COMMUNITY DEVELOPMENT

DESCHUTES COUNTY PLANNING COMMISSION

5:30 PM, THURSDAY, JULY 13, 2023
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 in person, electronically, and by phone.

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

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/86896938296?pwd=Q2JCTUgxOU94T213anlocW5CVjQzdz09

Passcode: 972041

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: 868 9693 8296 and Passcode: 972041. Written comments can also be provided for the public comment section to planningcommission@deschutes.org by 5:00 p.m. on July 12. They will be entered into the record.

I. CALL TO ORDER

II. APPROVAL OF MINUTES - May 11 and June 8

III. PUBLIC COMMENT

IV. ACTION ITEMS

1. Planning Commission Training

   Two new Planning Commissioners, Kelsey Kelley and Patrick Trowbridge, start their four year terms this month. To assimilate them into this new position, on July 13 staff will provide a training / refresher to the Planning Commission on several topics.

2. Text Amendment Work Session - Senate Bills (SBs) 391/644 and Rural Accessory Dwelling Units (*Kyle Collins, Associate Planner*)

V. PLANNING COMMISSION AND STAFF COMMENTS

VI. ADJOURN

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

COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Deschutes County Planning Commission

FROM: Peter Gutowsky, AICP, Director
Will Groves, Planning Manager
Stephanie Marshall, Assistant Legal Counsel

DATE: July 6, 2023

SUBJECT: Planning Commission Training

I. Overview

Two new Planning Commissioners, Kelsey Kelley and Patrick Trowbridge, start their four year terms this month. To assimilate them into this new position, on July 13 staff will provide a training / refresher to the Planning Commission on several topics:

- Deschutes County Planning Program
- Community Development Department Website / Official Records for Public Hearings
- Conflicts of Interest
- Public Meetings Law
- Measures 49 and 50

Stephanie Marshall, Assistant Legal Counsel will be joining CDD staff on July 13.

Attachment

Deschutes County Planning Program Overview / PowerPoint

DESCHUTES COUNTY

PLANNING PROGRAM OVERVIEW

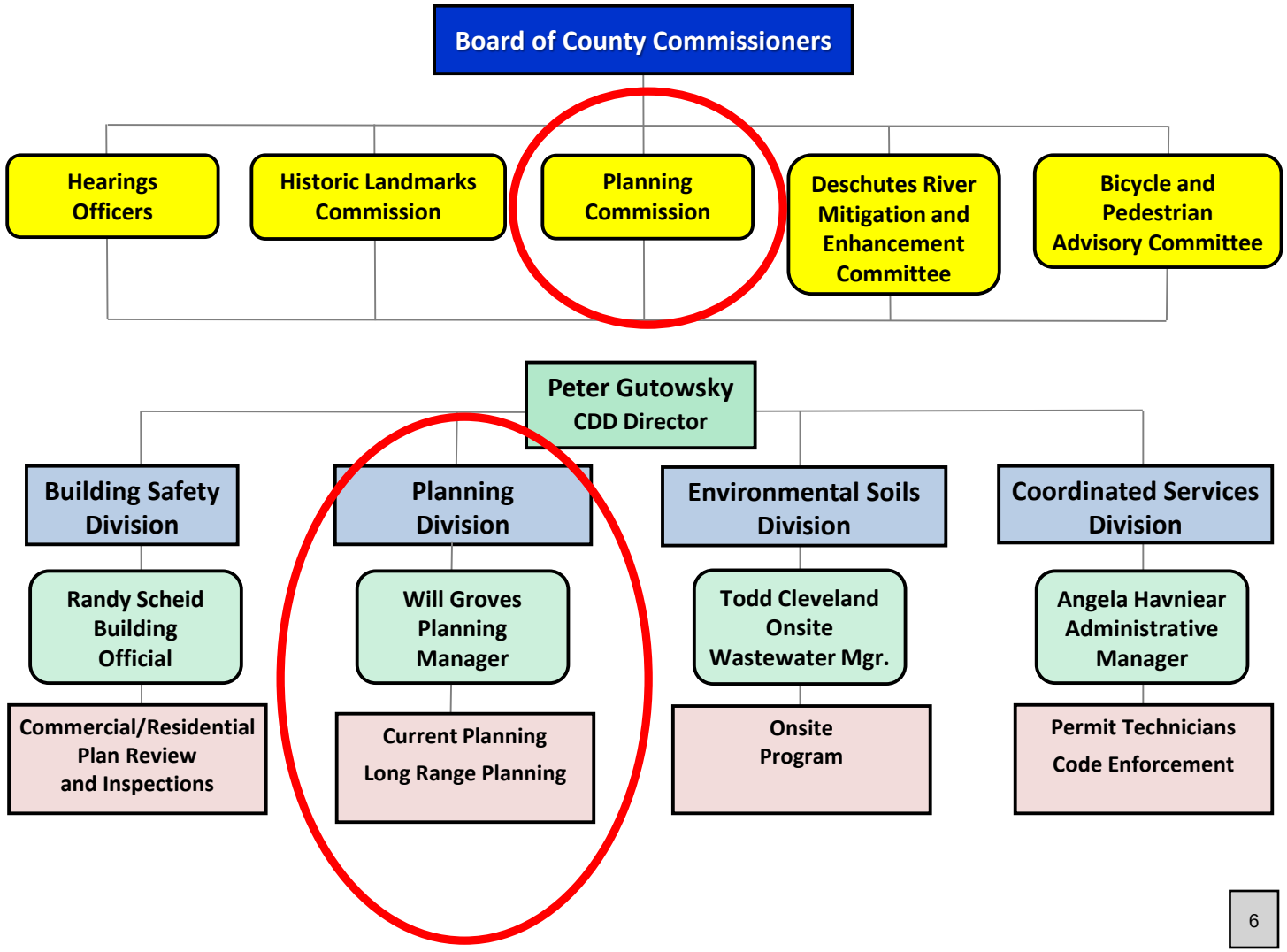
July 13, 2023

CDD Mission Statement

- Protect Public Health & Safety
- 1-stop shop for development services
- Coordination
- Partnerships
- Fee Supported

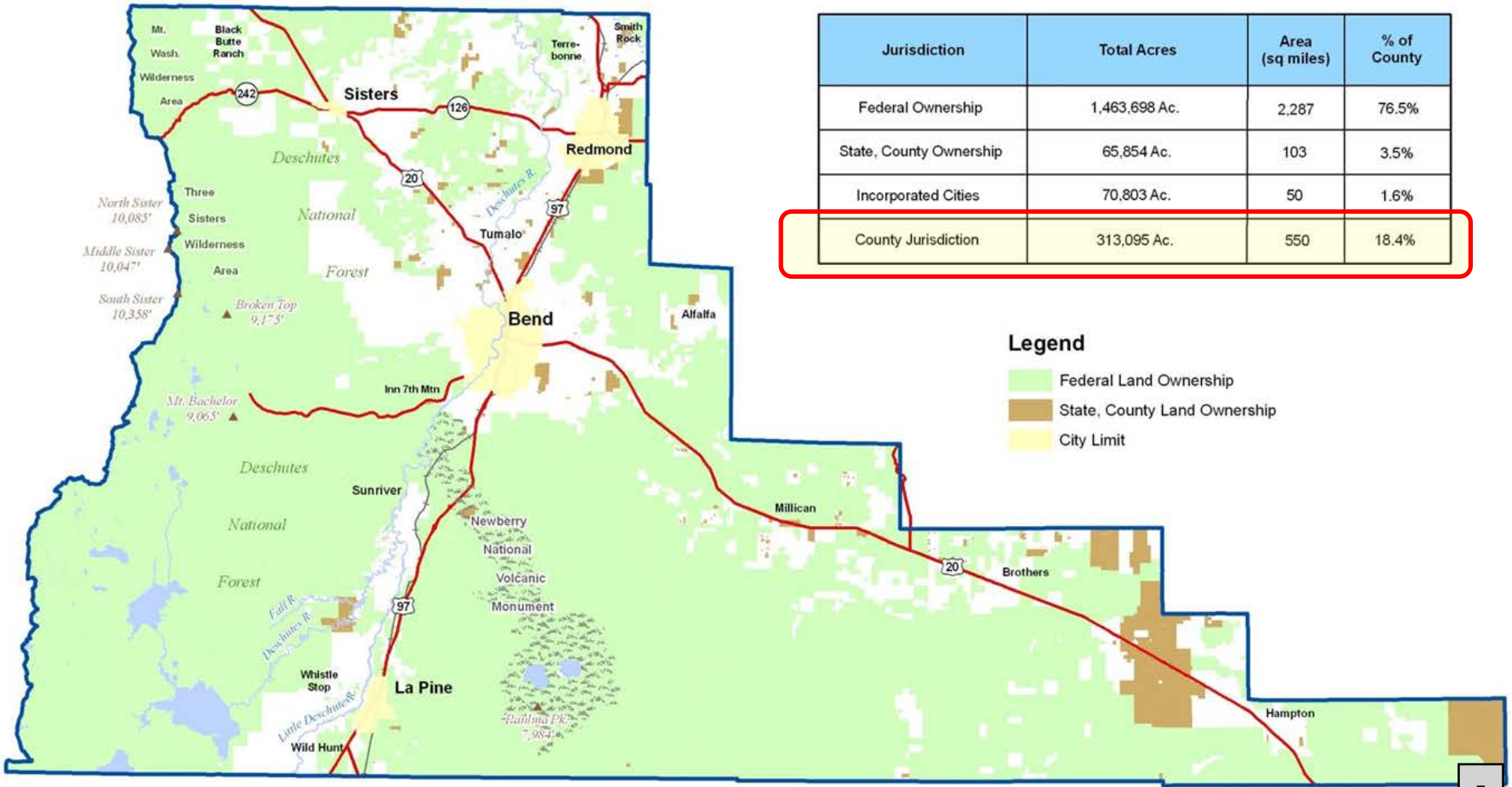
To **facilitate** orderly growth and development in the Deschutes County community through **coordinated** programs of Land Use Planning, Environmental Soils, Building Safety, Code Enforcement, **education**, and **service** to the public.

Overview

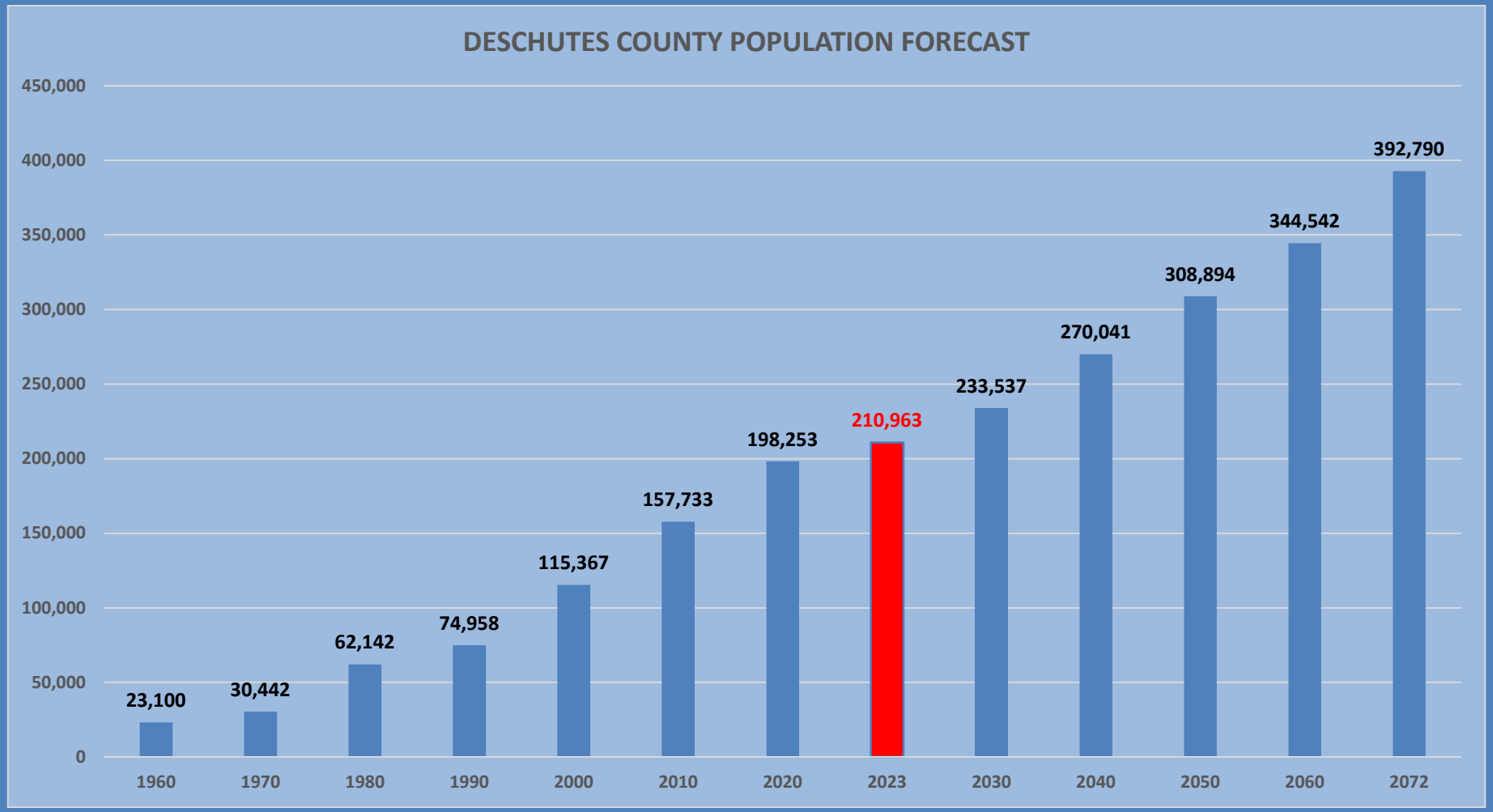

Board of County Commissioners
Hearings Officers
Historic Landmarks Commission
Planning Commission
Deschutes River Mitigation and Enhancement Committee
Bicycle and Pedestrian Advisory Committee
Peter Gutowsky
CDD Director
Building Safety Division
Planning Division
Environmental Soils Division
Coordinated Services Division
Randy Scheid
Building Official
Will Groves
Planning Manager
Todd Cleveland
Onsite Wastewater Mgr.
Angela Havniear
Administrative Manager
Commercial/Residential Plan Review and Inspections
Current Planning
Long Range Planning
Onsite Program
Permit Technicians
Code Enforcement

Jurisdiction

Jurisdiction	Total Acres	Area (sq miles)	% of County
Federal Ownership	1,463,698 Ac.	2,287	76.5%
State, County Ownership	65,854 Ac.	103	3.5%
Incorporated Cities	70,803 Ac.	50	1.6%
County Jurisdiction	313,095 Ac.	550	18.4%



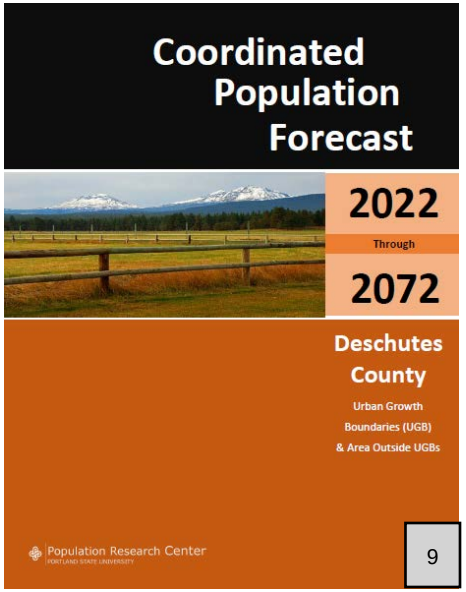
Deschutes County Growth*



*Portland State University Population Research Center

PSU Population Forecast

Geographic Area	2000	2010	*AAGR 2023-2047	2023	2047	2072
Deschutes County	**114,827**	**157,733**	**1.5%**	**210,836**	**298,937**	**392,790**
Bend	52,163	77,010	1.7%	105,794	160,361	225,619
Redmond	15,524	26,508	1.9%	38,059	60,060	82,601
Sisters	961	2,038	3.4%	3,554	7,911	14,881
La Pine	899	1,653	2.5%	2,806	5,129	8,336
Unincorporated	45,280	50,524	0.3%	60,624	65,476	61,352



PLANNING COMMISSION

Planning Commission

7 MEMBERS

Jessica Kieras (2025)
Chair, Redmond Area

Nathan Hovekamp (2027)
Vice Chair, Bend Area

Susan Altman (2024)
At-Large

Matt Cyrus (2026)
Sisters Area

Kelsey Kelley (2027)
Tumalo Area

Patrick Trowbridge (2027)
At-Large

Toni Williams (2025)
South County

- Appointed by the Board of County Commissioners
- Citizen Involvement Committee (Goal 1)
- Serves the unincorporated area of Deschutes County
- Volunteers
- Powers, Duties, Roles:
  - Encourage and gather public input on land use planning, transportation, economic development, and natural resource issues
  - Evaluate and make recommendations on land use policy and land use code changes to the Board of County Commissioners
  - Carry out comprehensive planning program, using citizen involvement and public hearings and coordinate activities with other jurisdictions, planning bodies and districts
  - Evaluate and make recommendations on Annual Planning Division Work Plan following public hearing(s)
  - Implement the Work Plan – Long Range Planning Projects
- Meeting Schedule: 2nd & 4th Thursdays each month

Planning Commission

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Tumalo Area

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At-Large

Toni Williams (2025)
South County

- No more than 2 members may be engaged in the same kind of occupation, business, trade or profession or be members, officers, or employees of any partnership or corporation that engages principally in buying, selling or developing of real estate for profit
- Term limits: Two 4-year terms or 10 years (if filling a vacancy)
- Be representative of the various geographic areas of the County, as much as possible:
  - 2 members from Bend Area
  - 1 member At-Large
  - 1 member from Redmond Area
  - 1 member from Sisters Area
  - 1 member from South County (La Pine/Sunriver area)
  - 1 member from Tumalo Area

Planning Commission

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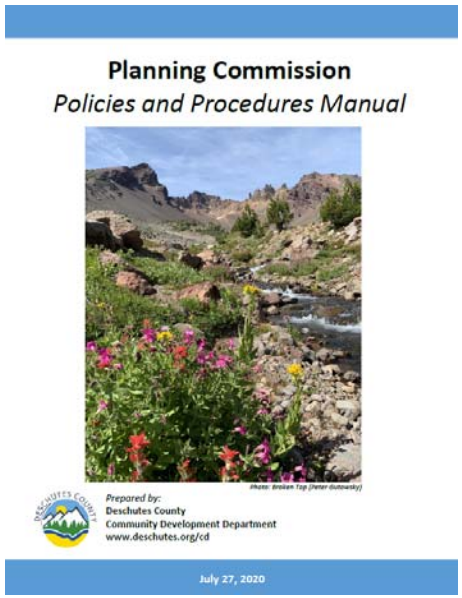
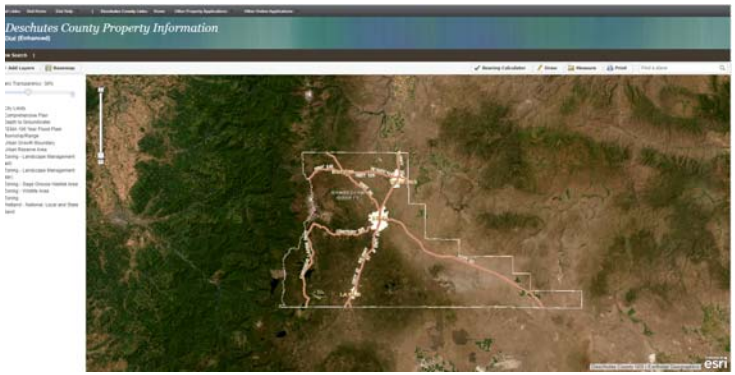
South County

Onboarding New Commissioners





Overview of Public Meetings Law

Roles, Responsibilities & Relations

PLANNING PROGRAM

Statewide Planning Goals

Goal 1 Citizen Involvement

Goal 2 Land Use Planning

Goal 3 Agricultural Lands

Goal 4 Forest Lands

Goal 5 Open Spaces, Scenic & Historic Areas and Natural Resources

Goal 6 Air, Water and Land Resources Quality

Goal 7 Areas Subject to Natural Disasters and Hazards

Goal 8 Recreation Needs

Goal 9 Economy of the State

Goal 10 Housing

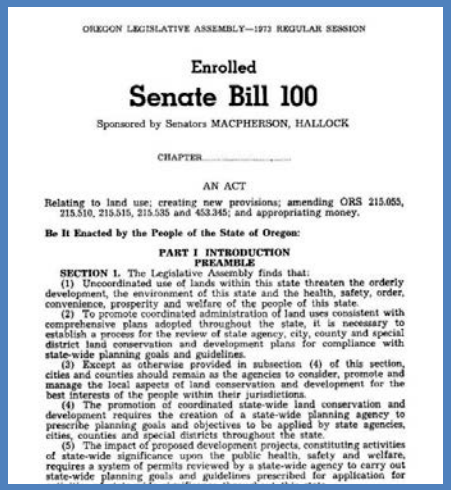
Goal 11 Public Facilities and Services

Goal 12 Transportation

Goal 13 Energy

Goal 14 Urbanization

Goals 15-19 Willamette River Greenway & Coastal Goals



OREGON LEGISLATIVE ASSEMBLY—1973 REGULAR SESSION

Enrolled

Senate Bill 100

Sponsored by Senators MACPHERSON, HALLOCK

CHAPTER.....

AN ACT

Relating to land use; creating new provisions; amending ORS 215.055, 215.510, 215.515, 215.535 and 453.345; and appropriating money.

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

PART I INTRODUCTION
PREAMBLE

SECTION 1. The Legislative Assembly finds that:

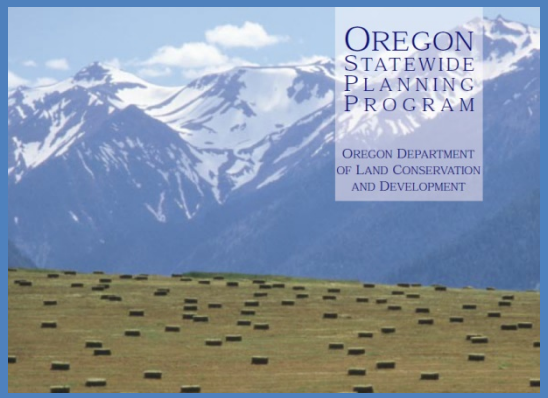
(1) Uncoordinated use of lands within this state threaten the orderly development, the environment of this state and the health, safety, order, convenience, prosperity and welfare of the people of this state.

(2) To promote coordinated administration of land uses consistent with comprehensive plans adopted throughout the state, it is necessary to establish a process for the review of state agency, city, county and special district land conservation and development plans for compliance with state-wide planning goals and guidelines.

(3) Except as otherwise provided in subsection (4) of this section, cities and counties should remain as the agencies to consider, promote and manage the local aspects of land conservation and development for the best interests of the people within their jurisdictions.

(4) The promotion of coordinated state-wide land conservation and development requires the creation of a state-wide planning agency to prescribe planning goals and objectives to be applied by state agencies, cities, counties and special districts throughout the state.

(5) The impact of proposed development projects, constituting activities of state-wide significance upon the public health, safety and welfare, requires a system of permits reviewed by a state-wide agency to carry out state-wide planning goals and guidelines prescribed for application for



Land Use Planning Foundation

- **1926 U.S. Supreme Court decision, *Village of Euclid vs. Ambler Realty Co.***

  Upholds legality of local zoning powers

- **Senate Bill 100** (1973)

  - Protect farm and forest land
  - Citizen involvement
  - Statewide Planning Goals
  - Cities and counties required to adopt comprehensive plans
  - Land Conservation and Development Commission
  - Land Use Board of Appeals

- ***Fasano v. Board of County Commissioners of Washington County*** (1973)

  - Required zoning to be consistent with comprehensive plans

- **Deschutes County Comprehensive Plan**

  - Comprehensive Plan amended in 1979 to comply with Statewide Planning Goals

County Planning History

1965 Zoning ordinance established for part of County. Repealed by voters in 1968

1970 County adopted first Comprehensive Plan

1972 Adopted zoning ordinance that applied countywide

1979 Updated Comprehensive Plan addressing Statewide Goals

1981 State approved Comprehensive Plan

1988 Periodic Review initiated

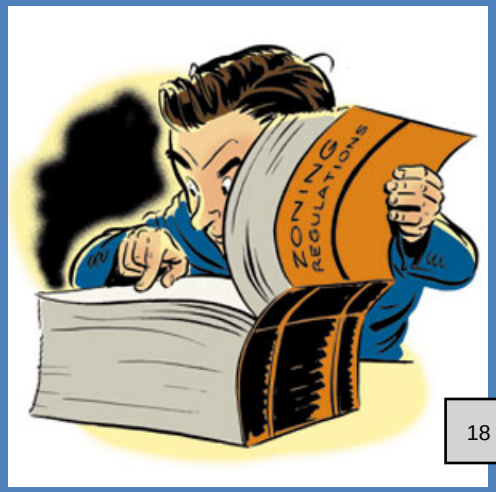
1992 Farm Study Plan Amendment

2000 Regional Problem Solving Plan Amendment

2011 Comprehensive Plan Update

Current Planning

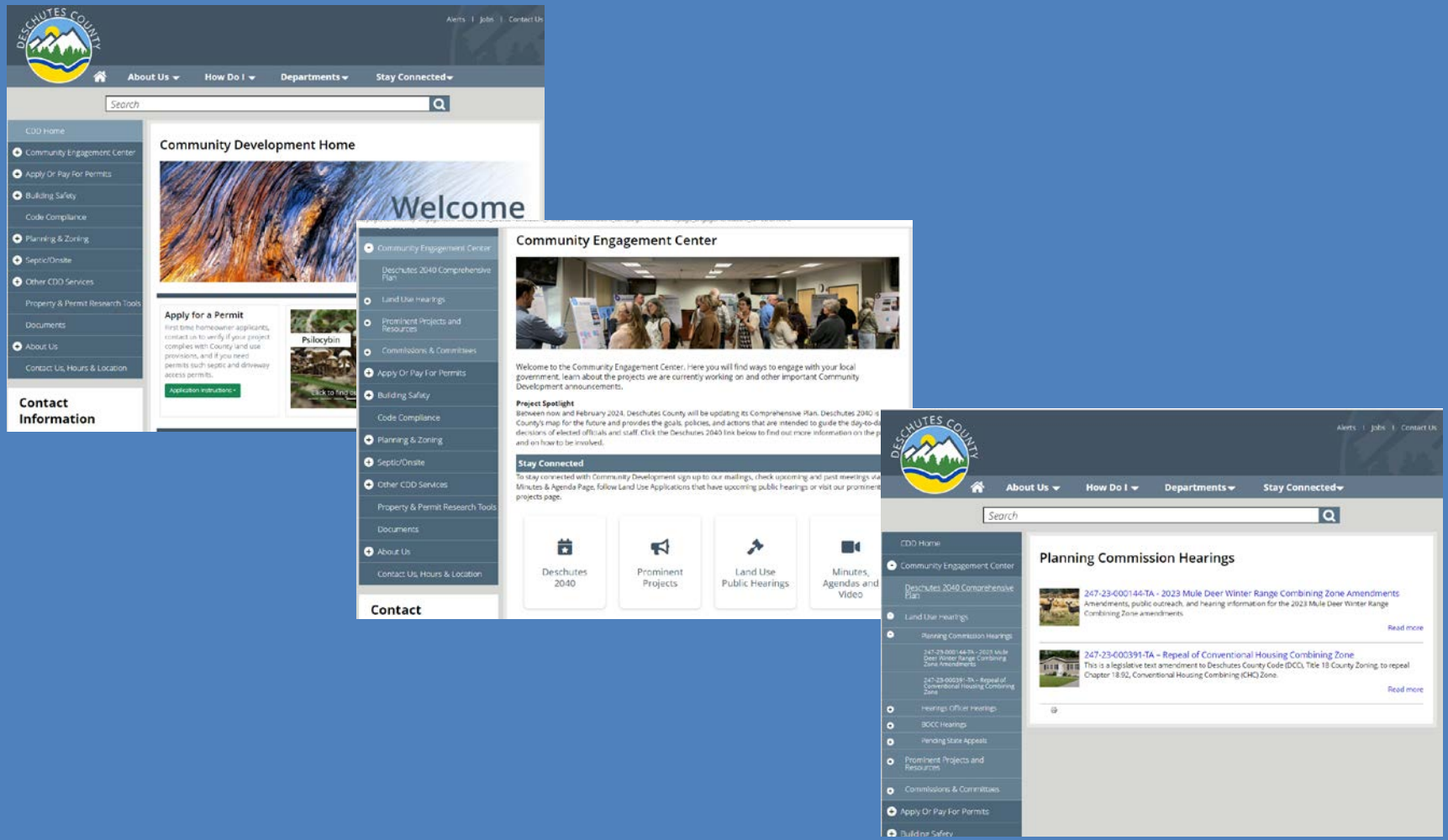
- Implement Comprehensive Plan and County Code on a daily basis
- Review land use planning applications in rural areas to determine if they comply with County regulations and State laws
- Respond to public inquiries about development proposals
- Review building and septic permits for consistency with land use regulations



Long Range Planning

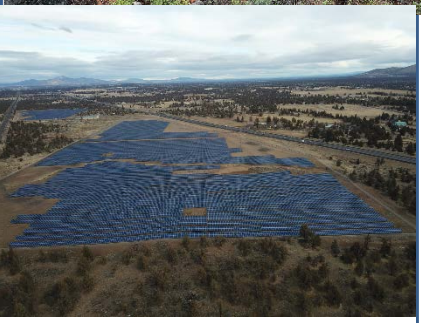
- Develop land use policy and regulations through:
  - Comprehensive Plan
  - Area Plans (Chapters of the Comprehensive Plan)
  - Deschutes County Code
  - Special Projects
- Coordinating with cities and agencies on planning projects
- Performing ongoing tasks (population forecasts, monitoring legislation, serving on committees, etc.)

CDD Website / Record



https://www.deschutes.org/cd

Themes for the Future



- Managing Population Growth & Demographic Changes
- Anticipating New Economic & Agricultural Opportunities
- Addressing Affordable and Workforce Housing
- Preserving & Protecting Natural Resources, Water Quality & Quantity
- Reducing Natural Hazard Risks, Preparing for Disaster Resilience
- Improving Transportation Systems
- Maintaining & Enhancing High Quality of Life
- Planning for Healthy & Safe Communities
- Regional Planning, Coordination, Partnerships

PLANNING PROGRAM OVERVIEW

July 13, 2023

DESCHUTES COUNTY

MEMORANDUM

TO: Deschutes County Planning Commission

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

DATE: July 5, 2023

SUBJECT: Senate Bills (SBs) 391 and 644 Work Session – Rural Accessory Dwelling Unit (ADU) Legislative Amendments

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I. OVERVIEW & RECENT CHANGES

The Deschutes County Planning Commission (Commission) will conduct a work session on July 13, 2023 concerning local provisions for rural ADUs as identified in Senate Bill (SB) 391[1] (file no. 247-22-000671-TA). This will be second work session with the Commission on these proposed amendments following previous actions during fall 2022.

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 Commission on September 22, 2022[2]. The Commission held deliberations on October 27, 2022[3] and the recommendations from that meeting are discussed within provided attachments.

Since the Commission's last actions on this proposal, legislation was passed by the Oregon Legislature which requires several changes to the original proposed amendments to maintain compliance with state standards. Specifically, SB 644 was recently passed which provides direction to local jurisdictions looking to adopt rural ADU standards prior to formal release of the Statewide Wildfire Hazard Map required by SB 762. Additionally, SB 80 was passed which alters the original standards and terminology used within the forthcoming Statewide Wildfire Hazard Map. Further details regarding SB 644 and SB 80 are discussed in following sections.

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[1] https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB0391/A-Engrossed
[2] See Deschutes County Planning Commission September 22, 2022 Agenda for more information: https://www.deschutes.org/bc-pc/page/planning-commission-17
[3] See Deschutes County Planning Commission October 27, 2022 Agenda for more information: https://www.deschutes.org/bc-pc/page/planning-commission-21

Given the passage of SB 644 and SB 80, along with the necessary amendment changes required by the bills, staff conducted a work session with the Deschutes County Board of Commissioners (Board) on June 5, 2023 to understand preferred steps on the ADU proposal moving forward. During that work session, the Board directed staff to reinitiate PAPA notice proceedings with DLCD to capture the newest version of the amendments and provide the Commission with an opportunity to review the revised amendments. Per Board direction, staff submitted a revised 35-day PAPA notice to DLCD on June 7, 2023.

Attached to this memorandum are:

- Staff Report and Draft Amendments (Attachment 1)[4]
- Memo Summarizing Previous Planning Commission Recommendations, Public Comments, and Agency Comments (Attachment 2)
- Memo Summarizing Anticipated Property Eligibility for Rural ADU Development (Attachment 3)

II. REQUESTED ACTIONS FROM THE COMMISSION

Based on the newest alterations and PAPA notice, the Commission has been asked to review the proposed amendments during a July 13, 2023 work session and offer any revised or new recommendations for the Board's consideration. No additional public hearings will be held before the Commission regarding the new amendments and any deliberative comments must be submitted during the work session proceedings. Recommendations from the Commission will be provided to the Board during a public hearing on July 26, 2023.

III. RECORD

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

IV. STATE REGULATIONS

SB 391 and SB 644 contain several provisions related to properties eligible for rural ADUs which cannot be amended by counties. Those criteria and restrictions are highlighted in the table below:

[4] Within the proposed amendments, added language is shown underlined and deleted shown as strikethrough.

Table 1: SB 391 & SB 644 – Rural Accessory Dwelling Unit Standards

Eligibility	Restrictions
1. Rural Residential Exception Areas, Minimum Lot Size, and Dwelling Requirements	• Applies to Rural Residential (RR10), Multiple Use Agricultural (MUA10), Urban Area Reserve (UAR-10), Suburban Residential (SR 2.5), and Westside Transect (WTZ) zones. • Lot or parcel must be at least two (2) acres in size. • One (1) single-family dwelling must be sited on the lot or parcel.
2. Existing Dwelling Nuisance	• The existing single-family dwelling is not subject to an order declaring it a nuisance or pending action under ORS 105.550 to 105.600.
3. ADU Sanitation Requirements	• The ADU must comply with all applicable laws and regulations relating to sanitization and wastewater disposal and treatment.
4. ADU Square Footage Requirements	• The ADU cannot include more than 900 square feet of useable floor area.
5. ADU Distance Requirements	• The ADU is required to be located no farther than 100 feet from the existing single-family dwelling.
6. ADU Water Supply Requirements	• If the ADU is relying on a domestic well, no portion of the lot or parcel can be within new or existing ground water uses restricted by the Water Resource Commission.
7. ADU Water Supply Source Option	• 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).[5]
8. ADU / Metolius Area of Critical State Concern / Limitations	• No portion of a lot or parcel can be within a designated area of critical state concern.
9. ADU Setback Requirements	• The ADU is required to have adequate setbacks from adjacent lands zoned Exclusive Farm Use (EFU) or Forest Use (F1 or F2).
10. ADU / Statewide Wildfire Map Requirements	• Applies to properties identified as high or extreme hazard/risk and/or located within a designated wildland urban interface (WUI) on the statewide wildfire risk/hazard maps established per SB 762. • ADUs identified as high or extreme hazard/risk are required to comply with the Oregon Residential Specialty Code relating to wildfire hazard mitigation for the mapped area (R327.4). • ADUs identified within a designated WUI on the statewide wildfire risk/hazard maps are required to comply with the minimum defensible space requirements for wildfire risk reduction established by the State Fire Marshal under ORS 476.392. • Per SB 644, prior to release of the statewide wildfire risk/hazard maps, all ADUs, regardless of future hazard/risk classification, are required to comply with the Oregon Residential Specialty Code relating to wildfire hazard mitigation (R327.4).
11. ADU / Outside Wildland-Urban Interface (WUI) Area Requirements	• If the ADU is not subject to ORS 477.015 to 477.061 (i.e. outside of the newly-defined WUI), local jurisdictions can impose supplemental defensible space and fuel break standards.

[5] https://oregon.public.law/statutes/ors_537.545

Eligibility	Restrictions
12. ADU Adequate Access and Evacuation for Firefighting Requirements	• Local regulations must ensure the ADU has adequate access for firefighting equipment, safe evacuation, and staged evacuation areas
13. ADU Occupancy Requirements	• ADUs cannot be allowed for vacation occupancy, as defined in ORS 90.100.
14. ADU Land Division Requirements	• If an eligible property with an ADU is divided, the single-family dwelling and ADU cannot be situated on a different lot or parcel.
15. ADU / Additional Units	• A second ADU is not allowed.

V. DESCHUTES COUNTY INTERPRETATIONS

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

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

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

Table 2: Draft Interpretations

Undefined SB 391 Standard	Draft County Interpretation
Useable Floor Area	• Means the living space area of the accessory dwelling unit included within the surrounding insulated exterior walls, exclusive of garages, carports, decks and porch covers.
100-Foot Siting Distance	• A unit must be located no farther than 100 feet from the existing single family dwelling, measured from a wall of the single-family dwelling to the nearest part of the "useable floor area" of the accessory dwelling unit.
Adequate Access and Evacuation for Firefighting Requirements	• "Safe evacuation plan" means an identifiable route on a right(s)-of-way and any onsite driveways from the rural accessory dwelling unit to the staged evacuation area. • "Staged evacuation area" means a public or private location that occupants of the rural accessory dwelling unit may evacuate to reorganize. • "Adequate access" means a continuous, minimum 20-foot width right(s)-of-way and any onsite driveways, connecting an accessory dwelling unit with a fire protection service provider with professionals who have received training or certification

Undefined SB 391 Standard	Draft County Interpretation
	described in ORS 181A.410. The right(s)-of-way and any onsite driveways providing access to an accessory dwelling unit must be improved and composed of an all-weather surface including asphalt, concrete, or gravel, but excluding cinders. ○ Alternatively, property owners may demonstrate adequate access by providing written certification from a fire protection service provider with professionals who have received training or certification described in ORS 181A.410, on a form prepared by Deschutes County, that access to the property meets minimum fire district requirements to provide emergency services to the property.

The following items describe supplemental development standards recommended by Community Development Department staff to ensure safe operations for any ADUs constructed within Deschutes County.

Groundwater Protection

Due to vulnerable groundwater characteristics in southern Deschutes County, the Onsite Wastewater Division recommends increasing the minimum lot or parcel size for rural ADUs to be at least five (5) acres in size in this specific geographic area. The draft amendments as presented include this provision. Additionally, in consultation with the Onsite Wastewater Division, staff has explored the possibility of requiring advanced wastewater treatment systems for ADU development in southern Deschutes County. Further details are included as part of the attached Commission Recommendation and Discussion Memo (Attachment 2).

Additional Dwelling Units

Due to concerns regarding failing treatment systems and wastewater impacts, the Onsite Wastewater Division recommends limiting properties constructed with ADUs from all future residential dwelling development, including additional ADUs, medical hardship dwellings, temporary dwellings within recreational vehicles, or similar uses. The draft amendments as presented include this provision. Further details are included as part of the attached Commission Recommendation and Discussion Memo (Attachment 2).

VI. WILDFIRE STANDARDS

Senate Bill 762

Certain properties in rural Deschutes County will likely be subject to new wildfire mitigation measures as approved under SB 762.[6] One of the primary pieces of SB 762 is the creation of a comprehensive Statewide Map of Wildfire Risk (Statewide Wildfire Hazard Map) to guide new wildfire regulations for development. The initial risk/hazard map was made available on June 30, 2022.[7] However, based on significant concern from citizens and interest groups through the state, the Oregon Department of

[6] SB 762 (2021)

[7] https://oregonexplorer.info/tools

Forestry (ODF) withdrew the initial map to provide more time for additional public outreach and refinement of risk/hazard classification methodologies. At this time, it is unclear when ODF anticipates releasing new maps.

Due to the current unavailability of fire risk/hazard maps, staff cannot provide specific estimates on the number of properties which may be subject to additional wildfire mitigation standards. Additionally, per direction from County Legal Counsel (discussed in detail during a November 14, 2022 work session with the Board[8]), the specific language of SB 391 originally mandated that no properties would be eligible for rural ADUs, despite adoption of County standards which approve said use within the County Comprehensive Plan and zoning ordinances, until such time as a new iteration of a Statewide Map of Wildfire Risk is formally released by ODF.

The following discussion is specific to the effects of SB 762, prior to modification by SB 644. This discussion is provided for reference, but the statute has been modified in important ways, as discussed below, under SB 644.

Under SB 762, once these risk maps are finalized, properties included in **both** a designated Wildland Urban Interface (WUI) boundary and classified as either high or extreme risk within the Statewide Map of Wildfire Risk will be subject to additional development regulations. SB 762 requires that, at minimum, local governments ensure that properties meeting both of these standards will be subject to:

1) Home hardening building codes as described in section R327 of the Oregon Residential Specialty Code.

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

At present, the State Fire Marshal has yet to develop final statewide defensible space requirements.

Senate Bill 644

SB 644 was recently passed by the Oregon State Legislature[9]. SB 644 effectively temporarily decouples 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 rural ADUs and prior to the release of the final risk/hazard map, any constructed ADUs will be subject to the home hardening building codes as described in section R327 of the Oregon Residential Specialty Code.

SB 644 does not alter the original defensible space standards of SB 762. At the urging of County Legal Counsel, and to provide for clear and objective standards, staff has proposed supplemental defensible space rules for all ADU development which occurs prior to adoption and release of the Statewide Map of Wildfire Risk (Statewide Wildfire Hazard Map). The proposed defensible space

[8] See Board of County Commissioners November 14, 2022 Agenda for more information: https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-71

[9] https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB644/Enrolled

standards are based on existing rules within the Forest Use Zones (F1 and F2) and would be effectively removed after final adoption of the risk/hazard map.

Senate Bill 80

SB 80 was recently passed by the Oregon State Legislature[10]. SB 80 is still awaiting final signature from the Governor, however staff believes this is likely to occur in the coming weeks. SB 80 alters several components of the Statewide Map of Wildfire Risk mandated by SB 762. As it relates to rural ADU standards, SB 80 changes the name of the Statewide Map of Wildfire Risk to the "Statewide Wildfire Hazard Map." Additionally, the bill reduces the number of hazard classifications from five to three: high, moderate, and low. The currently proposed ADU amendments reflect these changes where appropriate.

VII. NEXT STEPS

As discussed above, the Board will hold a public hearing on the proposed amendments **July 26, 2023**. The Commission will need to provide any new or altered recommendations on the amendments at the July 13, 2023 work session.

Attachments:

1. Staff Report and Draft Amendments
2. Memo Summarizing Planning Commission Recommendations, Public Comments, and Agency Comments
3. Memo Summarizing Anticipated Property Eligibility for Rural ADU Development

[10] https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB80/Enrolled

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 762[4] 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) is consistent with SB 391/SB 644. Redmond's Urban Reserve Areas is not near lands zoned in Title 19, therefore it is not cited in DCC 19.92.160.
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)(3) is consistent with SB 391/SB 644. The Metolius Area of Critical State Concern is not near lands zoned in Title 19, therefore it is not cited in DCC 19.92.160.
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)(4) and DCC 19.92.160(B)(2) are consistent with SB 391/SB 644. DCC 18.116.355(B)(4) requires 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)(5) and DCC 19.92.160(B)(3) are consistent with SB 391. Both require a minimum setback of 100 feet between the ADU and adjacent EFU and Forest Use zoned (F-1, F-2) properties.
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)(6) and DCC 19.92.160(B)(4) 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)(7) and DCC 19.92.160(B)(5) 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.
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)(8) and DCC 19.92.160(B)(6) 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)(9) and DCC 19.92.160(B)(7) are consistent with SB 391/SB 644.
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)(10) and DCC 19.92.160(B)(8) 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 plan and authorized staged evacuation areas.

[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
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)(12) and DCC 19.92.160(B)(10) 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 State Map of Wildfire Risk identified in SB 762.
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)(11) and DCC 19.92.160(B)(9) 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 State Map of Wildfire Risk identified in SB 762.
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)(13) and DCC 19.92.160(B)(11) 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)(14) and DCC 19.92.160(B)(12) are consistent with SB 391/SB 644.
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)(15) and DCC 19.92.160(B)(13) are consistent with SB 391/SB 644. While not requiring the same water source, DCC 18.116.355(B)(15) and DCC 19.92.160(B)(13) require setbacks from the well to be maintained from an ADU.

Topic	SB 391/SB 644 Requirements	Comment
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)(17) and DCC 19.92.160(B)(15) 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)(16) 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)(19) and DCC 19.92.160(B)(17) are consistent with SB 391/SB 644. 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.

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.***

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

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. [number TBD] upon approval and adoption by the Board of County Commissioners. This criterion will be met.

B. Statewide Planning Goals and Guidelines

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

Goal 2: Land Use Planning: This goal is met because ORS 197.610 allows local governments to initiate post acknowledgments plan amendments (PAPA). An Oregon Land Conservation and Development Department 35-day notice was initiated on August 17, 2022. 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, ADU, to rural residential exception areas. Local governments can choose to allow this use by: 1) amending their zoning codes and complying with SB 391/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. The eligible lot or parcel

size in this area of the County is 5 acres or larger. In the RR-10 zone 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 State Map of Wildfire Risk, 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, 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

July 5, 2023

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

Chapter 1: Overview of Goal 5 and ESEE Analyses

Introduction

This appendix report was prepared to supplement the findings document associated with File No. 247-22-000671-TA. Deschutes County is amending Deschutes County Code (DCC), Titles 18 and 19 to allow Rural Accessory Dwelling units (ADUs) consistent with Senate Bill (SB) 391 (2021) 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
• DCC Chapter 18.32, Multiple Use Agricultural Zone • DCC Chapter 18.60, Rural Residential Zone	• 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 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
Fish Habitat (Inventory – Ord. No. 92-041, page 18; creeks, rivers and lakes)	**Yes**	Major conflicts are removal of riparian vegetation, fill and removal activities within the bed and banks of streams or wetlands, hydroelectric, rural residential development and water regulation	Floodplain zone recognized as program to achieve the goal to conserve fish habitat (Ordinance Nos. 88-030, 88-031, 89-009). Others include: fill and removal permits, wetland removal regulations, hydro prohibitions, rimrock setbacks, 100' setback from OHW, conservation easements and restrictions on boats and docks.	Ordinance Nos. 86-018, 86-053, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041
Deer Winter Range (Inventory – Ord. No. 92-041, page 22; Metolius, Tumalo, North Paulina, and Grizzly ranges identified by ODFW	**Yes**	Major conflicts are dwellings, roads, and dogs. Activities which cause deterioration of forage quality and quantity or cover are conflicting uses. Fences which impede safe passage are also a conflicting use.	Floodplain zone recognized as a program to achieve the goal to protect deer winter range (Ordinance Nos. 88-030, 88-031, 89-009). Others include Wildlife Area Combining Zone. Requires 40-acre minimum lot size for all new residential land divisions. Underlying zoning in most of the deer winter range is: EFU, Forest, and Floodplain. These zones provide for large lot sizes and limit uses that are not compatible with farm or forest zones.	Ordinance Nos. 88-030, 88-031, 89-009, 92-040, 92-041, 92-042, 92-046
Deer Migration Corridor (Inventory – Ord. No. 92-041, page 26; Bend-La Pine migration corridor identified by ODFW)	**Yes**	Major conflicts are dwellings, roads, and dogs. Fences which impede safe passage are also a conflicting use.	Wildlife Area Combining Zone was recognized as the only program to achieve the goal to protect the deer migration corridor. Underlying zoning is RR-10. It was amended to require cluster development for all land divisions in the RR-10 zone in the Bend/La Pine migration corridor (92-042). A 20-acre parcel is the minimum size required for a cluster development. Siting and fencing standards also apply in the deer migration corridor. Migration corridor includes some EFU, Forest, and Floodplain zoned land. These resource zones provide for large lot sizes and limit uses that are not compatible with farm or forest zones.	Ordinance Nos. 92-040, 92-041, 92-042, 92-046

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
Elk Habitat (Inventory – Ord. No. 92-041 – page 32; identified by USFS and ODFW)	**Yes**	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.	Wildlife Area Combining Zone was recognized as the only program to achieve the goal to protect the elk habitat. 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. 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. * Some lands are zoned RR10, including lots that are split zoned with flood plain. They are already parcelized, preventing future land divisions.	Ordinance Nos. 88-030, 88-031, 89-009, 92-040, 92-041, 92-042, 92-046
Antelope Habitat (Inventory – Ord. No. 92-041 – page 38; identified by ODFW)	**No**	Land use or development activities which would result in the loss of habitat, and animal harassment and disturbance associated with human activity.	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.	Ordinance Nos. 92-040, 92-041, 92-042, 92-046
Habitat for Sensitive Birds (Inventory – Ord. No. 92-041 – page 41 and Table 5; identified by ODFW, ODF, OSU, Oregon Natural Heritage Data Bases). The area required for each nest site varies between species.	**No**	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. Any activity which would disturb the nesting birds, including intensive recreational use or removal of trees or	The Sensitive Bird and Mammal Combining Zone achieves the goal to protect sensitive bird sites.	Ordinance Nos. 92-040, 92-041, 92-042, 92-046

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
		vegetation could conflict with the habitat site.		
(**UPDATE -** Inventory – Ord. No. 94-004 –pages 3 to 140 Site specific ESEE analysis and decisions follow each site.	**No**	See above.	Habitat areas for sensitive birds of the Fish and Wildlife Element, adopted in No. 92-041 is repealed and replaced by inventories in Exhibit 1. Area required around each nest site needed to protect the nest from conflict varies between species. It's called "sensitive habitat area." Note: Northern bald eagle, osprey, golden eagle, prairie falcon, and great blue heron rookeries are located on federal land. Classified as "2A"Goal 5 Resources. Great Grey owl site no longer exists. Some bald eagle, golden eagle sites are controlled by the Sensitive Bird and Mammal Combining Zone.	Ordinance Nos. 94-004, 94-005 and 94-021
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)	**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.	Floodplain zone recognized as program to achieve the goal to conserve waterfowl habitat (Ordinance Nos. 88-030, 88-031, 89-009). Others include: fill and removal permits, wetland removal regulations, rimrock setbacks, 100' setback from OHW, conservation easements, restrictions on boats and docks, landscape management, state and federal scenic water regulations. In addition, the Forest and EFU zones require large minimum lot size which limits the potential density of development in the areas adjacent to many of the rivers, streams, wetlands, and ponds used for waterfowl habitat.	Ordinance Nos. 86-018, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041, 92-042- 92-045, 92-046

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
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)	**Yes**	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. 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. Chapter 6 of County/City of Bend River Study identifies conflicting uses with upland bird habitat.	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. County provisions to protect riparian areas and wetlands protect one of the most significant components of upland game habitat. 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.	Ordinance Nos. 86-018, 86-053,86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041, 92-042, 92-046
UPDATE - Inventory – Ord. No. 94-004 – pages 156-201.	**Yes**	See above.	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. 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. 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.	Ordinance Nos. 94-004 and 94-021

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
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.	**Yes**	The conflicting uses are those activities or development which would degrade or destroy habitat, or disturb the animals causing them to relocate. Conflicts between furbearers and other land uses are minimal in the county.	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. 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.	Ordinance Nos. 86-018, 86-053,86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041
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)	**No**	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.	Program to achieve the goal is Sensitive Bird and Mammal Combining Zone	Ordinance No. 92-041 and 042
UPDATE - Inventory – Ord. No. 94-004 – pages 140 to 155 Site specific ESEE analysis and decisions follow each site.	**No**	See above.	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.	Ordinance Nos. 94-004 and 94-021

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
Wetlands and Riparian Areas (Inventory – Ord. No. 92-041 – page 73; identified on USFWS NWI)	**Yes**	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. 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.	Floodplain zone recognized as program to achieve the goal to conserve wetland and riparian habitat (Ordinance Nos. 88-030, 88-031, 89-009). 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.	Ordinance Nos. 86-018, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041, 92-045

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
UPDATE – Riparian inventory – Ord. No. 94-007; Significant riparian habitat is located in three areas: Area within 100' of OHW of an inventoried stream or river; 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 Area adjacent to a river or stream and inventoried as a wetland on the NWI	**Yes**	Conflicting uses: 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. 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. 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. 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.	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. 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. 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. 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	Ordinance Nos. 94-007

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
UPDATE – Wetland Inventory – Ord. No. 94-007, Exhibit B – inventory is NWI (Ord. No. 92-045)	**Yes**	Conflicting uses include fill and removal of material, including vegetation, which could cause reduction in the size, quality or function of a wetland. 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. Draining wetlands for agriculture of other development purposes destroys the hydrological function of the wetland and alters the habitat qualities that certain wildlife depend on. 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.	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. Program to achieve Goal 5 for Wetland Habitat: • Fill and removal regulations to protect wetlands • 100' setback from OHW • Flood plain zone (regulates docks too) • DSL Removal / Fill law	Ordinance Nos. 94-007

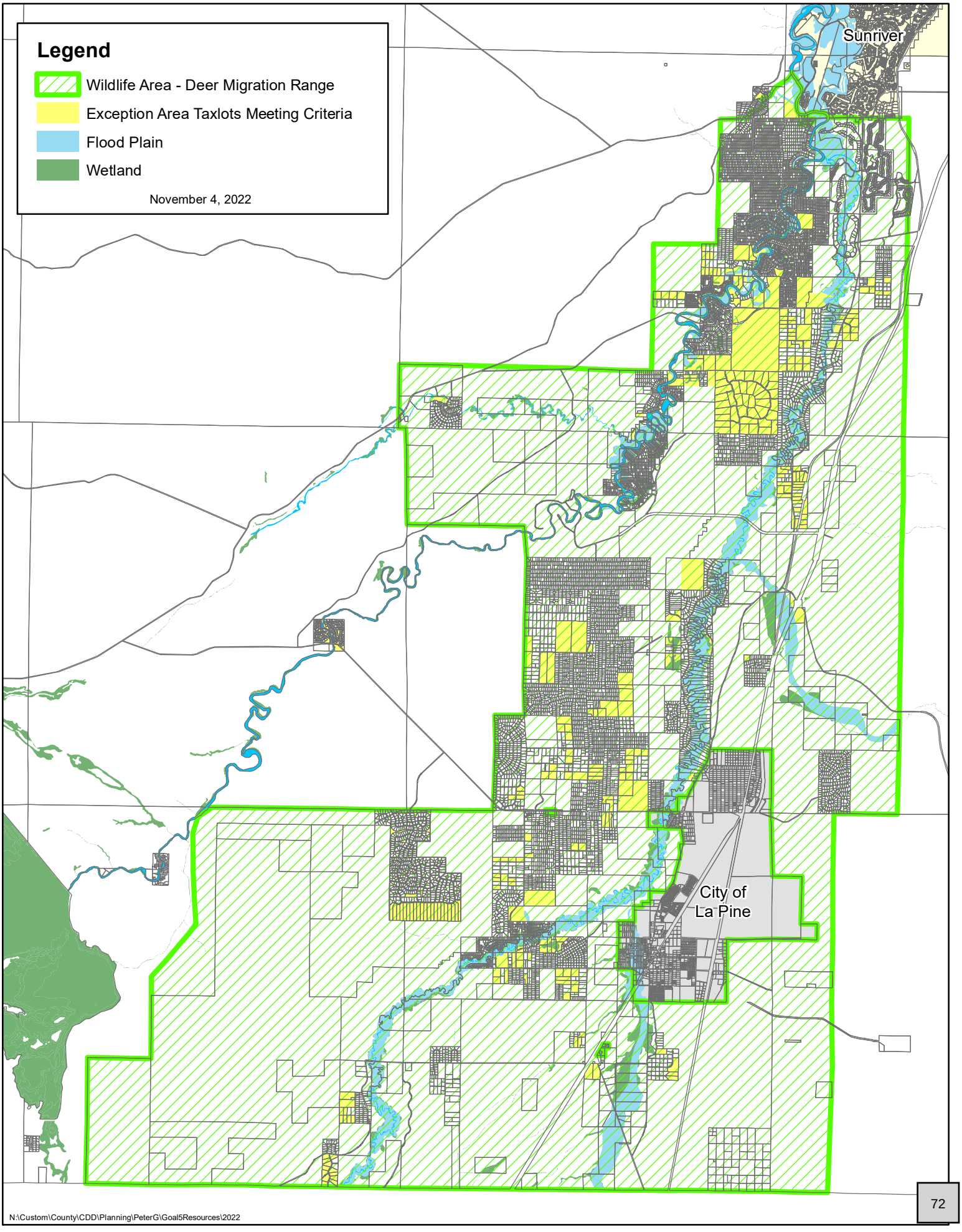
Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
Ecologically and Scientifically Significant Natural Areas * Little Deschutes River / Deschutes River Confluence (Inventory – Ord. No. 92-052, Exhibit B, Page 1; identified by Oregon Natural Heritage Program); Analysis 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.	**Yes**	Resort and vacation home development, recreational uses,livestock grazing, and fill and removal in wetlands are conflicting uses.	Programs for resource protection include the zoning of the property, the provisions of the flood plain, wetlands and the river corridor. The implementing measures which protect and regulate development in the confluence area are: EFU zoning, Floodplain zoning, conservation easements, and fill and removal permits. 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. Today, zoning is Floodplain and Forest Use.	Ordinance Nos. 86-018, 86-054, 86-056, 88-030, 88-031, 89-009, 92-040, 92-041, 92-045
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)	**Yes**	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.	Program for resource protection includes: Floodplain zone and restrictions, fill and removal permits, wetland removal regulations, hydro prohibitions, rimrock setbacks, conservation easements, restrictions on boats and docks, and landscape management.	Ordinance Nos. 86-018, 86-053, 86-054, 86-056, 88-030, 88-031, 89-009, 92-033, 93-034

Inventoried Resource	Flood Plain Relationship	Conflicts	Comments	Relevant Ordinances
Lakes and Reservoirs (Inventory – Ord. No. 92-052, Exhibit C, Page 10; includes Upper Tumalo Reservoir; remaining are on federal land	**No**	Conflicting uses with the open space and scenic values of the land adjacent to the inventoried lakes include development which would cause a loss of open space or a decrease in the aesthetic and scenic resources, and land management activities resulting in the removal of natural vegetation which provides wildlife habitat and scenic value.	Conflicting uses around Tumalo Reservoir are specifically limited by Title 18.48, Open Space Conservation Zone and a 100' setback for any structure from OHW.	Ordinance No. 91-020
State Scenic Waterways and Federal Wild and Scenic Rivers (Inventory – Ord. No. 92-052, Exhibit E, Page 1;	**Yes**	See County / City of Bend River Study and 1986 River Study Staff Report. Both referenced in Ord. 92-005, Exhibit E.	Program for resource protection includes: Floodplain zone and restrictions, fill and removal permits, wetland removal regulations, hydro prohibitions, rimrock setbacks, conservation easements, restrictions on boats and docks, and landscape management.	Ordinance Nos. 86-018, 86-053, 86-054, 86-056, 88-030, 88-031, 89-009, 92-033, 93-034
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.	**No**	N/A	N/A	N/A

Attachment 2 - Inventory Site Maps

Exception Area Taxlots Meeting ADU Criteria - Deer Migration Range

1" = 10,000'



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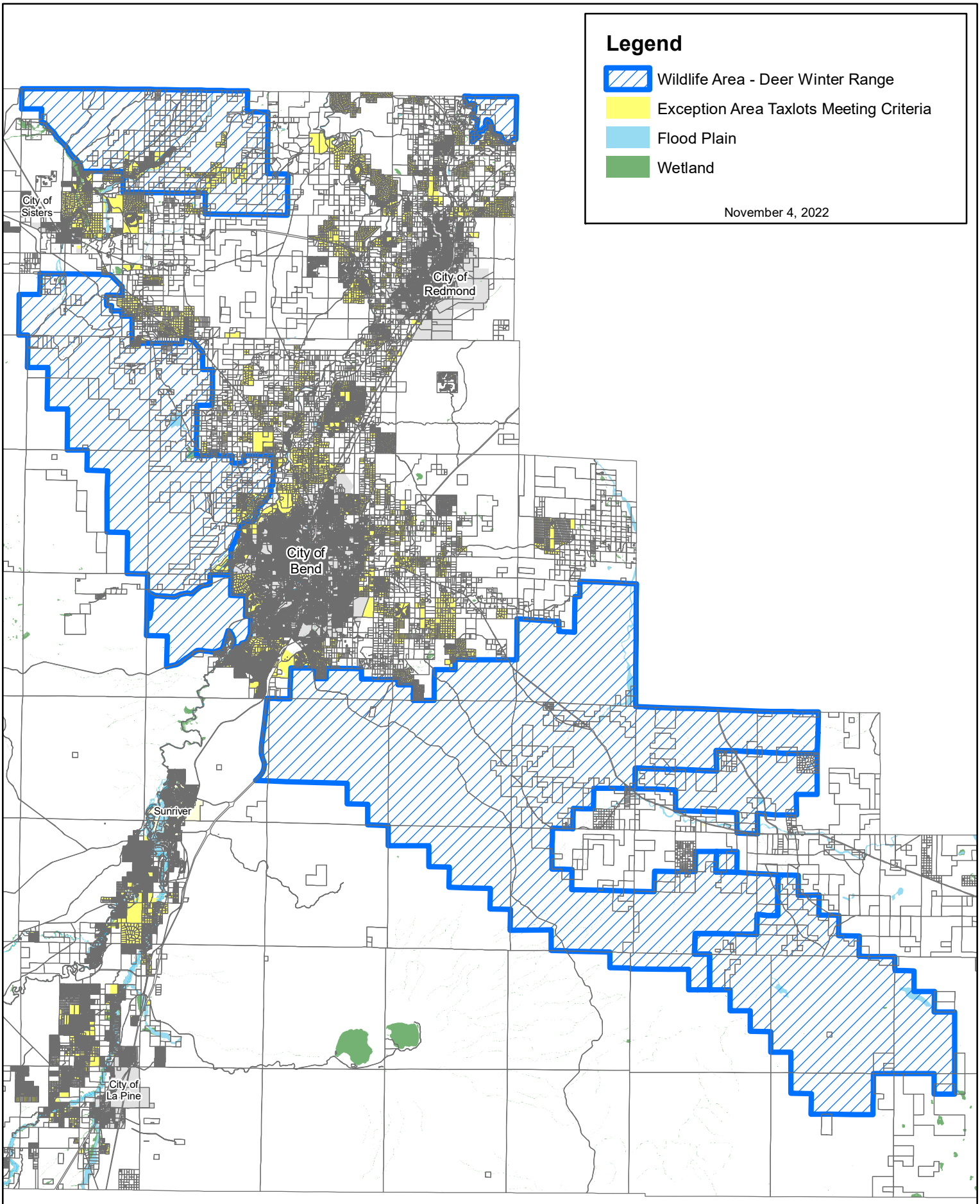
Exception Area Taxlots Meeting ADU Criteria - Deer Winter Range

1" = 6 mi.



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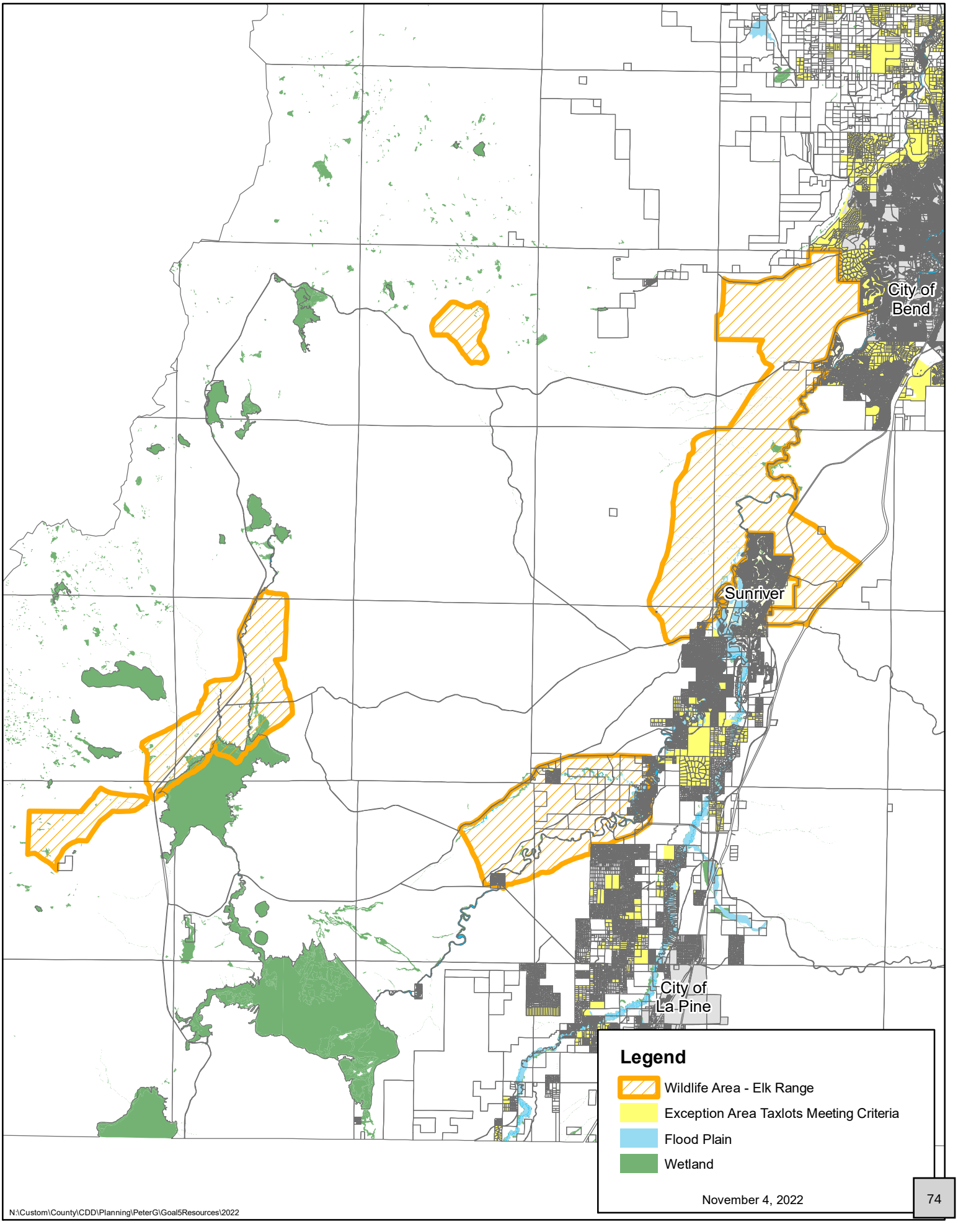
Exception Area Taxlots Meeting ADU Criteria - Elk Range

1" = 4 mi.



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Attachment 3 - Proposed Text Amendments

CHAPTER 18.32 MULTIPLE USE AGRICULTURAL ZONE; MUA

18.32.020 Uses Permitted Outright

* * *

18.32.020 Uses Permitted Outright

The following uses and their accessory uses are permitted outright:

A. Agricultural uses as defined in DCC Title 18.

B. A single family dwelling, or a manufactured home subject to DCC 18.116.070.

C. Propagation or harvesting of a forest product.

D. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.

E. Class III road or street project.

F. Noncommercial horse stables, excluding horse events.

G. Horse events, including associated structures, involving:

1. Fewer than 10 riders;

2. Ten to 25 riders, no more than two times per month on nonconsecutive days; or

3. More than 25 riders, no more than two times per year on nonconsecutive days. Incidental musical programs are not included in this definition. Overnight stays by participants, trainers or spectators in RVs on the premises is not an incident of such horse events.

H. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.

I. Type 1 Home Occupation, subject to DCC 18.116.280.

J. Historic Accessory Dwelling Units, subject to DCC 18.116.350.

K. Residential Accessory Dwelling Units, subject to DCC 18.116.355.

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. 2023-00x §x on [date]

CHAPTER 18.60 RURAL RESIDENTIAL ZONE; RR-10

18.60.020 Uses Permitted Outright

* * *

18.60.020 Uses Permitted Outright

The following uses and their accessory uses are permitted outright.

A. A single-family dwelling, or a manufactured home subject to DCC 18.116.070.

B. Utility facilities necessary to serve the area including energy facilities, water supply and treatment and sewage disposal and treatment.

C. Community center, if shown and approved on the original plan or plat of the development.

D. Agricultural use as defined in DCC Title 18.

E. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.

F. Class III road or street project.

G. Noncommercial horse stables as defined in DCC Title 18, excluding horse events.

H. Horse events, including associated structures, involving:

1. Fewer than 10 riders;

2. Ten to 25 riders, no more than two times per month on nonconsecutive days; or

3. More than 25 riders, no more than two times per year on nonconsecutive days. Incidental musical programs are not included in this definition. Overnight stays by participants, trainers or spectators in RVs on the premises is not an incident of such horse events.

I. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.

J. Type 1 Home Occupation, subject to DCC 18.116.280.

K. Historic Accessory Dwelling Units, subject to DCC 18.116.350.

L. Residential Accessory Dwelling Units, subject to DCC 18.116.355.

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. 2023-00x §x on [date]

CHAPTER 18.116 SUPPLEMENTARY PROVISIONS

18.116.350 Historic Home Accessory Dwelling Units In The RR10 And MUA Zones
18.116.355 Residential Accessory Dwelling Units In The RR10 And MUA 10 Zones

* * *

18.116.350 Historic Home Accessory Dwelling Units In The RR10 And MUA Zones

A. As used in this section:

1. "Historic Accessory dwelling unit ('ADU')" 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 main use of the property, and located on the same lot as the main use.

2. "Area zoned for rural residential use" means land that is not located inside an urban growth boundary as defined in ORS 195.060 and that is subject to an acknowledged exception to a statewide land use planning goal relating to farmland or forestland and planned and zoned by the county to allow residential use as a primary use.

3. "Historic home" means a single-family dwelling constructed between 1850 and 1945.

4. "New" means that the dwelling being constructed did not previously exist in residential or nonresidential form. "New" does not include the acquisition, alteration, renovation or remodeling of an existing structure.

5. "Place a manufactured home" means the placement of a manufactured home that did not previously exist on the subject lot of record; it may include the placement of a manufactured home that was previously used as a dwelling on another lot and moved to the subject lot of record.

6. "Single-family dwelling" means a residential structure designed as a residence for one family and sharing no common wall with another residence of any type.

B. An owner of a lot or parcel within an area zoned for rural residential use (RR10 and MUA ~~zones~~Zones) may construct a new single-family dwelling or place a manufactured home on the lot or parcel, provided:

1. The lot or parcel is not located in an area designated as an urban reserve as defined in ORS 195.137;

2. The lot or parcel is at least two acres in size;

3. A historic home is sited on the lot or parcel;

4. The owner converts the historic home to an accessory dwelling unit upon completion of the new single-family dwelling or placement of a manufactured home; and

5. The accessory dwelling unit may be required to comply with all applicable laws and regulations relating to sanitation and wastewater disposal and treatment.

C. The construction of an accessory dwelling 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 accessory dwelling unit.

2. Alter, renovate or remodel the accessory dwelling unit so that the square footage of the accessory dwelling unit is more than 120 percent of the historic home's square footage at the time construction of the new single-family dwelling commenced.

3. Rebuild the accessory dwelling unit if the structure is deemed a dangerous building due to fire or other natural disaster, pursuant to the Uniform Code for the Abatement of Dangerous Buildings, which defines "dangerous building" as "Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or location."

4. Construct an additional accessory dwelling unit on the same lot or parcel.

E. A new single-family dwelling constructed or a manufactured home placed under this section may be required to be served by the same water supply source as the accessory dwelling unit.

F. Owner occupancy of either the accessory dwelling unit or the new single-family dwelling is not required. However, the 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. 2023-00x §x on [date]

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

A. As used in this section:

1. "Accessory dwelling unit ('ADU')" 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 main use of the property, and located on the same lot as the main use.

2. "Adequate access" means a continuous, minimum 20-foot width right(s)-of-way and any onsite driveways, connecting an accessory dwelling unit with a fire protection service provider with professionals who have received training or certification described in ORS 181A.410. The right(s)-of-way and any onsite driveways providing access to an accessory dwelling unit must be improved and composed of an all-weather surface including asphalt, concrete, or gravel, but excluding cinders.

3. "Right-of-way" means either a public road maintained by the county, a private road with a public access easement, a public road maintained by a road district, or an unmaintained public or private road.

4. "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.

5. "Safe evacuation plan" means an identifiable route on a right(s)-of-way and any onsite driveways from the accessory dwelling unit to the staged evacuation area.

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.

7. "Staged evacuation area" means a public or private location that occupants of the accessory dwelling unit may evacuate to reorganize.

8. "Useable floor area" means all areas of the accessory dwelling unit included within the surrounding insulated exterior walls, exclusive of garages, carports, decks and porch covers.

9. "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 (ADU) is permitted outright on a lot or parcel zoned ~~for~~ RR-10 or MUA-10, provided:

   1. One single-family dwelling is sited on the lot or parcel;

      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.

   2. The lot or parcel is not located within the Redmond Urban Reserve Area, consistent with ORS 195.137.

   3. No portion of the lot or parcel is within the Metolius Area of Critical State Concern, as defined in ORS 197.416.

4. The lot area 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.

5. The accessory dwelling unit will have a minimum setback of 100 feet from adjacent land zoned F-1, F-2, or EFU and meet any other minimum setback requirements of the underlying zone and combining zones.

6. The accessory dwelling unit will not include more than 900 square feet of useable floor area.

7. The accessory dwelling unit will be located no farther than 100 feet from the existing single-family 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.

8. The accessory dwelling unit receives approval from a sewer authority or Deschutes County Environmental Soils for onsite wastewater disposal and treatment.

9. 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.

10. The accessory dwelling unit provides for all of the following:

    a. Adequate access:

        i. The accessory dwelling unit has adequate access as defined in DCC 18.116.355, or;

        ii. 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. 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.

11. 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:

        i. For areas designated as extreme or high wildfire risk 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:

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

12. 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 risk designations and/or 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. 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. Prior to use, 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. The fuel break shall be completed prior to the beginning of the coming fire season; 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. The accessory dwelling unit has defensible space and fuel break standards as developed in consultation with local fire protection service providers who have received training or certification described in ORS 181A.410.

13. 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.

14. 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 accessory dwelling unit or any other permanent or temporary structure or dwelling unit designed or used for residential purposes, including medical hardship dwellings.

15. 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.

16. 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.

17. 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).

18. 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.

19. The applicant shall sign and record with the County Clerk, prior to the issuance of a building permit, a restrictive covenant stating an accessory dwelling unit allowed under this section cannot be used for vacation occupancy, as defined in DCC 18.116.370(A)(10) and consistent with ORS 90.100.

HISTORY

Adopted by Ord. 2023-00x §x on [date]

CHAPTER 19.12 URBAN AREA RESERVE ZONE UAR-10

19.12.020 Permitted Uses

* * *

19.12.020 Permitted Uses

The following uses are permitted:

A. Farm uses as defined in DCC Title 19.

B. Single-family dwelling.

C. Home occupation subject to DCC 19.88.140.

D. Other accessory uses and accessory buildings and structures customarily appurtenant to a permitted use subject to DCC 19.92.020.

E. Day care center facilities subject to site review, DCC 19.76 and DCC 19.88.160.

F. Farm stands subject to DCC 19.76 and DCC 19.88.290.

G. Historic Accessory Dwelling Units, subject to DCC 19.92.150.

H. Residential Accessory Dwelling Units, subject to DCC 19.92.160

HISTORY
Adopted by Ord. PL-11 on 7/11/1979
Amended by Ord. 88-042 §4 on 12/19/1988
Repealed & Reenacted by Ord. 90-038 §1,2 on 10/3/1990
Amended by Ord. 91-001 §2 on 1/28/1991
Amended by Ord. 2008-014 §3 on 3/31/2008
Repealed & Reenacted by Ord. 2009-002 §1,2 on 2/11/2009
Amended by Ord. 2019-009 §4 on 9/3/2019
Recorded by Ord. 2019-009 §4 on 9/3/2019
Amended by Ord. 2023-00x §x on [date]

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

19.20.020 Permitted Uses

* * *

19.20.020 Permitted Uses

The following uses are permitted:

A. Single-family dwelling.

B. Agriculture, excluding the keeping of livestock.

C. Home occupations subject to DCC 19.88.140.

D. Other accessory uses and accessory buildings and structures customarily appurtenant to a permitted use subject to DCC 19.92.020.

E. Historic Accessory Dwelling Units, subject to DCC 19.92.150.

F. Child care facility and/or preschool.

G. Residential Accessory Dwelling Units, subject to DCC 19.92.160.

HISTORY
Adopted by Ord. PL-11 on 7/11/1979
Amended by Ord. 88-042 §6 on 12/19/1988
Repealed & Reenacted by Ord. 90-038 §1,2 on 10/3/1990
Amended by Ord. 91-001 §4 on 1/28/1991
Amended by Ord. 93-018 §3 on 5/19/1993
Repealed & Reenacted by Ord. 2009-002 §1,2 on 2/11/2009
Amended by Ord. 2019-009 §5 on 9/3/2019
Recorded by Ord. 2019-009 §5 on 9/3/2019
Amended by Ord. 2020-001 §20 on 4/21/2020
Amended by Ord. 2020-010 §9 on 7/3/2020
Amended by Ord. 2023-00x §x on [date]

CHAPTER 19.22 WESTSIDE TRANSECT ZONE; WTZ

19.22.020 Permitted Uses

* * *

19.22.020 Permitted Uses

The following uses and their accessory uses are permitted outright:

A. Single-family dwelling.

B. Home occupation subject to DCC 19.88.140.

C. Other accessory uses and accessory buildings and structures customarily appurtenant to a permitted use subject to DCC 19.92.020.

D. Residential Accessory Dwelling Units, subject to DCC 19.92.160.

HISTORY
Adopted by Ord. 2019-001 §8 on 4/16/2019
Amended by Ord. 2023-00x §x on [date]

CHAPTER 19.92 INTERPRETATIONS AND EXCEPTIONS

* * *

19.92.150 Accessory Dwelling Units In UAR-10 And SR-2 1/2 Zones
19.92.160 Residential Accessory Dwelling Units In UAR-10, SR-2 ½, And WTZ Zones

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

A. As used in this section:

1. "Historic Accessory dwelling unit ('ADU')" 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 main use of the property, and located on the same lot as the main use.

2. "Area zoned for rural residential use" means land that is not located inside an urban growth boundary as defined in ORS 195.060 and that is subject to an acknowledged exception to a statewide land use planning goal relating to farmland or forestland and planned and zoned by the county to allow residential use as a primary use.

3. "Historic home" means a single-family dwelling constructed between 1850 and 1945.

4. "New" means that the dwelling being constructed did not previously exist in residential or nonresidential form. "New" does not include the acquisition, alteration, renovation or remodeling of an existing structure.

5. "Single-family dwelling" means a residential structure designed as a residence for one family and sharing no common wall with another residence of any type.

B. An owner of a lot or parcel within an area zoned for rural residential use (UAR-10 and SR-2 1/2 zones) may construct a new single-family dwelling on the lot or parcel, provided:

1. The lot or parcel is not located in an area designated as an urban reserve as defined in ORS 195.137;

2. The lot or parcel is at least two acres in size;

3. A historic home is sited on the lot or parcel;

4. The owner converts the historic home to an accessory dwelling unit upon completion of the new single-family dwelling; and

5. The accessory dwelling unit may be required to comply with all applicable laws and regulations relating to sanitation and wastewater disposal and treatment.

C. The construction of an accessory dwelling 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 accessory dwelling unit.

2. Alter, renovate or remodel the accessory dwelling unit so that the square footage of the accessory dwelling unit is more than 120 percent of the historic home's square footage at the time construction of the new single-family dwelling commenced.

3. Rebuild the accessory dwelling unit if the structure is deemed a dangerous building due to fire or other natural disaster, pursuant to the Uniform Code for the Abatement of Dangerous Buildings, which defines "dangerous building" as "Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or location."

4. Construct an additional accessory dwelling unit on the same lot or parcel.

E. A new single-family dwelling constructed under this section may be required to be served by the same water supply source as the accessory dwelling unit.

F. Owner occupancy of either the accessory dwelling unit or the new single-family dwelling is not required. However, the new single-family dwelling and the accessory dwelling unit may not be used simultaneously for short-term rentals of thirty (30) consecutive days or less.

HISTORY
Adopted by Ord. 2019-009 §6 on 9/3/2019
Recorded by Ord. 2019-009 §6 on 9/3/2019
Amended by Ord. 2023-00x §x on [date]

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

A. As used in this section:

1. "Accessory dwelling unit ('ADU')" 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 main use of the property, and located on the same lot as the main use.

2. "Adequate access" means a continuous, minimum 20-foot width right(s)-of-way and any onsite driveways, connecting an accessory dwelling unit with a fire protection service provider with professionals who have received training or certification described in ORS 181A.410. The right(s)-of-way and any onsite driveways providing access to an accessory dwelling unit must be improved and composed of an all-weather surface including asphalt, concrete, or gravel, but excluding cinders.

3. "Right-of-way" means either a public road maintained by the county, a private road with a public access easement, a public road maintained by a road district, or an unmaintained public or private road.

4. "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.

5. "Safe evacuation plan" means an identifiable route on a right(s)-of-way and any onsite driveways from the accessory dwelling unit to the staged evacuation area.

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.

7. "Staged evacuation area" means a public or private location that occupants of the accessory dwelling unit may evacuate to reorganize.

8. "Useable floor area" means all areas of the accessory dwelling unit included within the surrounding insulated exterior walls, exclusive of garages, carports, decks and porch covers.

9. "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 (ADU) is permitted outright on a lot or parcel zoned for UAR-10, SR-2 ½, or WTZ, provided:

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.

2. The lot area or parcel area is at least two acres in size.

3. The accessory dwelling unit will have a minimum setback of 100 feet from adjacent land zoned F-1, F-2, or EFU and meet any other minimum setback requirements of the underlying zone and combining zones.

4. The accessory dwelling unit will not include more than 900 square feet of useable floor area.

5. The accessory dwelling unit will be located no farther than 100 feet from the existing single-family dwelling, measured from a wall of the existing single-family dwelling to the nearest part of the useable floor area of the accessory dwelling unit.

6. The accessory dwelling unit receives approval from a sewer authority or Deschutes County Environmental Soils for onsite wastewater disposal and treatment.

7. The lot or parcel is served by a fire protection service provider with professionals who have received training or certification described in ORS 181A.410.

8. The accessory dwelling unit provides for all of the following:

    a. Adequate access:

        i. The accessory dwelling unit has adequate access as defined in DCC 19.92.160, or;

        ii. 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. 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.

9. 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:

        i. For areas designated as extreme or high wildfire risk 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:

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

10. 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 risk designations and/or 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 11(b)(i) or 11(b)(ii) requirements shall apply:

i. 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. Prior to use, 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. The fuel break shall be completed prior to the beginning of the coming fire season; 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. The accessory dwelling unit has defensible space and fuel break standards as developed in consultation with local fire protection service providers who have received training or certification described in ORS 181A.410.

11. The existing single-family dwelling property on the lot or parcel is not subject to an order declaring it a nuisance or subject to any pending action under ORS 105.550 to 105.600.

12. A lot or parcel with an accessory dwelling unit approved under this section is 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 accessory dwelling unit or any other permanent or temporary structure or dwelling unit designed or used for residential purposes, including medical hardship dwellings.

13. If the accessory dwelling unit is served by a well, the construction of the accessory dwelling unit shall maintain all setbacks from the well required by the Water Resources Commission or Water Resources Department.

14. 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.

15. 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).

16. 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.

17. The applicant shall sign and record with the County Clerk, prior to the issuance of a building permit, a restrictive covenant stating an accessory dwelling unit allowed under this section cannot be used for vacation occupancy, as defined in DCC 18.116.370(A)(10) and consistent with ORS 90.100.

HISTORY

Adopted by Ord. 2023-00x §x on [date]

CHAPTER 22.04 INTRODUCTION AND DEFINITIONS

22.04.040 Verifying Lots of Record

* * *

22.04.040 Verifying Lots of Record

A. Purpose; scope. Concurrent with or prior to the issuance of certain permits, a lot or parcel shall be verified pursuant to this section to reasonably ensure compliance with the zoning and land division laws in effect on the date the lot or parcel was created. Not all permits require verification. If required, verifying that the lot or parcel was lawfully created is a threshold issue that should be addressed before the permit may be issued, but does not supersede or nullify other permit requirements. This section 22.04.040 provides an applicant the option to concurrently verify a lot or parcel as part of applying for a permit that requires verification, or preliminarily apply for a declaratory ruling to thereby determine the scope of available permits.

B. Permits Requiring Verification.

1. Unless an exception applies pursuant to subsection (B)(2) below, verifying a lot or parcel pursuant to subsection (C) shall be required prior to the issuance of the following permits:

a. Any land use permit for a unit of land in the Exclusive Farm Use Zones (DCC Chapter 18.16), Forest Use Zone – F1 (DCC Chapter 18.36), or Forest Use Zone – F2 (DCC Chapter 18.40);

b. Any permit for a lot or parcel that includes wetlands as shown on the Statewide Wetlands Inventory;

c. Any permit for a lot or parcel subject to wildlife habitat special assessment;

d. In all zones, a land use permit relocating property lines that reduces in size a lot or parcel;

e. In all zones, a land use, structural, or non-emergency on-site sewage disposal system permit if the lot or parcel is smaller than the minimum area required in the applicable zone;

f. In all zones, a permit for a Historic Accessory Dwelling Unit as defined in DCC 18.116.350 or 19.92.150;

~~e.~~g. In all zones, a permit for a Rural Accessory Dwelling Unit as defined in DCC 18.116.355 or 19.92.160.

C. Verified Lots of Record. Permits that require verification shall only be issued to lots or parcels that meet the “lot of record” definition in 18.04.030.

D. Findings; Declaratory Ruling. If an applicant is applying for a land use permit listed in subsection (B)(1), the County shall include a finding verifying that the lot or parcel meets the “lot of record” definition in 18.04.030, a finding noting that the lot or parcel does not meet the “lot of record”

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

HISTORY

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

Amended by Ord. 2023-00x §x on [date]

COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Deschutes County Planning Commission

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

DATE: June 29, 2023

SUBJECT: Rural Accessory Dwelling Unit (ADU) Legislative Amendments – Planning Commission Recommendations, Public Comments, and Agency Comments

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The Deschutes County Planning Commission (Commission) will conduct a work session on July 13, 2023 concerning local provisions for rural ADUs as identified in Senate Bill (SB) 391[1] (file no. 247-22-000671-TA). This will be second work session with the Commission on these proposed amendments following previous actions during fall 2022.

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 Planning Commission (Commission) on September 22, 2022[2]. The Commission held deliberations on October 27, 2022[3] and the recommendations from that meeting are discussed herein.

Since the Commission's last actions on this proposal, legislation was passed by the Oregon Legislature which requires several changes to the original proposed amendments to maintain compliance with state standards. Specifically, SB 644 was recently passed which provides direction to local jurisdictions looking to adopt rural ADU standards prior to formal release of the Statewide Wildfire Hazard Map required by SB 762. Additionally, SB 80 was passed which alters the original standards and terminology used within the forthcoming Statewide Wildfire Hazard Map.

Given the passage of SB 644 and SB 80, along with the necessary amendment changes required by the bills, staff conducted a work session with the Deschutes County Board of Commissioners (Board) on June 5, 2023 to understand preferred steps on the ADU proposal moving forward. During that work session, the Board directed staff to reinitiate PAPA notice proceedings with DLCD to capture the

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[1] https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB0391/A-Engrossed
[2] See Deschutes County Planning Commission September 22, 2022 Agenda for more information: https://www.deschutes.org/bc-pc/page/planning-commission-17
[3] See Deschutes County Planning Commission October 27, 2022 Agenda for more information: https://www.deschutes.org/bc-pc/page/planning-commission-21

newest version of the amendments and provide the Commission with an opportunity to review the revised amendments. Per Board direction, staff submitted a revised 35-day PAPA notice to DLCD on June 7, 2023.

Based on the newest alterations and PAPA notice, the Commission will review the proposed amendments during the July 13, 2023 work session and offer any revised or new recommendations for the Board's consideration. No additional public hearings will be held before the Commission regarding the new amendments and any deliberative comments must be submitted during the work session proceedings. Recommendations from the Commission will be provided to the Board during a public hearing on July 26, 2023.

I. PREVIOUS PLANNING COMMISSION RECOMMEDATIONS

As noted above, a public hearing was held with the Commission on September 22, 2022. The Commission held deliberations on October 27, 2022 and made recommendations concerning the proposed amendments. Many of these recommendations correspond with staff's initial draft amendments while others would require new language and modifications to the proposed amendments:

- **Recommendation #1** (*approved 4 to 2*): The Commission recommended adoption of the proposed amendments, with substantial changes to the initial proposal as discussed herein.

- **Recommendation #2** (*approved 5 to 1*): "Useable floor area" is undefined within SB 391 and the administering statutes. The Commission recommends "Useable Floor Area" be defined as "the area of the accessory dwelling unit included within the surrounding exterior walls, including garages and other accessory components." To clarify, the 900 square-foot size limitation for rural ADUs would apply to the entire ADU structure, including garages and accessory components.

- **Recommendation #3**: 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. This recommendation was unchanged by the Commission from staff's initial proposal and thus no approval vote was taken.

- **Recommendation #4:** Due to vulnerable groundwater characteristics in southern Deschutes County, the Commission recommends the minimum lot or parcel size for rural ADUs to be at least five (5) acres in size. The boundaries of this recommendation were defined by the upper Deschutes watershed area studied during the La Pine Demonstration Project, US Geological Survey report 2007-5237, USGS Fact Sheet 2007-3103. This recommendation was unchanged by the Commission from staff's initial proposal and thus no approval vote was taken.

- **Recommendation #5** (*approved 5 to 1*): The Commission recommends prohibiting rural ADU development in designated Goal 5 resource areas (i.e. – Wildlife Area Combining Zone, Greater Sage-Grouse Area Combining Zone, and the Sensitive Bird and Mammal Habitat Combining Zone).

- **Recommendation #6** (*approved 6 to 0*): Pursuant to SB 762, the Commission recommends delaying the adoption of any local rural ADU legislation until such time as the final Statewide Map of Wildfire Risk (Statewide Wildfire Hazard Map) has been released by the Oregon Department of Forestry (ODF).

    - This recommendation was made prior to adoption of SB 644 and the corresponding impacts on SB 391 and the Statewide Map of Wildfire Risk (Statewide Wildfire Hazard Map).

    - SB 644 effectively decouples 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 risk map, any constructed ADUs will be subject to the home hardening building codes as described in section R327 of the 2021 Oregon Residential Specialty Code.

- **Recommendation #7** (*approved 6 to 0*): The Commission recommends prohibiting rural ADU development the Westside Transect Zone (WTZ) Zone.

- **Recommendation #8** (*approved 6 to 0*): The Commission recommends prohibiting both the existing single-family dwelling and the ADU for vacation occupancy use, as defined in DCC 18.116.370(A)(8) and consistent with ORS 90.100.

Outside of the explicit recommendations above, the Commission engaged in numerous discussion points relevant to the proposed amendments. A number of Commissioners expressed concern that the rural ADU amendments were being presented prior to completion of other ongoing long range planning initiatives which may have significant bearing on the proposal. Specifically, some Commissioners highlighted the importance of the ongoing state wildfire mitigation efforts and SB 762, the ongoing Deschutes County Comprehensive Plan update (Deschutes 2040), and the ongoing Goal 5 habitat inventory update for mule deer (Wildlife Inventory Update)[4]. Of these items, only the SB 762 mapping and wildfire mitigation efforts received a majority vote recommending delay of the proposed amendments. Should the Board elect to follow the Commission's recommendation to delay adoption of the proposed amendments until release of the final Statewide Map of Wildfire Risk (Statewide Wildfire Hazard Map) by ODF, it is unclear when these maps will be formally released and may delay adoption and implementation of any local ADU standards.

II. WRITTEN TESTIMONY & DISCUSSION

To date, a total of sixteen (16) comments from members of the public have been received by staff concerning the initially proposed amendments.

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

[4] As of June 26, 2023, the Board elected to withdraw the proposed Goal 5 habitat inventory update for mule deer.

- Opportunities for a general increase in housing supply, particular given ongoing housing shortages and burdensome rental costs in Central Oregon.

- Increased opportunities for intergenerational living as many aging parents and family members pursue housing with other family members on existing developed properties.

- Increased economic activity from rural ADU development.

- In conjunction with the initially proposed County standards, the existing requirements in SB 391 will serve to limit the effects of increased development in rural areas of the county.

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

- Negative impacts from increased traffic.

- Additional risk from adding residential development in high wildfire risk areas.

- Impacts to pre-existing water resources from adding additional exempt, private residential wells in the rural county.

- Loss of open space and rural quality of life expected from increased rural density.

- Impacts to wildlife populations and habitat related to increased development density.

- General skepticism around the impact that rural ADUs would have on housing availability and affordability in the region.

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

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

- Delaying the amendment process until final versions of the Statewide Map of Wildfire Risk required by Senate Bill (SB) 762 has been released by the Oregon Department of Forestry.

- Prohibit ADUs in all Goal 5 inventories captured by Deschutes County, including the Wildlife Area Combining Zone, Greater Sage-Grouse Area Combining Zone, and the Flood Plain Zone.

- Prohibit ADUs in the Westside Transect Zone.

- Delay the amendment process until the County's proposed Goal 5 inventory update is

completed.

III. PLANNING COMMISSION HEARING TESTIMONY & DISCUSSION

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

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

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

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

IV. AGENCY COMMENTS & DISCUSSION

As part of the record, seven (7) comments have been included from several state and local agencies with an interest in the proposed ADU amendments. Staff will attempt to highlight some of those specific comments that are particularly pertinent:

Deschutes County Environmental Soils Division

Due to concerns regarding failing treatment systems and groundwater impacts, the Onsite Wastewater Division recommends the following:

- Increasing the minimum lot or parcel size for rural ADUs to be at least five (5) acres in size in this specific geographic area. Additionally, in consultation with the Onsite Wastewater Division, staff has explored the possibility of requiring advanced wastewater treatment

systems for ADU development in southern Deschutes County.

- Limiting properties constructed with ADUs from all future residential dwelling development, including additional ADUs, medical hardship dwellings, and temporary dwellings within recreational vehicles or similar uses.

Oregon Department of Fish and Wildlife

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

- The siting and fencing standards of Deschutes County Code (DCC) 18.88[5] be maintained for all rural ADU development in the WA Combining Zone.

- A specific size limitation be instituted for all accessory components (i.e. - garages, storage structures, etc.) of any developed ADU not included in the 900 square-foot "useable floor area" required by SB 391.

- Access to properties should utilize existing roads and driveways for all rural ADU development.

Staff believes that the siting and fencing standards of DCC 18.88 would apply to all rural ADU development, regardless of specific language included in the proposed text amendments. To maintain clarity, should rural ADUs be allowed within the Wildlife Area Combining Zone, staff could modify the proposed amendment language to explicitly state the referenced standards from DCC 18.88 will apply to any future ADU development.

Options for specific size limitations have been proposed and discussed by the Commission regarding accessory components of an ADU. As discussed above and within the attached Recommendation Matrix (Attachment 1), the Commission initially recommended limiting the definition of "useable floor area" to encompass both living areas and accessory components of an ADU. As recommended, the total footprint of any proposed ADU, including components such as garages or storage areas, would be limited to 900 square feet.

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

5 https://deschutescounty.municipalcodeonline.com/book?type=ordinances#name=CHAPTER_18.88_WILDLIFE_AREA_COMBINING_ZONE;_WA

Attachments:

1. Planning Commission Recommendation Matrix

PLANNING COMMISSION RECOMMENDATION MATRIX

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

	Issue Area	SB 391 Criterion	Planning Commission Recommendation	Possible Alternatives
1	Should rural ADUs be allowed with additional standards or prohibited?	None	• Allows an owner of a lot or parcel within an area zoned for rural residential use to construct one accessory dwelling unit on the lot or parcel subject to additional local standards and restrictions. • Recommended by Planning Commission 5 to 1	1. Prohibit rural ADU development in Deschutes County.
2	How should "Useable Floor Area" be defined?	The ADU cannot include more than 900 square feet of "useable floor area."	• "Useable floor area" is undefined within SB 391 and the administering statutes. • The 900 square-foot limit to applies to the entire ADU structure, including garages and accessory components • Recommended by Planning Commission 5 to 1	1. Exclude items such as garages and accessory components from the 900 square-foot "useable floor area" definition. 2. Set a maximum size limit to accessory components of ADUs such as garages. 3. Additional requirements for permitting standards on habitable versus non-habitable space (i.e. – Group R-3 building permits for habitable space and Group U permits for non-habitable space).
3	How should the 100-Foot Siting Distance requirement be interpreted?	The accessory dwelling unit will be located no farther than 100 feet from the existing single-family dwelling.	• A unit must be located no farther than 100 feet from the existing single family dwelling, measured from a wall of the single-family dwelling to the nearest part of the "useable floor area" of the accessory dwelling unit. • Unchanged by the Planning Commission from staff's initial recommendation	1. Requiring the entire footprint of an ADU to be located within 100 feet of the existing single-family dwelling.

PLANNING COMMISSION RECOMMENDATION MATRIX

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

	Issue Area	SB 391 Criterion	Planning Commission Recommendation	Possible Alternatives
4	Are specific limitations warranted for Southern Deschutes County Groundwater Protection?	None	• Due to vulnerable groundwater characteristics in southern Deschutes County, the minimum lot or parcel size for rural ADUs to be at least five (5) acres in size. The boundaries of this recommendation were defined by the upper Deschutes watershed area studied during the La Pine Demonstration Project, US Geological Survey report 2007-5237, USGS Fact Sheet 2007-3103. • Unchanged by the Planning Commission from staff's initial recommendation	1. Prohibit all rural ADU development in the identified southern Deschutes County boundaries. 2. Maintain 5-acre minimum parcel size for rural ADU development and require advanced nitrogen reducing systems for wastewater treatment for both existing single-family dwellings and proposed ADUs. 3. Set a larger minimum parcel size requirement for all southern Deschutes County properties to qualify for rural ADU development. 4. Remove the minimum size requirements for all southern Deschutes County properties to qualify for rural ADU development.
5	Do the current amendments and ESEE analysis adequately address and protect Goal 5 and Natural Resources?	None	• Prohibit rural ADU development in designated Goal 5 resource areas (i.e. – Wildlife Area Combining Zone, Greater Sage-Grouse Area Combining Zone, and the Sensitive Bird and Mammal Habitat Combining Zone) • Recommended by Planning Commission 5 to 1	1. Allow rural ADU development in designated Goal 5 areas such as the Wildlife Area Combining Zone, subject to existing standards and requirements. Any development within Goal 5 sites such as the Flood Plain Zone or jurisdiction wetlands requires a Conditional Use Permit and review by local, state, and federal agencies to ensure compliance with environmental and natural hazard mitigation regulations. 2. Prohibit rural ADU development in some, but not all, designated Goal 5 resource areas. 3. Develop additional restrictions in coordination with the Oregon Department of Fish and Wildlife (ODFW) for rural ADU development in designated Goal 5 resources areas such as minimum parcel sizes, driveway access consolidation, etc.

PLANNING COMMISSION RECOMMENDATION MATRIX

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

	Issue Area	SB 391 Criterion	Planning Commission Recommendation	Possible Alternatives
6	Do the current amendments adequately address Senate Bill 762 and Wildfire Mitigation?	• If the Statewide Wildfire Risk Map (Statewide Wildfire Hazard Map) has been approved, the accessory dwelling unit complies with the Oregon residential specialty code relating to wildfire hazard mitigation for the mapped area or, statewide wildfire risk maps have not been approved and any rural ADUs must comply with the Oregon Residential Specialty Code relating to wildfire hazard mitigation; • The accessory dwelling unit has adequate setbacks from adjacent lands zoned for resource use; • The accessory dwelling unit has adequate access for firefighting equipment, safe evacuation and staged evacuation areas.	• Delay the adoption of rural ADU legislation until such time as the final Statewide Map of Wildfire Risk (Statewide Wildfire Hazard Map) has been released by the Oregon Department of Forestry • Recommended by Planning Commission 6 to 0 • Vote undertaken prior to passage of SB 644, which effectively decouples adoption of the Statewide Map of Wildfire Risk (Statewide Wildfire Hazard Map) from local ADU code adoption	1. Continue the adoption of rural ADU legislation with the SB 391 fire mitigation standards prior to the release of the final Statewide Map of Wildfire Risk by the Oregon Department of Forestry. Development of any rural ADU project would be subject to the Oregon Residential Specialty Code relating to wildfire hazard mitigation. 2. Require all rural ADUs contain fire sprinklers (per recommendation from former Chief Mike Supkis of La Pine Rural Fire Protection District).

PLANNING COMMISSION RECOMMENDATION MATRIX

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

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

	Issue Area	SB 391 Criterion	Planning Commission Recommendation	Possible Alternatives
7	Should ADUs be allowed in the Westside Transect Zone (WTZ)?	None	• Prohibit rural ADU development in the WTZ. • Recommended by Planning Commission 6 to 0	1. Allow rural ADU development in the WTZ. All existing requirements related to development within the WTZ including subdivision and property scale fuel treatments, wildfire mitigation building code standards, and maintenance of designated open space corridors would be unaffected by the proposed amendments. 2. Develop additional restrictions for rural ADU development in the WTZ such as siting standards, etc.
8	Should Vacation Occupancy be prohibited in the existing residence, as well as the ADU?	A county may not allow an accessory dwelling unit allowed under this section to be used for vacation occupancy, as defined in ORS 90.100.	• Prohibit both the existing single-family dwelling and the ADU for vacation occupancy use, as defined in DCC 18.116.355(A)(10) or 19.92.160(A)(10), and consistent with ORS 90.100 • Recommended by Planning Commission 6 to 0	1. Allow the existing single-family dwelling to be utilized for vacation occupancy use. The applicant shall be required to sign and record with the County Clerk, prior to the issuance of a building permit, a restrictive covenant stating an accessory dwelling unit allowed under this section cannot be used for vacation occupancy, as defined in DCC 18.116.355(A)(10) or 19.92.160(A)(10), and consistent with ORS 90.100

COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Deschutes County Planning Commission

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

DATE: June 29, 2023

SUBJECT: Rural Accessory Dwelling Unit (ADU) Legislative Amendments – Anticipated Property Eligibility

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The Deschutes County Planning Commission (Commission) will conduct a work session on July 13, 2023 concerning local provisions for rural ADUs as identified in Senate Bill (SB) 391[1] (file no. 247-22-000671-TA). This will be second work session with the Commission on these proposed amendments following previous actions during fall 2022.

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 Planning Commission (Commission) on September 22, 2022[2]. The Commission held deliberations on October 27, 2022[3] and the recommendations from that meeting are discussed herein.

Since the Commission's last actions on this proposal, legislation was passed by the Oregon Legislature which requires several changes to the original proposed amendments to maintain compliance with state standards. Specifically, SB 644 was recently passed which provides direction to local jurisdictions looking to adopt rural ADU standards prior to formal release of the Statewide Wildfire Hazard Map required by SB 762. Additionally, SB 80 was passed which alters the original standards and terminology used within the forthcoming Statewide Wildfire Hazard Map.

Given the passage of SB 644 and SB 80, along with the necessary amendment changes required by the bills, staff conducted a work session with the Deschutes County Board of Commissioners (Board) on June 5, 2023 to understand preferred steps on the ADU proposal moving forward. During that work session, the Board directed staff to reinitiate PAPA notice proceedings with DLCD to capture the

[1] https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB0391/A-Engrossed
[2] See Deschutes County Planning Commission September 22, 2022 Agenda for more information: https://www.deschutes.org/bc-pc/page/planning-commission-17
[3] See Deschutes County Planning Commission October 27, 2022 Agenda for more information: https://www.deschutes.org/bc-pc/page/planning-commission-21

newest version of the amendments and provide the Commission with an opportunity to review the revised amendments. Per Board direction, staff submitted a revised 35-day PAPA notice to DLCD on June 7, 2023.

Based on the newest alterations and PAPA notice, the Commission will review the proposed amendments during the July 13, 2023 work session and offer any revised or new recommendations for the Board's consideration. No additional public hearings will be held before the Commission regarding the new amendments and any deliberative comments must be submitted during the work session proceedings. Recommendations from the Commission will be provided to the Board during a public hearing on July 26, 2023.

I. ANTICIPATED PROPERTY ELIGBILITY

This proposal amends Deschutes County Code (DCC), Titles 18 and 19 to allow Rural ADUs consistent with SB 391 in the Multiple Use Agricultural (MUA-10), Rural Residential (RR-10), Suburban Low Density Residential (SR 2.5), Urban Area Reserve (UAR-10), and Westside Transect (WTZ) Zones. Eligibility criteria will be incorporated in DCC Chapters 18.116, Supplementary Provisions and 19.92, Interpretations and Exceptions. Based on initial review of the qualifying characteristics, approximately **8,660 tax lots in Deschutes County could potentially qualify for a rural ADU**. This includes properties which do not currently have a single-family dwelling onsite, but otherwise meet the qualifying standards. Additionally, this includes parcels which the Commission has recommended be prohibited from rural ADU development. However, staff notes the following limitations and revisions to that initial estimate:

- The estimate is only based on general requirements from SB 391 and SB 644, and does not evaluate properties on an individual level. Specific properties may have unique lot boundaries, geographic features, onsite wastewater limitations, or other characteristics which make the establishment of a rural ADU more challenging or impossible.

- Property owners may encounter additional costs and challenges when constructing a rural ADU above and beyond specific land use standards. It is likely that numerous properties will need to incorporate significant upgrades to onsite wastewater treatment systems prior to establishment of rural ADUs.

- This estimate includes 765 potentially eligible tax lots in the Wildlife Area Combining Zone (includes Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat). There are no potentially eligible tax lots within the Greater Sage Grouse Area Combining Zone.

    - The Commission initially recommended that all properties within the Wildlife Area Combining Zone be prohibited from qualifying for an ADU.

- This estimate includes 120 potentially eligible parcels in the Westside Transect Zone.

    - The Commission recommends that all properties within the Westside Transect Zone be prohibited from qualifying for an ADU.

- This estimate is based on a 5-acre minimum parcel size in southern Deschutes County. There are approximately 319 potentially eligible tax lots in southern Deschutes County based on a 5-acre minimum parcel size. There are approximately 1,129 potentially eligible tax lots in this area based on a 2-acre minimum parcel size.

    - The Commission recommends a 5-acre minimum parcel size in southern Deschutes County for ADU development.

Attachments:

1. Map of Potentially Eligible Properties

Parcels Meeting Initial Criteria for Rural ADUs per SB 391

1" = 3.5 Miles

Sisters

Redmond

Bend

La Pine

Parcel Meeting Criteria for Rural ADU per SB 391

Approximately 8,660 Parcels

- Zone must be RR10, MUA10, SR2.5, UAR10 or WTZ
- Parcel size must be 2 Acres or larger
- In South Deschutes County, parcel size must be 5 Acres or larger
- Outside of Metolius Area of Critical State Concern

N:\Custom\County\CDD\Planning\KyleCollins\SB391_RuralADU

September 27, 2022