



COMMUNITY DEVELOPMENT

DESCHUTES COUNTY PLANNING COMMISSION

5:30 PM, THURSDAY, JULY 22, 2021

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

(541) 388-6575 | www.deschutes.org

AGENDA

MEETING FORMAT

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

Members of the public may view the Planning Commission meeting in real time via the Public Meeting Portal at www.deschutes.org/meetings.

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

<https://us02web.zoom.us/j/81766542655?pwd=QmlHUzJsaFNpTFBQTUJiYiV5R04yQT09>

Passcode: 164368

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

Members of the public can access the meeting via telephone, dial: 1-312-626-6799. When prompted, enter the following Webinar ID: 857-8633-4107 and Passcode: 164368.

Written comments can also be provided for the public comment section to planning@deschutes.org by 5:00 p.m. on July 21. They will be entered into the record.

I. CALL TO ORDER

II. APPROVAL OF MINUTES - JULY 8, 2021

III. PUBLIC COMMENT

IV. ACTION ITEMS

- [1.](#) Public Hearing: Marijuana Retail and Reporting Text Amendments
- [2.](#) Discussion: SB 391 / Rural Accessory Dwelling Unit Legislation

V. PLANNING COMMISSION AND STAFF COMMENTS

VI. ADJOURN



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



MEMORANDUM

TO: Deschutes County Planning Commission

FROM: Tanya Saltzman, AICP, Senior Planner

DATE: July 15, 2021

SUBJECT: Public Hearing: Marijuana Retail Hours and Annual Reporting Text Amendments

The Planning Commission will hold a July 22 public hearing concerning legislative amendments to 1) extend the permitted hours for marijuana retail businesses and 2) modify marijuana annual reporting requirements. Staff submitted a 35-day Post-Acknowledgement Plan Amendment (PAPA) notice to the Department of Land Conservation and Development (DLCD) on June 9, 2021. Staff initially brought these issues to the Planning Commission for a preliminary discussion on May 13,¹ and had a subsequent discussion with the Board of County Commissioners on May 24,² at which time the Board directed staff to initiate the text amendment process. Staff presented the proposed amendments to the Planning Commission at a work session on July 8, 2021.³

I. BACKGROUND

Both components of the proposed legislative amendments initially began with requests from Deschutes County property owners.

The Board received a request from a marijuana retailer to adjust marijuana retail hours of operation in rural Deschutes County. Deschutes County Code 18.116.330(C)(1) currently permits hours of operation from 9 a.m. to 7 p.m. for marijuana retail; however, the OLCC permits hours of operation from 7 a.m. to 10 p.m. This discrepancy may put these businesses at a competitive disadvantage, as retail operations within Bend and La Pine city limits generally adhere to OLCC guidelines.⁴ As one local business owner has described, the more restrictive hours may be having an impact on profit

¹ https://deschutescountyor.iqm2.com/Citizens/Detail_Meeting.aspx?ID=2770

² https://deschutescountyor.iqm2.com/Citizens/Detail_Meeting.aspx?ID=2701

³ https://deschutescountyor.iqm2.com/Citizens/Detail_Meeting.aspx?ID=2790

⁴ <https://potguide.com/oregon/marijuana-dispensaries/bend/>. Operating hours for dispensaries in Bend range from 8:00 a.m. to 8:00 p.m.; 8:00 a.m. to 9:00 p.m., 8:00 a.m. to 9:50 p.m., 8:00 a.m. to 10:00 p.m., 9:00 a.m. to 9:00 p.m. 9:00 a.m. to 10:00 p.m., 10:00 a.m. to 6:00 p.m., 12:30 to 8:30 p.m., and various times in between. There are three dispensaries in La Pine; operating hours range from 9:00 a.m. to 9:00 p.m., 9:00 a.m. to 10:00 p.m., and 10:00 a.m. to 9:00 p.m.

and opportunities to hire more staff. There are currently two marijuana retail businesses in unincorporated Deschutes County—one near La Pine and the other just outside of Sunriver.

The Board also received a request from a marijuana producer to modify or remove annual reporting and inspection requirements for marijuana-related businesses beginning in 2022 to reduce redundancies for business owners and operational capacity strains on staff.

In its current form, annual reporting by marijuana establishments—which requires applicants to document their satisfaction of their conditions of land use approval—is submitted to the Community Development Department (CDD) by February 1 of each year, including the applicable fee (\$796 in 2020) for those businesses with licenses, and a fully executed Consent to Inspect Premises form. Staff then reviews and logs those annual reports and uses them as a basis for a site visit in the summer/fall to verify observable conditions of approval, such as odor and noise mitigation systems, water source, and other criteria. For 2021, staff anticipates conducting site visits for approximately 34 businesses throughout the county. In reporting years 2018, 2019, and 2020, staff observed 100 percent compliance with observable conditions of approval, and for those with local approval but still in the queue for their OLCC license, staff verified that none of them were producing marijuana.

OLCC, the licensing authority for recreational marijuana, performs its own scheduled “proactive compliance inspections” of marijuana businesses, which address some of the same land use conditions that Deschutes County monitors, as well as items such as harvest weight and worker compliance.

II. PROPOSAL

The proposed text amendments are as follows:

- DCC 18.116.330(C)(1): Changes hours of operation for marijuana retailing from 9:00 a.m. – 7:00 p.m. to 7:00 a.m. – 10:00 p.m., in line with OLCC hours.
- DCC 18.116.330(D)(1): Adds text to state “An annual report shall be submitted, **if requested,** to the Community Development Department...” (new text indicated in bold type).
 - Staff notes that during the Planning Commission work session, some commissioners discussed the option of providing more clarity in this added phrase; the Planning Commission may choose to address this during deliberations.

The applicant, in this case Deschutes County Community Development, has submitted findings summarizing the amendments and stating that the text amendments are in compliance with the Statewide Planning Goals, and applicable policies of the Deschutes County Comprehensive Plan.

III. NEXT STEPS

At the conclusion of the public hearing, the Planning Commission can:

- Continue the hearing to a date certain;
- Close the oral record and leave the written record open to a date certain;
- Close the oral record and the written record and set a date for deliberations; or
- Close the hearing and begin deliberations.

Attachments:

1. Proposed Text Amendments – DCC Chapter 18.116.330
2. Proposed Findings

Chapter 18.116. SUPPLEMENTARY PROVISIONS

18.116.330 Marijuana Production, Processing, Retailing, and Wholesaling

* * *

- C. Marijuana Retailing. Marijuana retailing, including recreational and medical marijuana sales, shall be subject to the following standards and criteria:
1. Hours. Hours of operation shall be no earlier than 9:00 a.m. and no later than 7:00 p.m. on the same day.
 2. Odor. The building, or portion thereof, used for marijuana retailing shall be designed or equipped to prevent detection of marijuana plant odor off premise by a person of normal sensitivity.
 3. Window Service. The use shall not have a walk-up or drive-thru window service.
 4. Secure Waste Disposal. Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the OLCC licensee or OHA registrant.
 5. Minors. No person under the age of 21 shall be permitted to be present in the building, or portion thereof, occupied by the marijuana retailer, except as allowed by state law.
 6. Co-Location of Related Activities and Uses. Marijuana and tobacco products shall not be smoked, ingested, or otherwise consumed in the building space occupied by the marijuana retailer. In addition, marijuana retailing shall not be co-located on the same lot or parcel or within the same building with any marijuana social club or marijuana smoking club.
 7. Separation Distances. Minimum separation distances shall apply as follows:
 - a. The use shall be located a minimum of 1,000 feet from:
 - i. A public elementary or secondary school for which attendance is compulsory under Oregon Revised Statutes 339.010, et seq., including any parking lot appurtenant thereto and any property used by the school;
 - ii. A private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a), including any parking lot appurtenant thereto and any property used by the school;
 - iii. A licensed child care center or licensed preschool, including any parking lot appurtenant thereto and any property used by the child care center or preschool. This does not include licensed or unlicensed family child care which occurs at or in residential structures;
 - iv. National monuments and state parks; and
 - v. Any other marijuana retail facility licensed by the OLCC or marijuana dispensary registered with the OHA.
 - b. For purposes of DCC 18.116.330(B)(7), distance shall be measured from the lot line of the affected property to the closest point of the building space occupied by the marijuana retailer. For purposes of DCC 18.116.330(B)(7)(a)(vi), distance shall be measured from the closest point of the building space occupied by one marijuana retailer to the closest point of the building space occupied by the other marijuana retailer.
 - c. A change in use to another property to a use identified in DCC 18.116.330(B)(7), after a marijuana retailer has been licensed by or registered with the State of Oregon shall not result in the marijuana retailer being in violation of DCC 18.116.330(B)(7).
- D. Annual Reporting
1. An annual report shall be submitted, if requested, to the Community Development Department by the real property owner or licensee, if different, each February 1, documenting all of the following as of December 31 of the previous year, including the applicable fee as adopted in the current County Fee Schedule and a fully executed Consent to Inspect Premises form:
 - a. Documentation demonstrating compliance with the:
 - i. Land use decision and permits.

- ii. Fire, health, safety, waste water, and building codes and laws.
- iii. State of Oregon licensing requirements.
- b. Failure to timely submit the annual report, fee, and Consent to Inspect Premises form or to demonstrate compliance with DCC 18.116. 330(C)(1)(a) shall serve as acknowledgement by the real property owner and licensee that the otherwise allowed use is not in compliance with Deschutes County Code; authorizes permit revocation under DCC Title 22, and may be relied upon by the State of Oregon to deny new or license renewal(s) for the subject use.
- c. Other information as may be reasonably required by the Planning Director to ensure compliance with Deschutes County Code, applicable State regulations, and to protect the public health, safety, and welfare.
- d. Marijuana Control Plan to be established and maintained by the Community Development Department.
- e. Conditions of Approval Agreement to be established and maintained by the Community Development Department.
- f. This information shall be public record subject to ORS 192.502(17).
([Ord. 2021-00x §x, 2021](#); Ord. 2021-007 §x, 2021; Ord. 2020-007 §16, 2020; Ord. 2019-012, 2019; Ord. 2018-012 §3, 2018; Ord. 2016-015 §10, 2016)

FINDINGS

I. BACKGROUND

A. Deschutes County Marijuana Regulation History

Following the passage of Ballot Measure 91 (2014), legalizing the sale and recreational use of marijuana, and HB 3400 (2015), refining the implementation of marijuana legalization, the Deschutes County Board of Commissioners (Board) adopted marijuana regulations in June 2016 (Ordinance Nos. 2016-013, 2016-014, 2016-015, 2016-017, 2016-018, and 2016-019). Following their initial adoption, the Board committed to reexamine Deschutes County's marijuana land use regulations post-implementation after gaining additional experience regulating the evolving marijuana industry. Deschutes County utilized extensive resources from 2017 to 2019 to attempt to develop reasonable time, place, and manner marijuana regulations. During this time, citizens on all sides of the issue vocally expressed their dissatisfaction, consistently expressing doubt that Deschutes County's regulations have the ability to successfully harmonize ostensibly incompatible land uses in the rural County due to marijuana's classification as a farm crop.

On August 19, 2019, the Board adopted by emergency Ordinance No. 2019-014, which prohibited the establishment of future (new) marijuana production and processing businesses in unincorporated Deschutes County (commonly referred to as an Opt Out). Ordinance No. 2019-015, adopted on October 16, 2019, further clarified that Ordinance No. 2019-014 has no impact on the County's past marijuana production land use decisions and does not preclude those applicants from moving forward in the licensure process with the Oregon Liquor Control Commission (OLCC).

Oregon law (ORS 475B.968) provides that Deschutes County may adopt ordinances prohibiting marijuana businesses, but must then refer the matter to County electors at the next statewide general election. On November 3, 2020, Ballot Measure 9-134 asked voters if they wanted to repeal the opt-out ordinances. As the ballot measure was phrased, a "yes" vote would once again allow new marijuana production and processing businesses in Deschutes County, and a "no" vote would continue to prohibit new marijuana production and processing businesses in Deschutes County. Ultimately, 57% of Deschutes County's electorate voted "no" to [Measure 9-134](#), thereby upholding the opt-out and prohibiting future/new commercial marijuana production and processing businesses from being established in the unincorporated County. Existing marijuana production and processing businesses may continue to operate per their conditions of approval. Retail marijuana businesses are unaffected by the opt-out.

II. PROPOSAL

This is a legislative text amendment to Deschutes County Code (DCC), Title 18, County Zoning. The amendments modify marijuana retail hours consistent with the Oregon Liquor and Control Commission (OLCC) requirements and provide the Board of County Commissioners the discretion to modify annual marijuana reporting requirements.

III. REVIEW CRITERIA

Deschutes County lacks specific criteria in DCC Titles 18, 22, or 23 for reviewing a legislative plan 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.

A. Statewide Planning Goals and Guidelines

Goal 1: Citizen Involvement: The amendments do not propose to change the structure of the County's citizen involvement program. Notice of the proposed amendments were provided to the *Bulletin* for 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 June 9, 2021. The Planning Commission will hold a public hearing on July 22, 2021. The Findings document provides the adequate factual basis for the amendments.

Goal 3: Agricultural Lands: The proposed amendments do not make changes regarding marijuana's status as a farm crop, or the appropriate location of commercial grow sites and processing operations, and therefore continue to support Statewide Goal 3, to preserve and maintain agricultural lands. The proposed amendments to the County Code are consistent with these provisions of state law and are therefore consistent with Goal 3.

Goal 4: Forest Lands: The proposed text amendments do not propose to change the County's Plan policies or implementing regulations for compliance with Goal 4, and therefore are in compliance.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources: Complies because the text amendment does not propose to change the County's Plan policies or implementing regulations for Goal 5 open spaces, scenic and historic areas, and natural resources.

Goal 6: Air, Water and Land Resources Quality: The proposed text amendments do not propose to change the County's Plan policies or implementing regulations for compliance with Goal 6, and therefore are in compliance.

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

Goal 8: Recreational Needs: Complies because the text amendment does not propose to change the County's Plan or implementing regulations regarding recreational needs.

Goal 9: Economy of the State: Goal 9 and its implementing regulations focus on economic analysis and economic development planning required in urban Comprehensive Plans. The proposed amendments apply to rural lands but do not propose to amend the Comprehensive Plan. Nevertheless, there are currently two retail marijuana businesses in unincorporated Deschutes County. DCC 18.116.330(C)(1) permits hours of operation from 9am to 7pm for marijuana retail; however, the OLCC permits hours of operation from 7am to 10pm. Increasing the allowable hours has the potential to increase those retail businesses' economic opportunities with respect to sales as well as employment. Changing the reporting requirements will not have a direct effect on the economy of the state.

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

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

Goal 12: Transportation: The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding the Transportation System Plan; therefore, they are in compliance.

Goal 13: Energy Conservation: Complies because the text amendments do not propose to change the County's Plan or implementing regulations regarding energy conservation.

Goal 14: Urbanization: Complies because the text amendments do not propose to change the County's Plan or implementing regulations regarding urbanization.

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

D. Deschutes County Comprehensive Plan

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

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

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

Section 2.2, Agricultural Lands Policies, states that Goal 1 is to "preserve and maintain agricultural lands and the agricultural industry." Changing annual reporting requirements for existing marijuana production and processing businesses will not have a direct effect on the agricultural lands they may operate on. Retail businesses are not permitted on agricultural lands.

Goal 2 promotes a diversified, sustainable, revenue-generating agricultural sector. Policy 2.2.10 calls for the promotion of economically viable opportunities and practices while Policy 2.2.11 encourages small farming enterprises including but not limited to, niche markets and organic farming and valued-added projects. The proposed text amendments do not change existing marijuana businesses' ability to operate as a revenue generating agricultural businesses.

Goal 3 specifies the Exclusive Farm Use (EFU) policies, classifications, and codes are consistent with local and emerging agricultural conditions and markets. As noted above, the proposed amendments only impact reporting aspects of marijuana recreational production and processing businesses.



MEMORANDUM

TO: Deschutes County Planning Commission

FROM: Nick Lelack, AICP, Director
Peter Gutowsky, AICP, Planning Manager
Tanya Saltzman, AICP, Senior Planner

DATE: July 15, 2021

SUBJECT: Senate Bill 391 / Rural Accessory Dwelling Units

The purpose of this work session is to provide the Planning Commission with an overview of Senate Bill (SB) 391, which allows counties to allow accessory dwelling units (ADUs) in rural residential areas. Staff was scheduled to meet with the Board of County Commissioners (Board) for an initial discussion on July 14, 2021; staff anticipates scheduling a follow-up work session with the Board later in the summer to continue the discussion and seek further direction, and will update the Planning Commission as requested.

SB 391 depends on the adoption of statewide wildfire hazard maps and related wildfire provisions, including a revised definition of the wildland urban interface and the wildfire hazard zones; these wildfire provisions are outlined in the recently-passed SB 762. The complex process of adopting these maps and related provisions is governed at the state level, and it is estimated that final adoption will not occur until mid-2022 at the earliest. While the rural accessory dwelling law is effective immediately and counties may adopt ordinances to allow accessory dwelling units, local governments cannot implement the law (meaning they cannot allow or approve ADUs) until the adoption of the statewide wildfire maps. It is staff's intention to work with the Board to identify other parts of SB 391 that could be addressed in the interim so that code amendments will be ready upon adoption of the statewide wildfire maps.

I. Background

Rural residential zones exist throughout Oregon. By definition, rural residential zones exist outside of urban growth boundaries (UGBs) but are excluded from the state's resource land (farm and forest zone) protections. With certain exceptions, those protections allow residential uses only in conjunction with a farm or forest use. However, in rural residential zones, a dwelling can be a primary use of the land. Currently, state law allows counties to permit an additional dwelling on a property containing a house built prior to 1945.¹ However, unlike in urban zones, rural residential zones do not have any other by-

¹ House Bill 3012 (2017).

right accessory dwelling options, making inter-generational and alternative housing options difficult to achieve.

II. SB 391 / Overview

The Oregon Legislature adopted SB 391 into law on June 23, 2021 (Attachment 1). It authorizes a county to allow an owner of a lot or parcel within a rural residential zone to construct one ADU subject to certain restrictions and limitations. SB 391 does not obligate a county to allow ADUs. It also does not prohibit a county from imposing any additional restrictions, including those relating to the construction of garages and outbuildings that support an ADU. The matrix in Section 4 summarizes the new law as it pertains to Deschutes County.

Attachment 2 illustrates the potential eligible properties for rural ADUS using the *basic criteria only*—rural residential zones, parcels larger than 2 acres, containing a single-family dwelling. Using those criteria, there appears to be initial eligibility for approximately 7,950 properties. This does not take into account numerous other provisions, including wastewater/sanitation, site design, wildfire constraints, and others.

III. Implementation Process

In order to implement SB 391 for Deschutes County, several steps must occur:

1. First, decide whether to allow ADUs or not. If yes, then the Board of County Commissioners (Board) must adopt an ordinance to allow ADUs in Deschutes County Code (DCC).
2. The Board must decide if they would like to adopt the text of the bill as is, or if they would like to modify certain provisions—this bill allows counties to place additional conditions (be more restrictive) than state law. The matrix below provides explanations of various conditions and potential decision points for the Board.
3. If the Board would like to develop and adopt additional local standards, they will need to decide the process to develop the local standards, including public engagement.
4. Once the Board decides whether to adopt the bill as is or with additional local standards, the public hearing process to adopt the law into DCC will begin.

As noted above, it is important to note that in addition to the provisions that Commissioners may choose to examine more closely, SB 391 depends on the adoption of statewide wildfire hazard maps and related provisions per SB 762. The complex process of adopting these maps and other provisions is governed at the state level, and it is estimated that final adoption will not occur until mid-2022 at the earliest. While this law is effective immediately and counties may adopt ordinances to allow ADUs, local governments cannot implement the law (meaning they cannot allow or approve ADUs) until the adoption of the statewide wildfire maps. It is staff's intention to work with the Board to finalize all other parts of SB 391 in the interim so that code amendments will be ready upon adoption of the statewide wildfire maps.

IV. SB 391 Matrix

The matrix below provides a summary of criteria contained in SB 391, along with explanations and context; additionally, the matrix highlights elements that will require action, whether additional research by staff, coordination with other agencies, a decision by the Board, or similar.

SB 391 – Rural Accessory Dwelling Unit Legislation

Eligibility	Restrictions	Comments
1. Rural Residential Exception Areas, Minimum Lot Size, and Dwelling Requirements	<ul style="list-style-type: none"> Applies to Rural Residential (RR10), Multiple Use Agricultural (MUA10), Urban Area Reserve (UAR-10) and Suburban Residential (SR 2.5) zones. Lot or parcel must be at least two acres in size. One single-family dwelling must be sited on the lot or parcel. 	<ul style="list-style-type: none"> There are over 10,000 lots in Southern Deschutes County. The Oregon Department of Environmental Quality (DEQ), the US Geological Survey (USGS) and Deschutes County have determined that the safety of the groundwater in southern Deschutes County is threatened by nitrate contamination from traditional onsite septic wastewater treatment systems.² Consider raising the eligible lot or parcel size in this area (South of Sunriver) to 5 to 10 acres.
2. Existing Dwelling Nuisance	<ul style="list-style-type: none"> The existing single-family dwelling is not subject to an order declaring it a nuisance or pending action under ORS 105.550 to 105.600. 	<ul style="list-style-type: none"> ORS 105.550 to 105.600, Abatement of Nuisance, provide local governments specific authority to abate certain public nuisance activities that affects the health, safety and welfare of its community.
3. ADU Sanitation Requirements	<ul style="list-style-type: none"> The ADU must comply with all applicable laws and regulations relating to sanitization and wastewater disposal and treatment. 	<ul style="list-style-type: none"> In Southern Deschutes County, rural residential density, even at two acres, can create physical challenges for upgrading conventional septic systems and drainfields. Consider raising the eligible lot or parcel size in this area (South of Sunriver) to 5 to 10 acres.
4. ADU Square Footage Requirements	<ul style="list-style-type: none"> The ADU cannot include more than 900 square feet of useable floor area. 	<ul style="list-style-type: none"> Useable floor area is undefined.

² <https://www.oregon.gov/deq/wq/programs/Pages/Deschutes-Klamath-Groundwater-Protection.aspx>

Eligibility	Restrictions	Comments
5. ADU Distance Requirements	<ul style="list-style-type: none"> The ADU is required to be located no farther than 100 feet from the existing single-family dwelling. 	<ul style="list-style-type: none"> It is unclear whether the ADU in its entirety must be within 100 feet of the existing single-family dwelling or just a portion.
6. ADU Water Supply Requirements	<ul style="list-style-type: none"> If the ADU is relying on a domestic well, no portion of the lot or parcel can be within new or existing ground water uses restricted by the Water Resource Commission. 	<ul style="list-style-type: none"> The Water Resource Commission has not restricted new or existing domestic water use in Deschutes County for 1) watering any lawn or noncommercial garden, not exceeding one-half acre, or 2) serving a domestic use, not exceeding 15,000 gallons a day.
7. ADU Water Supply Source Option	<ul style="list-style-type: none"> A county may require that an ADU be served by the same water supply source or water supply system as the existing single-family dwelling, provided such is allowed by an existing water right or a use under ORS 537.545 (exempt uses).³ 	<ul style="list-style-type: none"> This provision is optional
8. ADU / Metolius Area of Critical State Concern / Limitations	<ul style="list-style-type: none"> No portion of a lot or parcel can be within a designated area of critical state concern. 	<ul style="list-style-type: none"> The Oregon legislature designated the Metolius River Basin as an "area of critical statewide concern" in 2009.
9. ADU Setback Requirements	<ul style="list-style-type: none"> The ADU is required to have adequate setbacks from adjacent lands zoned Exclusive Farm Use (EFU) or Forest Use. 	<ul style="list-style-type: none"> Adequate setbacks are not defined.

³ https://oregon.public.law/statutes/ors_537.545

Eligibility	Restrictions	Comments
10. ADU / Wildland-Urban Interface Requirements	<ul style="list-style-type: none"> The lot or parcel must comply with the rules of the State Board of Forestry under ORS 477.015 to 477.061.⁴ 	<ul style="list-style-type: none"> ORS 477 pertains to the wildland-urban interface (WUI), formerly known as the forestland-urban interface. SB 762, adopted in June 2021, rewrites several sections of ORS 477 cited in SB 391. Most significantly, the new provisions of ORS 477 require the State Board of Forestry to define the wildland-urban interface based on national best practices and define criteria and classes of the WUI to be included in the statewide wildfire hazard map. Until the provisions of the revised ORS 477 are met at the state level, the County will be unable to define the related criteria in SB 391.
11. ADU / Outside Wildland-Urban Interface Area Requirements	<ul style="list-style-type: none"> If the ADU is not subject to ORS 477.015 to 477.061 (i.e. outside of the newly-defined wildland-urban interface), it must have defensible space and fuel break standards as developed in consultation with local fire protection service providers. 	<ul style="list-style-type: none"> See above re: ORS 477.

⁴ Provisions in ORS 477.015-061, Urban Interface Fire Protection, were established through efforts of the Oregon Department of Forestry, the Office of the State Fire Marshal, fire service agencies from across the state, and the Commissioners of Deschutes, Jefferson, and Jackson Counties. It is designed to address the expanding interface wildfire problem within Oregon Department of Forestry Fire Protection Districts. Full implementation of the statute occurred on January 1, 2002. The statute does the following:

1. Directs the State Forester to establish a system of classifying forestland-urban interface areas;
2. Defines forestland-urban interface areas;
3. Provides education to property owners about fire hazards in forestland-urban interface areas. Allows for a forestland-urban interface county committee to establish classification standards;
4. Requires maps identifying classified areas to be made public;
5. Requires public hearings and mailings to affected property owners on proposed classifications;
6. Allows property owners appeal rights;
7. Directs the Board of Forestry to promulgate rules that set minimum acceptable standards to minimize and mitigate fire hazards within forestland-urban interface areas; and
8. Creates a certification system for property owners meeting acceptable standards. Establishes a \$100,000 liability limit for cost of suppressing fires, if certification requirements are not met.

Eligibility	Restrictions	Comments
12. ADU / Statewide Wildfire Map Requirements	<ul style="list-style-type: none"> Statewide wildfire risk maps must first be approved per SB 762. ADUs are then required to comply with the Oregon residential specialty code relating to wildfire hazard mitigation for the mapped area (R327.4). 	<ul style="list-style-type: none"> The State of Oregon wildfire risk maps are anticipated for adoption in mid-2022.
13. ADU Adequate Access and Evacuation for Firefighting Requirements	<ul style="list-style-type: none"> Local regulations must ensure the ADU has adequate access for firefighting equipment, safe evacuation and staged evacuation areas 	<ul style="list-style-type: none"> This provision will require coordination with Rural Fire Protection and Road Districts. Adequate access, safe evacuation and staged evacuation areas are not defined.
14. ADU Occupancy Requirements	<ul style="list-style-type: none"> ADUs cannot be allowed for vacation occupancy, as defined in ORS 90.100. 	<ul style="list-style-type: none"> Consider requiring a restrictive covenant that is recorded, prohibiting the ADU from being used as a vacation rental.
15. ADU Land Division Requirements	<ul style="list-style-type: none"> If land divided, the single family dwelling and ADU cannot be situated on a different lot or parcel. 	<ul style="list-style-type: none"> None.
16. ADU / Additional Units	<ul style="list-style-type: none"> A second ADU is not allowed 	<ul style="list-style-type: none"> Legislative amendments will need to clarify that a medical hardship dwelling and/or RV are not allowed.

V. SB 391 Decision Points Necessary Prior to Drafting of Amendments

If the Board wants to adopt SB 391 into DCC, it must first determine the desired procedural decision type in addition to deciding on a number of substantive issues contained in the bill itself.

Procedural Issues – Ministerial Decision versus Limited Land Use Decision

1. Ministerial Decision. This type of decision entails that the amendments are structured with clear and objective standards for ADU applications, require no discretion from staff, and as such would not be subject to public notice or public hearings requirements.
2. Limited Land Use Decision. Limited land use decisions can, if desired, be structured so notice of application is sent to neighboring property owners. Regardless, these types of decisions require a

mailed notice of decision to neighbors and those who have standing by commenting on an application. The land use decision can be appealed to a Hearings Officer and/or the Board.

Three provisions of SB 391 help illustrate the comparison between a ministerial decision and a limited land use decision:

- ADU / Wildland-Urban Interface Requirements. SB 391 requires applications to demonstrate if applicable that the subject property complies with the rules of the Department of Forestry (DOF) for mitigating fire hazards, as defined in ORS 477.015 to ORS 477.061. Legislative amendments structured for a ministerial decision can specify DOF standards as part of a complete application.

Alternatively, for a limited land use decision, amendments can require that an applicant demonstrate (forester fuel thinning contract, etc.) the subject property will mitigate fire hazards consistent with DOF standards. DOF certification would then be a condition of land use approval prior to issuing a building permit.

- ADU / Outside Wildland-Urban Interface Requirements. SB 391 requires for those ADUs not subject to ORS 477.015 to ORS 477.061 (i.e., outside a DOF Wildlife-Urban Interface designation), to demonstrate that the subject property has implemented defensible space and fuel break standards as developed in consultation with local fire protection service providers. Legislative amendments structured for a ministerial decision can specify documentation by a local fire protection service provider as part of a complete application.

Alternatively, for a limited land use decision, amendments can require that an applicant demonstrate (forester fuel thinning contract, etc.) the subject property will mitigate defensible space and fuel break standards consistent with local fire protection service providers. Local fire protection service provider documentation would then be a condition of land use approval prior to issuing a building permit.

- ADU / Access & Evacuation Requirements. SB 391 requires that each ADU have adequate access for firefighting equipment, safe evacuation and staged evacuation areas. Legislative amendments structured for a ministerial decision will require clearly and objectively defining adequate access, safe evacuation and staged evacuation areas. Based on those definitions, an applicant could then submit the requisite documentation as part of a complete application.

Alternatively, for a limited land use decision, amendments can require that an applicant demonstrate subject to discretionary criteria that adequate access, safe evacuation and staged evacuation areas are provided. Fulfilling this obligation would then be a condition of land use approval prior to issuing a building permit.

Substantive Issues

As noted in the above matrix, if the Board wants to adopt SB 391 into DCC, the following items require clarification by the County prior to drafting legislative amendments. These items are separate from wildfire-related provisions that will be determined at the state level.

3. Parcel Size. Consider raising the eligible lot or parcel size in Southern Deschutes County (South of Sunriver) to 5 acres.
4. Floor Area. Define “useable floor area” for the ADU.
5. Distance Requirements. Clarify whether the ADU in its entirety must be within 100 feet of the existing single-family dwelling or just a portion.
6. Setbacks. Define adequate ADU setbacks from adjacent lands zoned EFU or Forest Use.
7. Restrictive Covenant. Consider requiring a restrictive covenant that is recorded, prohibiting the ADU from being used as a vacation rental.
8. Water Supply Source. Clarify whether to require that an ADU be served by the same water supply source or water supply system as the existing single-family dwelling.

VI. Next Steps

Staff can schedule a follow-up work session with the Planning Commission later in the summer to continue the discussion and provide any updates.

Attachment:

1. SB 391
2. SB 391 Initial Criteria Map

Enrolled Senate Bill 391

Sponsored by Senators DEMBROW, FINDLEY, KNOPP; Senators GOLDEN, HANSELL, JAMA, KENNEMER, Representatives BYNUM, LEVY, MORGAN, SMITH DB, ZIKA (Pre-session filed.)

CHAPTER

AN ACT

Relating to accessory dwelling units in rural residential areas; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 215.

SECTION 2. (1) As used in this section:

(a) "Accessory dwelling unit" has the meaning given that term in ORS 215.501.

(b) "Area zoned for rural residential use" has the meaning given that term in ORS 215.501.

(c) "Single-family dwelling" has the meaning given that term in ORS 215.501.

(2) Consistent with a county's comprehensive plan, a county may allow an owner of a lot or parcel within an area zoned for rural residential use to construct one accessory dwelling unit on the lot or parcel, provided:

(a) The lot or parcel is not located within an area designated as an urban reserve as defined in ORS 195.137;

(b) The lot or parcel is at least two acres in size;

(c) One single-family dwelling is sited on the lot or parcel;

(d) 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;

(e) The accessory dwelling unit will comply with all applicable laws and regulations relating to sanitation and wastewater disposal and treatment;

(f) The accessory dwelling unit will not include more than 900 square feet of useable floor area;

(g) The accessory dwelling unit will be located no farther than 100 feet from the existing single-family dwelling;

(h) 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;

(i) No portion of the lot or parcel is within a designated area of critical state concern;

(j) 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;

(k) The lot or parcel and accessory dwelling unit comply with rules of the State Board of Forestry under ORS 477.015 to 477.061;

(L) Statewide wildfire risk maps have been approved and the accessory dwelling unit complies with the Oregon residential specialty code relating to wildfire hazard mitigation for the mapped area; and

(m) The county has adopted land use regulations that ensure that:

(A) The accessory dwelling unit has adequate setbacks from adjacent lands zoned for resource use;

(B) The accessory dwelling unit has adequate access for firefighting equipment, safe evacuation and staged evacuation areas; and

(C) If the accessory dwelling unit is not subject to ORS 477.015 to 477.061, the accessory dwelling unit has defensible space and fuel break standards as developed in consultation with local fire protection service providers.

(3) A county may not allow an accessory dwelling unit allowed under this section to be used for vacation occupancy, as defined in ORS 90.100.

(4) A county that allows construction of an accessory dwelling unit under this section may not approve:

(a) A subdivision, partition or other division of the lot or parcel so that the existing single-family dwelling is situated on a different lot or parcel than the accessory dwelling unit.

(b) Construction of an additional accessory dwelling unit on the same lot or parcel.

(5) A county may require that an accessory dwelling unit constructed under this section be served by the same water supply source or water supply system as the existing single-family dwelling, provided such use is allowed for the accessory dwelling unit by an existing water right or a use under ORS 537.545. 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.

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

(7) Nothing in this section requires a county to allow any accessory dwelling units in areas zoned for rural residential use or prohibits a county from imposing any additional restrictions on accessory dwelling units in areas zoned for rural residential use, including restrictions on the construction of garages and outbuildings that support an accessory dwelling unit.

SECTION 3. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by Senate April 15, 2021

Repassed by Senate June 9, 2021

.....
Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 7, 2021

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

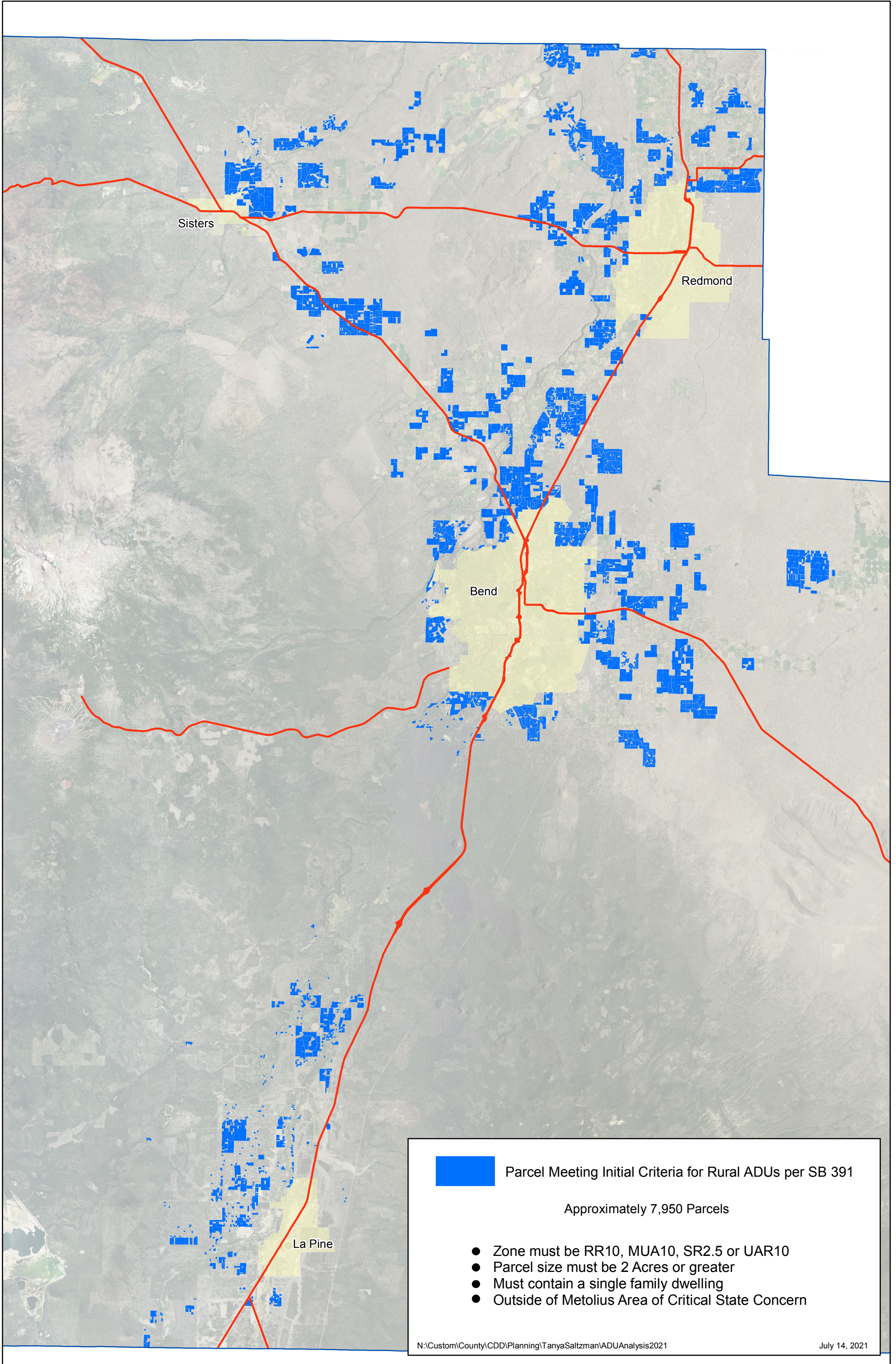
.....M.,....., 2021

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Shemia Fagan, Secretary of State



1" = 3.5 Miles

Parcels Meeting Initial Criteria for Rural ADUs per SB 391



Parcel Meeting Initial Criteria for Rural ADUs per SB 391

Approximately 7,950 Parcels

- Zone must be RR10, MUA10, SR2.5 or UAR10
- Parcel size must be 2 Acres or greater
- Must contain a single family dwelling
- Outside of Metolius Area of Critical State Concern