelling unit may evacuate to the staged evacuation area.
12. Wildfire Hazard Mitigation Building Code Standards:
- a. If the Statewide Wildfire Hazard Map described in ORS 477.490 has been approved, the following requirements shall apply to the accessory dwelling unit structure:
 - i. For areas designated as high wildfire hazard that are identified pursuant to ORS 477.490:
 1. The [Wildfire Hazard Mitigation](#) building code standards as described in section R327 of the Oregon Residential Specialty Code.
 - b. If the Statewide Wildfire Hazard Map described in ORS 477.490 has not been approved, the following requirements shall apply to the accessory dwelling unit structure:
 - i. The [Wildfire Hazard Mitigation](#) building code standards as described in section R327 of the Oregon Residential Specialty Code.
13. Wildfire Hazard Mitigation Defensible Space Standards:
- a. If the Statewide Wildfire Hazard Map described in ORS 477.490 has been approved, the following requirements shall apply:

- i. For all wildfire hazard designations in the wildland-urban interface that are identified pursuant to ORS 477.490:
 - 1. The minimum defensible space rules established by the State Fire Marshal as described in ORS 476.392.
 - b. If the Statewide Wildfire Hazard Map described in ORS 477.490 has not been approved, then either the section 13(b)(i) or 13(b)(ii) requirements shall apply:
 - i. Prior to issuance of building permits, the property owner(s) shall construct and maintain the following firebreaks on land surrounding the accessory dwelling unit that is owned or controlled by the owner:
 - 1. Primary Firebreak. A primary firebreak, not less than 10 feet wide, shall be constructed containing nonflammable materials. This may include lawn, walkways, driveways, gravel borders or other similar materials; and
 - 2. Secondary Firebreak. A secondary firebreak of not less than 20 feet wide shall be constructed outside the primary firebreak. This firebreak need not be bare ground, but can include a lawn, ornamental shrubbery or individual or groups of trees separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed; and
 - 3. Fuel Break. A fuel break shall be maintained, extending a minimum of 100 feet in all directions around the secondary firebreak. Individual and groups of trees within the fuel break shall be separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed; and
 - 4. No portion of a tree or any other vegetation shall extend to within 15 feet of the outlet of a stovepipe or chimney.
 - ii. Prior to issuance of building permits, the property owner(s) shall construct and maintain defensible space and fuel breaks as developed in consultation with local fire protection service providers who have received training or certification described in ORS 181A.410. Applicable defensible space and fuel breaks shall be on land surrounding the accessory dwelling unit on land that is owned or controlled by the owner.
14. 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.

- 15. A lot or parcel with an accessory dwelling unit approved under this section is ineligible for:
 - a. A subdivision, partition, other division of the lot or parcel, or a property line adjustment where the result of such application would be to situate the existing single-family dwelling on a different lot or parcel than the accessory dwelling unit; and
 - b. Placement or construction of any additional dwelling unit, guest house, or any other temporary residence as identified in DCC 18.116.090.

- 16. 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.

- 17. At the time of application, a letter confirming that the supplier of water is “Willing and Able to Serve” the accessory dwelling unit shall be provided if the accessory dwelling unit is to be served by any water source other than an onsite domestic well.

- 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. If the water supply source for the accessory dwelling unit or associated lands or gardens will be a well using water under ORS 537.545 (1)(b) or (d), no portion of the lot or parcel is within an area in which new or existing ground water uses under ORS 537.545 (1)(b) or (d) have been restricted by the Water Resources Commission.

- 20. Prior to issuance of building permits, the applicant shall sign and record with the County Clerk, a restrictive covenant stating an accessory dwelling unit allowed under this section and the primary single-family dwelling cannot be used for vacation occupancy, as defined in DCC 18.116.355(A)(8) and consistent with ORS 90.100.

HISTORY

Adopted by Ord. 2023-014 §3 on 11/1/2023

Exhibit D

CHAPTER 18.132 VARIANCES**18.132.020 Authority Of Hearings Body****18.132.025 Minor Variances**

18.132.020 Authority Of Hearings Body

A variance may be granted unqualifiedly or may be granted subject to prescribed conditions, provided that the Planning Director or Hearings Body shall make all of the following findings:

A. Area variance.

1. That the literal application of the ordinance would create practical difficulties resulting in greater private expense than public benefit.
2. That the condition creating the difficulty is not general throughout the surrounding area but is unique to the applicant's site.
3. That the condition was not created by the applicant. A self-created difficulty will be found if the applicant knew or should have known of the restriction at the time the site was purchased.
4. That the variance conforms to the Comprehensive Plan and the intent of the ordinance being varied.

B. Use variance.

1. That the literal application of the ordinance would result in unnecessary hardship to the applicant. An unnecessary hardship will be found when the site cannot be put to any beneficial use under the terms of the applicable ordinance.
2. Each of the findings listed in DCC 18.132.020(A)(1), (2) and (4).

C. Statutory Provisions.

1. Notwithstanding the provisions of this section, a variance may not be granted which amends any standards mandated by the Oregon Revised Statutes (ORS) or Oregon Administrative Rules (OAR).

HISTORY

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

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

Amended by Ord. [93-043](#) §24 on 8/25/1993

Amended by Ord. [2023-014](#) §4 on 11/1/2023

18.132.025 Minor Variances

A variance seeking to depart from on-site requirements of DCC Title 18, such as setbacks and area requirements, by no greater than 10 percent of the required distance or area may be granted by the Planning Director or Hearings Body in conformance with DCC 18.132.025.

- A. In the case of a setback or size variance, the applicant shall show that the approval will result in:
 - 1. More efficient use of the site;
 - 2. Preservation of natural features where appropriate;
 - 3. Adequate provision of light and privacy to adjoining properties; and
 - 4. Preservation of topographic, vegetative and drainage features which would be adversely affected by application of the standards otherwise required by DCC Title 18.
- B. A parcel that is smaller than the minimum lot size at the time of application may not be reduced by more than 10 percent from its current size without a variance.
- C. Notwithstanding B, above, a property may be reduced by more than 10 percent of its current size without a variance if :
 - 1. The property is located outside of a Farm (EFU) or Forest (F) zone;
 - 2. The long-standing occupation area is different than the legal description in the deed for the subject property;
 - 3. The purpose of the property line adjustment is to correct the deed description to match the long-standing occupation lines of the properties; and
 - 4. The discrepancy between the deed lines and the occupation lines is documented by submittal of a narrative and maps prepared by an Oregon Licensed Professional Surveyor.
 - 5. As used in this sub-section, "long-standing" means in excess of ten (10) years.

D. Statutory Provisions.

1. Notwithstanding the provisions of this section, a variance may not be granted which amends any standards mandated by the Oregon Revised Statues (ORS) or Oregon Administrative Rules (OAR).

HISTORY

- Adopted by Ord. [91-038](#) §3 on 9/30/1991*
- Amended by Ord. [2004-013](#) §15 on 9/21/2004*
- Amended by Ord. [2010-003](#) §1 on 7/6/2010*
- [Amended by Ord. 2023-014 §4 on 11/1/2023](#)*

Exhibit E

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 Home 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. 2023-014 §5 on 11/1/2023

Exhibit F

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 Home 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. 2023-014 §6 on 11/1/2023*

Exhibit G

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. 2023-014 §7 on 11/1/2023

Exhibit H

CHAPTER 19.76 SITE PLAN REVIEW**19.76.070 Site Plan Criteria**

19.76.020 Site Plan Requirements

In all zones, except for a single-family, duplex or triplex unit, or an accessory dwelling unit, on one lot, all new uses, buildings, outdoor storage or sales areas and parking lots or alterations thereof shall be subject to the provisions of DCC 19.76.020. Site plan approval shall not be required where a proposed alteration of an existing building does not exceed 25 percent of the size of the original structure unless the Planning Director finds the original structure or proposed alteration does not meet the requirements of DCC Title 19 or other ordinances of the County.

HISTORY

Adopted by Ord. [PL-11](#) on 7/11/1979

Repealed & Reenacted by Ord. [90-038](#) §1 on 10/3/1990

[Amended by Ord. 2023-014 §8 on 11/1/2023](#)

Exhibit I

CHAPTER 19.92 INTERPRETATIONS AND EXCEPTIONS

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

19.92.160 Residential Accessory Dwelling Units In The UAR-10, SR-2 1/2, And WTZ Zones

* * *

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

A. As used in this section:

1. "Historic Accessory-accessory dwelling unit" means a residential structure that is used in connection with or that is auxiliary to a single-family dwelling. For the purposes of this section, "auxiliary" means a use or structure incidental and subordinate to the single-family dwelling on the property, and located on the same lot as the single-family dwelling.
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~~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 a historic-accessory dwelling unit upon completion of the new single-family dwelling; and
5. The historic 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 a historic accessory dwelling unit 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 historic accessory dwelling unit.
 - 2. Alter, renovate or remodel the historic accessory dwelling unit so that the square footage of the historic 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 historic 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 historic accessory dwelling unit.
- F. Owner occupancy of either the historic accessory dwelling unit or the new single-family dwelling is not required. However, the historic accessory dwelling unit and the new single-family dwelling placed under this section ~~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. [2023-014 §9](#) on 11/1/2023

19.92.160 Residential Accessory Dwelling Units In The 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 a single-family dwelling. For the purposes of this section, “auxiliary” means a use or structure incidental and subordinate to the single-family dwelling on the property, and located on the same lot as the single-family dwelling.
- 2. “Accessory dwelling unit structure” means all areas of an accessory dwelling unit inclusive of garages, carports, decks, and porch covers.

3. “Rural residential use” means a lot or parcel located in the UAR-10, SR-2 ½, or WTZ Zones, consistent with the definition in ORS 215.501.
 4. “Safe evacuation plan” means an identifiable route on a right(s)-of-way and any onsite driveways from the accessory dwelling unit to a staged evacuation area.
 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.
 6. “Staged evacuation area” means a public or private location that occupants of the accessory dwelling unit may evacuate to reorganize.
 7. “Useable floor area” means all areas of an accessory dwelling unit included within the surrounding 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; and
 - 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 UAR-10, SR-2 ½, or WTZ, provided all of the following standards are met:
1. One single-family dwelling is sited on the lot or parcel:
 - a. As used in this section, “sited” means established onsite or applied for prior to issuance of any building or land use permits for an accessory dwelling unit.
 - b. An existing single-family dwelling meeting all other criteria in this section may be converted to an accessory dwelling unit during construction of a new primary single-family dwelling.
 2. There is no guest house, temporary residence as identified in DCC 19.88.090, or additional dwelling units except the primary single-family dwelling established on the subject property.
 - a. An existing lawfully established guest house, temporary residence as identified in DCC 19.88.090, or an additional dwelling unit meeting all other criteria in this section may be converted to an accessory dwelling unit.
 3. The lot or parcel is not located within an Urban Reserve Area, consistent with ORS 195.137.
 4. No portion of the lot or parcel is within the Metolius Area of Critical State Concern, as defined in ORS 197.416.

5. The lot 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. Within these exception areas, the lot area is at least five acres in size.
6. The accessory dwelling unit structure will have a minimum setback of 100 feet from adjacent properties zoned F-1, F-2, or EFU and meet any other minimum setback requirements of the underlying zone and combining zones.
7. The accessory dwelling unit will not include more than 900 square feet of useable floor area.
8. The accessory dwelling unit will be located no farther than 100 feet from the existing single-family dwelling, measured from a wall of the existing single-family dwelling to the nearest part of the useable floor area of the accessory dwelling unit.
 - a. An existing structure converted to an accessory dwelling unit must be located no farther than 100 feet from the existing single-family dwelling, measured from the existing single-family dwelling to the nearest part of the accessory dwelling unit structure. For the purposes of this section, "existing" means the structure was lawfully established on or before November 1, 2023.
9. Prior to application, the accessory dwelling unit receives approval from a sewer authority or the Deschutes County Onsite Wastewater Division for onsite wastewater disposal and treatment.
10. 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.
11. The accessory dwelling unit provides for all of the following:
 - a. Adequate access connecting an accessory dwelling unit with a fire protection service provider with professionals who have received training or certification described in ORS 181A.410. Adequate access is met by demonstrating compliance with section 11(a)i and 11(a)(ii), or section 11(a)(iii):
 - i. A continuous, minimum 20-foot width right(s)-of-way with an unobstructed vertical clearance of not less than 13.5 feet. For the purposes of this section, right(s)-of-way are defined as:
 1. Public roads with maintenance responsibility accepted by a unit of local or state government or assigned to landowners or homeowners association by covenant or agreement; or
 2. Private roads, as permitted by DCC Title 19, with maintenance responsibility assigned to landowners or homeowners associations by covenant or agreement pursuant to ORS 105; and

- ii. A continuous, minimum 12-foot width onsite driveway with an unobstructed horizontal clearance of not less than 20 feet and an unobstructed vertical clearance of not less than 13.5 feet, designed and maintained as follows:
 - 1. Composed of an all-weather surface including asphalt or concrete; or
 - 2. Designed and maintained to support a minimum gross vehicle weight (GVW) of 75,000 lbs as certified by a Professional Engineer, registered in Oregon;
- iii. Written confirmation 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. For private properties utilized as staged evacuation areas, written authorization from the property owner(s) of the staged evacuation area that the occupants of the accessory dwelling unit may evacuate to the staged evacuation area.

12. Wildfire Hazard Mitigation Building Code Standards:

a. If the Statewide Wildfire Hazard Map described in ORS 477.490 has been approved, the following requirements shall apply to the accessory dwelling unit structure:

i. For areas designated as high wildfire hazard that are identified pursuant to ORS 477.490:

1. The Wildfire Hazard Mitigation building code standards as described in section R327 of the Oregon Residential Specialty Code.

b. If the Statewide Wildfire Hazard Map described in ORS 477.490 has not been approved, the following requirements shall apply to the accessory dwelling unit structure:

i. The Wildfire Hazard Mitigation building code standards as described in section R327 of the Oregon Residential Specialty Code.

13. Wildfire Hazard Mitigation Defensible Space Standards:

a. If the Statewide Wildfire Hazard Map described in ORS 477.490 has been approved, the following requirements shall apply:

i. For all wildfire hazard designations in the wildland-urban interface that are identified pursuant to ORS 477.490:

1. The minimum defensible space rules established by the State Fire Marshal as described in ORS 476.392.

b. If the Statewide Wildfire Hazard Map described in ORS 477.490 has not been approved, then either the section 13(b)(i) or 13(b)(ii) requirements shall apply:

i. Prior to issuance of building permits, the property owner(s) shall construct and maintain the following firebreaks on land surrounding the accessory dwelling unit on land that is owned or controlled by the owner:

1. Primary Firebreak. A primary firebreak, not less than 10 feet wide, shall be constructed containing nonflammable materials. This may include lawn, walkways, driveways, gravel borders or other similar materials; and
2. Secondary Firebreak. A secondary firebreak of not less than 20 feet wide shall be constructed outside the primary firebreak. This firebreak need not be bare ground, but can include a lawn, ornamental shrubbery or individual or groups of trees separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed; and
3. Fuel Break. A fuel break shall be maintained, extending a minimum of 100 feet in all directions around the secondary firebreak. Individual and groups of trees within the fuel break shall be separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed; and
4. No portion of a tree or any other vegetation shall extend to within 15 feet of the outlet of a stovepipe or chimney.

ii. Prior to issuance of building permits, the property owner(s) shall construct and maintain defensible space and fuel breaks as developed in consultation with local fire protection service providers who have received training or certification described in ORS 181A.410. Applicable defensible space and fuel breaks shall be on land surrounding the accessory dwelling unit that is owned or controlled by the owner.

14. 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.

15. A lot or parcel with an accessory dwelling unit approved under this section is ineligible for:

- a. A subdivision, partition, other division of the lot or parcel, or a property line adjustment where the result of such application would be to situate the existing single-family dwelling on a different lot or parcel than the accessory dwelling unit; and

- b. Placement or construction of any additional dwelling unit, guest house, or any other temporary residence as identified in DCC 19.88.090.
16. 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.
17. At the time of application, a letter confirming that the supplier of water is “Willing and Able to Serve” the accessory dwelling unit shall be provided if the accessory dwelling unit is to be served by any water source other than an onsite domestic well.
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. If the water supply source for the accessory dwelling unit or associated lands or gardens will be a well using water under ORS 537.545 (1)(b) or (d), no portion of the lot or parcel is within an area in which new or existing ground water uses under ORS 537.545 (1)(b) or (d) have been restricted by the Water Resources Commission.
20. Prior to issuance of building permits, the applicant shall sign and record with the County Clerk, a restrictive covenant stating an accessory dwelling unit allowed under this section and the primary single-family dwelling cannot be used for vacation occupancy, as defined in DCC 19.92.160(A)(8) and consistent with ORS 90.100.

HISTORY

Adopted by Ord. 2023-014 §9 on 11/1/2023

Exhibit J

CHAPTER 19.108 VARIANCES**19.108.020 Criteria**

19.108.020 Criteria

No variance shall be granted pursuant to the provisions of DCC 19.108.010 unless the applicant can establish:

- A. That special conditions exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, buildings or structures in the same zone; and
- B. That strict interpretation of the provisions of DCC Title 19 would deprive the applicant of rights commonly enjoyed by other properties in the same zone under the terms of DCC Title 19; and
- C. That the special conditions and circumstances do not result from the actions of the applicant and such conditions and circumstances do not merely constitute pecuniary hardship or inconvenience; and
- D. That granting the variance will be in harmony with the objectives of DCC Title 19 and not injurious to the neighborhood or otherwise detrimental to the public welfare.

D-E. Notwithstanding the provisions of this section, a variance may not be granted which amends any standards mandated by the Oregon Revised Statutes (ORS) or Oregon Administrative Rules (OAR).

HISTORY

Adopted by Ord. [PL-11](#) on 7/11/1979

Repealed & Reenacted by Ord. [90-038](#) §1 on 10/3/1990

[Amended by Ord. 2023-014 §10 on 11/1/2023](#)

Exhibit K

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 Home Accessory Dwelling Unit as defined in DCC 18.116.350 or 19.92.150;
 - e.g. In all zones, a permit for a Residential Accessory Dwelling Unit as defined in DCC 18.116.355 or 19.92.160.
 - 2. Exceptions. Verification shall not be required if one of the following exceptions apply:
 - a. The lot or parcel was created by a subdivision plat, partition plat, condominium plat, or town plat so long as the plat was recorded and approved by the County, another political subdivision of the State of Oregon, or the State of Oregon;

- b. The lot or parcel was previously validated by the County and an applicable partition plat was subsequently recorded within 365 days as required by ORS 92.176(5);
 - c. The lot or parcel was previously determined to be a lot of record in a formal decision issued by the County or a finding in a land use action prior to November 1, 2017;
 - d. The lot or parcel was previously verified pursuant to subsection (C) and a finding was issued to that effect in a land use action or declaratory ruling; or
 - e. For permits listed in subsection (B)(1)(e) only, the lot or parcel previously received a land use or building permit prior to November 1, 2017, a structural permit after November 1, 2017, or a non-emergency on-site sewage disposal permit.
 - f. Notwithstanding DCC 22.04.040(B)(2)(b), if a unit of land has been validated by a city or county under ORS 92.176 before January 1, 2022, such unit of land becomes a lawfully established parcel, provided that the owner of the unit of land caused a partition plat to be recorded on or before December 31, 2022.
- 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. 2023-014 §11 on 11/1/2023](#)



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 Bills (SB) 391 and 644, 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.¹ 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

¹ <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 1945.² 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. Senate Bill 644

On May 8, 2023, the Oregon Legislature adopted Senate Bill (SB) 644, which amends requirements relating to wildfire hazard mitigation for development of accessory dwelling units on lands zoned for rural residential use.³ Prior to adoption of SB 644, counties were required to wait for final adoption of the Statewide Map of Wildfire Risk (Statewide Wildfire Hazard Map) from the Oregon Department of Forestry (ODF) as identified in SB 762⁴ prior to adoption of any local administering rural ADU standards. SB 644 decouples adoption of the Statewide Map of Wildfire Risk (Statewide Wildfire Hazard Map) from the adoption of any local rules allowing rural ADUs. During any interim period where a local jurisdiction has adopted rules allowing ADUs and prior to the release of the final map, any constructed ADUs will be subject to the home hardening building codes as described in section R327 of the Oregon Residential Specialty Code.

C. 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.⁵ 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.

² House Bill 3012 (2017).

³ <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB644/Enrolled>

⁴ <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB762/Enrolled>

⁵ SB 1533 (2022) corrected broken links in SB 762 related to wildfire mapping.

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 and SB 644. 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 & SB 644 Requirements

Topic	SB 391/SB 644 Requirements	Comment
Single Family Dwelling	SB 644 Section 1(2)(c) requires one single-family dwelling to be located on the lot or parcel.	DCC 18.116.355(B)(1) and DCC 19.92.160(B)(1) are consistent with SB 391/SB 644.
Urban Reserve Area	SB 644 Section 1(2)(a) 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 18.116.355(B)(2) and DCC 19.92.160(B)(2) are consistent with SB 391/SB 644.
Nonresource Lands	SB 644 Section 1(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.
Areas of Critical State Concern	SB 644 Section 1(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 18.116.355(B)(4) and DCC 19.92.160(B)(4) are consistent with SB 391/SB 644.
Minimum Lot Size	SB 644 Section 1(2)(b) requires the subject lot or parcel be at least two acres in size.	DCC 18.116.355(B)(5) and DCC 19.92.160(B)(5) are consistent with SB 391/SB 644. DCC 18.116.355(B)(5) and DCC 19.92.160(B)(5) also require a minimum lot or parcel to be at least 5 acres in size south of Sunriver due to groundwater protection.

Topic	SB 391/SB 644 Requirements	Comment
Setbacks	SB 644 Section 1(2)(m)(A) requires that the ADU has adequate setbacks from adjacent lands zoned for resource use.	DCC 18.116.355(B)(6) and DCC 19.92.160(B)(6) are consistent with SB 391/644. Both require a minimum setback of 100 feet between the ADU and adjacent EFU and Forest Use zoned (F-1, F-2) properties.
ADU Size	SB 644 Section 1(2)(f) limits the size of the ADU to 900 square feet of useable floor area.	DCC 18.116.355(B)(7) and DCC 19.92.160(B)(7) are consistent with SB 391/SB 644. 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."
Distance from Dwelling	SB 644 Section 1(2)(g) requires the ADU to be located no farther than 100 feet from the single-family dwelling. ⁶	DCC 18.116.355(B)(8) and DCC 19.92.160(B)(8) are consistent with SB 391/SB 644. 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. An exception to this standard has been provided for pre-existing structures converted to ADUs by allowing measurements to be taken from non-useable floor area portions of the ADU.
Sanitation and Wastewater	SB 644 Section 1(2)(e) requires the ADU to comply with applicable sanitation and wastewater regulations.	DCC 18.116.355(B)(9) and DCC 19.92.160(B)(9) are consistent with SB 391/SB 644.
Fire Protection District Service	SB 644 Section 1(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 18.116.355(B)(10) and DCC 19.92.160(B)(10) are consistent with SB 391/SB 644.

⁶ 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/SB 644 Requirements	Comment
Access and Evacuation	SB 644 Section 1(2)(m)(B) requires that the ADU has adequate access for firefighting equipment and safe evacuation and staged evacuation areas.	DCC 18.116.355(B)(11) and DCC 19.92.160(B)(11) are consistent with SB 391/SB 644. As an alternative standard, both sections allow certification of access by the applicable fire protection district and that there are evacuation plans and staged evacuation areas.
Wildland Urban Interface (WUI) Defensible Space Requirements	SB 644 Section 1(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 the wildland-urban interface, the lot or parcel and accessory dwelling unit comply with any applicable minimum defensible space requirements for wildfire risk reduction established by the State Fire Marshal under ORS 476.392 and any applicable local requirements for defensible space established by a local government pursuant to ORS 476.392	DCC 18.116.355(B)(13) and DCC 19.92.160(B)(13) are consistent with SB 391/SB 644. Consistent with SB 644, the code sections identify alternatives for properties wishing to develop rural ADUs prior to and after the adoption of the Statewide Wildfire Hazard Map identified in SB 762/SB 80.
Wildland Urban Interface (WUI) Fire Hardening	SB 644 Section 1(2)(l)(A) requires that if the lot or parcel is in an area identified on the statewide map of wildfire risk described in ORS 477.490, the ADU must comply with R327 (fire hardening standards) in the Oregon Residential Specialty Code. SB 644 Section 1(2)(l)(B) requires that if no statewide map of wildfire risk has been adopted, the ADU must comply with R327 (fire hardening standards) in the Oregon Residential Specialty Code	DCC 18.116.355(B)(12) and DCC 19.92.160(B)(12) are consistent with SB 391/SB 644. Consistent with SB 644, the code sections identify alternatives for properties wishing to develop rural ADUs prior to and after the adoption of the Statewide Wildfire Hazard Map identified in SB 762/SB 80.
Nuisance	SB 644 Section 1(2)(d) requires 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.	DCC 18.116.355(B)(14) and DCC 19.92.160(B)(14) are consistent with SB 391/SB 644.
Subdivision and Other Accessory Dwelling Unit Limitations	SB 644 Section 1(2)(m)(C)(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 18.116.355(B)(15) and DCC 19.92.160(B)(15) are consistent with SB 391/SB 644.

Topic	SB 391/SB 644 Requirements	Comment
Water Supply	SB 644 Section 1(2)(m)(C)(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 18.116.355(B)(16) and DCC 19.92.160(B)(16) are consistent with SB 391/SB 644. While not requiring the same water source, DCC 18.116.355(B)(16) and DCC 19.92.160(B)(16) require setbacks from the well to be maintained from an ADU.
Water Right Exempt Use	SB 644 Section 1(2)(m)(C)(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.	DCC 18.116.355(B)(18) and DCC 19.92.160(B)(18) are consistent with SB 391/SB 644.
Water Right Restrictions	SB 644 Section 1(2)(h) requires that no ADUs be permitted in areas if the water supply source for the accessory dwelling unit or associated lands or gardens will be a well using water under ORS 537.545 (1)(b) or (d), no portion of the lot or parcel is within an area in which new or existing ground water uses under ORS 537.545 (1)(b) or (d) have been restricted by the Water Resources Commission ⁷ .	DCC 18.116.355(B)(18) and DCC 19.92.160(B)(18) are consistent with SB 391/SB 644.
Vacation Occupancy	SB 644 Section 1(2)(m)(C)(3) prevents an ADU from being used for vacation occupancy as defined in ORS 90.100.	DCC 18.116.355(B)(20) and DCC 19.92.160(B)(20) are consistent with SB 391/SB 644. Additional standards prohibit the primary single-family dwelling onsite from use as a vacation rental after construction of a lawful ADU Both require a restrictive covenant be recorded to ensure compliance.

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.

⁷ Deschutes County does not contain any critical groundwater areas as defined by the Water Resources Commission.

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 and subsequently reviewed the proposed amendments on July 13, 2023. The Board then held a public hearing on July 26, 2023. 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. 2023-014 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. An Oregon Land Conservation and Development Department 35-day notice was reinitiated on June 7, 2023 to capture amendments required by state legislative action. The Planning Commission held a public hearing on September 22, 2022 and the Board of County Commissioners held a public hearing on July 26, 2023. 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 and SB 644 in 2023, the Oregon Legislature added a new use, Accessory Dwelling Units (ADUs), to rural residential exception areas. Local governments can choose to allow this use by: 1) amending their zoning codes and complying with SB 391/SB 644'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 less than 5 acres. In the eligible zones south of Sunriver, there are 1,129 tax lots between 2 acres or larger, and 319 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/SB 644 and those constructed prior to adoption of the Statewide Wildfire Hazard Map, will be required to comply with Oregon Residential Specialty Code (R327) to fire harden the ADU and coordinate with the Oregon State Fire Marshal or local fire protection districts 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 and SB 644 in 2023, the Oregon Legislature added a new use, Accessory Dwelling Units (ADUs), to rural residential exception areas. Local governments can choose to allow this use by amending their zoning codes and complying with SB 391/SB 644’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 [sic].

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 and SB 644, 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 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.

Rural Accessory Dwelling Unit Text Amendment

Appendix A: ESEE Analysis Document to

File No. 247-22-000671-TA

Deschutes County Community Development

September 27, 2023

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- 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) and SB 644 (2023) 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.⁸ 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) and SB 644 (2023).

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"> DCC Chapter 18.32, Multiple Use Agricultural Zone DCC Chapter 18.60, Rural Residential Zone 	<ul style="list-style-type: none"> DCC Chapter 19.12, Urban Area Reserve Zone DCC Chapter 19.20, Suburban Low Density Residential Zone DCC Chapter 19.22, Westside Transect Zone

⁸ 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.”⁹ 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.

⁹ 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.¹⁰ 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

¹⁰ 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”.¹¹ 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.

¹¹ 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 ¹²

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

¹² 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 useable 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.

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. 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 testimony from ODFW, mule deer populations have declined up to 70% since 2000. Their testimony identified other elements contributing to reductions in mule deer populations tied to human caused habitat reduction, fragmentation, and disturbance on winter range.

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 and SB 644, the ADU must be within 100 feet of the existing dwelling. It must utilize the existing onsite system or an upgraded 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. For example, a limitation requiring 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.

Adding a limitation requiring the entire ADU to be within a 100 feet of the existing dwelling (or others), could establish 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 construction 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 recent testimony from ODFW, mule deer populations have declined up to 70% since 2000. Their testimony identified other elements contributing to reductions in mule deer populations tied to human caused habitat reduction, fragmentation, and disturbance on winter range.

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

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

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
<p>Fish Habitat (Inventory – Ord. No. 92-041, page 18; creeks, rivers and lakes)</p>	<p>Yes</p>	<p>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</p>	<p>Floodplain zone recognized as program to achieve the goal to conserve fish habitat (Ordinance Nos. 88-030, 88-031, 89-009).</p> <p>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.</p>	<p>Ordinance Nos. 86-018, 86-053, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041</p>
<p>Deer Winter Range (Inventory – Ord. No. 92-041, page 22; Metolius, Tumalo, North Paulina, and Grizzly ranges identified by ODFW)</p>	<p>Yes</p>	<p>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.</p>	<p>Floodplain zone recognized as a program to achieve the goal to protect deer winter range (Ordinance Nos. 88-030, 88-031, 89-009).</p> <p>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.</p>	<p>Ordinance Nos. 88-030, 88-031, 89-009, 92-040, 92-041, 92-042, 92-046</p>
<p>Deer Migration Corridor (Inventory – Ord. No. 92-041, page 26; Bend-La Pine migration corridor identified by ODFW)</p>	<p>Yes</p>	<p>Major conflicts are dwellings, roads, and dogs. Fences which impede safe passage are also a conflicting use.</p>	<p>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.</p>	<p>Ordinance Nos. 92-040, 92-041, 92-042, 92-046</p>

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<p>Elk Habitat (Inventory – Ord. No. 92-041 – page 32; identified by USFS and ODFW)</p>	<p>Yes</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>Antelope Habitat (Inventory – Ord. No. 92-041 – page 38; identified by ODFW)</p>	<p>No</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>Habitat for Sensitive Birds (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>No</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.		
<p>(UPDATE - Inventory – Ord. No. 94-004 –pages 3 to 140 Site specific ESEE analysis and decisions follow each site.</p>	No	See above.	<p>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.”</p> <p>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.</p>	Ordinance Nos. 94-004, 94-005 and 94-021
<p>Waterfowl Habitat (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)</p>	Yes	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.	<p>Floodplain zone recognized as program to achieve the goal to conserve waterfowl habitat (Ordinance Nos. 88-030, 88-031, 89-009).</p> <p>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.</p>	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>Upland Game Bird Habitat (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>Yes</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>UPDATE - Inventory – Ord. No. 94-004 – pages 156-201.</p>	<p>Yes</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>Furbearer Habitat (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>Yes</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>Habitat Areas for Townsend’s Big-Eared Bats (Inventory – Ord. No. 92-041 – page 69; identified by ODFW, ODF, OSU, Oregon Natural Heritage Data Bases)</p>	<p>No</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>UPDATE - Inventory – Ord. No. 94-004 – pages 140 to 155 Site specific ESEE analysis and decisions follow each site.</p>	<p>No</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>Wetlands and Riparian Areas (Inventory – Ord. No. 92-041 – page 73; identified on USFWS NWI)</p>	<p>Yes</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>UPDATE – Riparian inventory – 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>UPDATE – Wetland Inventory – Ord. No. 94-007, Exhibit B – inventory is NWI (Ord. No. 92-045)</p>	<p>Yes</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"> • Fill and removal regulations to protect wetlands • 100’ setback from OHW • Flood plain zone (regulates docks too) • DSL Removal / Fill law 	<p>Ordinance Nos. 94-007</p>

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
<p>Ecologically and Scientifically Significant Natural Areas * Little Deschutes River / Deschutes River Confluence (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>Yes</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>Landscape Management Rivers and Streams (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>Yes</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
<p>Lakes and Reservoirs (Inventory – Ord. No. 92-052, Exhibit C, Page 10; includes Upper Tumalo Reservoir; remaining are on federal land)</p>	<p>No</p>	<p>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.</p>	<p>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.</p>	<p>Ordinance No. 91-020</p>
<p>State Scenic Waterways and Federal Wild and Scenic Rivers (Inventory – Ord. No. 92-052, Exhibit E, Page 1;</p>	<p>Yes</p>	<p>See County / City of Bend River Study and 1986 River Study Staff Report. Both referenced in Ord. 92-005, Exhibit E.</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>
<p>Wilderness Areas, Areas of Special Concern, Energy Sources (Ord. No 92-052), and Groundwater Resources (Ord. No. 94-003) not analyzed because they’re on federal land or don’t relate to flood plains.</p>	<p>No</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>

Attachment 2 - Inventory Site Maps







1" = 10,000'

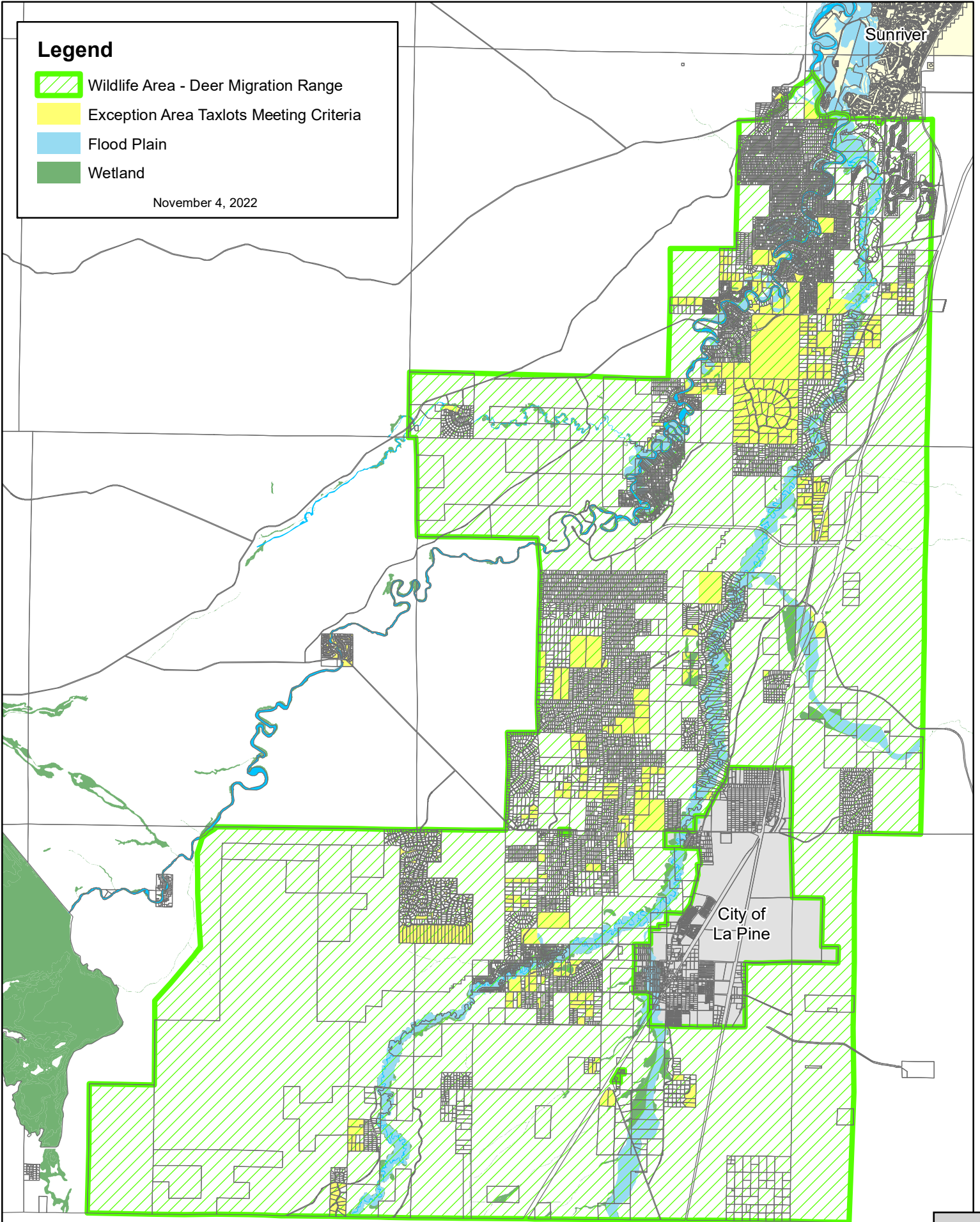
Exception Area Taxlots Meeting ADU Criteria - Deer Migration R

11/01/2023 Item #8.

Legend

-  Wildlife Area - Deer Migration Range
-  Exception Area Taxlots Meeting Criteria
-  Flood Plain
-  Wetland

November 4, 2022

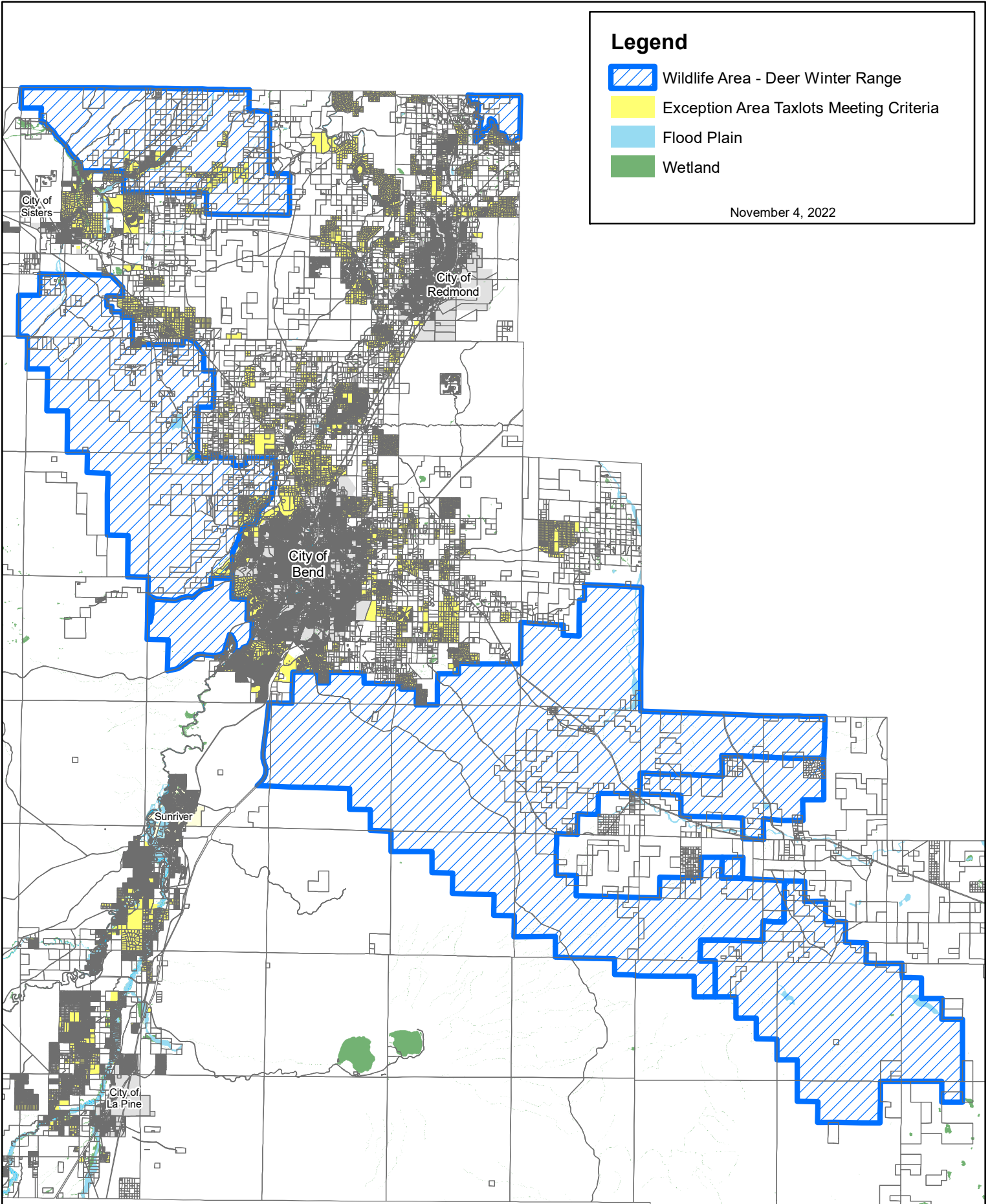




Exception Area Taxlots Meeting ADU Criteria - Deer Winter Range

11/01/2023 Item #8.

1" = 6 mi.

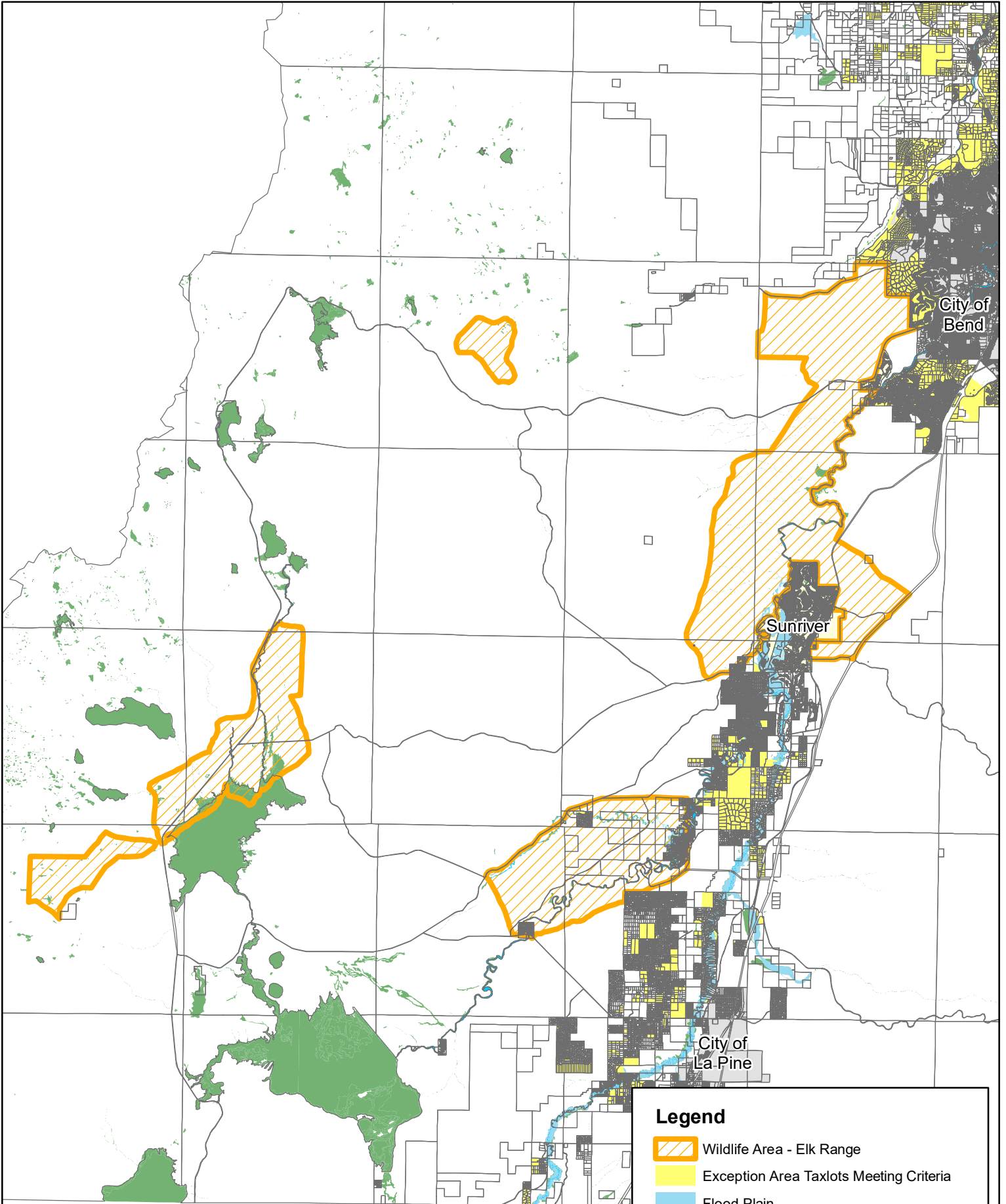








1" = 4 mi.

Exception Area Taxlots Meeting ADU Criteria - Elk Range

11/01/2023 Item #8.



Legend

-  Wildlife Area - Elk Range
-  Exception Area Taxlots Meeting Criteria
-  Flood Plain
-  Wetland

November 4, 2022



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: November 1, 2023

SUBJECT: Consideration to hear an appeal of the Hearings Officer’s remand decision approving a single-family dwelling in the Forest Use Zone at 59770 Scale House Road, Bend

RECOMMENDED MOTIONS:

Move approval of Order 2023-050, accepting review of the Hearings Officer’s Decision in File No. 247-23-000599-A and establishing the review will be heard de novo.

OR

Move approval of Order 2023-050, denying review of the Hearings Officer’s Decision in File No. 247-23-000599-A.

BACKGROUND AND POLICY IMPLICATIONS:

The applicant is requesting conditional use approval to establish a single-family dwelling in the Forest Use (F2) Zone. In 2022, the County approved the applicant’s request. However, the Windlinx Ranch Trust appealed this decision, and the State Appellate Courts remanded the decision back to the County for further review. On October 10, 2023, the Hearings Officer issued the remand decision and approved the applicant’s request. The Windlinx Ranch Trust has filed an appeal of this decision and asks the Board of County Commissioners to review the appeal.

BUDGET IMPACTS:

None.

ATTENDANCE:

Caroline House, Senior Planner
William Groves, Planning Manager
Legal Counsel



MEMORANDUM

TO: Board of County Commissioners

FROM: Caroline House, Senior Planner

DATE: October 25, 2023

RE: An appeal of the Hearings Officer's Remand Decision Approving a Single-Family Dwelling in the Forest Use (F2) Zone; File No. 247-23-000599-A and Appeal No. 247-23-000728-A

On November 1, 2023, the Board of County Commissioners ("Board") will consider hearing an appeal of the Hearings Officer's remand decision conditionally approving a single-family dwelling in the F2 Zone.

I. PROPOSAL

The Applicant is requesting conditional use approval to establish a single-family dwelling in the F2 Zone. The requested Forest Use dwelling type is a "Template Dwelling", and the property is located at 59770 Scale House Road, Bend, OR 97702.

II. PROCEDURAL HISTORY

In 2021-2022, the Hearings Officer approved the Applicant's conditional use request. However, this decision was appealed to the Land Use Board of Appeals ("LUBA") and the Oregon Court of Appeals. Ultimately, the Hearings Officer's decision was remanded back to the County for further review.

On July 28, 2023, the Applicant initiated the subject remand application. Since the Hearings Officer was the final decision maker in the previous review, the Hearings Officer was the initial reviewer for the subject remand application. After reviewing the submitted information, the Hearings Officer found the Applicant sufficiently addressed the issues on remand and approved the Applicant's request. On October 10, 2023, the Windlinx Ranch Trust ("Appellant") filed an appeal of the Hearings Officer's decision.

III. WINDLINX RANCH TRUST APPEAL

The Appellant requests the Board review the Hearings Officer’s decision, as part of a *de novo* review, to address the following key issues related to the template dwelling test requirements:

- 1. To determine the location of Lot 7B and Lot 7C.
- 2. To determine whether Lot 7C is located within the Applicant’s 160-acre square template.
- 3. To determine if Lot 7 is a “parcel” as defined in ORS 215.010.

IV. STAFF RECOMMENDATION

Staff recommends the Board not hear the appeal for the following reasons:

- The appeal issues are primarily matters of state law interpretation and a Board decision would not be given deference if appealed to LUBA.
- The Hearings Officer’s decision is well written and reasoned, and could be supported, as the record exists today on appeal to LUBA.
- The County’s review of a remand application must be completed within 120 days and the County will have used 95 of the 120 days as of November 1st. Therefore, it is unlikely there would be sufficient time for the Board to review the subject appeal and meet the 120-day deadline.
- Both parties were well represented by land use attorneys.

V. BOARD OPTIONS

First, the Board must decide if it wishes to hear the appeals. In determining whether to hear the appeals, the Board may only consider:

- 1. The record developed before the Hearings Officer;
- 2. The Notice of Appeal; and
- 3. Recommendation of staff¹

Option 1: Hear the Appeal

If the Board decides to hear the appeal, the Board must make a decision on the scope of the review. As noted above, the Appellant has requested a *de novo* review. Per the Deschutes County Code (“DCC”), the Board has two choices for the scope of the review:

¹ Deschutes County Code 22.32.035(D)

1. On the Record

- This means parties can only present their arguments and the Board must rely on the record developed before the Hearings Officer. No new evidence can be submitted.

2. De Novo

- This means parties can submit new evidence and present their arguments.

Next, the Board may wish, but is not required, to limit the issues it will consider as part of the Board's review.

Lastly, the Board should give staff direction on when to schedule the appeal hearing and the Board may want to establish time limits for testimony at the hearing.

Option 2: Not Hear the Appeal

Should the Board decline to hear the appeal, the Hearings Officer's decision will become the final decision of the County. Upon the mailing of the Board's decision to decline review, the party appealing may continue their appeal as provided under the law.

VI. 120-DAY LAND USE CLOCK

The 120th day on which the County must take final action on this application is November 25, 2023.

VII. RECORD

The record for File no. 247-23-000599-A and the Notice of Appeal are presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-23-000599-kerr-template-dwelling-remand>

Attachments:

1. DRAFT Board Order 2023-050 Accepting Review of the Hearings Officer's Decision
2. DRAFT Board Order 2023-050 Declining Review of the Hearings Officer's Decision
3. Notice of Appeal – 247-23-000728-A

developed before the lower hearings body for File No. 247-23-000599-A, as presented at the following website:

<https://www.deschutes.org/cd/page/247-23-000599-kerr-template-dwelling-remand>

Going forward, all documents further placed before, and not rejected by, the Board shall be added to the aforementioned website, and that website shall be the Board’s official repository for the record in this matter.

DATED this ____ day of _____, 2023.

BOARD OF COUNTY COMMISSIONERS

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Denying Review of the Hearings *
Officer’s Decision in File No. 247-23-000599-A * ORDER NO. 2023-050

WHEREAS, on October 10, 2023, the Hearings Officer approved File No. 247-23-000599-A; and

WHEREAS, on October 20, 2023, the Windlinx Ranch Trust, the Appellant, appealed (Appeal No. 247-23-000728-A) the Deschutes County Hearings Officer’s Decision on File No. 247-23-000599-A; and

WHEREAS, Sections 22.32.027 and 22.32.035 of the Deschutes County Code (“DCC”) allow the Deschutes County Board of County Commissioners (“Board”) discretion on whether to hear appeals of Hearings Officers’ decisions; and

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

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

Section 1. That it will not hear on appeal Appeal No. 247-23-000728-A pursuant to Title 22 of the DCC and/or other applicable provisions of the County land use ordinances.

Section 2. Pursuant to DCC 22.32.015, the County shall refund any portion of the appeal fee not yet spent processing the subject application. If the matter is further appealed to the Land Use Board of Appeals and the County is required to prepare a transcript of the hearing before the Hearings Officer, the refund shall be further reduced by an amount equal to the cost incurred by the County to prepare such a transcript.

Section 3. Pursuant to DCC 22.32.035(D), the only documents placed before and considered by the Board are the notice of appeal, recommendations of staff, and the record developed before the lower hearing body for File No. 247-23-000599-A, as presented at the following website:

<https://www.deschutes.org/cd/page/247-23-000599-kerr-template-dwelling-remand>

DATED this ____ day of _____, 2023.

BOARD OF COUNTY COMMISSIONERS

ANTHONY DEBONE, Chair

ATTEST:

PATTI ADAIR, Vice Chair

Recording Secretary

PHIL CHANG, Commissioner



RECEIVED

OCT 20 2023

Deschutes County CDD

247-22 11/01/2023 Item #9. A

COMMUNITY DEVELOPMENT

APPEAL APPLICATION - BOARD OF COUNTY COMMISSIONERS

FEE: \$4,448

EVERY NOTICE OF APPEAL SHALL INCLUDE:

- 1. A statement describing the specific reasons for the appeal.
2. If the Board of County Commissioners is the Hearings Body, a request for review by the Board stating the reasons the Board should review the lower decision.
3. If the Board of County Commissioners is the Hearings Body and de novo review is desired, a request for de novo review by the Board, stating the reasons the Board should provide the de novo review as provided in Section 22.32.027 of Title 22.
4. If color exhibits are submitted, black and white copies with captions or shading delineating the color areas shall also be provided.

It is the responsibility of the appellant to complete a Notice of Appeal as set forth in Chapter 22.32 of the County Code. The Notice of Appeal on the reverse side of this form must include the items listed above. Failure to complete all of the above may render an appeal invalid. Any additional comments should be included on the Notice of Appeal.

Staff cannot advise a potential appellant as to whether the appellant is eligible to file an appeal (DCC Section 22.32.010) or whether an appeal is valid. Appellants should seek their own legal advice concerning those issues.

Appellant's Name (print): Windlinx Ranch Trust Phone: (541) 410-0191

Mailing Address: 59895 Scale House Road City/State/Zip: Bend, Oregon 97702

Email Address: rwindlinx@empnet.com

Land Use Application Being Appealed: 247-23-000599-A (Remand)

Property Description: Township 18 Range 12 Section 31 Tax Lot 600

Appellant's Signature: Robert Windlinx Date: 10-20-2023

By signing this application and paying the appeal deposit, the appellant understands and agrees that Deschutes County is collecting a deposit for hearing services, including "whether to hear" proceedings. The appellant will be responsible for the actual costs of these services. The amount of any refund or additional payment will depend upon the actual costs incurred by the county in reviewing the appeal.

Except as provided in section 22.32.024, appellant shall provide a complete transcript of any hearing appealed, from recordings provided by the Planning Division upon request (there is a \$5.00 fee for each recording copy). Appellant shall submit the transcript to the planning division no later than the close of

NOTICE OF APPEAL

Windlinx Trust Appeal Statement

Dear Chair DeBone, Vice-Chair Adair, and Commissioner Chang:

Windlinx Ranch Trust respectfully appeals a recent hearings officer decision that approves a template dwelling in the F2 zone. This appeal statement presents the specific reasons for appeal and the reasons the Board should provide de novo review as provided in DCC 22.32.027.

Background for Appeal.

The application involves a request to add a new template dwelling in the F2 zone. The proposed template is depicted on Exhibit 1 to this document. This appeal involves the parcel identified as Lot 7C. The applicants asserted that Lot 7C and a parcel identified as Lot 7A were created in 1910 when the owner of the larger parcel, Ferguson, conveyed right-of-way to the Oregon Trunk Railway. The 1910 deed, a copy of which is attached as Exhibit 2, did not contain any legal description of the property interest conveyed. It referred to a strip 50 feet on either side of a centerline of a railroad now or hereafter located and staked over the west half of the southwest quarter of Section 31. Although the proposed template illustrated a location for Lot 7B, the "railroad parcel", the applicants acknowledged that that strip could not be specifically located. That is because the railroad was never constructed, a fact established by former County Surveyor, Mike Berry. The parcel noted as Lot 7C was not part of the request because the applicants stated that they could not locate the railroad parcel and thus, could not show that Lot 7C was located in their template. At most, applicants stated that they believed that a small part of Lot 7C was in the template. Appellant asserts that the applicants never revised or amended their statement that they were not using Lot 7C for establishing compliance with the template test.

A hearings officer approved the request, and that approval was appealed to LUBA. LUBA remanded for the county to further evaluate whether Lots 7C, 7A, and Lot 2 were lawfully created. Both parties appealed LUBA's decision and the court of appeals affirm LUBA on all counts.

On remand, the applicants asserted that the hearings officer had already decided that the specific location of Lot 7B and Lot 7C was, as a matter of fact, within the proposed template. They argued that LUBA and the court of appeals confirmed that finding. Appellant asserted the contrary that the specific location of Lots 7B and 7C was never determined because it was impossible to determine said location. On remand, the hearings officer concluded that the issue of whether Lot 7C was in the template was resolved in the prior proceedings even though LUBA expressly stated that Lot 7C was not part of the application. The hearings officer further found that the applicants demonstrated that Lot 7C was within the proposed template. The hearings officer noted that each iteration of the proposed template showed Lot 7C within the template, apparently concluding that all an applicant must do is recite on a template that a parcel is within the template they propose. The hearings officer accepted applicants' surveyors' reliance on ODOT maps that depicted possible locations of a railroad line that was never constructed. He disregarded the testimony of five professional surveyors who agreed with the applicants' initial representation that because Lot 7B (railroad parcel) cannot be located, it is not possible to locate Lot 7C within the applicants'

template. Each professional surveyor stated that the railroad parcel cannot be located because there is no legal description, and the railroad was never constructed.

Grounds for Appeal.

1. The hearings officer erred in misapplying the law to conclude that the issue over whether Lot 7C is located within the 160-acre square proposed by applicants was previously decided and could not be raised in the remand proceedings. He erred in determining that the specific location of Lot 7B was determined. Neither the hearings officer nor LUBA determined that the specific location of those parcels was established or decided that Lot 7C was in the template because the applicants did not include Lot 7C in their template analysis as LUBA expressly noted in its decision. In fact, LUBA specifically noted that Lot 7C was not part of the applicants' request. The LUBA decision was not preclusive on this issue because it did not conclude that Lot 7C is within the applicants' proposed template. The only issue decided with respect to Lot 7C was whether it was lawfully created.

2. The hearings officer erred in making a decision not supported by the preponderance of the evidence, or substantial evidence, that Lot 7C is located within the applicants' 160-acre square. The hearings officer accepted unsupported opinions from applicants' surveyors that they could locate Lot 7C based on the location of the "railroad parcel" as depicted on ODOT maps. The hearings officer ignored credible evidence from five professional surveyors who stated that the location of Lot 7C could not be determined because to locate that parcel of land one would need to be able to locate property described as the railroad parcel. The refuted evidence established that the railroad was never constructed and thus, it was impossible for anyone to locate it on the ground. To the extent the hearings officer agreed that the 1911 deed on the adjacent parcel established the location of the railroad strip on the Ferguson parcel in Section 31, he committed two errors. First, the grantor in the 1911 deed, Mueller, did not own the Ferguson parcel (Lot 7) at that time and could not have created any interest in it. Second, if the hearings officer agreed that the 1911 Mueller deed created an interest in a strip of property on the Ferguson parcel (Lot 7), he ignored the text in the 1911 deed that expressly states that the strip was only a right-of-way easement that reverted back to Mueller if the railroad was not constructed in five years. A copy of that deed is attached as Exhibit 3. Mike Berry provided unrefuted evidence that the railroad was never constructed. Thus, there could not have been any strip in the Ferguson parcel or the Mueller property after 1916. The hearings officer sanctioned an applicant asserting contrary positions.

Statement on why the Board should accept the appeal.

It is important that the Board accepts this appeal and reverses the hearings officer because his erroneous decision could pave the way for future dwellings in resource areas based upon applicants using "parcels" that do not exist or cannot be located. The "railroad parcel" was clearly conveyed to allow only a possible railroad in a general location. LUBA ruled that the conveyance for railroad purposes created a fee parcel. Appellant accepts that ruling. However, LUBA's ruling that such a deed not only creates a lawful parcel but also lawful parcels on each side of it creates a dangerous precedent when the primary "parcel" cannot be located. It allows applicants to show the special

use “parcel” almost anywhere they want in a parcel creating additional parcels that they show wherever they want and then use for qualifying for a dwelling. Indeed, under the hearings officer’s decision, the railroad strip still exists even though no one could ever locate it and the 1911 deed stated that it went away after five years. The hearings officer’s decision allows the applicants to use in its template a historic parcel description that went away over 100 years ago.

Further, under the hearings officer’s current decision, any deed conveying an interest for a utility can be a parcel. If the document does not define a specific location, an applicant can show it anywhere on a parcel and then manipulate it to “create” additional parcels for a template test. Appellant submits that this is not the type of “parcel” the county intended to be used for qualifying for a dwelling. A proper template test should include only real parcels that can be found and identified in a specific location.

An additional reason the Board should hear this appeal is that the hearings officer’s decision potentially allows unauthorized dwellings in a forest zone and that will increase the potential for wildfires. It will also have negative impacts on established and accepted forestry operations.

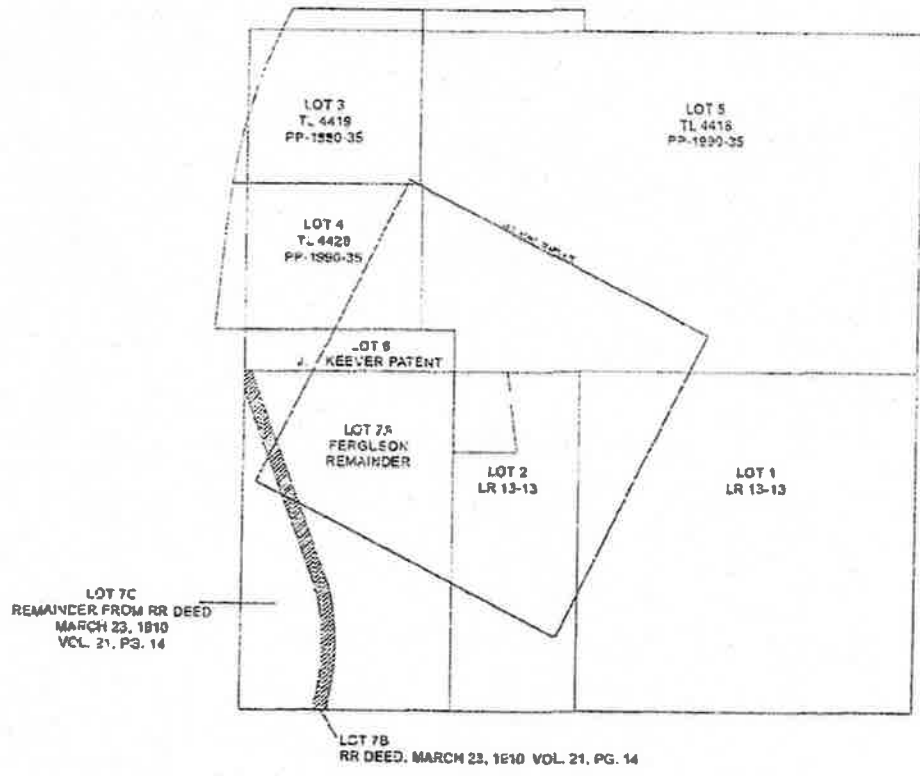
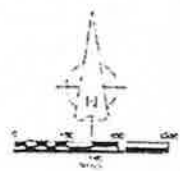
Appellant requests that if the Board accepts the appeal, it conduct a de novo hearing.

DCC 22.32.027 (B)(2)(d) provides: **"Whether in its sole judgment a de novo hearing is necessary to fully and properly evaluate a significant policy issue relevant to the proposed land use action.**

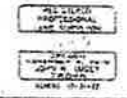
As stated above this appeal presents a significant policy issue on how the county should apply DCC 18.40.050 to parcels that were created for a special purpose and not intended for use commonly associated with dwelling applications.

Thank you in advance for your consideration of this matter.

EXHIBIT - 160 ACRE TEMPLATE



AXIS MAPPING & SURVEYING COMPANY 1254 NW FRESNO AVENUE, BEND, OR 97703 541-728-8474



Attachment 11
Page 1 of 1

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IN WITNESS WHEREOF, WE THE GRANTORS ABOVE NAMED, HERUNTO SET, OUR HANDS AND SEALS
THIS 7TH DAY OF MARCH 1910

WITNESS TO THE EXECUTION HEREOF: SIDNEY S. STEARNS (SEAL)
NORA F. STEARNS; LORA L. STEARNS FRANCES E. STEARNS (SEAL)

STATE OF OREGON, }
COUNTY OF CROOK } ss.

THIS CERTIFIES, THAT ON THIS 7TH DAY OF MARCH A.D. 1910 BEFORE ME, THE UNDERSIGNED,
A NOTARY PUBLIC; IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED THE WITHIN NAMED
SIDNEY S. STEARNS AND FRANCES E. STEARNS, HIS WIFE, WHO ARE KNOWN TO ME TO BE THE IDENTICAL
INDIVIDUALS DESCRIBED IN AND WHO EXECUTED THE WITHIN INSTRUMENT, AND ACKNOWLEDGED TO ME
THAT THEY EXECUTED THE SAME, FREELY AND VOLUNTARILY AND FOR THE PURPOSES THEREIN SET
FORTH.

IN TESTIMONY WHEREOF, I HAVE HERUNTO SET MY HAND AND NOTARIAL SEAL THE DAY AND YEAR
LAST ABOVE WRITTEN.

ALFRED A. AYA
(NOTARIAL SEAL) NOTARY PUBLIC IN AND FOR THE STATE OF OREGON.

4365

JOHN FERGUSON & WIFE
TO
OREGON TRUNK RAILWAY.

VOLUME 21, DEEDS, PAGE 14.
TRANSCRIPT FROM CROOK COUNTY
FILED MARCH 23rd, A.D. 1910

WARRANTY DEED.

KNOW ALL MEN BY THESE PRESENTS, THAT JOHN FERGUSON AND SARAH FERGUSON, HIS WIFE
OF COUNTY OF CROOK, STATE OF OREGON, IN CONSIDERATION OF ONE & 00/100 DOLLARS TO THEM IN
HAND PAID BY THE OREGON TRUNK RAILWAY, A CORPORATION, THE RECEIPT WHEREOF IS HEREBY ACKNOW-
LEDGED, DO HEREBY GIVE, GRANT, BARGAIN, SELL AND CONVEY UNTO THE SAID OREGON TRUNK RAIL-
WAY, ITS SUCCESSORS AND ASSIGNS FOREVER, ALL THE FOLLOWING DESCRIBED REAL PROPERTY, FREE
FROM ALL INCUMBRANCES, TO-WIT: A STRIP OF LAND FOR RAILROAD PURPOSES ONE HUNDRED FEET IN
WIDTH BEING FIFTY (50) FEET ON EACH SIDE OF AND PARALLEL WITH THE CENTER LINE OF THE
OREGON TRUNK RAILWAY, AS THE SAME IS NOW OR MAY HEREAFTER BE LOCATED AND STAKED OUT OVER
AND ACROSS AND UPON THE FOLLOWING DESCRIBED REAL ESTATE IN CROOK COUNTY, STATE OF OREGON:
THE WEST HALF OF THE SOUTHWEST QUARTER (1/2 SW) OF SECTION THIRTY ONE (31); TOWNSHIP EIGHT-
EEN SOUTH, RANGE TWELVE (12) EAST, WILLAMETTE MERIDIAN. TOGETHER WITH THE RIGHT TO TAKE
FROM THE LANDS ADJACENT TO AND OUTSIDE OF THE STRIP HEREIN ABOVE DESCRIBED SUCH MATERIAL
SAND AND STONE AS MAY BE NECESSARY FOR THE CONSTRUCTION OF SAID RAILROAD; AND NO MORE.
TOGETHER, WITH ALL AND SINGULAR, THE TENEMENTS, HEREDITAMENTS AND APPURTENANCES THEREUNTO
BELONGING OR IN ANYWISE APPERTAINING,

TO HAVE AND TO HOLD THE ABOVE DESCRIBED PREMISES, TOGETHER WITH THEIR APPURTENANCES,
UNTO THE SAID OREGON TRUNK RAILWAY, ITS SUCCESSORS AND ASSIGNS FOREVER. AND JOHN FER-
GUSON AND SARAH FERGUSON GRANTORS ABOVE NAMED DO HEREBY COVENANT TO AND WITH THE OREGON
TRUNK RAILWAY COMPANY AFORESAID, ITS SUCCESSORS AND ASSIGNS, THAT THE ABOVE GRANTED PREM-
ISES ARE FREE FROM ALL INCUMBRANCES; THAT THEY HAVE GOOD RIGHT AND TITLE TO CONVEY THE
SAME IN MANNER AFORESAID, AND THAT THEY WILL AND THEIR HEIRS, EXECUTORS AND ADMINISTRAT-
ORS SHALL FOREVER WARRANT AND DEFEND THE ABOVE GRANTED PREMISES, AND EVERY PART AND PAR-
CEL THEREOF, AND THE PEACEABLE POSSESSION THEREOF UNTO THE SAID OREGON TRUNK RAILWAY, ITS
SUCCESSORS AND ASSIGNS AGAINST THE LAWFUL CLAIMS OF ALL PERSONS WHOMSOEVER.

LUBA 2022-022 Record EXHIBIT T

IN WITNESS WHEREOF, THEY HAVE HEREUNTO SET THEIR HANDS AND SEALS ON THIS NINETEENTH DAY OF MARCH A.D. 1910

EXECUTED IN THE PRESENCE OF
D. LYNES; E.O. STADTER

JOHN FERGOUSON (SEAL)
SARAH FERGOUSON (SEAL)

146

STATE OF OREGON, }
COUNTY OF CROOK } ss.

THIS CERTIFIES, THAT ON THIS 19TH DAY OF MARCH A.D. 1910 BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED THE WITHIN NAMED JOHN FERGOUSON, AND SARAH FERGOUSON HIS WIFE WHO ARE KNOWN TO ME TO BE THE INDIVIDUALS DESCRIBED IN AND WHO EXECUTED THE WITHIN INSTRUMENT, AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME FREELY AND VOLUNTARILY FOR THE USES AND PURPOSES THEREIN MENTIONED.

IN TESTIMONY WHEREOF, I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL, THE DAY AND YEAR LAST ABOVE WRITTEN.

(NOTARIAL SEAL)

E.O. STADTER
NOTARY PUBLIC FOR THE STATE OF OREGON

4366

CROOK COUNTY INVESTMENT CO.
TO
R. M. MOORE.

VOLUME 21, DEEDS, PAGE 15
TRANSCRIPT FROM CROOK COUNTY
FILED MARCH 23", A.D. 1910

THIS INDENTURE, MADE AND ENTERED INTO BY AND BETWEEN THE CROOK COUNTY INVESTMENT COMPANY, A CORPORATION, INCORPORATED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF OREGON, PARTY OF THE FIRST PART, AND R.M. MOORE PARTY OF THE SECOND PART.

WITNESSETH, SAID PARTY OF THE FIRST PART, FOR AND IN CONSIDERATION OF THE SUM OF ONE HUNDRED FIFTY (\$150.00) DOLLARS TO IT IN HAND PAID, THE RECEIPT WHEREOF IS HEREBY ACKNOWLEDGED, DOES BY THESE PRESENTS GRANT, BARGAIN, SELL AND CONVEY UNTO SAID PARTY OF THE SECOND PART, HIS HEIRS AND ASSIGNS FOREVER, THAT CERTAIN REAL PROPERTY SITUATED IN CROOK COUNTY, OREGON, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: LOTS NINE (11) AND TEN (10) IN BLOCK NINETY-FOUR (94) IN HILLMAN, AS THE SAME APPEARS OF RECORD IN THE OFFICE OF THE COUNTY CLERK OF CROOK COUNTY, OREGON. TOGETHER WITH ALL AND SINGULAR THE TENEMENTS, HEREDITAMENTS AND APPURTENANCES THEREUNTO BELONGING OR IN ANYWISE APPERTAINING.

TO HAVE AND TO HOLD THE SAME UNTO SAID PARTY OF THE SECOND PART HIS HEIRS AND ASSIGNS FOREVER. AND SAID PARTY OF THE FIRST PART DOES HEREBY COVENANT, TO AND WITH SAID PARTY OF THE SECOND PART, HIS HEIRS AND ASSIGNS, THAT SAID PREMISES ARE FREE FROM ALL INCUMBRANCES, AND THAT SAID PARTY OF THE FIRST PART WILL WARRANT AND DEFEND THE SAME, AND EVERY PART THEREOF, AGAINST THE LAWFUL CLAIMS AND DEMANDS AND DEMANDS OF ALL PERSONS, WHOMSOEVER.

IN WITNESS WHEREOF, SAID CROOK COUNTY INVESTMENT COMPANY HAS CAUSED THESE PRESENTS TO BE SIGNED, AND ITS CORPORATE SEAL TO BE HERETO AFFIXED, BY ITS PRESIDENT AND SECRETARY, THIS 3RD DAY OF MARCH 1910 UNDER DUE AUTHORITY CONFERRED THEREFOR BY THE BOARD OF DIRECTORS OF SAID CORPORATION.

EXECUTED IN THE PRESENCE OF
TILLY ANDERSON; F.B. EDGINGTON

CROOK COUNTY INVESTMENT COMPANY
By F.P. COOPER, PRESIDENT
By T.W. TAYLOR SECRETARY

(CORPORATE SEAL)

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ALL OF LOT FOUR (4) BLOCK EIGHT (8) AS THE SAME APPEARS UPON THE OFFICIAL MAP OF IMPERIAL TOWNSHIP, SAID MAP BEING RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF CROOK COUNTY, AT PRINEVILLE, STATE OF OREGON, ON THE 2ND DAY OF MARCH 1911, IN MAP BOOK THREE AT PAGE---, TOGETHER WITH ALL AND SINGULAR THE TENEMENTS, HEREDITAMENTS AND APPURTENANCES THEREUNTO BELONGING OR IN ANYWISE APPERTAINING.

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TO HAVE AND TO HOLD, THE SAID PREMISES, WITH THE APPURTENANCES, UNTO THE SAID PARTY OF THE SECOND PARTY AND TO HIS HEIRS AND ASSIGNS FOREVER. THE SAID PARTY OF THE FIRST PARTY DOES HEREBY COVENANT TO AND WITH THE ABOVE NAMED PARTY OF THE SECOND PART THAT SHE, HER HEIRS, EXECUTORS AND ADMINISTRATORS, SHALL WARRANT AND DEFEND THE ABOVE GRANTED PREMISES, AGAINST THE DEEDS AND DEEDS OF THE SAID PARTY OF THE FIRST PART AND ALL PERSONS CLAIMING BY, FROM, THROUGH OR UNDER, SAID PARTY OF THE FIRST PART, UNTO THE SAID PARTY OF THE SECOND PART, HIS HEIRS, AND ASSIGNS FOREVER.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL THE DAY AND YEAR FIRST HEREINABOVE WRITTEN.

WITNESSES TO THE EXECUTION HEREOF CONSTANCE REID (SEAL)
B. MONTGOMERY
W. F. BOYLAN

STATE OF OREGON
COUNTY OF MULTNOMAH

THIS CERTIFIES, THAT ON THIS 3RD DAY OF MARCH A. D. 1911, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED THE WITHIN NAMED CONSTANCE REID (AN UNMARRIED WOMAN), WHO IS KNOWN TO ME TO BE THE IDENTICAL PERSON DESCRIBED IN AND WHO EXECUTED THE WITHIN INSTRUMENT, AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME, AS HER FREE ACT AND DEED, FOR THE USES AND PURPOSES THEREIN EXPRESSED.

IN TESTIMONY WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL THE DAY AND YEAR LAST ABOVE WRITTEN

B. MONTGOMERY
NOTARY PUBLIC IN AND FOR THE STATE OF OREGON.
(NOTARIAL SEAL)

9643.
THE CHRISTIAN MUELLER LAND AND TIMBER COMPANY
TO
OREGON TRUNK RAILWAY

VOL. 24, DEEDS, PAGE 444.
TRANSCRIPT FROM CROOK COUNTY.
FILED APR. 11, 1911, AT 5 O'CLOCK P.M.
WARREN BROWN COUNTY CLERK

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, THAT THE THE CHRISTIAN MUELLER LAND AND TIMBER COMPANY, A CORPORATION ORGANIZED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF OREGON, IN CONSIDERATION OF ONE AND 00/100 DOLLARS TO IT SAID BY THE OREGON TRUNK RAILWAY A CORPORATION ORGANIZED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF

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WASHINGTON, AND DOING BUSINESS IN THE STATE OF OREGON AND ELSEWHERE; THE RECEIPT WHEREOF IS HEREBY ACKNOWLEDGED, DOES HEREBY GIVE, GRANT, BARRAIN, SELL AND CONVEY UNTO THE SAID OREGON TRUNK RAILWAY, ITS SUCCESSORS AND ASSIGNS FOREVER, ALL THE FOLLOWING DESCRIBED REAL PROPERTY, FREE FROM ALL INCUMBRANCES AND SITUATE IN THE COUNTY OF CROOK, STATE OF OREGON, TO-WIT:

ALL THAT PART OF THE EAST HALF OF THE SOUTHWEST QUARTER ($E\frac{1}{2} SW\frac{1}{4}$) OF SECTION SEVENTEEN (17), TOWNSHIP TWENTY (20) SOUTH, RANGE ELEVEN (11) EAST OF THE WILLAMETTE MERIDIAN, LYING WESTERLY OF A LINE PARALLEL TO AND FIFTY (50) FEET EASTERLY OF THE CENTER LINE OF THE OREGON TRUNK RAILWAY, AS THE SAME IS NOW STAKED OUT OVER AND ACROSS SAID SECTION SEVENTEEN;

ALSO, ALL THAT PART OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER ($SE\frac{1}{4} NW\frac{1}{4}$) OF SECTION FIVE (5) TOWNSHIP TWENTY (20) SOUTH, RANGE ELEVEN (11) EAST OF THE WILLAMETTE MERIDIAN, LYING WITHIN A STRIP OF LAND ONE HUNDRED (100) FEET IN WIDTH, BEING FIFTY (50) FEET ON EACH SIDE OF THE CENTER LINE OF THE OREGON TRUNK RAILWAY AS THE SAME IS NOW STAKED OUT OVER AND ACROSS SAID SECTION FIVE (5)

ALSO ALL THAT PART OF THE WEST HALF OF THE NORTHWEST QUARTER ($W\frac{1}{2}$ OF $NW\frac{1}{4}$) OF SECTION THIRTY-ONE (31) TOWNSHIP EIGHTEEN (18) SOUTH, RANGE TWELVE (12) EAST OF THE WILLAMETTE MERIDIAN, LYING WITHIN A STRIP OF LAND ONE HUNDRED (100) FEET IN WIDTH BEING FIFTY (50) FEET ON EACH SIDE OF THE CENTER LINE OF THE OREGON TRUNK RAILWAY AS THE SAME IS NOW STAKED OUT OVER AND ACROSS SAID SECTION THIRTY-ONE (31)

SAID CENTER LINE ACROSS SECTION SEVENTEEN AND FIVE, TOWNSHIP TWENTY (20) SOUTH, RANGE ELEVEN (11) EAST OF THE WILLAMETTE MERIDIAN, AND ACROSS SECTION THIRTY-ONE (31), TOWNSHIP EIGHTEEN (18) SOUTH, RANGE TWELVE EAST OF THE WILLAMETTE MERIDIAN, BEARS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT STATION 26204.86, A POINT ON THE SOUTH LINE OF SECTION SEVENTEEN (17) TOWNSHIP TWENTY (20) SOUTH, RANGE ELEVEN (11), EAST OF THE WILLAMETTE MERIDIAN, 1236 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION SEVENTEEN (17) THENCE N $2^{\circ} 58'$ E. 5305.7 FEET TO STATION 2673191.8 A POINT ON THE NORTH LINE OF SAID SECTION SEVENTEEN (17), 1464.4 FEET FROM THE NORTHWEST CORNER OF SAID SECTION SEVENTEEN (17); THENCE CONTINUING N. $2^{\circ} 58'$ E 5396.7 FEET TO STATION 2727188.5 A POINT ON THE SOUTH OF SAID SECTION FIVE (5), 1765 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION FIVE (5); THENCE CONTINUING N. $2^{\circ} 58'$ E. 2788.5 FEET TO STATION 2755174; THENCE CURVING TO THE LEFT ON A $1^{\circ} 00'$ CURVE 1640.4 FEET THROUGH AN ANGLE OF $16^{\circ} 24'$ TO STATION 2772114.4; THENCE N. $13^{\circ} 26'$ W. 814.6 FEET TO STATION 2780129, A POINT ON THE NORTH LINE OF SAID SECTION FIVE (5), 1544 FEET FROM THE NORTHWEST CORNER OF SAID SECTION FIVE (5); THENCE CONTINUING NORTHERLY AND NORTHEASTERLY BY VARIOUS COURSES AND DISTANCES TO STATION 3225136, A POINT ON THE WEST LINE OF SECTION SIX (6) TOWNSHIP NINETEEN (19) SOUTH, RANGE TWELVE (12) EAST OF THE WILLAMETTE MERIDIAN, 1261.2 FEET FROM THE NORTHWEST CORNER OF SAID SECTION SIX (6); THENCE N. $50^{\circ} 56'$ E. 220.0 FEET TO STATION 3227156.0; THENCE ON A SPIRAL CURVE TO THE LEFT INCREASING TO A $3^{\circ} 00'$ CURVE 180 FEET THROUGH AN ANGLE OF $2^{\circ} 42'$ TO STATION 3229136.0; THENCE ON A $3^{\circ} 00'$ CURVE TO THE LEFT 2620.0 FEET THROUGH AN ANGLE OF $78^{\circ} 36'$ TO STATION 3255156.0; THENCE ON A DECREASING SPIRAL CURVE TO THE LEFT 180 FEET THROUGH AN ANGLE OF $2^{\circ} 42'$ TO STATION 3257136.0; THENCE N. $33^{\circ} 04'$ W 1008.2 FEET TO STATION 3267144.2; THENCE ON A SPIRAL CURVE TO THE RIGHT INCREASING TO $3^{\circ} 00'$ CURVE, 180 FEET THROUGH AN ANGLE OF $2^{\circ} 42'$ TO STATION 3269124.2 THENCE ON A $3^{\circ} 00'$ CURVE TO THE RIGHT 1825.0 FEET THROUGH AN ANGLE OF $54^{\circ} 45'$ TO STATION 3287149.2;

*



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: November 1, 2023

SUBJECT: Consideration to hear an appeal of a Hearings Officer's decision conditionally approving an outdoor motocross facility in the Rural Residential Zone at 7505 NW Eagle Dr in Redmond

RECOMMENDED MOTIONS:

Move approval of Order 2023-051, accepting review of Hearings Officer's Decision in File Nos. 247-22-000812-CU, 247-22-000813-SP, & 247-23-000666-RC and establishing the review will be heard full de novo.

OR

Move approval of Order 2023-051, accepting review of Hearings Officer's Decision in File Nos. 247-22-000812-CU, 247-22-000813-SP, & 247-23-000666-RC and establishing the review will be heard de novo and the scope of the review will be limited to the issues raised in the Applicant's appeal.

OR

Move approval of Order 2023-051, denying review of Hearings Officer's Decision in File Nos. 247-22-000812-CU, 247-22-000813-SP, & 247-23-000666-RC.

BACKGROUND AND POLICY IMPLICATIONS:

The applicant is requesting conditional use and site plan approval for a recreation-oriented facility requiring large acreage. Specifically, the applicant proposes a commercial outdoor motocross facility with four courses. The subject property is located at 7505 NW Eagle Dr, Redmond, OR 97756.

The review was initially referred to a Hearings Officer and the Hearings Officer approved the applicant's request on August 31, 2023. However, the applicant submitted a reconsideration application requesting changes to the conditions of approval. The Hearings Officer's Reconsideration Decision modified two conditions of approval and denied modification of four other conditions. On October 17, 2023, the applicant filed a timely appeal of the Hearings Officer's Reconsideration Decision.

BUDGET IMPACTS:

None

ATTENDANCE:

Caroline House, Senior Planner
William Groves, Planning Manager
Legal Counsel



MEMORANDUM

TO: Board of County Commissioners

FROM: Caroline House, Senior Planner

DATE: October 25, 2023

RE: An appeal of the Hearings Officer’s Decision Approving an Outdoor Motocross Facility in the Rural Residential (RR10) Zone; File Nos. 247-22-000812-CU / 247-22-000812-SP and Appeal No. 247-23-000724-A

On November 1, 2023, the Board of County Commissioners (“Board”) will consider hearing an appeal of the Hearings Officer’s decision conditionally approving an outdoor motocross facility in the RR10 Zone.

I. PROPOSAL

The Applicant is requesting conditional use and site plan approval for a recreation-oriented facility requiring large acreage. Specifically, the Applicant proposes a commercial outdoor motocross facility with four (4) courses. The subject property is located at 7505 NW Eagle Dr, Redmond, OR 97756.

II. PROCEDURAL HISTORY

The applications were received on October 11, 2022. The initial public hearing before a Hearings Officer was held on May 2, 2023. Continuances of the initial hearing were held on July 11, 2023 and August 15, 2023. The Hearings Officer approved the Applicant's request on August 31, 2023.

Subsequently, the Applicant submitted a Reconsideration application requesting changes to the conditions of approval. The Hearings Officer's Reconsideration Decision modified two (2) conditions of approval and denied modification of four (4) other conditions. On October 17, 2023, the Applicant filed a timely appeal of the Hearings Officer’s Reconsideration Decision.

III. APPLICANT'S APPEAL

The Applicant requests the Board review the Hearings Officer's decision, as part of a *de novo* review, but limit the scope of review to the following conditions of approval:

1. Reconciliation of conflict and confusion between application of Conditions of Approval U, V, W, Y, and AA concerning motorcycle noise.
2. Appeal of Condition of Approval "S" addressing the Hours of Operation to be consistent with the evidence in the record that the primary operating season is October-March.
3. Appeal of Condition of Approval "T" which limits the number of "visitors" on the property does not relate to any approval criterion.
4. Appeal of Condition of Approval "BB" requiring construction of a new restroom facility.

IV. STAFF RECOMMENDATION

There are several factors staff believes the Board should consider when deciding whether to hear this appeal. Below staff has summarized key issues that staff recommends the Board consider as part of their decision.

Reasons to hear the appeal:

- The appeal issues are primarily associated with local code requirements. For this reason, the Board decision will potentially be given deference on these matters if appealed to the Land Use Board of Appeals ("LUBA").
- Staff believes conditions of approval relying on the Department of Environmental Quality ("DEQ") Noise regulations may be difficult for the County to enforce, and the Board could consider imposing clearer conditions as part of any approval.
- There was significant public interest in the proposal.
- The Board may wish to concur, reverse, or modify the Hearing Officer's decision.

Reasons to not hear the appeal:

- The County's Noise Ordinance (DCC 8.08) will likely impact the Applicant's proposal regardless of any potential changes to the conditions of approval. Staff believes that the Applicant likely needs to initiate a Text Amendment to resolve this issue.
- Staff believes the Hearings Officer's decision to limit visitors is reasonable to ensure compatibility with the surrounding uses.
- The Board will not be afforded deference on the restroom facility requirements as this authority is given to DEQ and the County's Onsite Wastewater Division.

If the Board decides to hear the appeal, staff recommends the Board hear the appeal *de novo* and not limit the scope of review.

V. BOARD OPTIONS

First, the Board must decide if it wishes to hear the appeals. In determining whether to hear the appeals, the Board may only consider:

- 1. The record developed before the Hearings Officer;
- 2. The Notice of Appeal; and
- 3. Recommendation of staff¹

Option 1: Hear the Appeal

If the Board decides to hear the appeal, the Board must make a decision on the scope of the review. As noted above, the Applicant has requested a *de novo* review and to limit the issues to be reviewed by the Board. Per the Deschutes County Code (“DCC”), the Board has two choices for the scope of the review:

- 1. On the Record
 - This means parties can only present their arguments and the Board must rely on the record developed before the Hearings Officer. No new evidence can be submitted.
- 2. De Novo
 - This means parties can submit new evidence and present their arguments.

Next, the Board may wish, but is not required, to limit the issues it will consider as part of the Board’s review.

Lastly, the Board should give staff direction on when to schedule the appeal hearing and the Board may want to establish time limits for testimony at the hearing.

Option 2: Not Hear the Appeal

Should the Board decline to hear the appeal, the Hearings Officer’s decision will become the final decision of the County. Upon the mailing of the Board’s decision to decline review, the party appealing may continue their appeal as provided under the law.

¹ Deschutes County Code 22.32.035(D)

VI. 150-DAY LAND USE CLOCK

The 150th day on which the County must take final action on this application is April 27, 2023.

VII. RECORD

The record for File Nos. 247-22-000812-CU & 247-22-000812-SP and the Notice of Appeal are presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-22-000812-cu-247-22-000813-sp-homan-outdoor-motocross-track>

Attachments:

1. DRAFT Board Order 2023-051 Accepting Review of the Hearings Officer's Decision – Full Review
2. DRAFT Board Order 2023-051 Accepting Review of the Hearings Officer's Decision – Limited Scope of Review
3. DRAFT Board Order 2023-051 Declining Review of the Hearings Officer's Decision
4. Notice of Appeal - 247-23-000724-A

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Accepting Review of Hearings *
Officer’s Decision in File Nos. 247-22- * ORDER NO. 2023-051
000812-CU, 247-22-000813-SP, & 247-23-
000666-RC.

WHEREAS, on October 5, 2023, the Hearings Officer approved File Nos. 247-22-000812-CU, 247-22-000813-SP, & 247-23-000666-RC; and

WHEREAS, on October 17, 2023, Justin Homan, the Applicant, appealed (Appeal No. 247-23-000724-A) the Deschutes County Hearings Officer’s Decision on File Nos. 247-22-000812-CU, 247-22-000813-SP, & 247-23-000666-RC; and

WHEREAS, Sections 22.32.027 and 22.32.035 of the Deschutes County Code (“DCC”) allow the Deschutes County Board of County Commissioners (“Board”) discretion on whether to hear appeals of Hearings Officer’s decisions; and

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

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

Section 1. That it will hear on appeal Appeal No. 247-23-000724-A pursuant to Title 22 of the DCC and other applicable provisions of the County land use ordinances.

Section 2. The appeal shall be heard *de novo*.

Section 3. Staff shall set a hearing date and cause notice to be given to all persons or parties entitled to notice pursuant to DCC 22.24.030 and DCC 22.32.030.

Section 4. Pursuant to Section 22.32.024, the Board waives the requirement that the appellants provide a complete transcript for the appeal hearing.

Section 5. Pursuant to DCC 22.32.035(D), to date the only documents placed before and considered by the Board are the notice of appeal, recommendations of staff, and the record developed before the lower hearings body for File Nos. 247-22-000812-CU, 247-22-000813-SP, & 247-23-000666-RC as presented at the following website:

<https://www.deschutes.org/cd/page/247-22-000812-cu-247-22-000813-sp-homan-outdoor-motocross-track>

Going forward, all documents further placed before, and not rejected by, the Board shall be added to the aforementioned website, and that website shall be the Board's official repository for the record in this matter.

DATED this ____ day of _____, 2023.

BOARD OF COUNTY COMMISSIONERS

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Accepting Review of Hearings *
Officer’s Decision in File Nos. 247-22- * ORDER NO. 2023-051
000812-CU, 247-22-000813-SP, & 247-23-
000666-RC.

WHEREAS, on October 5, 2023, the Hearings Officer approved File Nos. 247-22-000812-CU, 247-22-000813-SP, & 247-23-000666-RC; and

WHEREAS, on October 17, 2023, Justin Homan, the Applicant, appealed (Appeal No. 247-23-000724-A) the Deschutes County Hearings Officer’s Decision on File Nos. 247-22-000812-CU, 247-22-000813-SP, & 247-23-000666-RC; and

WHEREAS, Sections 22.32.027 and 22.32.035 of the Deschutes County Code (“DCC”) allow the Deschutes County Board of County Commissioners (“Board”) discretion on whether to hear appeals of Hearings Officer’s decisions; and

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

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

Section 1. That it will hear on appeal Appeal No. 247-23-000724-A pursuant to Title 22 of the DCC and other applicable provisions of the County land use ordinances.

Section 2. The appeal shall be heard *de novo* and the scope of the review will be limited to the issues raised in the Applicant’s appeal.

Section 3. Staff shall set a hearing date and cause notice to be given to all persons or parties entitled to notice pursuant to DCC 22.24.030 and DCC 22.32.030.

Section 4. Pursuant to Section 22.32.024, the Board waives the requirement that the appellants provide a complete transcript for the appeal hearing.

Section 5. Pursuant to DCC 22.32.035(D), to date the only documents placed before and considered by the Board are the notice of appeal, recommendations of staff, and the record developed before the lower hearings body for File Nos. 247-22-000812-CU, 247-22-000813-SP, & 247-23-000666-RC as presented at the following website:

<https://www.deschutes.org/cd/page/247-22-000812-cu-247-22-000813-sp-homan-outdoor-motocross-track>

Going forward, all documents further placed before, and not rejected by, the Board shall be added to the aforementioned website, and that website shall be the Board's official repository for the record in this matter.

DATED this ____ day of _____, 2023.

BOARD OF COUNTY COMMISSIONERS

ANTHONY DEBONE, Chair

ATTEST:

PATTI ADAIR, Vice Chair

Recording Secretary

PHIL CHANG, Commissioner

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Denying Review of Hearings *
Officer’s Decision in File Nos. 247-22- * ORDER NO. 2023-051
000812-CU, 247-22-000813-SP, & 247-23-
000666-RC.

WHEREAS, on October 5, 2023, the Hearings Officer approved File Nos. 247-22-000812-CU, 247-22-000813-SP, & 247-23-000666-RC; and

WHEREAS, on October 17, 2023, Justin Homan, the Applicant, appealed (Appeal No. 247-23-000724-A) the Deschutes County Hearings Officer’s Decision on File Nos 247-22-000812-CU, 247-22-000813-SP, & 247-23-000666-RC; and

WHEREAS, Sections 22.32.027 and 22.32.035 of the Deschutes County Code (“DCC”) allow the Deschutes County Board of County Commissioners (“Board”) discretion on whether to hear appeals of Hearings Officers’ decisions; and

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

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

Section 1. That it will not hear on appeal Appeal No. 247-23-000724-A pursuant to Title 22 of the DCC and/or other applicable provisions of the County land use ordinances.

Section 2. Pursuant to DCC 22.32.015, the County shall refund any portion of the appeal fee not yet spent processing the subject application. If the matter is further appealed to the Land Use Board of Appeals and the County is required to prepare a transcript of the hearing before the Hearings Officer, the refund shall be further reduced by an amount equal to the cost incurred by the County to prepare such a transcript.

Section 3. Pursuant to DCC 22.32.035(D), the only documents placed before and considered by the Board are the notice of appeal, recommendations of staff, and the record developed before the lower hearing body for File Nos. 247-22-000812-CU, 247-22-000813-SP, & 247-23-000666-RC as presented at the following website:

<https://www.deschutes.org/cd/page/247-22-000812-cu-247-22-000813-sp-homan-outdoor-motocross-track>

DATED this ____ day of _____, 2023.

BOARD OF COUNTY COMMISSIONERS

ANTHONY DEBONE, Chair

ATTEST:

PATTI ADAIR, Vice Chair

Recording Secretary

PHIL CHANG, Commissioner



COMMUNITY DEVELOPMENT

APPEAL APPLICATION – BOARD OF COUNTY COMMISSIONERS

FEE: _____

EVERY NOTICE OF APPEAL SHALL INCLUDE:

- 1. A statement describing the specific reasons for the appeal.
- 2. If the Board of County Commissioners is the Hearings Body, a request for review by the Board stating the reasons the Board should review the lower decision.
- 3. If the Board of County Commissioners is the Hearings Body and *de novo* review is desired, a request for *de novo* review by the Board, stating the reasons the Board should provide the *de novo* review as provided in Section 22.32.027 of Title 22.
- 4. If color exhibits are submitted, black and white copies with captions or shading delineating the color areas shall also be provided.

It is the responsibility of the appellant to complete a Notice of Appeal as set forth in Chapter 22.32 of the County Code. The Notice of Appeal on the reverse side of this form must include the items listed above. Failure to complete all of the above may render an appeal invalid. Any additional comments should be included on the Notice of Appeal.

Staff cannot advise a potential appellant as to whether the appellant is eligible to file an appeal (DCC Section 22.32.010) or whether an appeal is valid. Appellants should seek their own legal advice concerning those issues.

Appellant's Name (print): Justin Homan Phone: (541) 815-5512
 Mailing Address: 7505 NW Eagle Drive City/State/Zip: Redmond, OR 97756
 Email Address: Lisa@FitchandNeary.com
 Land Use Application Being Appealed: 247-22-812-CU, 247-22-813 SP. Recms. 247-23-666 RC
 Property Description: Township 15 Range 12 Section 11 Tax Lot 600
 Appellant's Signature: See land use authorization attached Date: 10.17.23

By signing this application and paying the appeal deposit, the appellant understands and agrees that Deschutes County is collecting a deposit for hearing services, including "whether to hear" proceedings. The appellant will be responsible for the actual costs of these services. The amount of any refund or additional payment will depend upon the actual costs incurred by the county in reviewing the appeal.

Except as provided in section 22.32.024, appellant shall provide a complete transcript of any hearing appealed, from recordings provided by the Planning Division upon request (there is a \$5.00 fee for each recording copy). Appellant shall submit the transcript to the planning division no later than the close of



Lisa Andrach
lisa@fitchandneary.com

LAND USE AUTHORIZATION FORM

For: Deschutes County Community Development

Re: T15S-R12E-11 Tax Lot 600 (Tax Account 124991)
7505 NW Eagle Drive, Redmond, Oregon 97756

Let it be known that the firm of Fitch & Neary PC has been retained to act as my authorized agent to perform all acts for development on my property noted above. These acts include: Pre-application conference, filing applications, and/or other required documents relative to all Permit applications.

Property Owner: Justin Homan

Justin Homan
Justin Homan (Sep 8, 2023 12:46 PDT)
Justin Homan

Sep 8, 2023
date

NOTICE OF APPEAL
TO DESCHUTES COUNTY BOARD OF COMMISSIONERS

FILE NUMBER: Reconsideration file 247-23-000666-RC;
Planning Files 247-22-000812-CU/247-22-000813-SP
(hearings officer)

APPLICANT/OWNER: Justin Homan

APPLICANT’S ATTORNEY: Lisa Andrach
Fitch & Neary, P.C.
210 SW 5th St., Ste. #2
Redmond OR 97756
P: 541-316-1588
Email: lisa@fitchandneary.com

Appeal of specific conditions of approval set forth in a hearings officer decision approving a recreation-oriented facility (“ROF”) requiring large acreage. Specifically, the applicant proposes an outdoor motocross facility for training classes.

I. APPLICABLE CRITERIA

22.32.010 Who May Appeal

- A. The following may file an appeal:**
- 1. A party**

FINDING: The appellant is the applicant in Deschutes County File Nos. 247--22-000812-CU/247-22-000813-SP that are the subject of this appeal. This criterion is satisfied.

22.32.015 Filing Appeals

- 1. To file an appeal, an appellant must file a completed notice of appeal on a form prescribed by the Planning Division and an appeal fee.**
- 2. Unless a request for reconsideration has been filed, the notice of appeal and appeal fee must be received at the offices of the Deschutes County Community Development Department no later than 4:00 PM on the twelfth day following mailing of the decision. If a decision has been modified on reconsideration, an appeal must be filed no later than 4:00 PM on the twelfth day following mailing of the decision as modified. Notices of Appeals may not be received by facsimile machine.**

- 3. **If the Board of County Commissioners is the Hearings Body and the Board declines review, a portion of the appeal fee may be refunded. The amount of any refund will depend upon the actual costs incurred by the County in reviewing the appeal. When the Board declines review and the decision is subsequently appealed to LUBA, the appeal fee may be applied toward the cost of preparing a transcript of the lower Hearings Body’s decision.**
- 4. **The appeal fee shall be paid by method that is acceptable to Deschutes County.**

FINDING: The appellant has filed herewith the required notice of appeal on the prescribed form, and the appeal fee, within the 12 days from the date of mailing of the decision on reconsideration. This criterion is met.

22.32.020 Notice Of Appeal

Every notice of appeal shall include:

- A. **A statement raising any issue relied upon for appeal with sufficient specificity to afford the Hearings Body an adequate opportunity to respond to and resolve each issue in dispute.**

FINDING: Appeal concerns specific conditions of appeal imposed by the hearings officer. Because the hearings officer found that the concerns with the conditions of approval below did not “meet the standards for reconsideration of the decision,” and that “resolution of [a] conflict [between conditions of approval] is best left to the Board of Commissioners and not a hearings officer,” the hearings officer declined to modify the decision to address the applicant’s concerns.

Specifically, the appellant requests review of the following conditions of approval:

- 1. **Reconciliation of conflict and confusion between application of Conditions of Approval U, V, W, Y, and AA concerning motorcycle noise.**

The decision approves a recreation-oriented facility (“ROF”) for an outdoor motocross facility in the RR-10 zone. Specifically, the language in the code for the RR-10 zone identifies an off-road vehicle track or racetrack – such as the motocross facility proposed - as an example of the type of recreation-oriented facility that the Board considered may be allowed in the zone. The express language of DCC 18.60.030(G) provides

The following uses may be allowed subject to DCC 18.128:

- G. **Recreation-oriented facility requiring large acreage such as off-road vehicle track or race track, but not including a rodeo grounds.**

(underline emphasis added)

The hearings officer imposed five (5) conditions of approval to address potential noise impacts from the approved use. However, as written, the conditions of approval are conflicting and irreconcilable, and the applicant/appellant (hereinafter “applicant”) asks the Board to clarify the conditions and resolve the conflicts. The applicant is concerned that the conflict and confusion between the Conditions of Approval regulating noise impacts has the potential to nullify the approval for motorcycle use and asks the Board of Commissioners to clarify and resolve the conflicts between the Conditions of Approval imposed.

Specifically, the Condition of Approval “AA” requires that “[w]here any condition imposed by this decision is less restrictive than any comparable conditions imposed by which is more restrictive, the more restrictive shall govern.” As written, it is not clear and objective which of the Conditions of Approval that address motorcycle noise (U, V, W, Y) is “more restrictive,” and as a result it is not clear which of the four (4) Conditions of Approval ultimately “governs” as set forth in “AA.”

This issue is extremely important because the applicant is required to make substantial improvements and financial investment to commence operation of the use, but as written is concerned that he could end up in complicated code enforcement litigation and/or be shut down if the Condition of Approval “U,” which imposes the county noise ordinance, could be construed as the most restrictive and controlling under COA “AA.”

While the applicant agrees that the county noise ordinance generally applies to “unreasonably loud or raucous noise,” the hearings officer added language to “U” which creates confusion as to how the noise ordinance applies to the approved motorcycle use. Specifically, Condition of Approval “U” provides:

The Property Owner will comply with the County Noise Control Ordinance DCC Chapter 8.08 and shall not allow or engage in any uses on the property that result in “unreasonably loud or raucous noise, defined in DCC 8.08.040(N) as “the use of any off-road motorcycle where it is heard by the occupant from the premises of an inhabited residence not owned by the user.”

(underline emphasis added)

The confusion and conflict is caused by the underlined language that the hearings officer added to the Condition of Approval “U.” If “U,” as written is construed to prohibit any motorcycle noise “where it is heard by the occupants from the premises of an inhabited residence not owned by the user,” even if generated from the use of the motocross facility, it could be applied as the most restrictive under “AA,” and such a construction would effectively nullify the ability to use the ROF as otherwise permitted.

As written, it is ambiguous if “U” is the “most restrictive” condition of approval that “governs” the use. The other three (3) Conditions of Approval addressing noise (V, W, Y) all impose requirements to comply with the DEQ Noise Control Regulations for In-Use Motor Vehicles as regulated by state adopted DEQ administrative rules, with maximum decibel levels and ambient noise restrictions. (Exhibit A) How are these three (3) conditions of approval reconciled with “U” as required by “AA” which provides that the most restrictive shall govern? The applicant wants to avoid future confusion and possible code enforcement proceedings to determine whether “U” is the most restrictive, or how it applies.

Some of the confusion is created by an error in the language of DCC 8.08.040(N)¹ which carves out an exception to the noise ordinance for permitted motorcycle noise. DCC 8.08.040(N) refers to an exception for motorcycle noise if the user has a permit and is operating the motorcycle within the terms of the permit. However, the confusion is caused by the reference in DCC 8.08.040(N) to a noise permit issued under DCC 8.08.080(B). This cross-referenced section no longer applies to permits for noise in general because the county amended DCC 8.08.080(B) in 2005 and it now only applies to permits for road construction noise. When DCC 8.08.080(B) was amended in 2005, the cross-reference in DCC 8.08.040(N) was not also amended.

However, while awkwardly worded, the code clearly intends to allow for an exception to motorcycle noise when the user has a permit and is operating within the terms of the permit. Unfortunately, the hearings officer did not include the balance of that language from the code in the Condition of Approval “U,” which would have clarified how the conditions of approval U, V, W, Y are reconciled as required by “AA.” On reconsideration, he stated that he “believe[s] the resolution of that conflict is best left to the Board of Commissioners and not to a hearings officer.” (Reconsideration, Pg.2)

¹ Specifically, the County Noise Control Ordinance **8.08.040** regulates off-road motorcycle noise generally. Then it **defines “unreasonably loud or raucous noise” to mean:**

B. Noise, which violates the standards of the Environmental Quality Commission, adopted pursuant to ORS 467.030 which are not exempt under ORS 467.035 or permitted by a variance issued under ORS 467.060;

N. The use of any off-road motorcycle or snowmobile where it is heard by the occupant from the premises of an inhabited residence not owned by the user. If the user has a permit issued under DCC 8.08.080(B), such person may operate the motorcycle or snowmobile within the terms of the permit;

(underline emphasis added)

A modification to the COA “U” to make clear that the use of the motorcycles in compliance with the other Conditions of Approval shall not be a violation of the DCC 8.08.040 Noise Control Ordinance would reconcile the conflict and allow clarity in applying the Conditions of Approval U, V, W, Y, and AA.

The applicant is prepared to make substantial changes to the property and investment into the operation of the ROF consistent with the approval, including but not limited to: purchasing a water truck, landscaping, irrigation, restroom facilities, parking, moving berms, and paying System Development Charges (SDC). The foregoing could all be nullified if the track cannot be used because of the conflict, confusion and ambiguity in the Conditions of Approval.

2. Appeal of Condition of Approval “S” addressing the Hours of Operation to be consistent with the evidence in the record that the primary operating season is October-March.

Condition of Approval “S” provides:

The hours of operation are limited as follows:

OCTOBER-MARCH: two weekdays per week and one day per weekend.

The Property Owner has the ability to select these days based upon weather, other events and customers.

Hours of operation on the 2 weekdays is limited to 10 am to 3 pm.

Hours of operation on the one weekend day is limited to 10 am to 3 pm and 6 pm to 7:30 pm. Total hours per week are limited to 10 hours.

April to September: two weekdays per week and one day per weekend. Applicant has the ability to select these days based on weather, other events and customers.

Hours of operation on the 2 weekdays and the one weekend day is limited to 10 am to 3 pm and 5 pm to 8 pm. Total hours per week are limited to 10 hours. If applicant opts not to operate during October-March, applicant shall be limited to 20 hours per week.

(underline emphasis added)

The applicant appreciates the need to limit the hours of operation for the proposed use in general, but makes the following request to the October-March operation schedule to be

consistent with the evidence in the record that the primary operating season is October-March (“winter”) due to weather conditions and event schedules. As written, the Condition of Approval allows more operating time in the summer.

The applicant testified that he works full time, and that the primary season for the use of his training course is in the winter when the track is naturally moist and there are not other courses open, or other competitions and/or events which the riders all participate in. He testified that the track is not used as much in the April to September (“summer”) season because in the summer, conflicting schedules with other events, other open courses, wind, and dry soil limit the use of the track.

Therefore, the applicant requests that the winter evening hours not be limited to only the “weekend day” because, as set forth in the evidence, the evening hours during the week work better for the applicant and training on a weekend evening is not ideal for people’s schedules generally. During the wet, cold winter weekday evenings, the neighbors are likely indoors with the windows and doors closed which serves to minimize noise impacts, and moist conditions minimize dust. It is more likely the neighbors would be outside on a weekend evening, not a weeknight evening, during the winter, so the proposal is a win-win for both the neighbors and the applicant, and is consistent with the substantial evidence in the record.

The applicant also requests that the same option that is applied to the “summer” schedule which allows a maximum of 20 hours per week if the Property Owner did not operate the prior season, also be applied to the winter operation because the winter operation is the primary operating season as set forth in the evidence and above.

The proposed modification makes the two operating seasons consistent and more conducive to the operating needs of the applicant without increasing the overall operating hours. Without the change, the primary operating season – which is winter - is extremely limited.

3. Appeal of Condition of Approval “T” which limits the number of “visitors” on the property does not relate to any approval criterion.

Condition of Approval “T” provides that “[t]he total number of riders and visitors is limited to 20 per weekday or weekend session.” The applicant asks the Board of Commissioners to remove the “visitors” from the cap because visitor impacts are already regulated by the DCC 8.08.040 the County Noise Ordinance, and the limitation on parking. Visitors generally include parents and siblings of students and including them in the cap on riders has the effect of reducing the number of riders allowed in a class.

The decision discusses a limit of 20 on the number of riders as a means to minimize and address potential impacts to surrounding neighbors (Decision, page 60), but then the Condition

of Approval includes “visitors” in that cap. The limitation on the number of “visitors” in the Condition of Approval does not relate to any approval standard because visitors are already regulated by the Deschutes County Noise Control Ordinance provision of DCC 8.08.040 (no unreasonably loud or raucous noise), and by the limitation on the parking available, and the hours of operation.

Any spectators on-site to watch the riders are generally the parents/guardians and siblings of the rider participating in a class. The spectators are generally quiet and observant. The spectators also do not create dust and there is no evidence in the record that the “visitors” cause other concerns related to an applicable standard that requires a limitation on the number of “visitors.”

The decision already limits the hours of operation and the number of riders in response to the applicable criteria to minimize any potential adverse impacts from the motorcycle use. There are no known or identified potential impacts from any “visitors” so a limitation on the number of “visitors” is not related to an applicable standard.

The application of this condition makes it extremely hard to assure riders that they will be able to participate in classes. If a student – which are generally minors - has parents and siblings that must be on-site during the class, the total number of riders that can participate in the class session is reduced accordingly. With a maximum of 20 people (“riders and visitors”) on site, the applicant would have to turn parents, siblings, or riders away from a session if there are too many people on site.

It is imperative to have the legal guardian of a minor rider on-site during the session, and often those legal guardians/parents have other minor children in tow (ie siblings). The applicant acquiesces to the limit on the number of riders, but asks that the limit not also include “visitors” which is an extreme hardship in the operation of the proposed use.

In addition, under state land use law, it is impermissible as a matter of law for the county to impose a condition of approval relating to “visitors” without finding that such limitation on “visitors” is warranted due to the proposed use and due to such adverse impacts “visitors” may have under the applicable standards. Without identifying what adverse impacts to the surrounding area will result from the potential impacts of “visitors,” no condition of approval is warranted. It is not clear and objective in terms of what the condition of approval seeks to accomplish. Therefore, the applicant requests that the reference to “visitors” be struck from Condition of Approval “T.”

4. Appeal of Condition of Approval “BB” requiring construction of a new Restroom Facility.

Condition of Approval “BB” requires the Property Owner to apply to Deschutes County Onsite Wastewater Division, to the Planning Division and to the Building Division for approval of siting and construction of a restroom with running water and full facilities including lavatories.

The applicant appeals condition of approval “BB” to allow the applicant to work with the Deschutes County wastewater division to determine the restroom facility requirements.

While the applicant understands the need to provide a place for patrons to use restroom facilities, the applicant has bathrooms available in his house, and has successfully used portable toilets without any negative issues or smells. The Condition of Approval specifically requires construction of a new restroom facility building. The applicant appeals to ask that the decision not limit the restroom options that may be available for use at the facility subject to Deschutes County wastewater division approval.

B. If the Board of County Commissioners is the Hearings Body, a request for review by the Board stating the reasons why the Board should review the lower Hearings Body's decision.

FINDING: The appeal seeks clarification and reconciliation of conflicting conditions of approval and clarification as to how the county noise ordinance applies to the approved use. The hearings officer also imposed conditions of approval that are not supported by or are in conflict with the substantial evidence in the record, or which do not apply to any specific approval criterion.

C. If the Board of County Commissioners is the Hearings Body and de novo review is desired, a request for de novo review by the Board stating the reasons why the Board should provide de novo review as provided in DCC 22.32.030.

FINDING: The applicant requests *de novo* review of the issues raised on appeal herein. The issue concerning the DCC 8.08.040(N) County Noise Ordinance as it applies to an approved use for an ROF motocross track, and the intended exception in the code for motorcycle noise when operated within the terms of a permit, is an issue of first impression for the Board of Commissioners.

The applicant faces extreme hardship if he makes all of the improvements required and invests all of the sums necessary to comply with the conditions of approval, if he could still be subject to possible code enforcement proceedings to address how the county noise ordinance applies to the approved use. Any such enforcement proceeding could result in nullifying the use if the conflicts and clarity of the conditions of approval regulating motorcycle noise are not resolved by the Board of Commissioners herein.

The Board of Commissioners, as the legislative body of the county, is the only body that can issue a binding interpretation of the county code. Here it is necessary for *de novo* review so that the Board has an opportunity to fully and properly evaluate the issues on review which are of first impression. The Board’s application and interpretation of DCC 8.08.040 is important enough and the stakes are extremely high for the applicant all which further warrant the Board of Commissioners addressing the issues raised *de novo*.

2.32.024 Transcript Requirement

1. **Except as otherwise provided in DCC 22.32.024, appellants shall provide a complete transcript of any hearing appealed from, from recorded magnetic tapes provided by the Planning Division.**
2. **Appellants shall submit to the Planning Division the transcript no later than the close of the day five days prior to the date set for a de novo appeal hearing or, in on-the-record appeals, the date set for receipt of written arguments. Unless excused under DCC 22.32.024, an appellant's failure to provide a transcript shall cause the Board to decline to consider the appellant's appeal further and shall, upon notice mailed to the parties, cause the lower Hearings Body's decision to become final.**
3. **An appellant shall be excused from providing a complete transcript if appellant was prevented from complying by: (1) the inability of the Planning Division to supply appellant with a magnetic tape or tapes of the prior proceeding; or (2) defects on the magnetic tape or tapes of the prior proceeding that make it not reasonably possible for applicant to supply a transcript. Appellants shall comply to the maximum extent reasonably and practicably possible.**
4. **Notwithstanding any other provisions in DCC 22.32, the appeal hearings body may, at any time, waive the requirement that the appellant provide a complete transcript for the appeal hearing.**

FINDING: The appellant agrees to the transcript requirements imposed by this criterion.

22.32.027 Scope Of Review

1. **Before Hearings Officer or Planning Commission. The review on appeal before the Hearings Officer or Planning Commission shall be de novo.**
2. **Before the Board.**
 1. **Review before the Board, if accepted, shall be on the record except as otherwise provided for in DCC 22.32.027.**
 2. **The Board may grant an appellant's request for a de novo review at its discretion after consideration of the following factors:**
 1. **Whether hearing the application de novo could cause the 150-day time limit to be exceeded; and**
 2. **If the magnetic tape of the hearing below, or a portion thereof, is unavailable due to a malfunctioning of the recording device during that hearing, whether**

review on the record would be hampered by the absence of a transcript of all or a portion of the hearing below; or

- 3. Whether the substantial rights of the parties would be significantly prejudiced without de novo review and it does not appear that the request is necessitated by failure of the appellant to present evidence that was available at the time of the previous review; or
- 4. Whether in its sole judgment a de novo hearing is necessary to fully and properly evaluate a significant policy issue relevant to the proposed land use action.

For the purposes of DCC 22.32.027, if an applicant is an appellant, factor DCC 22.32.027(B)(2)(a) shall not weigh against the appellant's request if the applicant has submitted with its notice of appeal written consent on a form approved by the County to restart the 150-day time clock as of the date of the acceptance of applicant's appeal.

FINDING:

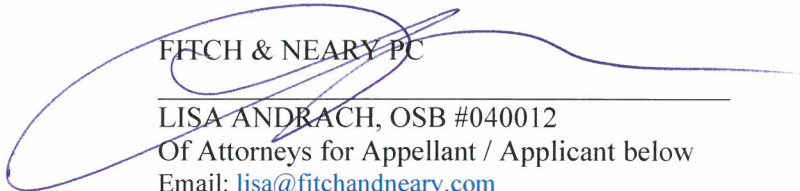
1. The applicant is the appellant, and the 150-day clock is near expiration. Therefore, the applicant / appellant hereby agrees to restart the clock to allow time for the appeal as set forth above.

2. The substantial rights of the applicant are prejudiced by the decision on review. The applicant requests *de novo* review of the issues appealed herein to allow the Board of Commissioners an opportunity to fully understand the proposed use and reconcile or amend the conditions of approval as addressed above.

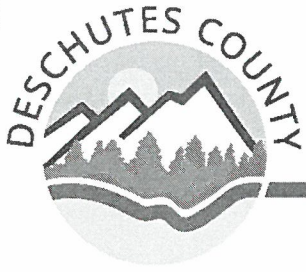
- 3. **Notwithstanding DCC 22.32.027(B)(2), the Board may decide on its own to hear a timely filed appeal de novo.**
- 4. **The Board may, at its discretion, determine that it will limit the issues on appeal to those listed in an appellant's notice of appeal or to one or more specific issues from among those listed on an applicant's notice of appeal.**

FINDING: The appellant requests that the Board limit the issues on appeal to those listed in appellant's notice of appeal.

DATED this 17th day of October 2023.


 FITCH & NEARY PC

 LISA ANDRACH, OSB #040012
 Of Attorneys for Appellant / Applicant below
 Email: lisa@fitchandneary.com
 P: 541.316.1588 F: 541.316.1943



Mailing Date:
Thursday, August 31, 2023

11/01/2023 Item #10.

COMMUNITY DEVELOPMENT

NOTICE OF HEARINGS OFFICER'S DECISION

The Deschutes County Hearings Officer has **APPROVED** the land use application(s) described below:

FILE NUMBERS: 247-22-000812-CU / 247-22-000813-SP

**SUBJECT PROPERTY/
OWNER:**

Mailing Name: HOMAN, JUSTIN M
Map and Taxlot: 1512110000600
Account: 124991
Situs Address: 7505 NW EAGLE DR, REDMOND, OR 97756

APPLICANT: Justin Homan

REQUEST: The applicant requests conditional use and site plan approval for a recreation-oriented facility requiring large acreage. Specifically, the applicant proposes an outdoor motocross facility.

HEARINGS OFFICER: Alan Rappleyea

STAFF PLANNER: Caroline House, Senior Planner
Phone: 541-388-6667
Email: Caroline.House@deschutes.org

RECORD: Record items can be viewed and downloaded from:
<https://www.deschutes.org/cd/page/247-22-000812-cu-247-22-000813-sp-homan-outdoor-motocross-track>

STANDARDS AND APPLICABLE CRITERIA:

Deschutes County Code (DCC)

Title 18, Deschutes County Zoning Ordinance:

- Chapter 18.60, Rural Residential Zone (RR10)
- Chapter 18.80, Airport Safety Combining Zone (AS)
- Chapter 18.116, Supplementary Provisions



Chapter 18.124, Site Plan Review
 Chapter 18.128, Conditional Use
 Title 22, Deschutes County Development Procedures Ordinance

DECISION: The Hearings Officer finds that the application meets applicable criteria, and approval is being granted subject to the following conditions:

CONDITIONS OF APPROVAL:

- A.** This approval is based upon the application, site plan, specifications, and supporting documentation submitted by the applicant. Any substantial change in this approved use will require review through a new land use application.
- B.** The Property Owner shall obtain any necessary permits from the Deschutes County Building Division, Environmental Soils Division and Onsite Wastewater Disposal Division.
- C.** No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.
- D.** No lighting associated with the proposed use shall project directly onto an existing runway or taxiway or into existing airport approach surfaces except where necessary for safe and convenient air travel.
- E.** Lighting shall incorporate shielding in their designs to reflect light away from airport approach surfaces.
- F.** No use shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.
- G.** No glare producing material, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of structures.
- H.** The subsequent use of the property for which the permit is issued shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by DCC Title 18.
- I.** Off-street parking areas used to fulfill the requirements of DCC Title 18 shall not be used for loading and unloading operations except during periods of the day when not required to take care of parking needs.
- J.** Required parking facilities for 15 spaces shall be provided prior to or concurrently with construction and/or initiation of the proposed use. The parking area shall be graveled and not cindered.



- K. Required parking spaces shall be available for the parking of operable passenger automobiles of residents, customers, patrons and employees only and shall not be used for the storage of vehicles or materials or for the parking of trucks used in conducting the business or used in conducting the business or use.
- L. There shall be no on-street parking for customers or visitors to the motocross course.
- M. Any lighting used to illuminate off-street parking areas shall be so arranged that it will not project light rays directly upon any adjoining property in a residential zone.
- N. The service drive clear vision area shall be maintained in accordance with DCC 18.116.020(A).
- O. All trees and shrubs existing on-site, not removed by necessity of the proposed development, shall be protected, unless lawfully changed/removed by outright uses (such as farm use) or such change/removal is approved by future land use approvals.
- P. All exterior lighting shall be shielded so that direct light does not project off site.
- Q. Provision shall be made for watering planting areas where such care is required.
- R. Required landscaping shall be continuously maintained and kept alive and attractive.
- S. Hours of Operation:

The hours of operation are limited as follows:

October-March: two weekdays per week and one day per weekend. The Property Owner has the ability to select these days based on weather, other events and customers.

Hours of operation on the 2 weekdays is limited to 10 am to 3 pm. Hours of operation on the one weekend day is limited to 10 am to 3 pm and 6pm to 7:30pm. Total hours per week are limited to 10 hours.

April to September: two weekdays per week and one day per weekend. Applicant has the ability to select these days based on weather, other events and customers.

Hours of operation on the 2 weekdays and the one weekend day is limited to 10 am to 3 pm and 5 pm to 8 pm. Total hours per week are limited to 10 hours. If Applicant opts not to operate during October-March, applicant shall be limited to 20 hours per week.

- T. The total number of riders and visitors at any given time is limited to 20 per weekday or weekend session.

- U.** The Property Owner will comply with the County Noise Control Ordinance DCC Chapter 8.08 and shall not allow or engage in any uses on the Property that result in “unreasonably loud or raucous noise, defined in DCC 8.08.040(N) as “the use of any off-road motorcycle where it is heard by the occupant from the premises of an inhabited residence not owned by the user.”
- V.** The Property Owner will comply with DEQ Noise Control Regulations for In-Use Motor Vehicles OAR 340-035-0030 or as amended.
- W.** The Property Owner shall not allow any person to operate an off-road motorcycle on the Property which exceeds a stationary noise level limit measured at 20 inches from the vehicle of 99 decibels, or in a manner as to exceed a moving vehicle noise level limit measured at 50 feet from the vehicle of 82 decibels. For the purposes of this condition, terms defined under OAR 340-035-0015 shall have the meaning(s) defined thereunder.
- X.** The Property Owner shall not allow any person to operate an off-road recreational vehicle with any of the following defects: no muffler, leaks in the exhaust system, and/or pinched outlet pipe.
- Y.** Ambient Noise Limits: The Property Owner shall not cause, allow, permit or fail to control the operation of motorcycles on the Property if the operation thereof increases the ambient noise level above 60 decibels during the hours of 7 a.m. to 7 p.m. and/or above 55 decibels during the hours of 10 p.m. to 7 a.m. as measured from any residence located within 1,000 feet of the motor vehicle. For the purposes of this condition, terms defined under OAR 340-035-0015 shall have the meaning(s) defined thereunder.
- Z.** The Property Owner will test motorcycles once every week at the facility to ensure compliance with DEQ noise requirements.
- AA.** Where any condition imposed by this decision is less restrictive than any comparable conditions imposed by which is more restrictive, the more restrictive shall govern.
- BB.** The Property Owner will make application to the Deschutes County Onsite Wastewater Division, to the Planning Division and to the Building Division for approval of siting and construction of a restroom with running water and full facilities including lavatories. These facilities shall be reviewed, approved and provided prior to or concurrently with construction and/or initiation of the proposed use.
- CC.** The Property Owner will have a functioning water truck on the site to suppress dust and fires.
- DD.** The number of employees, besides the Property Owner, is limited to two.



- EE.** The Property Owner will abide by yard and setbacks per DCC 18.60.040(A), (B), & (C) for the improved structures. The berms are improved structures and must be moved from the setback areas.
- FF.** No structures shall be greater than 30 feet in height.
- GG.** Refuse storage must be buffered and screened from view from neighboring properties.
- HH.** No competitive racing is allowed other than for training and education.

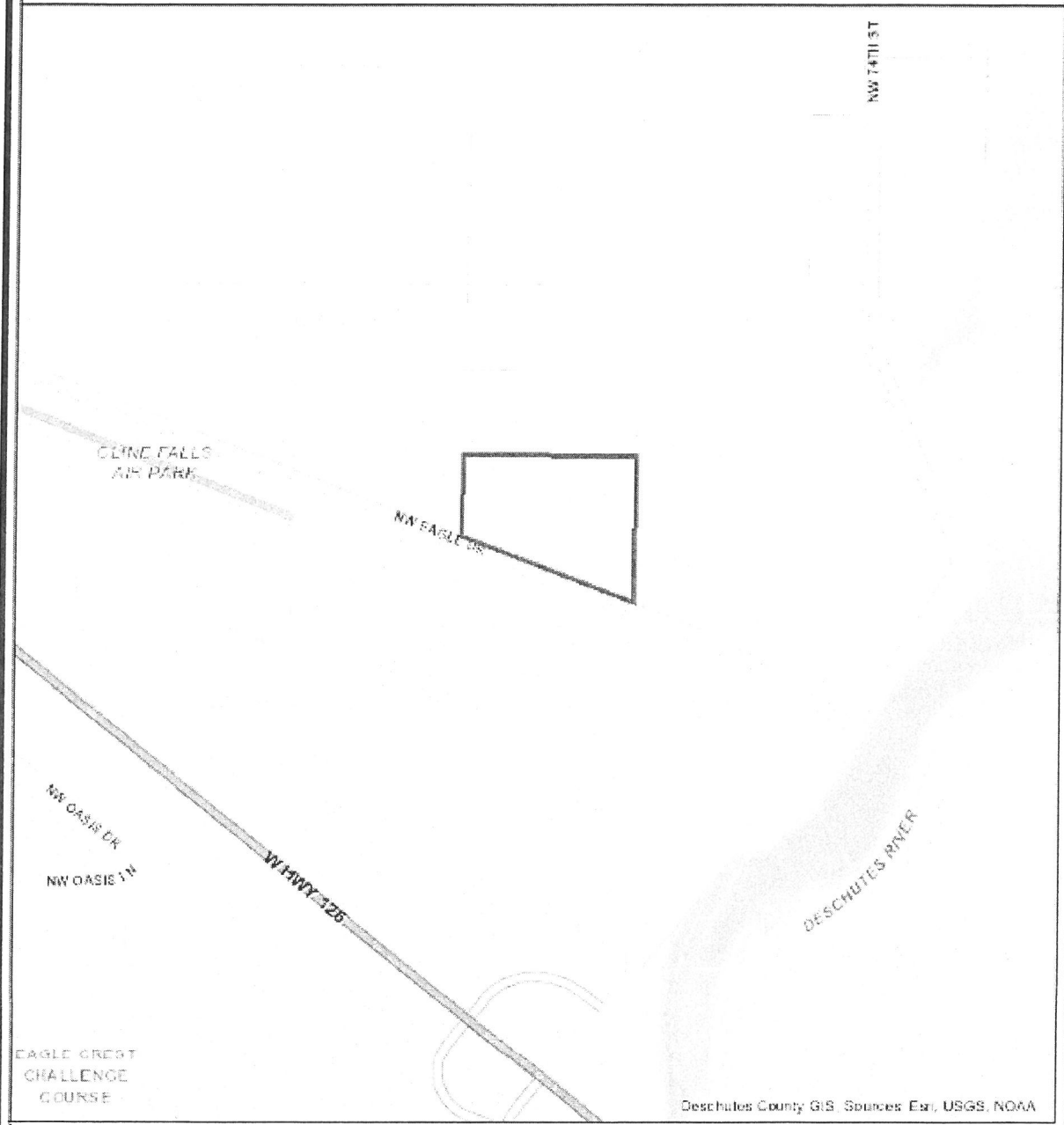
This decision becomes final twelve (12) days after the date mailed, unless appealed by a party of interest. To appeal, it is necessary to submit a Notice of Appeal, the base appeal deposit plus 20% of the original application fee(s), and a statement raising any issue relied upon for appeal with sufficient specificity to afford the Board of County Commissioners an adequate opportunity to respond to and resolve each issue.

Copies of the decision, application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost. Copies can be purchased for 25 cents per page.

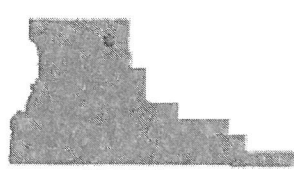
NOTICE TO MORTGAGEE, LIEN HOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER.

7505 NW EAGLE DR, REDMOND, OR 97756

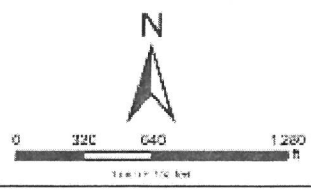
247-22-000812-CU / 247-22-000813-SP



Deschutes County GIS Sources: Esri, USGS, NOAA



DATE: 05/2024





**BOARD OF
COMMISSIONERS**

AGENDA REQUEST & STAFF REPORT

MEETING DATE: November 1, 2023

SUBJECT: Bend UGB Expansion, Plan Amendment, and Zone Change -Stevens Road Tract

RECOMMENDED MOTION:

Move approval of Hearings Officer decision for files 247-23-000415-PA and 247-23-000416-PA, approving a Comprehensive Plan Amendment and Zone Change.

BACKGROUND AND POLICY IMPLICATIONS:

Staff will provide background to the Board for consideration of a request for a Comprehensive Plan Amendment and Zone Change (file nos. 247-23-000415-PA, 416-ZC) for a 261-acre parcel located to the east of the Bend Urban Growth Boundary (UGB). House Bill 3318 allows the subject property, known as the Stevens Road Tract, to be brought into the Bend UGB and developed with affordable housing and other uses.

A public hearing on the quasi-judicial Plan Amendment/Zone Change application was held before the Deschutes County Hearings Officer on October 11, 2023. A Hearings Officer decision approving the application was mailed on October 24, 2023.

BUDGET IMPACTS:

None

ATTENDANCE:

Audrey Stuart, Associate Planner



MEMORANDUM

TO: Board of County Commissioners

FROM: Audrey Stuart, Associate Planner

DATE: October 23, 2023

RE: Consideration of whether to initiate review of a Plan Amendment/Zone Change request; Land use file nos. 247-23-000415-PA, 247-23-000416-ZC.

On November 1, 2023, the Board of County Commissioners (“Board”) will consider whether to initiate review of a Hearings Officer’s approval of a Comprehensive Plan Amendment and Zone Change, for a property known as the ‘Stevens Road Tract.’

I. SUBJECT PROPERTY

The subject property is approximately 261 acres and is located immediately to the south of Stevens Road. The property is zoned Multiple Use Agricultural (MUA10) and is undeveloped.

House Bill 3318 was passed by the Oregon Legislature in 2021 and allows for the Stevens Road Tract to be brought within the Bend Urban Growth Boundary (UGB) through a special process. The bill is specific to the subject property and would not allow any other properties to be brought within the Bend UGB through this same pathway. As part of this bill, a certain number of the housing units must be set aside as affordable housing, with priority given to school district employees.

The Bend City Council voted to approve a Concept Plan, which provides a high-level overview of where different housing types, commercial areas, parks and roads would be located within the property. This future development would not occur until the property is annexed into the Bend city limits. The subject property is currently owned by the State of Oregon, and future development is also contingent on the land being transferred to the City of Bend.

II. PROPOSAL

The Applicant requests a change in the Comprehensive Plan designation, from Rural Residential Exception Area to Urban Growth Boundary. The Applicant also requests a concurrent change in the

zoning designation, from MUA10 to Urbanizable Area. No development or new uses are being reviewed as part of this application.

A staff report was mailed on October 4, 2023, and staff found the proposal complied with all applicable provisions of Deschutes County Code, Deschutes County Comprehensive Plan policies, and Statewide Planning Goals. A public hearing was held before a Hearings Officer on October 11, 2023, and a Hearing's Officer decision approving the application was mailed on October 24, 2023. As described below, the Board may decide to either adopt the Hearing's Officer decision or initiate review of the decision.

III. PUBLIC COMMENTS

Two members of the public submitted written comments regarding this application. One comment was in support and one was neutral. No members of the public attended the Hearings Officer hearing on October 11, 2023. Comments received from other agencies did not indicate any concerns with the proposal.

IV. BOARD OPTIONS

Pursuant to DCC 22.28.030(B), the Board shall adopt the Hearing's Officer decision unless an appeal is filed or the Board initiates review of the application. Under DCC Title 22, the Board is only required to hold their own hearing when a Plan Amendment and Zone Change application involves an exception to a Statewide Planning Goal or involves land that is designated for forest or agricultural use. In this instance, neither of those conditions apply and the Board is therefore not required hear this application.

Reasons not to hear

Members of the public were notified of the subject application through a mailed Notice of Application, posted land use sign, mailed Notice of Public Hearing, project webpage, and posting in the Bend Bulletin. Ample time was provided to submit public comments, and no comments were received in opposition. Staff and the Applicant generally concur with the Hearings Officer decision and there do not appear to be any interpretive issues that would benefit from further review. The Hearings Officer decision provided a thorough analysis and could be supported, as the record exists today, on appeal to the Land Use Board of Appeals.

Reasons to hear

The Board may want to take testimony and make interpretations relating to the Hearings Officer's decision. The Board may also want to reinforce or refute some or all of the decision findings/interpretations prior to Land Use Board of Appeals review.

If the Board decides the Hearings Officer's Decision shall be the final decision of the county, then the Board shall not initiate review. Staff will then return to the Board for a first and second reading

of Ordinance 2023-025, a draft Ordinance approving the subject Comprehensive Plan Amendment and Zone Change.

V. STAFF RECOMMENDATION

The Hearing's Officer decision was well-reasoned and aligned with staff's analysis of the application materials. Staff does not have any concerns with the Hearing's Officer decision and therefore recommends the Board decline to initiate review. The Applicant also generally supports the Hearings Officer's decision, and initiating a Board hearing would add additional time and cost to the project.

VI. 150-DAY LAND USE CLOCK

Pursuant to DCC 22.20.040(D)(1), the subject application is exempt from the 150-day land use clock.

VII. RECORD

The record for File Nos. 247-23-000415-PA, 247-23-000416-ZC are as presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-23-000415-pa-247-23-000416-zc-stevens-road-comprehensive-plan-amendment-and-zone-change>

Attachments:

1. Hearing's Officer Decision for file nos. 247-23-00415-PA, 247-23-000416-ZC

HEARINGS OFFICER DECISION

FILE NUMBER(S): 247-23-000415-PA, 247-23-000416-ZC

**SUBJECT PROPERTY/
OWNER:**

Mailing Name: STATE OF OREGON
Map and Tax lot: 1812110000100
Account: 151657
Situs Address: 61200 27TH ST, BEND, OR 97702
(the "Subject Property")

APPLICANT: Eric King, City of Bend

REQUEST: Amendment to the Comprehensive Plan designation and a Zone Change of the Subject Property from Rural Residential Exception Area (RREA) and Multiple Use Agricultural ("MUA10") Zone to Bend Urban Growth Boundary (UGB) Area and Urbanizable Area (UA), respectively. The subject proposal is in conjunction with House Bill 3318 ("HB 3318"), to bring the Stevens Road Tract into the City of Bend UGB.

STAFF CONTACT: Audrey Stuart, Associate Planner
Phone: 541-388-6679
Email: Audrey.Stuart@deschutes.org

RECORD: Record items can be viewed and downloaded from:
<https://www.deschutes.org/cd/page/247-23-000415-pa-247-23-000416-zc-stevens-road-comprehensive-plan-amendment-and-zone-change>.

HEARINGS OFFICER: Gregory J Frank

I. APPLICABLE CRITERIA

Title 18 of the Deschutes County Code, the County Zoning Ordinance:
Chapter 18.32, Multiple Use Agricultural (MUA10).
Chapter 18.136, Amendments

Title 19A of the Deschutes County Code, Bend Urbanizable Area (UA) District

Title 22, Deschutes County Development Procedures Ordinance

Deschutes County Comprehensive Plan

Chapter 1, Comprehensive Planning

Chapter 2, Resource Management

Chapter 4, Urban Growth Management

Chapter 5, Supplemental Sections

Appendix C-Transportation System Plan

Oregon Administrative Rules (“OAR”), Chapter 660

Division 12, Transportation Planning

Division 15, Statewide Planning Goals and Guidelines

Division 24, Urban Growth Boundaries

Oregon Revised Statutes (“ORS”)

ORS 197.298, Priority of Land to be Included with Urban Growth Boundary

II. Overview Findings

A public hearing was held on October 11, 2023 (the “Hearing”) providing the Applicant, Deschutes County Planning Staff (“County Staff”) and members of the public an opportunity to provide oral and written comments related to the application in this case. Only the Applicant (City of Bend Planning Staff and City Attorney representatives) and County Staff offered testimony and written comments at the Hearing. No person or entity, at the Hearing, provided the Hearings Officer any testimony or written comments in opposition to the Applicant’s proposal or the evidence and findings set forth in the Staff Report.

The Staff, in the Staff Report and during its presentation at the Hearing, expressed a level of uncertainty related to the relationship of various County planning policies to the House Bill 3318 statutory processes. Staff, in the Staff Report (page 29), stated the following¹:

“The language of HB 3318 appears to refer to the planning amendments the City of Bend must undertake in order to receive approval for bringing the subject property within the Bend UGB.

Section (2)(4) of HB 3318 includes the following definition: “Stevens Road planning amendments’ means amendments to the city’s comprehensive plans, land use regulations or zoning maps that affect the development of the Stevens Road tract’ [emphasis added].

The language of the House Bill does not specify the process, if any, that the County must undertake for the corresponding amendment to the County Comprehensive Plan. Absent that guidance, the subject request has been processed as a request for a Comprehensive Plan Amendment and Zone Change pursuant to Deschutes County Code. It is not apparent to staff whether the House Bill exempts the subject application from demonstrating compliance with Statewide Planning Goals, Deschutes County Comprehensive Plan policies, or other provisions of Deschutes County Code.

Staff requests the Hearings Officer make specific findings regarding whether the provisions of HB 3318 are applicable approval criteria for the subject amendment to Deschutes County’s Comprehensive Plan, as well as the proposed Zone Change of the subject property.”

The Hearings Officer agrees with Staff that HB 3318 is focused on actions that must be taken by the City of Bend. The Hearings Officer finds no clear reference, in HB 3318, to any planning process or procedures that must be undertaken by the County. The Hearings Officer concurs with Staff that

¹ See also County Senior Transportation Planner comments related to relevant/applicability of Statewide Goal 12 (Staff Report, page 5).

HB 3318 references to planning amendments are references to the City of Bend's comprehensive plan, land use regulations and zoning maps.

Staff asked the Hearings Officer to determine if the Statewide Planning Goals are applicable to the application in this case. The Applicant provided the following comments related to this issue:

"The purpose of this finding is to show that the Statewide Planning Goals are not applicable to this proposal because of the above-cited language in Section 3 of HB 3318. Section 9 of HB 3318 provides that standards in the bill apply to the Stevens Road Tract in lieu of statewide planning goals. Section 3(1)(a) of HB 3318 states that actions taken under sections 2 through 9 of this 2021 Act are not land use decisions, as defined in ORS 197.015. Under this statute, ORS 197.015(10) defines a land use decision as one that includes under (10)(a)(A) a final decision or determination made by a local government or special district that concerns the adoption, amendment, or application of the goals. The goals in this context refer to the Statewide Planning Goals."

The Hearings Officer does not disagree with the Applicant's above-quoted comments as they relate to City of Bend applications and processing of the Stevens Road Tract. However, based upon the lack of clear and objective language relating to the **County** processing of the Stevens Road Tract, the Hearings Officer makes the following findings.

The Hearings Officer finds that HB 3318 does not explicitly or inferentially limit or restrict consideration of County planning processing requirements. The Hearings Officer finds that the County application processing requirements for Comprehensive Plan amendments, and other relevant provisions of the Deschutes County Code ("DCC"), do require consideration of statewide planning goals. The Hearings Officer finds the County processing requirements, including consideration of statewide planning goals, do apply in the processing of this land use application. The Hearings Officer acknowledges that Staff, in the Staff Report, provided findings for the County Comprehensive Plan and other relevant provisions of the DCC. The Applicant, during Hearing testimony, expressed agreement with the Staff Report findings related to the statewide planning goals.

Staff, in several instances, requested the Hearings Officer consider supplementing Staff findings. The Hearings Officer addresses those requests in the findings for the relevant criterion.²

Finally, the Hearings Officer reiterates that no person or entity testified at the Hearing or asserted in any written document contained in the public record opposition to the Applicant's proposal. With the exception of findings set forth in this section (Overview of Findings) and in the modified findings related to specific sections (see footnote 2) the Hearings Officer has adopted the Staff Findings from the Staff Report as the findings for this decision.

² See findings for DCC 18.136.020 B (Staff Report page 8), DCC 18.136.020 C.2 (Staff Report page 10); Comprehensive Plan sections 2.5 (Staff Report page 14), 3.6 Goal 1 (Staff Report page 22 & 23) and 3.7 (Staff Report page 23).

III. BASIC FINDINGS

LOT OF RECORD: The Subject Property is a legal lot of record together with Tax Lot 200, which borders the Subject Property to the west, pursuant to Deschutes County files 247-17-000726-PA, 727-ZC.

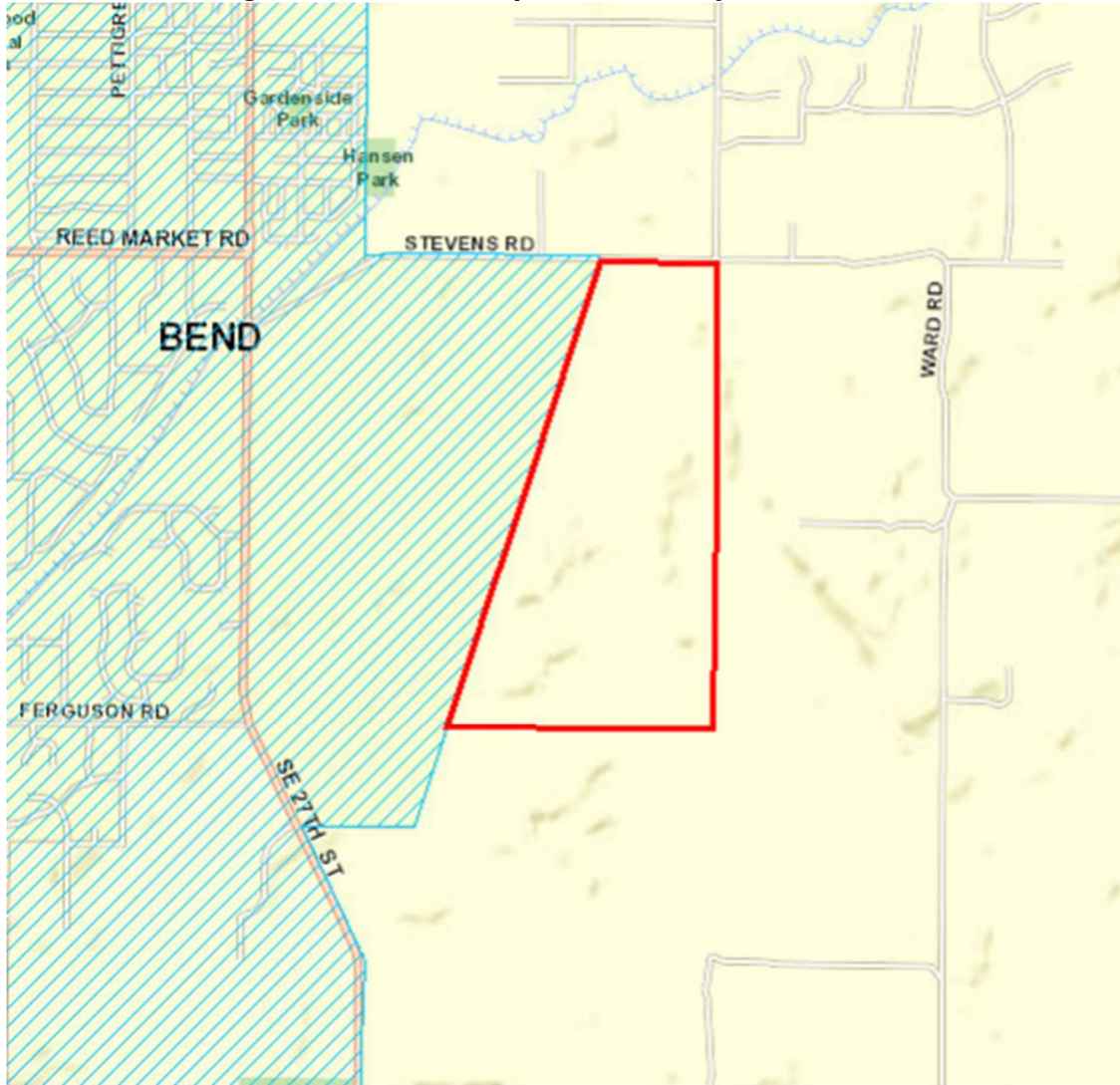
SITE DESCRIPTION: The Subject Property is 261.66 acres in size and is bordered on the north by Stevens Road, which turns into Ward Road. The Subject Property is bordered to the west by a TransCanada natural gas pipeline and 13 acres of the Subject Property are within an easement associated with the pipeline. The application materials provide the following description of the Subject Property:

“The Stevens Road Tract property today is undeveloped rural land with informal trail systems meandering through the site. It is comprised of scattered junipers and occasional ponderosa pine trees, with sagebrush and other low-coverage understory vegetation. There are rock outcrops that form localized high points and subtle ridges throughout the site, rising between approximately 10 and 20 feet above grade.”

The Subject Property is zoned Multiple Use Agricultural (MUA10) and is not within any overlay zones. There is no mapped floodplain on the Subject Property, and it does not contain any wetlands mapped on statewide or national inventories.

As described below, the Subject Property was approved for a UGB expansion through HB 3318. There are associated City of Bend planning processes for the Subject Property, and the Subject Property is referred to as Stevens Road Tract in those documents. For the purpose of this review, Hearings Officer uses the terms ‘Subject Property’ and ‘Stevens Road Tract’ or ‘SRT’ interchangeably.

Figure 1: Location Map and Proximity to Bend UGB



PROPOSAL: The Applicant requests approval of a Comprehensive Plan Map Amendment to change the designation of the Subject Property from a Rural Residential Exception Area (RREA) designation to Bend Urban Growth Area. The Applicant also requests approval of a corresponding Zoning Map Amendment to change the zoning of the Subject Property from Multiple Use Agricultural (MUA10) to Urbanizable Area (UA) District. The purpose of the amendments is to provide dense, master-planned development that includes affordable housing and workforce housing, pursuant to the process outlined in HB 3318. The submitted application materials include the following additional details:

“In 2021, the Oregon Legislature passed HB 3318 (See Exhibit G). Through this legislation, HB 3318 provides an alternative process for the City of Bend to include the Stevens Road Tract in the Bend UGB (See Section 6 of HB 3318). The bill is limited in use to including only the 261.66 acre tract and no other properties in the Bend UGB. The legislation further requires a two-step process for planning this property that includes development and approval of a concept plan, and subsequent approval of what HB 3318 refers to as planning amendments (See Section 9 of HB 3318) that outline what amendments to the Bend Comprehensive Plan and Development Code the City must adopt to support subsequent master planning of the Stevens Road Tract. The legislation was crafted with the

participation and consent of DSL, to facilitate the property for sale and future urban development.”

SURROUNDING LAND USES: The area surrounding the Subject Property is defined by the City of Bend’s UGB to the west; land to the north, east, and south of the Subject Property are outside of the UGB and contain a mix of residential use, small-scale agriculture, and public facilities. Neighboring rural lands are zoned Multiple Use Agricultural (MUA10) and Exclusive Farm Use (EFU).

The submitted application materials include the following additional details on adjacent properties:

“North. The area north of Stevens Road includes several rural residential parcels developed with homes and outbuildings. The County Comprehensive Plan designations in this area include Agriculture and Rural Residential Exception Area. Most of the area is zoned MUA10, Multiple Use Agricultural. One property approximately 38 acres in size and located at the northwest corner of Ward Road and Stevens Road is zoned Exclusive Farm Use-Tumalo/Redmond/Bend subzone. The area outside of the UGB includes properties from five to 40 acres in size. A Central Oregon Irrigation District (COID) Canal runs southwest to northeast between properties inside and outside the UGB. The area north and west of the COID canal is inside the UGB and has been developed with detached houses in the RS, Urban Standard Residential Zone.

West. The area west of the SRT consists of the area described above as the Stevens Ranch Major Community Master Plan. The master plan includes land designated for housing, commercial uses, and industrial uses. The plan includes a 50-acre large lot industrial site located to the south and abutting property owned by Deschutes County that is also north of the Knott Landfill.

South. The area due south of the SRT is owned by Deschutes County, is undeveloped, and has similar topography and vegetation. This area is designated as Agriculture on the County’s Comprehensive Plan map and zoned EFUTRB. The County also owns land south of the SRT that has been developed as the Knott Landfill, designated Surface Mining, and zoned for Surface Mining. To the south and west of the SRT are a number of non-residential uses along 27th Street south of Ferguson Rd, including the County’s Road Department, Humane Society of Central Oregon, and Central Oregon Electric Cooperative.

East. The area due east of the SRT includes several rural residential parcels south of Ward Road and west of Ward/Larsen Road. The properties in this area are designated either Rural Residential Exception Area or Agriculture and zoned accordingly. This area is approximately one-half mile in depth between the SRT’s eastern boundary line and Ward/Larsen Road. Non-residential uses include Bend Community Farm and the Bend Kitty Lodge.”

PUBLIC AGENCY COMMENTS: The Planning Division mailed notice on June 8, 2023, to several public agencies and received the following comments:

Deschutes County Senior Transportation Planner, Tarik Rawlings

“I have reviewed the transmittal materials for file 247-23-000415-PA, 416-ZC for a Plan Amendment and Zone Change for affordable housing on 261.66 acres to the north of the City of

Bend at 61200 27th St, Bend, OR 97702 aka County Assessor's Map 18-12-11, Tax Lot 100. The proposal is related to House Bill 3318 (2021), and the subject property is referred to as the Stevens Road Tract. The subject property currently has a Comprehensive Plan designation of Rural Residential Exception Area (RREA) and is zoned as Multiple Use Agriculture (MUA-10). The proposal would annex the area and change the designation to the City's Urbanizing Area (UA).

HB 3318 Section 3 specifically states that actions taken under Sections 2 to 9, including Plan Amendments and Zone Changes, are not land use decisions as defined in ORS 197.015 and, therefore, are not required to comply with Statewide Planning Goal 12 (Transportation), which is implemented by the Transportation Planning Rule (TPR) - OAR 660-012-0060. However, local codes still require traffic analysis, specifically Deschutes County Code (DCC) 18.116.310(C)(3) and 18.116.310(E)(4), which may apply to the subject proposal.

The subject property will be brought into the City of Bend as a result of the proposal. There currently is no specific proposal to develop the land, but the City's transportation consultant had prepared an assessment dated (May 17, 2022) reviewing the potential trip generation of the property and planned improvements to affected City facilities. There were no adverse effects outlined in the assessment. Under the Joint Area Management Agreement between City of Bend and Deschutes County, jurisdictional transfer of roads are accomplished as part of annexation. The site is currently served by Stevens Road (County designated Rural Collector) to the north. Adequacy of current and future transportation facilities will be reviewed per the Bend development code as the land is proposed to develop. Finally, HB 3318 exempts the subject property from any Statewide Planning Goals, including Goal 12 (Transportation) as the subject property includes affordable housing and that the proposal is not a land use decision. Therefore, the Transportation Planning Rule (TPR) at OAR 660-012, does not apply nor does Deschutes County Code (DCC) 18.116.310. Staff finds this goal is met."

The following agencies did not respond to the notice: Arnold Irrigation District, Bend Fire Department, City of Bend Planning Department, City of Bend Growth Management Department, Oregon Department of Agriculture, Oregon Department of Land Conservation and Development, Department of State Lands, Deschutes County Assessor, Deschutes County Building Division, Deschutes County Road Department, and District 11 Watermaster.

PUBLIC COMMENTS: The Planning Division mailed notice of the application to all property owners within 750 feet of the subject property on June 8, 2023. The Applicant also complied with the posted notice requirements of Section 22.24.030(B) of Title 22. The Applicant submitted a Land Use Action Sign Affidavit indicating the Applicant posted notice of the land use action on June 12, 2023. Two public comments were received into the record. The first, from John Heylin (6/23/2023 email) expressed support for the application proposal. The second, from David and Theresa Douglas (10/11/2023 email) expressed concerns related to roadway access if and when the Subject Property is developed. The Douglas email did not set forth any objections to the application in this case.

NOTICE REQUIREMENT: On September 1, 2023, the Planning Division mailed a Notice of Public Hearing to all property owners within 750 feet of the Subject Property and public agencies. A Notice of Public Hearing was published in the Bend Bulletin on Sunday, September 3, 2023. Notice of the

first evidentiary hearing was submitted to the Department of Land Conservation and Development on September 3, 2023.

REVIEW PERIOD: According to Deschutes County Code 22.20.040(D), the review of the proposed quasi-judicial plan amendment and zone change application is not subject to the 150-day review period.

IV. GENERAL FINDINGS & CONCLUSIONS

Title 19A of the Deschutes County Code, Bend Urbanizable Area District

Section 19A.01.010 Purpose, Applicability And Definitions

1. ***Purpose. The Urbanizable Area (UA) District is intended to preserve large areas of undeveloped or rural land for future urban development prior to annexation. The UA District promotes the livability, stability, safety and improvement of the City of Bend by allowing orderly development consistent with the Bend Comprehensive Plan.***
2. ***Applicability. The provisions of the UA District apply to all land inside the Urban Growth Boundary but outside the city limits, except for the land withdrawn from the City of Bend by the County by City Resolution 2459. The City of Bend is responsible for administering Title 19A using the Bend Development Code (BDC). The UA District will automatically be removed upon annexation to the City, and the zoning that implements the Bend Comprehensive Plan designation for the property will apply.***

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

“As described above, the applicant proposes to change the zoning of the subject property to Urbanizable Area, which will function as a holding zone until the property is annexed into the Bend city limits. Staff finds that DCC 19A.01.010 is a purpose statement, which sets forth a general expression of a goal or objective to maintain large areas of undeveloped or rural land for future urban development prior to annexation. See Beck v. City of Tillamook, 20 Or LUBA 178, 185-86 (1990). Staff therefore finds DCC 19A.01.010 is not an approval criterion for the subject application.”

Title 18 of the Deschutes County Code, County Zoning

Chapter 18.136, Amendments

Section 18.136.010, Amendments

DCC Title 18 may be amended as set forth in DCC 18.136. The procedures for text or legislative map changes shall be as set forth in DCC 22.12. A request by a property owner for a quasi-judicial map amendment shall be accomplished by filing an application on

forms provided by the Planning Department and shall be subject to applicable procedures of DCC Title 22.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

"The Applicant, also the property owner, has requested a quasi-judicial plan amendment and filed the applications for a plan amendment and zone change. The Applicant has filed the required Planning Division's land use application forms for the proposal. The application will be reviewed utilizing the applicable procedures contained in Title 22 of the Deschutes County Code."

Section 18.136.020, Rezoning Standards

The applicant for a quasi-judicial rezoning must establish that the public interest is best served by rezoning the property. Factors to be demonstrated by the applicant are:

A. That the change conforms with the Comprehensive Plan, and the change is consistent with the plan's introductory statement and goals.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

"The Applicant provided the following response in its submitted burden of proof statement:

The proposed amendment will be consistent with the applicable elements of the Comprehensive Plan Vision Statement. The expansion of the Bend UGB to include the Stevens Road Tract is a necessary step before completing planning amendments required under HB 3318. This legislation requires certain elements to be addressed in planning amendments adopted by the City after an approved UGB expansion, which will also be consistent with these elements of the Vision Statement as follows:

- *The beauty, boundary, and richness of a healthy natural environment. The proposal will satisfy this element because future master planning will be based upon an inventory of significant historical artifacts, cultural sites, and natural resources, and land use regulations for their protection and preservation (See Section 9(1)(a) and (b) of HB 3318)*
- *A strong and diverse economy. The proposal will satisfy this element because the Concept Plan for the Stevens Road Tract contemplates approximately five (5) acres of land for Commercial plan designations, and another seven (7) for Mixed Employment. In addition, the Concept Plan Alternative 3 shows the potential for over 2,400 new housing units that can support the commercial areas to the west within the Stevens Ranch Master Plan.*
- *Access to a wide variety of outdoor recreational opportunities. The proposal meets this element because the Concept Plan proposes: 1) a 29-acre Community Park adjacent to the Stevens Ranch Master plan; 2) a green loop of trails around the perimeter of the tract and within the tract along the planned local and collector streets, and; 3) an additional three (3) acres of undesignated open spaces that would be determined as part of future master planning for the Stevens Road Tract.*

- *The rural character of the region. The proposal is consistent with this element because master planning for the Stevens Road Tract will be based on an inventory of significant natural resources, including significant trees and rock outcrops, and these resources will be protected and preserved through land use regulations incorporated in the Bend Development Code.'*

Staff concurs with the Applicant's response to the Community Vision section of the Comprehensive Plan. The Applicant identified specific Comprehensive Plan Goals and policies that apply to the proposal and has provided a response to each. These findings are listed in the Comprehensive Plan section of this staff report in further detail. Staff agrees with the Applicant's analysis and finds the above provision to be met based on Comprehensive Plan conformance as demonstrated in subsequent findings."

B. That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

"The Applicant provided the following response in the submitted burden of proof statement:

The proposal meets this criterion because the proposed change in classification for the SRT is consistent with the purpose and intent of the proposed zone classification. The proposal is to change the zoning of the SRT from MUA10, Multiple Use Agricultural, to UA, Urbanizable Area. The intent of applying the UA is to limit the development of the SRT, and maintain this tract as one block of land, until such time as the DSL surpluses the property to a developer. The City will then collaborate with a developer to ensure a final master plan submitted to the city for approval satisfies the planning amendments adopted to satisfy the requirements of Section 9 of HB 3318. Once the master plan is approved and the SRT annexed, the City's zoning map will be changed to reflect those City Comprehensive Plan designations applied to the SRT through the master plan.'

The purpose of the UA Zone is described in DCC 19A.01.010, which is addressed above. Staff finds the proposed Zone Change will allow orderly development consistent with the Bend Comprehensive Plan by retaining the subject property as undeveloped land until it is annexed, at which time Bend Comprehensive Plan designations will be applied. The provisions of the UA Zone are intended to preserve land for future urbanization by regulating land divisions, allowed uses, and other development standards. Staff finds the UA Zone is an appropriate zoning designation for the subject property, based on the intended use of future annexation.

Staff finds the Applicant has demonstrated the change in classification is consistent with the purpose and intent of the UA Zone, and asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit."

The Hearings Officer finds that the Applicant has submitted substantial evidence that the change in classification is consistent with the purpose and intent of the UA Zone.

- C. That changing the zoning will presently serve the public health, safety and welfare considering the following factors:**
- 1. The availability and efficiency of providing necessary public services and facilities.**

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

"Although there are no plans to develop the properties in their current state, the above criterion specifically asks if the proposed zone exchange will presently serve public health, safety, and welfare. The Applicant provided the following response in the submitted burden of proof statement:

The proposal satisfies criterion (3)(1) because public services and facilities are available and can be provided efficiently to the SRT. As evidence in support of these Proposal, the applicant has included in the record the June 2023 Stevens Road Tract Concept Plan (See Exhibit H) and the Plan's Technical Appendices (See Exhibit I). The Concept Plan includes evidence that transportation facilities, water, and wastewater collection infrastructure can be provided to the SRT to serve future housing, commercial, mixed use, and open space (parks) development. These provisions of the Concept Plan are required by HB 3318 to be in the City's planning amendments adopted after UGB expansion.'

No issues have been identified in the record regarding service provision to the subject property. The Bend UGB is adjacent to the west side of the subject property, and the neighboring 382-acre parcel to the west is the Stevens Ranch Master Plan property. This neighboring property has not been developed yet but underwent a master planning process that accounted for parks, a new elementary school, and other public facilities necessary to serve the proposed residential commercial, and industrial uses. Staff finds the proximity to the Bend UGB will allow for efficient provision of public services. In addition, the master planning projects on the subject property and surrounding vicinity will ensure adequate land is provided for public facilities.

The subject property is bordered to the north by Stevens Road, which is classified as a County-maintained Rural Collector. This road connection provides direct access to land within the Bend UGB as well as surrounding rural lands. In addition, the Concept Plan submitted with the application materials demonstrates a future road network within the subject property has been planned for. The Stevens Road Tract Concept Plan submitted with the application materials also provides an overview of water, sewer, and stormwater infrastructure that would be required to serve property. These supporting materials indicate the Applicant has collected preliminary comments regarding the system upgrades that would be required, and the approximate locations of road and sewer extensions.

There are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare. In addition, the application materials indicate coordination has begun with Avion Water and public agencies to ensure necessary public facilities and services can be provided.

Prior to development of the properties, the Applicant would be required to comply with the applicable requirements of the Deschutes County Code or the Bend Development Code, if development occurs

after annexation whether. Through these development review processes, assurance of adequate public services and facilities will be verified. Staff finds this provision is met.”

2. The impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

“The proposed Zone Change from MUA10 to UA will not generate additional development or impacts to surrounding properties. The UA Zone will function as a holding zone to preserve the subject property in its current configuration until it is brought into the City of Bend, and new urban zoning designations are assigned. If any development occurs while the property remains within Deschutes County zoning, all necessary land use permits will need to be obtained and compatibility with surrounding uses will be evaluated.

The Applicant provided specific findings for each relevant Comprehensive Plan goal and policy, which are addressed below. Staff finds the Applicant has demonstrated the impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan, and asks the Hearings Officer to amend or add to these findings as the Hearings Officer sees fit.”

The Hearings Officer finds that Applicant has adequately, with substantial evidence in the record, demonstrated that the impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan.

D. That there has been a change in circumstances since the property was last zoned, or a mistake was made in the zoning of the property in question.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

“The Applicant proposed to rezone the properties from MUA10 to UA and re-designate the properties from Rural Residential Exception Area to Bend Urban Growth Boundary. The Applicant provided the following response in the submitted burden of proof statement:

The proposal meets this criterion, because there has been a change of circumstances since the property (aka SRT) was last zoned. The property owner, the Division of State Lands or DSL, obtained approval of quasi-judicial plan and zone map amendments for the SRT in 2018. Through Ordinance 2018-11, the County approved a quasi-judicial change to the plan designation from Agriculture to Rural Residential Exception Area, and a change to the zoning from Exclusive Farm Use-Tumalo/Redmond/Bend subzone to Multiple Use Agricultural (MUA10). In 2021, the Oregon Legislature passed HB 3318, providing for an alternative process to bring the SRT into the Bend UGB. HB 3318 passed both chambers, was signed by Governor Brown on July 19, 2021, and became effective on September 25, 2021. The Bend City Council subsequently approved a Concept Plan for the Stevens Road Tract in June 2022.’

Staff finds the adoption of House Bill 3318 represents a change in circumstances because it modifies the process for the subject property to be brought into the Bend UGB. This legislation is specific to the subject property, and represents a clear change in the conditions that apply to this property and the subject application. Staff finds this criterion is met."

Deschutes County Comprehensive Plan

Chapter 1, Comprehensive Planning

Section 1.3, Land Use Planning

Goal 1, Maintain an open and public land use process in which decisions are based on the objective evaluation of facts.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

"Planning and development of the subject property will involve public processes led by the State of Oregon, Deschutes County, and City of Bend. First, legislation was passed to allow the subject property to be brought into the Bend UGB for the purpose of developing affordable housing. The language of HB 3318 includes an objective evaluation of facts regarding the subject property, including: the property is not in a resource zone, the property has no associated water rights, the property is held by the Common School Fund, and the property is adjacent to a UGB. The passage of this state legislation was not subject to Deschutes County's Procedures Ordinance, however, staff finds it involved an open and public process.

The subject application is being evaluated based on an objective review of compliance with Statewide Planning Goals, Deschutes County Comprehensive Plan policies, and Oregon Administrative Rules. A public hearing will be held before a Hearings Officer on October 11, 2023, and members of the public can attend and testify at that hearing. Pursuant to DCC 22.28.030, the Board of County Commissioners will take final action on the application and may choose to either adopt the Hearings Officer findings or conduct their own hearing. This Comprehensive Plan Amendment and Zone Change application will be evaluated through an open process that allows for public input and follows Deschutes County's Procedures Ordinance.

The City of Bend is undertaking parallel planning efforts to amend their Comprehensive Plan, develop a Concept Plan for the subject property, draft Code amendments specific to the subject property, and eventually annex the subject property and facilitate a master planning process. The application materials document public open houses that have been held for the Stevens Road Tract Concept Plan project, as well as public meetings with the City's Planning Commission and City Council. These City-led efforts allow for greater public involvement in the planning and development of the subject property, even though they are not directed specifically at the subject Comprehensive Plan Amendment and Zone Change application.

Staff finds that within each of the steps described above, there is an open and public process that is based on an objective evaluation of facts. This criterion will be met.”

Goal 2, Promote regional cooperation and partnerships on planning issues.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

“The subject application is the result of a collaborative effort between City of Bend, Deschutes County, and the State of Oregon. The application represents a regional effort to address a key planning issue, housing affordability, through the implementation of HB 3318. There are a number of parallel processes that are being undertaken by partner agencies in order to eventually master plan and develop the subject property with a variety of uses, including deed-restricted affordable housing.

The City of Bend has developed a concept plan for the subject property, and is amending their own Comprehensive Plan and development code to reflect this concept plan. Once the County’s Comprehensive Plan amendment and the City’s development code amendments are both completed, Department of State Lands can initiate the process to transfer the property ownership to City of Bend. These multi-step planning processes are interrelated and require regional coordination, and staff finds they demonstrate cooperation and partnership between the County, City, and State agencies.”

Chapter 2, Resource Management

Section 2.2, Agricultural Lands Policies

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

“The Subject property has a Comprehensive Plan designation of Rural Residential Exception Area and is therefore not categorized as agricultural lands. In addition, staff finds there is nothing in the record that indicates the property is in farm use. Agricultural lands policies do not apply.”

Section 2.3, Forests

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

“The subject property has a Comprehensive Plan designation of Rural Residential Exception Area and is therefore not categorized as forest land. Staff therefore finds forest land policies do not apply.”

Section 2.4, Goal 5 Overview Policies

Goal 1, Protect Goal 5 Policies

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

“The Applicant provided the following response to this criterion in their submitted Burden of Proof:

The proposal will be consistent with this goal because the applicant has reviewed the County’s Inventory of Goal 5 resources and confirmed that none were identified and mapped on the SRT. The Concept Plan also includes planned actions to protect significant trees and rock outcrops, inventory and protect cultural resources, and identify locations for open spaces (e.g., community parks, loop trail) on the SRT. These provisions of the Concept Plan are required by HB 3318 to be in the City’s planning amendments adopted after UGB expansion.

Staff concurs with this analysis, and notes the Applicant does not propose to repeal or modify any Goal 5 policies as part of this application.

The County’s Goal 5 policies are partially implemented through the Landscape Management Combining Zone, which regulates development within designated scenic corridors. The subject property is not within the Landscape Management Combining Zone. In addition, the subject property does not contain any jurisdictional wetlands mapped on a statewide or national wetland inventory. The Applicant does not propose to remove any Goal 5-related overlay zones from the subject property or change mapped resources. Eventual development of the subject property will be regulated by the Bend Development Code and any applicable State regulations. The application materials indicate a thorough review of resources within the site has been conducted, and no Goal 5 resources have been identified.

For these reasons, staff finds the proposed Comprehensive Plan Amendment and Zone Change will not have an adverse impact on Goal 5 policies.”

Section 2.5, Water Resources Policies

Goal 6, Coordinate land use and water policies.

Policy 2.5.24 Ensure water impacts are reviewed and, if necessary, addressed for significant land uses or developments.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

“The Applicant has not proposed a specific development application at this time. Below, the Applicant argues they are therefore not required to address water impacts associated with development. Instead, water impacts would be reviewed during development of the subject property, under any necessary land use applications.

The applicant finds that the goals and policies of Section 2.5 are not applicable to review of the proposed amendments because the proposed amendments will not have the effect of impacting

or potentially impacting water resources. The subject property does not have any water rights associated with it and is not adjacent to or bisected by either a river or stream. The proposed amendments themselves would have the effect of amending the Bend urban growth boundary to include the subject property and changing its plan designation and zoning. No development is proposed at this time that would affect either surface or subsurface water resources. The application materials include the Stevens Road Tract Concept Plan (See Exhibit H) and the Technical Appendices (See Exhibit I). These documents, including Appendix L document how domestic water will be provided to the Stevens Road Tract by the Avion Water Company.'

The Stevens Road Concept Plan also includes the following analysis of water provision to the subject property, which staff finds relevant in addressing this policy.

The City contacted Avion regarding water infrastructure needed to serve the proposed future development that may result from this Concept Plan and Avion identified the key infrastructure improvements needed to provide water to the Tract. These improvements include: a 1.5-million-gallon day tank and a booster plant for the tank. Detailed locations of water lines by size will be determined in the future along with local road locations and final land use designations.'

If this criterion does require an analysis of the water impacts that will be generated by future urban development of the subject property, staff finds the application materials demonstrate these water impacts have been reviewed. However, staff requests the Hearings Officer amend or add to these findings as the Hearings Officer sees fit."

The Hearings Officer incorporates the Overview Findings as additional findings for this section. The Hearings Officer finds that the Applicant has submitted substantial evidence to demonstrate that relevant water impacts have been reviewed and addressed.

Section 2.6, Wildlife

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

"There are no Goal 5-listed wildlife species present on the subject property, based on the Goal 5 inventory nor threatened or endangered species. There is no identified wildlife habitat on the subject property."

Section 2.7, Open Spaces, Scenic Views and Sites

Goal 1, Coordinate with property owners to ensure protection of significant open spaces and scenic view and sites.

Policy 2.7.1 Goal 5 open spaces, scenic views and sites inventories, ESEEs and programs are retained and not repealed.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

“The applicant provided the following response to this policy:

The applicant finds that the proposal is consistent with this plan policy because it does not propose to either remove or repeal any scenic views, site inventories, ESEE analyses, or programs for protection of open spaces and scenic view under Statewide Planning Goal 5. The proposed amendments include two amendments to the Deschutes County Comprehensive Plan map to include the subject property within the Bend Urban Growth Boundary and change its plan designation from Rural Residential Exception Area to Urban Growth Boundary. The proposed amendments also include amendments to the County’s Zoning Map to change to the zoning for the subject property from MUA10 to UA, Urbanizable Area. No amendments to the text of the County’s Goal 5 inventories are proposed.

The applicant has evaluated whether any Goal 5 resources would be affected by the development of the Stevens Road Tract through the work on Stevens Road Tract Concept Plan (See Exhibit H). The application materials provided with the application also include the technical appendices to the Concept Plan (See Exhibit I), which includes Appendix E – Historic, Cultural, and Natural Resources Technical Memorandum. This memorandum provides the results of the project staff’s research, using the County’s adopted Goal 5 inventories, to determine what resources would potentially be impacted by development of the Stevens Road Tract. The memorandum documents the review of the existing inventories and found that there are no Goal 5 open space, scenic view, or site inventories that would be impacted by development of the Tract.’

Staff concurs with the Applicant’s response and finds this criterion has been met.”

Policy 2.7.2 Cooperate with stakeholders to establish a comprehensive system of connected open spaces.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

“The applicant provided the following response to this policy:

The proposed amendment will be consistent with this policy because the amendment to the UGB has been preceded by the adoption of a Concept Plan for the Stevens Road Tract (See Exhibit H) that includes a proposed green-loop trail system, and this system’s development can be coordinated with the development of other trails in the area. The application materials include the approved Concept Plan for the Stevens Road Tract. This document shows that incorporation of a trail system (aka green-loop) was incorporated in the transportation planning for the Tract. In addition, the materials submitted with the proposed amendments include the Technical Appendices (See Exhibit I), which includes a Planning Context technical memorandum (Appendix C) that draws on and incorporates the most recent work on trail development by the Bend Park and Recreation District from their 2018 Comprehensive Plan.’

Staff finds the applicant's response, above, demonstrates coordination has already begun to ensure trails and parks within the subject property are part of a connected network."

Policy 2.7.3 Support efforts to identify and protect significant open spaces and visually important areas including those that provide a visual separation between communities such as the open spaces of Bend and Redmond or lands that are visually prominent.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

"The application materials include diagrams and photographs of the subject property that inventory existing natural features and conditions on the site. This inventory maps features such as existing trails, mature trees, rock outcrops, and views of Three Sisters, Broken Top, and Mt. Bachelor. The application materials demonstrate an effort to identify significant open space and visually important areas by conducting a thorough analysis of the site's existing natural conditions.

The policy language above specifically references open space of Bend, which staff finds applicable to the subject proposal. The high-level Concept Plan for the subject property indicates 29 acres of land will be protected for a community park, in addition to other land preserved for trails. The public ownership of the subject property, and the Master Plan process that will be required, presents a unique opportunity to designate land early in the planning process as future park land. Approval of the proposed Comprehensive Plan Amendment is one step towards formally preserving this open space through park creation, and therefore supports this policy."

Policy 2.7.4 Encourage a variety of approaches that protect significant open spaces and scenic views and sites.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

"The Stevens Road Tract Concept Plan includes the following statement regarding the importance of preserving open space during the planning process:

'The natural beauty of the site – key trees, outcrops, views – should be retained so they can be enjoyed by all in the future. Parks and open space provide a great opportunity to retain these special features for all members of the community. Locating multifamily and affordable housing in prime locations with close proximity and access to parks and open space, ensures equitable access and opportunity for all to enjoy the natural features that make this area unique.'

The application materials indicate a variety of approaches will be utilized to preserve open spaces and scenic views on the site. These approaches include strategically locating new zoning designations,

coordinating with BPRD on the location and design of a community park, and building a connected trails system within the property.”

Policy 2.7.5 Encourage new development to be sensitive to scenic views and sites.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

“No development or new uses are proposed on the subject property at this time, but a concept plan has been approved by the Bend City Council. While the approved concept plan is not an applicable approval criterion under Deschutes County Code, it provides context on the type of development planned for the subject property. As noted above, the eventual development of the subject property will occur after it has been annexed into the City of Bend, and future development will therefore be subject to the Bend Development Code.”

Section 2.8, Energy Policies

Goal 1, Promote energy conservation.

Goal 2, Promote affordable, efficient, reliable and environmentally sound energy systems for individual home and business consumers.

Goal 3, Promote affordable, efficient, reliable and environmentally sound commercial energy facilities.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

“The Applicant proposes to rezone the subject property to UA and bring it within the Bend UGB. No specific development is proposed at this time, therefore review of specific energy systems is not applicable. However, the Applicant provided the following description of how the future development of the subject property will align with these goals:

‘The proposed amendments are a necessary step to implementing the Stevens Road Tract Concept Plan (See Exhibit H). The Concept Plan included an Alternative 3 that was supported by the City Council because it included a multi-modal transportation system that proposes future infrastructure for making trips by walking, bicycling, and taking transit. This alternative’s design also proposes location of land uses so that housing is within walkable distances of main streets (e.g., Wilderness Way), the commercial areas along Wilderness Way, and to the proposed Community Park. In addition, proposed medium and high-density housing has been located along Wilderness Way so that children have the option to walk to the school site within the Stevens Ranch Master Plan.’

Staff concurs with this analysis and finds energy conservation has been considered throughout the application materials. Figures included on pages 71-72 of the Stevens Road Tract Concept Plan

indicate that of the three alternatives that were proposed, the one selected would lead to the greatest energy conservation. The selected land use concept had the lowest estimated energy consumption per household and the lowest estimated carbon emissions per household. To the extent these goals apply to the subject application, staff finds they have been met.”

Section 2.9, Environmental Quality

Goal 1. Maintain and improve the quality of the air, water and land.

Goal 2. Promote sustainable building practices that minimize the impacts on the natural environment.

Goal 3. Encourage and increase recycling

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

“The Stevens Road Tract Concept Plan includes the following statement on sustainable building practices.

‘Energy efficiency in home and building design are very important. All of the housing and non-residential buildings in the development will be new and, therefore, more efficient than older homes.’

The application materials demonstrate impacts on water, energy usage, and carbon emissions have been evaluated. The building materials and specific design will occur at a later date and will be reviewed by the City of Bend. The proposed zoning designation, UA, is intended to serve as a holding zone while the property remains undeveloped. The Applicant is not required to provide detailed information on future building practices and building materials as part of a Comprehensive Plan Amendment application. However, staff finds the applicant has demonstrated the future Bend Development Code amendments will promote sustainability and consider impacts to resources within the subject property.

Finally, staff notes the subject property is located approximately 0.3 miles north of a Deschutes County-owned property with a garbage and recycling transfer station. The application materials do not list specific measures that will be taken to encourage and increase recycling within the Stevens Road Tract. However, the proximity to established recycling facilities will afford benefits to future developments within the subject property.”

Section 2.10, Surface Mining

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

“The subject property is not designated as a surface mine on the Deschutes County Comprehensive Plan. The Applicant does not seek to modify or amend the County’s Goal 5 Aggregate and Mineral inventory list or the Goal 5 program. Staff finds this criterion does not apply.”

Section 2.11, Cultural and Historic Resources

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

“The application materials include a memorandum from Damian Syrnyk, City of Bend Senior Planner, regarding previous inventories of cultural resources that have been conducted on the subject property. The March 28, 2022, memorandum, titled Stevens Road Tract Concept Plan- Historic, Cultural, and Natural Resources, included the following statement:

The County’s Goal 5 inventory of Cultural and Historic Resources (See Section 5.9) has not identified any cultural or historic buildings/resources on the Tract. The closest historic buildings/cultural resources are the Agnes Mae Allen Sottong and Henry J. Sottong House and Barn (See No. 35) located roughly two miles to the south on Tekampe Road. The DSL has completed prior archeological surveys for the Tract and the DSL property included in the Bend urban growth boundary (UGB) in 2016. Attached to this memorandum is a January 11, 2022 “Cultural Review of DSL’s Stevens Road Tract” prepared by Gary Curtis of DSL. DSL has conducted six (6) cultural resource surveys of the original Section 11, with the most recent survey of the Tract completed in 1996. The report does not indicate that either historic or cultural resources were identified by this or previous surveys. The CTWS recommended completing a new archeological survey given the age of the last survey (1996) and because the last survey did not cover the entire Tract.’

The memorandum also indicates two meetings were held with the Confederated Tribes of Warm Springs and one meeting was held with the State Historic Preservation Office to review these findings. The methodology and outcomes of this previous work indicate cultural and historic resources have been factored in throughout the concept planning of the subject property. The application materials also note that:

‘HB 3318 requires future planning amendments to include: ‘(a)n inventory of significant historical artifacts, cultural sites and natural resources’ (see Section 9(1)(a) of HB 3318).’

Based on the extensive work that has been done to survey cultural and historic resources on the subject property, and the requirements of HB 3318, staff finds the proposal will comply with this Comprehensive Plan section.”

Chapter 3, Rural Growth

Section 3.3, Rural Housing Policies

Goal 1, Maintain the rural character and safety of housing in unincorporated Deschutes County

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

"The Applicant provided the following response to this section in their burden of proof:

The applicant finds that this goal is not applicable to the proposed amendments. The proposed amendments would have the effect of including the Stevens Road Tract within the Bend urban growth boundary, changing its plan designation to Bend Urban Growth Boundary, and changing the zoning to UA, Urbanizable Area. Should the County conclude the goal is applicable, the applicant provides the following finding to show the proposal complies with this goal.

The proposed amendments would have the effect of including the subject property, the Stevens Road Tract, within the Bend Urban Growth Boundary. This is a necessary step to development of the property for housing, as envisioned through 2021 HB 3318. The application materials include a copy of the Concept Plan for the Stevens Road Tract (See Exhibit H), which considered several land use and open space alternatives. Each alternative considered more land for RS, Urban Standard Residential, development toward the eastern boundary of the tract, which is adjacent to rural residential development that has occurred between the Tract and Larsen Road. The alternatives provide the opportunity for larger residential lots along this property boundary that can provide more of a transition between the urban development to the west within the Tract and the rural residential areas to the east. Based on this finding, the applicant finds that the proposal is also consistent with Goal 1.'

Staff concurs with this analysis and finds no new rural housing is proposed."

Policy 3.3.1, Except for parcels in the Westside Transect Zone, the minimum parcel size for new rural residential shall be 10 acres.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

"No land division is proposed as part of the subject application. Staff therefore finds this criterion does not apply."

Policy 3.3.2, Incorporate farm and forest housing reports into a wider system for tracking the cumulative effects of rural housing development.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

"The subject Comprehensive Plan Amendment and Zone Change does not review or approve any new uses or construction on the subject property. In addition, the proposed UA zoning is not a farm or forest zone, therefore new residential construction would not be subject to this reporting requirement. Staff therefore finds this criterion does not apply."

Policy 3.3.4, Encourage new subdivisions to incorporate alternative development patterns, such as cluster developments, that mitigate community and environmental impacts.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

“No land divisions, including subdivisions, are proposed with the subject application. Future division of the subject property will occur after annexation and will be reviewed by the City of Bend. Staff finds future land divisions will meet the intent of this policy, because they will be guided by the Stevens Road Concept Plan and the site-specific amendments to the Bend Development Code, which are designed to mitigate community and environmental impacts.”

Policy 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 Rule to permit accessory dwelling units in the Exclusive Farm Use, Forest and Rural Residential zones.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

“The applicant provided the following response to this criterion:

‘The applicant finds that this policy is not applicable because the proposed amendments do not propose any changes to either the County’s Comprehensive Plan or Zoning Ordinance that would have the effect of allowing accessory dwelling units in the Exclusive Farm Use, Forest or Rural Residential Zones. The proposed amendments would have the effect of amending the County’s Comprehensive Plan map to include the Stevens Road Tract, change its plan designation to Bend Urban Growth Boundary, and change its zoning to Urbanizable Area on the County’s Zoning Map. The proposed amendments do not include any concurrent amendments to the County’s Zoning Ordinance that would permit accessory dwelling units in above-cited zones.’

Staff concurs that the portion of this policy regarding accessory dwelling units does not apply. Future development of the subject property will provide a diversity of opportunities including both market-rate housing and deed-restricted affordable housing, which may be developed as a combination of single-family and multi-family housing. Staff notes the development of housing on the subject property will be subject to a City of Bend review process and will not occur under the proposed UA zoning. No development is proposed during the time the subject property remains in the UA Zone, and no impacts to the rural character of the property are anticipated. Prior to development, the subject property will be annexed into the Bend city limits and the Comprehensive Plan protections on rural land will no longer apply to the property. Staff therefore finds the proposal complies with the applicable sections of this policy, namely those regarding rural character and provision of housing opportunities.”

Goal 2, Support agencies and non-profits that provide affordable housing

Policy 3.3.6 Support Central Oregon Regional Housing Authority and other stakeholders to meet the housing needs of all Deschutes County residents.

- a. **Assist as needed in coordinating and implementing housing assistance programs.**
- b. **Support efforts to provide affordable and workforce housing in urban growth boundaries and unincorporated communities.**

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

"The Applicant provided the following response in their Burden of Proof:

The proposed amendments are consistent with this goal because the planning for the Stevens Road Tract includes identifying specific lands for deed-restricted affordable housing. Section 9(2) requires at least 20 net acres of land to be identified for deed-restricted affordable housing. This has been reflected in the Concept Plan for the Stevens Road Tract and is reflected in a recorded agreement between the City and DSL for the City to purchase these acres and develop them for affordable housing, as required by HB 3318. These provisions of the Concept Plan are required by HB 3318 to be in the City's planning amendments adopted after UGB expansion.'

Staff finds the Applicant has demonstrated compliance with this policy. The proposed UGB expansion will be reviewed by the Department of Land Conservation and Development for conformance with the provisions of HB 3318, including the requirements to designate land within the subject property for affordable housing. The development and management of these affordable housing units will require multiagency coordination, and the application materials indicate this stakeholder coordination is underway.

Staff finds the proposed Comprehensive Plan Amendment will support the eventual development of workforce housing within an urban growth boundary. This criterion will be met."

Policy 3.3.7, Utilize block grants and other funding to assist in providing and maintaining low and moderate income housing.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

"The application materials include an Affordable Housing Memorandum, dated January 25, 2022, and prepared by ECONorthwest consulting group. This memorandum provides an analysis of various funding sources that can be utilized in developing affordable housing, such as the Low Income Housing Tax Credit (LIHTC). The memorandum also provides a detailed analysis of the different housing types and ownership models that are likely to be developed within the subject property based on the preliminary zoning concept.

The memorandum also provided the following information on existing programs that can provide gap funding or otherwise assist in providing affordable housing.

The City of Bend has some financial tools that can assist in incentivizing affordable housing and influencing financial feasibility.

- *Affordable Housing Fund. The City of Bend levies a Construction Excise Tax on the value of building permits that goes towards supporting the development of affordable housing. Currently, the fund is used to acquire land for deed-restricted affordable housing, develop the land, construct homes, or rehabilitate homes.*
- *Community Development Block Grants (CDBGs). Each year the City of Bend allocates some of its CDBG funds to affordable housing projects being developed by nonprofit affordable housing providers.*
- *City Surplus Property. Bend routinely sells or conveys some of its excess land holdings to affordable housing providers.*
- *Low-Income Rental Property Tax Exemptions. The City awards a 20-year renewable property tax exemption to qualifying affordable rental housing projects.*
- *System Development Charge Exemptions. All City system development charges (SDCs) are exempted for deed-restricted units at or below 80% of AMI. (Parks SDCs charged by Bend Parks and Recreation District are not exempted.)'*

The language of HB 3318 describes the acres of land that must be dedicated to housing for different income levels. The application materials indicate the Applicant has evaluated how to leverage a variety of funding sources to provide affordable housing in a way that complies with the House Bill."

Section 3.4, Rural Economy Policies

Goal 1, Maintain a stable and sustainable rural economy, compatible with rural lifestyles and a healthy environment.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

"The Applicant provided the following response to this criterion:

The applicant finds that the proposed amendments will result in the subject property being included in the Bend urban growth boundary for development of urban housing, affordable housing, and some commercial and mixed employment uses. Once amended, the County's Comprehensive Plan will show the property within the Bend urban growth boundary and designated Bend Urban Growth Boundary, and the Zoning map will show the property zoned UA, Urbanizable Area. While the property will not be available for rural economic uses under the MUA10 Zone, the Concept Plan for the Stevens Road Tract does include land for commercial uses (five acres), and mixed employment uses (seven acres). The applicant finds the proposed amendments will be consistent with this policy because land will be provide for economic development, jobs, and services and available to urban and rural residents.'

Staff concurs with this statement and notes the subject application will not limit commercial uses on surrounding rural lands. Surrounding rural lands are zoned MUA10 and EFU, which allow for limited commercial uses subject to land use review. Amending the Comprehensive Plan to include the subject property in the Bend UGB will not impact the zoning designation or allowed uses on neighboring properties outside of the Bend UGB.”

Section 3.6, Public Facilities and Services

Goal 1, Support the orderly, efficient and cost-effective siting of rural public facilities and services.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

“In a letter dated July 14, 2023, the Applicant provided the following response to this criterion:

‘The purpose of this UGB amendment is to facilitate the development of the Stevens Road Tract under HB 3318, which would result in urban levels of housing, including affordable housing. The property is served by the Avion Water Company, and the applicant has completed some public facility planning to serve the tract. This level of public facility planning plans for urban streets, water, and sewer infrastructure.’

Staff generally agrees with the above analysis and notes the subject application is not for the purpose of developing rural public facilities or services. As the Applicant notes, urban public facilities will be provided for the future development within the subject property. The application materials demonstrate this public facility planning is underway, with early coordination allowing for more orderly and efficient service provision. The water, sewer, and road improvements described in the application materials will not be constructed until the property is brought within the Bend city limits and subject to the Bend Development Code. These described infrastructure upgrades will serve future residents of the subject property, not the surrounding rural area.

Staff therefore presents alternate findings that this criterion does not apply because the Applicant does not propose any changes to rural public facilities or services. No development is proposed on the subject property while it remains in the UA Zone, so no additional public services will be required to serve the property while it remains in rural zoning. Staff requests the Hearings Officer amend these findings as they see fit.”

The Hearings Officer concurs with the final paragraph comments quoted immediately above. The Hearings finds no development is proposed in this application therefore no additional public services will be required to serve the Subject Property.

Section 3.7, Transportation

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

“Deschutes County’s Senior Transportation Planner Tarik Rawlings submitted the following comments, dated June 21, 2023:

The subject property will be brought into the City of Bend as a result of the proposal. There currently is no specific proposal to develop the land, but the City’s transportation consultant had prepared an assessment dated (May 17, 2022) reviewing the potential trip generation of the property and planned improvements to affected City facilities. There were no adverse effects outlined in the assessment. Under the Joint Area Management Agreement between City of Bend and Deschutes County, jurisdictional transfer of roads are accomplished as part of annexation. The site is currently served by Stevens Road (County designated Rural Collector) to the north. Adequacy of current and future transportation facilities will be reviewed per the Bend development code as the land is proposed to develop. Finally, HB 3318 exempts the subject property from any Statewide Planning Goals, including Goal 12 (Transportation) as the subject property includes affordable housing and that the proposal is not a land use decision. Therefore, the Transportation Planning Rule (TPR) at OAR 660-012, does not apply nor does Deschutes County Code (DCC) 18.116.310. Staff finds this goal is met.’

Staff finds these comments demonstrate compliance in regard to any transportation-related goals or policies that may apply. Staff presents additional findings regarding the Comprehensive Plan policies and Statewide Planning Goals that apply to the subject proposal, under the House Bill 3318 section later in this staff report. The Hearings Officer may choose to edit these findings as they see fit, and provide additional guidance on what criteria, if any, the subject application is exempted from by HB 3318. In the event the Hearings Officer finds the Transportation section of the Comprehensive Plan does apply to the subject application, staff presents the Transportation Planner comments above as evidence this criterion is met.”

The Hearings Officer finds that Applicant’s transportation submissions/comments and Staff’s additional comments contained in the transportation section of the Comprehensive Plan provides substantial and adequate evidence this goal has been met.

Section 3.8, Rural Recreation

Goal 1, Promote a variety of passive and active park and recreation opportunities through a regional system that includes federal and state parks and local park districts.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

“The Stevens Road Tract Concept Plan submitted with the application materials provides the following analysis of proposed park facilities:

“Recreational opportunities and open space were identified as key components in the conceptual planning for the Stevens Road Tract. Working in close coordination with Bend Park and Recreation District (BPRD), the three Concept Plan Alternatives were created to ensure adequate parks, open

space, trails, and recreational opportunities for the existing community and future residents of this area.

The adopted 2018 BPRD Comprehensive Plan calls for a target of 7.85 acres of neighborhood and community parks per 1,000 residents and a neighborhood or community park within a ½ mile walking distance from most homes. Additionally, trails – as both recreational amenities and longer-distance transportation routes – are identified as important recreational and functional parts of the parks system. The three Concept Plan Alternatives for the Stevens Road Tract provide different options aimed at meeting these targets.

...

The park(s) would be developed to provide opportunities for a mix of active (e.g., ball fields and playgrounds) and passive recreational activities (e.g., trails and open space).’

The application materials indicate Bend Park and Recreation District, a local park district, has been involved in the concept planning of the subject property. The Stevens Road Tract Concept Plan presented three alternatives, and the alternative that was ultimately selected was the one with the most amount of land dedicated to parks. This design includes a 29-acre community park, as well as trail connections that take advantage of the existing natural gas pipeline easement. The applicant proposes a looped trail system that goes around the perimeter of the subject property, which will provide benefits to neighboring properties both inside and outside of the Bend UGB.

The applicant does not propose new federal or state parks within the subject property. However, staff finds the proposed park development within the subject property will bolster the regional parks network and provide additional recreation opportunities for residents both inside and outside of the Bend UGB.”

- Policy 3.8.1, Cooperate with public agencies and local park districts to provide park and recreation lands, facilities, and opportunities.**
- a. The Statewide Comprehensive Outdoor Recreation Plan and State Park Master Plans shall serve as a basis for coordination on County-wide park and recreation issues.**
- b. Support exceptions to Statewide Planning Goals for urban fringe areas owned or acquired by and operated by park and recreation districts.**

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

“As described above, the application materials indicate ongoing cooperation between City of Bend and Bend Park and Recreation District. The subject application for a Zone Change and Comprehensive Plan Amendment will not immediately lead to the development of new park facilities. However, it is a necessary step towards an eventual Master Plan and development of the subject property, which will provide new recreation opportunities.

The Applicant does not request an exception to a Statewide Planning Goal. Staff therefore finds subsection (b), above, does not apply.”

Chapter 4, Urban Growth Management

Section 4.2, Urbanization Policies

Goal 1, Coordinate with cities, special districts and stakeholders to support urban growth boundaries and urban reserve areas that provide an orderly and efficient transition between urban and rural lands.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

“The Applicant provided the following response in their submitted Burden of Proof:

‘The proposal is consistent with this goal because the City has coordinated with Deschutes County, the Bend Park and Recreation District, and other stakeholders to support the concept planning for the Stevens Road Tract and the amendment of the Bend UGB to include it. The Concept Plan (See Exhibit H) documents the City’s coordination with the Park District, Cascades East Transit, and Avion Water Company to plan for an orderly and efficient transition between urban and rural lands for the Stevens Road Tract. These provisions of the Concept Plan are required by HB 3318 to be in the City’s planning amendments adopted after UGB expansion.’

Staff concurs with the Applicant’s analysis and finds they have demonstrated coordination between Deschutes County, the City of Bend, and special districts. The outreach process for the Stevens Road Concept Plan included three community meetings with stakeholders, which were held in 2021 and 2022. The application materials also list the following special districts and public agencies that were consulted during this process:

‘Collaboration with Bend Park and Recreation District, Bend-La Pine School District, Cascades East Transit, Deschutes County, DSL, Oregon Department of Land Conservation and Development, and Oregon Department of Transportation.’

The larger planning process to develop the subject property pursuant to HB 3318 has involved coordination with a range of agencies and stakeholders. While the development of the Stevens Road Tract Concept Plan was led by the City of Bend, staff finds the coordination during that process is relevant in addressing this criterion.”

Policy 4.2.1, Participate in the processes initiated by cities in Deschutes County to create and/or amend their urban growth boundaries.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

“The subject application was initiated by a city in Deschutes County as part of a larger process to amend its urban growth boundary. The subject Comprehensive Plan Amendment will bring the

property within the Bend UGB, which will allow the City of Bend to initiate amendments to its Development Code and eventually rezone the property for urban uses. As noted above, the subject property is owned by the State of Oregon, and the jurisdictional and ownership transfer of the property therefore requires the coordination of multiple land use processes. The applicant has coordinated with various agencies, including Deschutes County, to align these interrelated planning efforts.

Staff finds this UGB amendment and subsequent development of the subject property through a master planning process are only possible with County participation and coordination, including review of the subject application. Therefore, the County's role in this application will function to increase participation in city-led UGB amendments."

Policy 4.2.2, Promote and coordinate the use of urban reserve areas.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

"The subject property is not designated as Urban Reserves. Staff therefore finds this policy does not apply."

Goal 2, Coordinate with cities, special districts and stakeholders on urban growth area zoning for lands inside urban growth boundaries but outside city boundaries.

Goal 3, Coordinate with cities, special districts and stakeholders on policies and zoning for lands outside urban growth boundaries but inside urban reserve areas

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

"The proposed zoning designation, UA, will serve as a holding zone while the subject property is inside the Bend UGB but outside city boundaries. The application materials document ongoing coordination between the City of Bend, Deschutes County, State of Oregon and service providers regarding how the property will be managed during the time period it remains outside city boundaries but within the Bend UGB."

Goal 4, To build a strong and thriving regional economy by coordinating public investments, policies and regulations to support regional and state economic development objectives in Central Oregon.

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements:

"The subject property presents a unique opportunity to leverage public investments because the property is owned by the State of Oregon and its sale will generate revenue for the Common School

Fund. Increasing workforce housing is a regional and state economic development objective, and development of the subject property will be leveraged to provide housing for school district employees.

In addition to providing workforce housing, the subject property will be zoned to include five acres of commercial land and seven acres of mixed employment land. The public ownership of the subject property, and the provisions of HB 3318, provide a unique opportunity to maximize public benefit by master planning the subject property. The master planning process for the subject property will result in a walkable community with services and employment located near a range of housing types. High-level zoning diagrams indicate commercial areas will be concentrated near the proposed community park in a "main street"-style design where the commercial area functions as a community center. The Concept Plan also indicates seven acres of mixed employment land will be provided in the southwest corner of the subject property, and this area is adjacent to other industrial uses and will allow for a mix of commercial and light industrial uses. Providing employment land within the subject property will support regional economic development by bolstering the local economy.

Commercial uses will not be established on the subject property until it is annexed into the City of Bend and rezoned. The eventual commercial development will be subject to the Bend Development Code and will be within the city limits of Bend, and will be close to unincorporated lands and provide economic benefit to the surrounding rural area."

HOUSE BILL 3318

FINDING: The Hearings Officer incorporates as additional findings for this section the Overview Findings. The Hearings Officer finds that the Staff comments below are supported by substantial evidence and, as supplemented by the Overview Findings, are legally correct. Staff findings are set forth below in italics.

"The proposed expansion of the Bend UGB to include the subject property is in response to the passage of HB 3318. This House Bill is specific to the Stevens Road Tract and outlines a unique process the City of Bend may utilize when adding this property to its UGB. The Applicant has proposed findings, below, to demonstrate compliance with applicable sections of HB 3318.

SECTION 3. Stevens Road planning generally.

(1) Actions taken under sections 2 to 9 of this 2021 Act:

(a) Are not land use decisions, as defined in ORS 197.015.

FINDING: *The purpose of this finding is to show that the Statewide Planning Goals are not applicable to this proposal because of the above-cited language in Section 3 of HB 3318. Section 9 of HB 3318 provides that standards in the bill apply to the Stevens Road Tract in lieu of statewide planning goals. Section 3(1)(a) of HB 3318 states that actions taken under sections 2 through 9 of this 2021 Act are not land use decisions, as defined in ORS 197.015. Under this statute, ORS 197.015(10) defines a land use decision as one that includes under (10)(a)(A) a final decision or determination made by a local government or special district that concerns the adoption, amendment, or application of the goals. The goals in this context refer to the Statewide Planning Goals.*

SECTION 6. Stevens Road urban growth boundary expansion.

(1) Notwithstanding ORS 197.286 to 197.314, 197.626 or 197A.320 or any statewide land use planning goal related to housing or urbanization, the Department of Land Conservation and Development shall approve an expansion of the urban growth boundary submitted by the city and approved by the city by ordinance, if the department determines that:

FINDING: The following findings address compliance with Section 6 of HB 3318 (See Exhibit F). To address Section 6 of HB 3318, these findings refer to sections of HB 3318 where the bill itself refers to a section of this 2021 Act. Regarding Section 6(1), the applicant finds that this section directs actions of the Oregon Department of Land Conservation and Development regarding the Stevens Road Tract. This section directs the Department to approve an expansion of the UGB that has been approved by and subsequently submitted by the City of Bend based on the criteria below under Section 6(1)(a) through (1)(c).

(a) The department has received the letters required by section 4 of this 2021 Act;

FINDING: The proposal satisfies criterion (1)(a) because the City has submitted, and the Department of Land Conservation and Development has received the letters required by Section 4 of HB 3318. Section 4 of HB 3318 required the following letters to be submitted to the Department with the Stevens Road Tract Concept Plan:

Section 4(1) requires a letter from the City of Bend expressing the city's nonbinding intent to consider a concept plan under Section 5 of HB 3318, and;

Section 4(2) requires a letter from the Department of State Lands (DSL or Department) that gives its consent to the City to pursue an urban growth boundary expansion and planning amendments under Sections 6 through 9 of HB 3318. This same letter from DSL must also establish an agreement with the City that is binding on the successors of the owners, is contingent up on the final approval of the planning amendments, and establishes the essential terms, including price per acre, but not requiring specific lands to be designated, for the Department's conveyances to the city of real property consistent with Section 9 (2) and (3) of HB 3318.

The City provided both letters to the Department of Land Conservation and Development (DLCD) by electronic mail on June 23, 2022. This email and the attached letters are enclosed as Exhibit J. DLCD acknowledged receipt of the letter and materials through an electronic mail message dated August 29, 2022. Through this same message, DLCD submitted a copy of their letter approving the concept plan dated August 29, 2022 (See Exhibit K).

(b) The department has approved the city's conceptual plan under section 5 of this 2021 Act; and

FINDING: The proposed UGB expansion satisfies criterion (1)(b) because the department (DLCD) has approved the city's conceptual plan under Section 5 of HB 3318. As stated above under the

forgoing finding address criterion (1)(a), the Department (DLCD) submitted an August 29, 2022, letter to the City through an email of the same approving the Concept Plan. This electronic mail message and August 29, 2022, letter are enclosed as Exhibit K.

(c) The proposed urban growth boundary expansion adds all of the Stevens Road tract and no other lands to the area within the city's urban growth boundary.

FINDING: The proposed UGB expansion satisfies criterion (1)(c) above because the City has proposed to expand the UGB to include only the Stevens Road Tract, and all the land within the tract. The proposal described above in this proposed set of findings states that the only land included in this proposed expansion of the Bend UGB is the Stevens Road Tract and all the land within the tract would be included in the UGB. This property is described as Tax Lot 100 on Deschutes County Tax Assessor's Map 18-12-11 and is also described as Property 1 in a decision dated September 19, 2019, approving a property line adjustment under file no. PZ-10-0550, being 261 acres (See Exhibit B).

(2) The city shall include the lands brought within the city's urban growth boundary under this section in the city's inventory of buildable lands under ORS 197.296 (3)(a).

FINDING: The proposal will satisfy criterion (2) because the City has proposed to include the lands brought within the UGB in the City's inventory of buildable lands under ORS 197.296(3)(a). The proposal includes a copy of a proposed amendment to Appendix J, the 2016 Buildable Lands Inventory, of the Bend Comprehensive Plan (See Exhibit M). This proposed amendment is attached as Exhibit I and proposes to add the 198 acres of buildable land within the Stevens Road Tract to the BLI. These acres would not be designated for either housing or employment until such as the City adopts planning amendments for guiding master planning of the Stevens Road Tract that include the required elements from Section 9 of HB 3318 and mirror the proposed plan designations as shown in Alternative 3 of the Concept Plan.

The language of HB 3318 appears to refer to the planning amendments the City of Bend must undertake in order to receive approval for bringing the subject property within the Bend UGB.

Section (2)(4) of HB 3318 includes the following definition: "Stevens Road planning amendments" means amendments to the city's comprehensive plans, land use regulations or zoning maps that affect the development of the Stevens Road tract' [emphasis added].

The language of the House Bill does not specify the process, if any, that the County must undertake for the corresponding amendment to the County Comprehensive Plan. Absent that guidance, the subject request has been processed as a request for a Comprehensive Plan Amendment and Zone Change pursuant to Deschutes County Code. It is not apparent to staff whether the House Bill exempts the subject application from demonstrating compliance with Statewide Planning Goals, Deschutes County Comprehensive Plan policies, or other provisions of Deschutes County Code.

Staff requests the Hearings Officer make specific findings regarding whether the provisions of HB 3318 are applicable approval criteria for the subject amendment to Deschutes County's Comprehensive Plan, as well as the proposed Zone Change of the subject property."

OREGON ADMINISTRATIVE RULES CHAPTER 660, LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES

OAR 660-015, Division 15, Statewide Planning Goals and Guidelines

FINDING: The Hearings Officer adopts as findings for this decision the following Staff Report statements (in italics):

"The applicant asserts the Statewide Planning Goals are not applicable to the subject application because it is being processed pursuant to HB 3318. The Burden of Proof includes the following analysis in support of this claim.

The purpose of this finding is to show that the Statewide Planning Goals are not applicable to this proposal because of the above-cited language in Section 3 of HB 3318. Section 9 of HB 3318 provides that standards in the bill apply to the Stevens Road Tract in lieu of statewide planning goals. Section 3(1)(a) of HB 3318 states that actions taken under sections 2 through 9 of this 2021 Act are not land use decisions, as defined in ORS 197.015.'

Staff also cites Section (6)(1) of HB 3318, below, which references Statewide Planning Goals in regard to the Stevens Road tract UGB expansion.

SECTION 6. Stevens Road urban growth boundary expansion. (1) Notwithstanding ORS 197.286 to 197.314, 197.626 or 197A.320 or any statewide land use planning goal related to housing or urbanization [emphasis added], the Department of Land Conservation and Development shall approve an expansion of the urban growth boundary submitted by the city and approved by the city by ordinance, if the department determines that:

- (a) The department has received the letters required by section 4 of this 2021 Act;*
- (b) The department has approved the city's conceptual plan under section 5 of this 2021 Act; and*
- (c) The proposed urban growth boundary expansion adds all of the Stevens Road tract and no other lands to the area within the city's urban growth boundary.*

The proposed Comprehensive Plan Amendment and Zone Change are for the purpose of bringing the property into the Bend UGB and are subject to applicable provisions of Deschutes County Code as well as state law. The language of HB 3318 does not provide clear direction on whether an amendment to the County's Comprehensive Plan is subject to Statewide Planning Goals, and if so, which goals are applicable. Staff requests the Hearings Officer make specific findings on this topic. In the event the Hearings Officer finds the Statewide Planning Goals apply, staff has provided alternate findings below demonstrating compliance."

Goal 1, Citizen Involvement. To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

FINDING: A land use action sign was posted on the subject property on June 12, 2023, and a Notice of Application was mailed to nearby property owners on June 8, 2023. A public hearing will be held before a Hearings Officer and a second public hearing will be held before the Board of County Commissioners. Notice of all public hearings will be mailed to impacted individuals and a notice will also be printed in the Bend Bulletin newspaper. The published and mailed notices will all comply with the requirements of DCC 22.12.020.

Goal 2, Land Use Planning. To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

FINDING: This proposal satisfies this goal because the applications were handled pursuant to the procedures applicable to plan amendments in the County's Comprehensive Plan and zoning ordinance.

Goal 3, Agricultural Lands. To preserve and maintain agricultural lands.

FINDING: The subject property is not designated as agricultural lands on the Deschutes County Comprehensive Plan. Staff notes the subject property previously received approval for a Comprehensive Plan Amendment from Agriculture to Rural Residential Exception Area, on the basis the subject property does not meet the definition of agricultural land.

Goal 4, Forest Lands. To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

FINDING: The subject property does not contain any forest lands and therefore this goal is not applicable.

Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces. To protect natural resources and conserve scenic and historic areas and open spaces.

FINDING: The subject property does not contain any inventoried Goal 5 resources. An assessment of natural resources, scenic and historic areas, and open space was conducted as part of the conceptual planning process done by the City of Bend. Appendix E to the Stevens Road Tract Concept Plan is a memo dated March 28, 2022, titled Historic, Cultural, and Natural Resources. This memo includes a review of different types of Goal 5 resources and notes the subject property does not contain any area within the Surface Mining Impact Area, Wildlife Area Combining Zone, or Landscape Management Combining Zone.

Goal 6, Air, Water, and Land Resources Quality. To maintain and improve the quality of the air, water, and land resources of the state.

FINDING: *The proposal is consistent with Goal 6 based on the analysis provided in the Stevens Road Tract Concept Plan and other supplemental application materials. These materials demonstrate future development of the subject property will be designed to minimize carbon emissions and will reduce single-occupancy vehicles trips by planning for transit and bicycle connections. No development is proposed at this time and future uses will be established under urban zoning designations. In a letter dated July 14, 2023, the Applicant provides the following statement on impacts to water resources.*

'No development is proposed at this time that would affect either surface or subsurface water resources.'

Staff concurs and notes the subject application only reviews the impacts of rezoning the subject property to UA and changing the Comprehensive Plan designation to Bend UGB. Future annexation will be subject to a separate land use application and impacts to natural resources will be evaluated again at that time. Staff finds the Stevens Road Tract Concept Plan is not the subject of this review but provides relevant context on how the planned uses of the subject property will comply with Goal 6.

Goal 7, Areas Subject to Natural Disasters and Hazards. To protect people and property from natural hazards.

FINDING: *The applicant provided the following statement regarding wildfire and flood risk on the subject property:*

The proposed amendments are consistent with this goal because the Concept Plan guiding future development of the Stevens Road Tract has accounted for the natural hazard of wildfire. The proposed amendments would change the County's Comprehensive Plan map to include the subject property within the Bend urban growth boundary, change the Plan designation to Bend Urban Growth Boundary, and change the zoning on the County's Zoning map to UA, Urbanizable Area. The purpose behind these amendments is to facilitate the development of the subject property according to the Stevens Road Tract Concept Plan (See Exhibit H). The materials submitted with the plan amendment and zone change applications include the Technical Appendices to the Concept Plan (See Exhibit I), which also include a technical memorandum addressing wildfire risk and identifying several strategies for mitigation (See Appendix F). The subject property does not abut or is impacted by a flood plain.'

Staff finds wildfire risk is the primary natural disaster concern on the subject property.

The adopted concept plan indicates transportation access to other areas of the City of Bend will improve as a road network is developed within the subject property. Staff notes the new roads and improved access will provide benefits if a natural disaster were to occur and the subject property

either needed to be evacuated or needed to be accessed by emergency service providers. Future annexation of the subject property will also allow it to be served by urban service providers.

Goal 8, Recreational Needs. To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

FINDING: The Stevens Road Tract Concept Plan presented three high-level alternatives for future development of the subject property. The concept plan that was ultimately approved by Bend City Council includes a 29-acre centrally located community park, seven acres of trail corridors, and three acres of open space. This concept plan factors in trail and bicycle connections to existing and proposed trail networks.

The Stevens Road Tract Concept Plan also provides an evaluation of existing natural features, such as rock outcroppings and trails along the utility easements, and how these features can be preserved and incorporated into developed parks and recreation opportunities.

Goal 9, Economy of the State. To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

FINDING: The intended use of the subject property is future annexation by the City of Bend and a master planning process for development. The adopted Stevens Road Tract Concept Plan proposes a mix of commercial and residential uses, and HB 3318 requires land to be zoned for commercial uses in accordance with the City's most recent economic opportunity analysis.

As described below, the Stevens Road Tract master plan will provide housing affordable for those earning 80 percent or less of the area median income, with priority given to employees of an education provider. Staff finds the provision for workforce housing will benefit the local economy.

Goal 10, Housing. To provide for the housing needs of citizens of the state.

FINDING: Section (9)(2) of HB 3318 stipulates that at least 20 net acres of land within the Stevens Road Tract must be conveyed to the City of Bend and remain as income-restricted housing for a period of no less than 50 years. Of this land area that is set aside for income-restricted housing, at least 12 net acres must be available to households earning 60 percent or less of the area median income. In addition, six net acres must be made available to households earning 80 percent or less of the area median income, with priority given to employees of education providers. Finally, at least two net acres must be restricted so that at least 80 percent of the units in each contiguous development tract are affordable to households earning 80 percent or less of the area median income, which includes at least one acre where preference is given to employees of an education provider.

HB 3318 provides additional guidance on the development of market-rate housing, to ensure adequate opportunities for the development of all needed housing types. Housing in the Stevens Road Tract must exceed a minimum density of nine units per gross residential acre, and the ratio of single-

family to multifamily housing must exceed what is required in the city's most recently adopted housing needs analysis. Staff notes no housing development is proposed under the UA zoning designation, and future development will be reviewed according to the City of Bend's Development Code and Comprehensive Plan. However, staff finds the subject Comprehensive Plan Amendment and Zone Change will promote the creation of new housing units by completing a necessary step towards eventual development of the subject property.

Goal 11, Public Facilities and Services. To plan and develop a timely, orderly, and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

FINDING: The application materials indicate the subject property is currently served by Avion Water Company, and planning has begun regarding domestic water service for the future build-out of the property. The appendixes to the Steven Road Tract Concept Plan also include technical memorandums regarding water infrastructure, sewer infrastructure, and transportation improvements. Staff finds interagency planning is underway to ensure a smooth transition of services when the subject property is brought into the Bend city limits and developed. Beginning this coordination at the concept planning phase allows for timely input from service providers, which increases the likelihood of orderly and efficient public facilities.

Goal 12, Transportation. To provide and encourage a safe, convenient and economic transportation program.

FINDING: The Stevens Road Tract Concept Plan indicates 20 percent of the unconstrained land area is planned for future public right of way, which amounts to approximately 50 acres of land. The application materials also provide an analysis of the intersection and roadway improvements that would be required to build out the subject property, and information on how those improvements relate to the goals of the City of Bend's Transportation System Plan.

Staff finds the applicant has demonstrated that different modes of transportation will be planned for, and that direct road and transit connections will be provided between the subject property and other neighborhoods within Bend. Although these transportation improvements will not be built out until the property is annexed into the City of Bend, there is significant evidence that transportation planning is underway and is being accounted for. For these reasons, staff finds the proposed Zone Change and Comprehensive Plan Amendments are a step towards developing a safe, convenient, and economic transportation network within the subject property.

Goal 13, Energy Conservation. To conserve energy.

FINDING: The application materials indicate the subject property will be developed with high-density housing, walkable commercial centers, and will be served by transit. Three alternatives were presented in the Stevens Road Concept Plan, and the option that was selected had the "least impact per household for water usage, energy usage, and carbon emissions" (Stevens Road Tract Concept Plan page 70).

Goal 14, Urbanization. To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

FINDING: *The subject property will be annexed into the City of Bend and developed through a master planning process that accounts for parks, walkable neighborhoods, transit access, commercial uses, and a variety of housing types. Staff finds this master planning process will encourage the development of the subject property as a livable community that accommodates urban housing and urban employment. As described above, the planning process for the subject property has been a coordinated effort with involvement from the City of Bend, Deschutes County, and the State of Oregon. The unique factors of the subject property, particularly that it is under public ownership and was approved for a UGB expansion through HB 3318, will allow an orderly and efficient transition from the current rural use of the land to its future urban uses.*

Goal 15, Willamette Greenway.

FINDING: *This criterion does not apply because the subject property is not located in the Willamette Greenway.*

Goals 16 through 19.

FINDING: *These goals do not apply to land in Central Oregon.*

Staff finds that if the Statewide Planning Goals do apply, compliance with them has been effectively demonstrated. Staff requests the Hearings Officer make specific findings regarding whether the Statewide Planning Goals apply to the subject application."

V. CONCLUSION

The Hearings Officer finds that the Applicant has met the burden of proof necessary to justify changing the Comprehensive Plan Designation of the Subject Property from Rural Residential Exception Area to Bend Urban Growth Area, to change the zoning of the Subject Property from Multiple Use Agricultural (MUA10) to Urbanizable Area (UA), and to expand the Urban Growth Boundary through effectively demonstrating compliance with the applicable criteria of DCC Title 18 (Deschutes County Zoning Ordinance), DCC Title 19A (Bend Urbanizable Area District), the Deschutes County Comprehensive Plan, and applicable sections of OAR and ORS.

VI. DECISION AND RECOMMENDATION

Approval of:

Change of the Subject Property Plan Designation from Rural Residential Exception Area to Bend Urban Growth Area; and to

Change of the Subject Property Zoning from Multiple Use Agriculture (MUA 10) to Urbanizable Area

(UA).

Deschutes County Hearings Officer



Gregory J. Frank

Date: October 23, 2023