



APPEAL APPLICATION – BOARD OF COUNTY COMMISSIONERS

FEE: \$3,170.00

EVERY NOTICE OF APPEAL SHALL INCLUDE:

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

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

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

Appellant's Name (print): Gary Sherman Phone: (541) 610-4477

Mailing Address: 61585 K Barr Road City/State/Zip: 97702

Email Address: tgbwwrgs@gmail.com

Land Use Application Being Appealed: 247-21-000889-AD

Property Description: Township _____ Range _____ Section _____ Tax Lot _____

Appellant's Signature: _____ Date: 2/28/2022

BY SIGNING THIS APPLICATION AND PAYING THE APPEAL FEE, THE APPELLANT UNDERSTANDS AND AGREES THAT DESCHUTES COUNTY IS COLLECTING A DEPOSIT FOR COSTS RELATED TO, PREPARING FOR, AND CONDUCTING A PUBLIC HEARING. THE APPELLANT WILL BE RESPONSIBLE FOR THE ACTUAL COSTS OF THE HEARING PROCESS. THE AMOUNT OF ANY REFUND OR ADDITIONAL PAYMENT WILL DEPEND UPON THE ACTUAL COSTS INCURRED BY THE COUNTY IN REVIEWING THE APPEAL.

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

(This page may be photocopied if additional space is needed.)

Deschutes County Community Development
117 NW Lafayette Avenue
Bend, OR 97703

Re: New Cingular Wireless PCS tower –
Request for Board Review and Appeal Statement

File: File No. 247-21-889

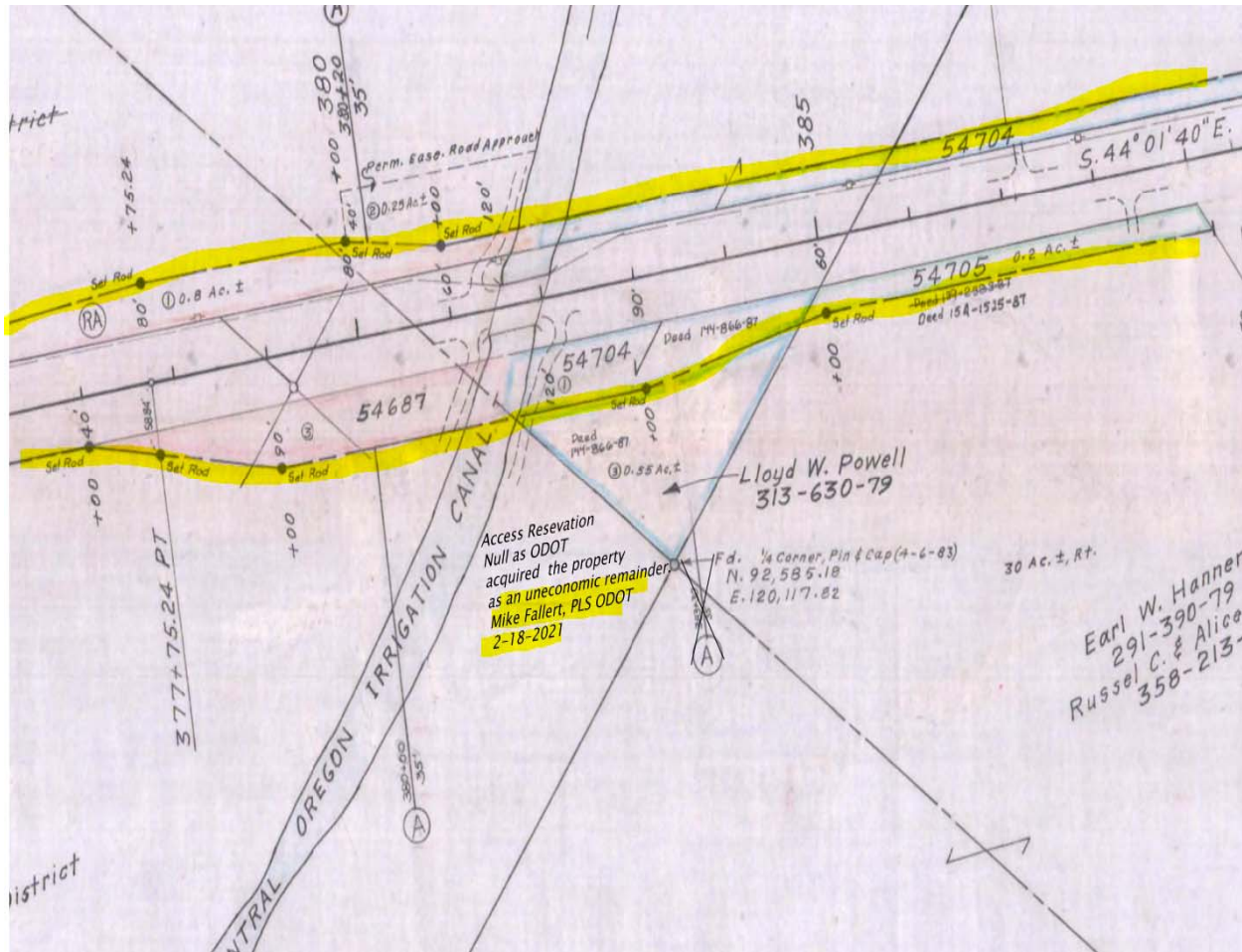
Date: February 28, 2022

Dear Board of Commissioners:

We are the property owners that live at 61585 K Barr Road, which is located on Hwy 20, east of Bend. Our property is zoned EFU and is located within the Landscape Management Overlay. We respectfully request the Board of Commissioners hear our appeal of the Hearings Officer's decision dated February 15, 2022, allowing the siting of a cell tower adjacent to our property. We believe the Hearing's Officer made a number of errors, including misinterpreting County Code (DCC 18.84.050) relating to the Landscape Management (LM) Overlay and Goal 5 Scenic View Protections, as well as the use of the public Right of Way (ROW).

The Deschutes County Code clearly prohibits the proposed 150 foot cell tower because it exceeds the 30-foot height limit in the LM Overlay and will be a visible obstruction in the protected Goal 5 Scenic View corridor. If the Hearings Officer's decision stands, this precedent will exempt all structures built within any public ROW from complying with the County's LM Overlay protections, even when they are blatantly visible, and a violation of the scenic view protections. I have written this letter with help from my lawyer on the technical issues.

This proposed tower site is located on ODOT property adjacent to Hwy 20, but on an "uneconomic remainder" parcel approximately 120 feet from the pavement's edge, near the arrow labeled "Lloyd W. Powell" on the drawing below. The proposed .55 acre tower site is outside of ODOT's control line for Hwy 20 (in yellow), but in an e-mail ODOT confirmed that it regards the site to be "right-of-way" property. This property was purchased as an "Uneconomic Remainder" which was purchased by ODOT because the highway made this sliver of land useless to the previous owner. This .55 acre is just big enough to site the tower and that is how AT&T is trying to circumvent the LM overlay by claiming that this is ODOT Land not subject to a Building Permit, thus not triggering the LM overlay.



The following is a broader summary of the appeal issues:

1. Interpretation of DCC 18.84.050(A). A critical issue before the Hearings Officer was whether this 150-foot cell tower actually triggered application of the LM Overlay. The question is addressed in DCC 18.85.050(A), which the Hearings Officer interpreted as requiring application of the LM Overlay only for new structures that require a building permit:

A. Any new structure or substantial exterior alteration of a structure requiring a building permit or an agricultural structure within an LM Zone shall obtain site plan approval in accordance with DCC 18.84 prior to construction. As used in DCC 18.84 substantial exterior alteration consists of an alteration which exceeds 25 percent in the size or 25 percent of the assessed value of the structure.

DCC 18.84.050 (Use Limitations).

The Hearings Officer concluded that the allocation of commas and use of the disjunctive term “or” in the first sentence was significant:

“If the County had intended DCC 18.84.050(A) to be a list of three distinct items, that Code provision would have been structured differently and more like DCC 18.84.010, with commas separating the three categories of development with no need for the use of ‘or’ twice in the sentence, as follows: ‘Any new structure, ~~or~~ substantial exterior alteration of a structure requiring a building permit, or an agricultural structure within an LM Zone shall obtain site plan approval.’ As drafted, however, without commas and the use of ‘or’ twice, the Code is more appropriately interpreted as addressing two items: (1) ‘Any new structure or substantial exterior alteration of a structure requiring a building permit’ or (2) ‘an agricultural structure’.”

HO’s decision at 10 (emphasis in the original)

Thus, even though DCC 18.84.050(A) starts with a list of three items separated by the word “or,” only the second of which is modified by “requiring a building permit,” the Hearings Officer concluded that the building permit requirement applied to new structures as well. Because this cell tower does not require a building permit due to its location in ODOT’s right-of-way, the Hearings Officer concluded, based on his interpretation of DCC 18.84.050(A), that the LM Overlay review was not triggered, and this hugely visible 150-foot cell tower was not subject to the 30-foot maximum height limitation.

The Hearings Officer’s conclusion, however, ignored the background and policy basis for the LM Overlay as the only mechanism for protecting Goal 5 scenic view resources. The County’s Goal 5 scenic resource program is enshrined in its Comprehensive Plan and codified in DCC Chapter 18.84, which was first adopted in 1979 (Ordinance PL-15). The original language of this section from Ordinance PL-15 provided as follows:

“Use Limitations. No structure, including agricultural buildings, shall be erected or substantially altered externally within one-quarter mile (measured at right angles from centerline of any identified landscape management roadway or within 200 feet of the mean high-water mark of any identified landscape management corridor along a river) without first obtaining the approval of the Planning Director.”

Section (5) of Ordinance PL-15.

The section’s provisions for scenic waterways were modified slightly again in 1991 (Ordinance 91-020), at which point the Board codified the LM Overlay scenic view protections into DCC Ch. 18.84.

In 1992 (Ordinance 92-034) the Board adopted significant amendments to DCC 18.84.050(A) relating to alterations of existing structures. The 1992 amendments make clear that the Board did not want to subject minor alterations of existing structures to the LM Overlay, especially if they would not be visible from the designated scenic corridor. It is equally clear that the Board did not intend to exempt any new visible structures in a scenic corridor from compliance with the LM Overlay and Goal 5 Scenic View protections. The 1992 amendment addressed the issue in two ways: First Ordinance 92-034 included a building permit as the trigger for what constitutes a substantial alteration. Second, Ordinance 92-034 added a new

section expressly stating that structures and alterations that would not be visible from the designated scenic corridor were exempt. Ordinance 92-034 shows the following changes to DCC 18.84.050 (deleted language in [brackets], new language underlined):

1. [No] Any new structure or substantial alteration of a structure requiring a building permit, or [structure including] an agricultural structure[s,] within an LM Combining Zone shall obtain site plan approval in accordance with this Chapter and Chapter 18.124, Site Plan Review, prior to construction. As used in this chapter substantial alteration consists of an alteration which exceeds 25% in the size or 25% of the assessed value of the structure. [one-quarter mile (measured at right angles from centerline of any identified landscape management roadway or within 200 feet of the mean high-water mark of any identified landscape management corridor along a river) without first obtaining the approval of the Planning Director or Hearings Body.]

2. Structures which are not visible from the designated roadway, river or stream and which are assured of remaining not visible because of vegetation, topography or existing development are exempt from the provisions of DCC 18.84.080 (Design Review Standards) and DCC 18.84.090 (Setback Standards). An applicant for site plan review in the LM Zone shall conform with the provisions of DCC 18.84, or may submit evidence that the proposed structure will not be visible from the designated road, river or stream. Structures not visible from the designated road, river or stream must meet setback standards of the underlying zone

Ordinance 92-034 (emphasis in the original)

The Staff report attached to Ordinance 92-034 explains that the amendment's focus was to exempt minor alterations to existing structures and any structure that would not be visible, but that all new visible structures would be subject to the Scenic View protections of the LM Overlay. Staff provided the following explanation of the 1992 changes:

“Section 18.84.050 requires site plan review for structures within the LM zone, clarifies the amount of alteration allowed without site plan review and exempts structures which will not be and will remain invisible from a designated roadway, river or stream from the provisions of site plan review.” Ex. C to Ordinance 92-034.

DCC 18.84.050 was amended most recently in 2015 (Ordinance 2015-016), to make clear that only exterior alterations of existing structures (not interior alterations) would be subject to LM Overlay precisely because interior alterations, even though they may require a building permit, were invisible and would not be visible from protected Goal 5 Scenic Resources. The staff report to the Board associated with the 2015 amendment explained the prior history of amendments and what those changes to DCC 18.84.050 meant:

As currently worded, this section requires that all substantial alterations, interior or exterior, requiring a building permit receive LM site plan approval. The regulation and review of interior alterations is not related to the purpose of the LM zone which

is "...to maintain scenic and natural resources of the designated areas and to maintain and enhance scenic vistas and natural landscapes as seen from designated roads, rivers, or streams." Staff believes this is an oversight from previous amendments that were not related to the interior alterations.

In Ordinance 91-20, Section 18.84.050, Use limitations, previously stated:

No structure, including agricultural buildings, shall be erected or substantially altered externally within one-quarter mile (measured at right angles from centerline of any identified landscape management roadway or within 200 feet of the ordinary [mean] high water mark of any identified landscape management corridor along a river) without first obtaining the approval of the Planning Director or Hearings Body. (emphasis added)

Then, Ordinance 92-034 amended 18.84.050 to its current wording which omitted the reference to exterior alterations. Exhibit "C" of Ordinance 92-034 summarizes the amendments noting, "Section 18.84.050 requires site plan review for structures within the LM zone, clarifies the amount of alteration allowed without site plan review and exempts structures which will not be and will remain invisible from a designated roadway, river, or stream from the provision of site plan review." Staff concludes the omission of reference to exterior alterations was done in error.

This section also included a reference to DCC 18.124, Site Plan Review. However, DCC 18.124 is not applicable to the LM zone. The site plan review requirements and standards that are applicable to the LM zone are outlined in the Chapter 18.84. The proposed amendment removes this reference.

Exhibit C to Ordinance 2015-016, pp 4 & 5 of 8 (emphasis in the original)

According to staff's description to the Board in 2015, DCC 18.84.050 required site plan review for all structures in the LM zone except those that were, and would remain, invisible from the designated roadway. The building permit requirement only attached to the alteration of existing structures as a way to exempt minor changes to existing structures. Exempting interior alterations of existing structures was another way to ensure that minor alterations would not be subject to needless review. There is no indication in this history of amendments or staff's assessments that the building permit requirement was meant to apply to new visible structures such as a 150-foot cell tower adjacent to Hwy 20. In 2015, staff provided no parsing of commas or the term "or," nor did staff identify a building permit as the sole trigger for application of the LM Overlay as the Hearings Officer now finds.

The focus from 1979 to the present was to exempt only minor and non-visible alterations to existing structures and new structures that would not be visible from protected scenic view corridors. New visible structures, regardless of whether they needed a building permit, were always intended to be subject to the LM Overlay and its Goal 5 Scenic View protections. The Hearings Officer misinterpreted DCC 18.84.050 in finding that "requiring a building permit" applies to new visible structures, and the Board has never been presented with these arguments

as to what the provision means. The only plausible interpretation of DCC 18.84.050 that is consistent with the underlying Goal 5 purpose of protecting designated Scenic Views is to subject this 150-foot cell tower to LM Overlay review and that “requiring a building permit” applies only to exterior alterations of existing structures. The Hearings Officer’s interpretation is not plausible because it ignores the Goal 5 purpose of protecting designated Scenic Views from new visible structures such as a 150-foot cell tower, and he ignores the history of amendments to DCC 18.84.050.

We purchased our property and chose to live where we do precisely because we knew about the County’s Scenic View protections for Hwy 20 east of Bend. We were shocked to see this application and doubly shocked to see the contrived interpretation of DCC 18.84.050 that AT&T made to the Hearings Officer. You can understand, then, our dismay when the Hearings Officer adopted AT&T’s interpretation and exempted all new structures from LM Overlay review when located in a public right-of-way, including this 150-foot tall cell tower. Currently, there are no such obstructions anywhere in this 20-mile long Hwy. 20 corridor. Construction of this tower would not only violate the Goal 5 Scenic View protections the County adopted and meant to implement through DCC Ch. 18.84, but the tower will be a huge visual obstruction as seen through my main living room window. Please correct this erroneous interpretation of DCC 18.84.050 and make this hugely visible cell tower proposal comply with the Scenic View protections of the LM Overlay.

2. Interpretation of ORS 215.283(1)(i). Normally, a cell tower on EFU zoned land would be regarded as a “utility facility necessary for public service” under ORS 215.283(1)(c), which also implicates a host of additional EFU protections and requirements in ORS 215.275. In particular, ORS 215.275 requires an applicant like AT&T to demonstrate that the facility has to be sited on EFU land in order to provide service.

The Hearings Officer, however, concluded that this cell tower was allowed on EFU land as part of the “reconstruction or modification of public roads and highways” under ORS 215.283(1)(i), which provides:

Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

ORS 215.283(1)(i).

The Hearings Officer seemed to view this as part of an ODOT project, or at least part of the “reconstruction or modification” of a public highway. In fact, this is a purely private project by AT&T to erect a 150-foot cell tower approximately 120 feet from the edge of Hwy 20 pavement, and has nothing to do with the reconstruction or modification of a public highway. It is astounding that the Hearings Officer would ignore the first and most fundamental requirement of this section and simply regard this cell tower as allowed outright on EFU land because it is on ODOT property adjacent to Hwy 20. While ODOT agreed in an e-mail that the site was within

ODOT right-of-way, the cell tower will be ~120 feet from the pavement and has nothing to do with the “reconstruction or modification” of Hwy 20.

If the Hearings Officer had correctly categorized this cell tower a “utility facility necessary for public service” under ORS 215.283(1)(c), AT&T would have had to address the additional siting criteria and EFU protections in ORS 215.275. DCC 18.16.038 reflects these criteria and requires the applicant to demonstrate why, in fact, the facility must be sited on EFU land in order to provide service. As part of its basic justification for this EFU-zoned site along Hwy 20, AT&T categorically ignored all near-by non-EFU zoned property zoned RR-10 and MUA because AT&T said it was too difficult (impossible) to site a cell tower in either of those zones. AT&T also rejected the existing tower at the Oregon National Guard property (Oregon Youth Challenge) just 1.4 miles away which already has an 80’ telecommunication tower that could be expanded or replaced with a taller tower. AT&T claimed that the permissions and permit review needed for the Oregon National Guard property were too daunting to navigate. In fact, AT&T moved immediately to the ODOT property near Hwy 20 and they realized they could avoid a building permit for the tower and DCC 18.84.050 could be interpreted to exempt the cell tower from LM Overlay review entirely.

Ultimately, AT&T chose the EFU-zoned site owned by ODOT near Hwy 20 because it is less expensive, quicker and simpler than having to address the requirements in the RR-10 or MUA zones or having to deal with the Oregon National Guard, and they can elude the Goal 5 Scenic Protections of the LM Overlay.

We ask the Board to please accept review of the Hearings Officer’s decision because without Board review, AT&T will be proven correct to the detriment of property owners like us, who relied on the County’s Goal 5 Scenic View protections and LM Overlay and to the detriment of everyone who cherishes the unobstructed scenic beauty of the County’s Goal 5 resources.

Sincerely,

Gary Sherman
Karen Sherman

92-11484

REVIEWED
Bww
LEGAL COUNSEL

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

92 APR -8 PM 1:03

An Ordinance Amending Title 18 of *
the Deschutes County Code Regarding *
Landscape Management Zones and *
Declaring an Emergency *

MARY SUE PENNOLLOW
COUNTY CLERK

0111-0007

ORDINANCE NO. 92-034

WHEREAS, Deschutes County is engaged in periodic review of its comprehensive plan and zoning ordinance pursuant to ORS Chapter 197; and

WHEREAS, the County has been required by LCDC to review its landscape management zones as part of periodic review; and

WHEREAS, public hearings have been held in conformance with state law; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON ORDAINS AS FOLLOWS:

Section 1. ADOPTION OF AMENDMENTS TO CHAPTER 18.04. Chapter 19.04 is amended to add the following definition of "Agricultural Structure:"

"Agricultural Structure. Agricultural structures include any structure considered to be an agricultural structure under the building code."

Section 2. ADOPTION OF AMENDMENTS TO CHAPTER 18.84. Chapter 18.84 of Title 18 is amended to read as set forth in Exhibit A, attached hereto and by this reference incorporated herein.

Section 3. ADOPTION OF AMENDMENTS TO CHAPTER 18.116. Section 18.116.160 is amended to read as set forth in Exhibit B, attached hereto and by this reference incorporated herein.

Section 4. FINDINGS. This ordinance is supported by the findings set forth in Exhibit C, attached hereto and by this reference incorporated herein.

KEYPUNCHED
APR 13 1992
MICROFILMED
APR 20 1992

Section 5. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

DATED this 8th day of April, 1992.


BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON



TOM THROOP, Commissioner

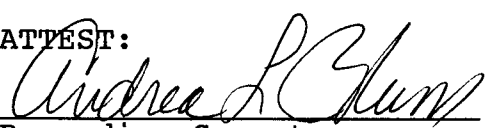


NANCY POPE SCHLANGEN, Commissioner



DICK MAUDLIN, Chairman

ATTEST:



Recording Secretary

Chapter 18.84

LANDSCAPE MANAGEMENT COMBINING - LM ZONE

In any LM Combining Zone, the requirements and standards of this Chapter shall apply in addition to those specified in this Title for the underlying zone. If a conflict in regulation or standards occurs, the provision of this chapter shall govern.

18.84.010 Purpose.

The purposes of the Landscape Management Combining Zone are to maintain scenic and natural resources of the designated areas and to maintain and enhance scenic vistas and natural landscapes as seen from designated roads, rivers or streams. [important to the local economy.]

18.84.020 Application of Provision.

The provisions of this chapter shall apply to all areas within one quarter mile of roads identified as landscape management corridors in the Comprehensive Plan and the County Zoning Map. The Provisions of this chapter shall also apply to all areas [designated as] within the boundaries of a State scenic waterway or Federal wild and scenic river corridor and all areas within 660 feet of rivers and streams otherwise identified as landscape management corridors in the comprehensive plan and the county zoning map. The distance specified above shall be measured horizontally from the center line of designated landscape management roadways or from the nearest ordinary high water mark of a designated landscape management river or stream. [identified as landscape management corridors in the Comprehensive Plan or the county zoning map.] The limitations in this section shall not unduly restrict accepted agricultural practices.

18.84.030 Uses Permitted Outright.

Uses permitted in the underlying zone with which the LM zone is combined shall be permitted in the LM zone, subject to the provisions in this Chapter.

[In a zone with which the LM is combined, the uses permitted shall be those permitted outright by the underlying zone with which the LM Zone is combined, subject to Section 18.84.050, below]

18.84.040 Uses Permitted Conditionally.

Uses permitted conditionally in the underlying zone with which the LM zone is combined shall be permitted as conditional uses in the LM zone, subject to the provisions in this Chapter.

[In a zone with which the LM is combined, the uses permitted shall be those permitted outright by the underlying zone with which the LM Zone is combined, subject to Section 18.84.050, below]

18.84.050 Use Limitations.

1. [No] Any new structure or substantial alteration of a structure requiring a building permit, or [structure including] an agricultural structure[s,] within an LM Combining Zone shall obtain site plan approval in accordance with this Chapter and Chapter 18.124, Site Plan Review, prior to construction. As used in this chapter substantial alteration consists of an alteration which exceeds 25% in the size or 25% of the assessed value of the structure. [one-quarter mile (measured at right angles from centerline of any identified landscape management roadway or within 200 feet of the ordinary high water mark of any identified landscape management corridor along a river) without first obtaining the approval of the Planning Director or Hearings Body.]

2. Structures which are not visible from the designated roadway, river or stream and which are assured of remaining not visible because of vegetation, topography, or existing development are exempt from the provisions of Section 18.84.080 (Design Review Standards) and Section 18.84.090 (Setback Standards). An applicant for site plan review in the LM zone shall conform with the provisions of this Chapter, or may submit evidence that the proposed structure will not be visible from the designated road, river or stream. Structures not visible from the designated road, river or stream must meet setback standards of the underlying zone.

18.84.060 Dimensional Standards.

In an LM Zone, the [following dimensional standards shall apply:

- A. M]minimum lot size shall be as established in the underlying zone with which the LM Zone is combined.

- [B. Setbacks shall be those established in the underlying zone with which the LM Zone is combined. If upon written recommendations from the Planning Director, the Planning Director or Hearings Body finds the established setbacks are inappropriate to carry out the purpose of the LM zone, he may require more or less restrictive dimensions.]

[18.84.070 Zoning Permits.

All buildings or structures covered by this section not

requiring a building permit shall be required to obtain a zoning permit before beginning construction.]

18.84.07[8]0 Application [Design Review].

0111-0011

[In reviewing an application, the Planning Director or Hearings Body shall consider the following:

A. Height, width, color, bulk and texture of the building or structure to assure that the building or structure is visually compatible with the surrounding natural landscape and does not unduly generate glare or other distracting conditions.

B. Retention of existing plant material and natural features to retain as much as possible the natural character of the area.]

[C.] (Moved to Section 18.84.080(9))

[D. Nothing in the section shall be construed to prevent the use of accepted agricultural practices, crops or equipment or restrict the construction of innovative residences, i.e. "dome" houses, except where their design or siting unduly diminishes the aesthetic qualities of the area.]

[E.] (Moved to Section 18.84.090(3))

An application for site plan approval for development in the Landscape Management zone shall be submitted to the Planning Division. The site plan application shall include the following:

1. A plot plan, drawn to scale, showing:

a. Location and dimensions of existing and proposed structures.

b. Setbacks from lot lines (and river and rimrock, if present).

c. Existing and proposed access.

d. Existing and proposed exterior lighting.

2. A drawing of the proposed structure elevations showing:

a. Exterior appearance.

b. Height, dimensions.

c. Siding and roofing material and color.

d. Location and size of windows including skylights.

3. A landscape plan drawn to scale, showing:
- a. Location, size and species of existing trees six inches in diameter or greater, or existing shrub vegetation higher than 4 feet, between the proposed development and the designated landscape management road, river or stream. Where a significant amount of vegetation exists a landscape plan may be accepted which generalizes and explains how the existing trees and shrubs provide screening.
 - b. Proposed location and species of introduced vegetation which will screen the proposed development from the designated landscape management road, river or stream.

18.84.080 Design Review Standards.

The following standards will be used to evaluate the proposed site plan:

1. Except as necessary for construction of access roads, building pads, septic drain fields, public utility easements, parking areas, etc., the existing tree and shrub cover screening the development from the designated road, river, or stream shall be retained. This provision does not prohibit maintenance of existing lawns, removal of dead, diseased or hazardous vegetation; the commercial harvest of forest products in accordance with the Oregon Forest Practices Act, or agricultural use of the land.
2. It is recommended that new structures and additions to existing structures be finished in muted earth tones that blend with and reduce contrast with the surrounding vegetation and landscape of the building site.
3. No large areas, including roofs, shall be finished with white, bright or reflective materials. Metal roofing material is permitted if it is non-reflective and of a color which blends with the surrounding vegetation and landscape.
4. Subject to applicable rimrock setback requirements or rimrock setback exception standards in section 18.084.090, all structures shall be sited to take advantage of existing vegetation, trees and topographic features in order to reduce visual impact as seen from the designated road, river, or stream. When more than one non-agricultural structure is to exist and no vegetation, trees or topographic features exist which can reduce visual impact of the subject structure, such structure shall be clustered in a manner which reduces their visual impact as seen from the designated road, river, or stream.

5. Structures shall not exceed 30 feet in height measured from the natural grade on the side(s) facing the road, river or stream. Within the LM zone along a State scenic waterway or Federal wild and scenic river, the height of a structure shall include chimneys, antennas, flag poles or other projections from the roof of the structure. This section shall not apply to agricultural structures located at least 50 feet from a rimrock.
6. New residential or commercial driveway access to designated landscape management roads shall be consolidated wherever possible.
7. New residential exterior lighting, including security lighting, shall be sited and shielded so that it is directed downward and is not directly visible from the designated road, river, or stream.
8. The Planning Director or Hearings Body may require the establishment of introduced landscape material to screen the development, assure compatibility with existing vegetation, reduce glare, direct automobile and pedestrian circulation [and] or enhance the overall appearance of the development while not interfering with the views of oncoming traffic at access points, or views of mountains, forests and other open and scenic area as seen [from the proposed site] from the designated landscape management road, river or stream. Use of native species shall be encouraged. (Formerly Section 18.84.080(c))
9. No signs or other forms of outdoor advertising that are visible from a designated landscape management river or stream shall be permitted. Property protection signs (No Trespassing, No Hunting, etc.) are permitted.
10. A conservation easement as defined in Section 18.04.030 "Conservation Easement" and specified in Section 18.116.2[1]20 shall be required as a condition of approval for all landscape management site plans involving property adjacent to the Deschutes River, Crooked River, Fall River, Little Deschutes River, Spring River, Squaw Creek and Tumalo Creek. Conservation easements required as a condition of landscape management site plans shall not require public access.

18.84.085 Imposition of Conditions.

The standards of this chapter may be met by the imposition of conditions drawn to ensure that the standards will be met.

18.84.090 Setbacks.

1. Except as provided in this Section, minimum setbacks shall be those established in the underlying zone with which the LM Zone is combined.
2. Road Setbacks. All new structures or additions to existing structures on lots fronting a designated landscape management road shall be set back at least 100 feet from the edge of the designated road unless the Planning Director or Hearings Body finds that:
 - a. A location closer to the designated road would more effectively screen the building from the road; or protect a distant vista; or
 - b. The depth of the lot makes a 100 foot setback not feasible; or
 - c. Buildings on both lots abutting the subject lot have front yard setbacks of less than 100 feet and the adjacent buildings are within 100 feet of the lot line of the subject property; and the depth of the front yard is not less than the average depth of the front yards of the abutting lots.

If the above findings are made, the Planning Director or Hearings Body may approve a less restrictive front yard setback which will be appropriate to carry out the purpose of the zone.

3. River and Stream Setbacks. All new structures or additions to existing structures shall be set back 100 feet from the ordinary high watermark of designated streams and rivers or obtain a setback exception in accordance with section 18.120.030. For the purpose of this section, decks are considered part of a structure and must conform with the setback requirement.

The placement of on-site sewage disposal systems shall be subject to joint review by the Planning Director or Hearings Body and Deschutes County Environmental Health Division. The placement of such systems shall minimize the impact on the vegetation along the river and shall allow a dwelling to be constructed on the site as far from the stream or lake as possible. Sand filter systems may be required as replacement systems when this will allow a dwelling to be located further from the stream or to meet the 100-foot setback requirement. (Formerly Section 18.84.08(E))

4. Rimrock Setback. New structures (including decks or additions to existing structures) shall be set back 50 feet from the rimrock in an LM zone. An exception to this setback may be granted to as close ~~to~~ 20 feet of

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the rimrock pursuant to the provisions of subsection 5 of this section.

5. Rimrock Setback Exceptions. An exception to the 50-foot rimrock setback may be granted by the Planning Director or Hearings Body, subject to the following standards and criteria:

a. An exception shall be granted when the Planning Director or Hearings Body finds that: [In all cases the structure shall meet all standards and criteria established in this chapter and Section 18.116.160 of this Title.]

(1) A lesser setback will make the structure less visible or completely screened from the river or stream; or

(2) The subject lot or parcel was a lot of record prior to the adoption of this ordinance; or

(3) Dwellings (including decks) on both lots or parcels abutting the subject lot within 50 feet of the rimrock and the adjacent buildings are within 100 feet of the lot line of the subject property; or

(4) Adherence to the 50-foot setback would prevent the structure from being sited on the lot.

b. A dwelling qualifying for a rimrock setback exception under the criteria set forth above shall be located as follows:

(1) The structure shall be designed and sited to minimize the visual impact when viewed from the ordinary high water mark on the far side of the river. This shall be determined by viewing the property from the ordinary high water mark immediately across from the center of the river frontage on which the structure is proposed with like evaluations being made 300 feet upstream and downstream on either side of that point over the entire length of river frontage on which the structure is proposed.

(2) Existing trees and shrubs which reduce the visibility of the proposed structure shall be retained.

(3) The height of the structure shall not exceed the setback from the edge of the rimrock.

(4) No structure (including decks) shall be located closer than 20 feet from the edge of

the rimrock unless the planning director or hearings body finds that the lesser setback will make the structure less visible or the structure is completely screened from the river or stream.

- (5) Where multiple non-agricultural structures are proposed on a lot or parcel, the structures shall be grouped or clustered so as to maintain a general appearance of open landscape for the affected area. This shall require a maintenance of at least 65% open space along rimrocks within subject lots or parcels.

6. Scenic Waterways. Approval of all structures in a State Scenic Waterway shall be conditioned upon receipt of approval of the State Parks Department.

18.84.100[090] Septic Permits.

Prior to the issuance of a permit for any on-site sewage disposal system [permit] that is to be located within 200 feet of a river or stream in a landscape management corridor a Landscape Management Site Plan shall be approved in accordance with this Chapter. (Ord.90-020 § 1, 1990).

Chapter 18.116

Supplementary Provisions

18.116.160 Rimrock Setbacks outside of LM Combining Zone.

All structures, including decks, within 50 feet from the edge of a rimrock, as defined in Section 18.04.[040]030 of this Title, shall be subject to site review if visible from the river or stream. Prior to approval of any structure within 50 feet of a rimrock the Planning Director or Hearings Body shall make the following findings:

- A. All structures, including decks, shall be set back a minimum of 20 feet from the edge of the rimrock. [as defined in Section 18.04.030. "Rimrock".]
- B. The height of the structure shall not exceed the setback from the edge of the rimrock. [The 20-foot rimrock setback shall not apply to decks so long as the railing or other man-made border around the deck does not exceed four feet in height and is not of solid construction. However, no deck shall be set back less than three feet from any rimrock.]
- [C. If there is more than one rimrock ledge or outcrop within the river or stream canyon, the 20-foot setback requirement shall be measured from the rimrock which is furthest from the river or stream.]
- D. Existing trees and shrubs which reduce the visibility of the proposed structure shall be retained. [If the 20-foot rimrock setback is within 100 feet of the ordinary high water line of the river or stream, the structure may be granted an exception to the 100-foot river or stream setback as provided under Section 18.120.030 for structures meeting the criteria of Section 18.120.030(E)(b)(2). However, under no circumstances shall the structure be set back less than 20 feet from the rimrock.]
- E. Where multiple structures are proposed on a parcel of land the structures shall be grouped or clustered so as to maintain a general appearance of open landscape for the effected area. This shall require a maintenance of at least 65% open space along all rimrocks.

(Ord. 91-020 § 1, 1991; Ord. 86-053 § 21, 1986; Ord. 82-013 § 2, 1982)

(Section 5.250, Lands Adjoining SM or SMR Zones, repealed by Ord. 88-004 § 1, 1988; Ord. 85-016 § 2, 1985; Ord. 81-015 § 1, 1981)

**OPEN SPACE AREAS OF SPECIAL CONCERN AND ENVIRONMENTAL
QUALITY FINDINGS FOR
LANDSCAPE MANAGEMENT COMBINING ZONES**

BACKGROUND:

The County Comprehensive Plan section on open spaces, areas of special concern, and environmental quality is the guiding policy document for the Landscape Management Combining Zone (LMCZ) and rimrock setback provisions. Areas included in the LM zone consist of numerous roads and highways, identified in the comprehensive plan, and all area within 200 feet of either side of designated rivers and streams.

In 1986, to implement the findings of the City of Bend and Deschutes County River Study, the Board of County Commissioners adopted Ordinance 86-019 which amended comprehensive plan policies relating to landscape management areas along certain rivers and streams. Ordinance 86-006, by operation, deleted the Deschutes River Combining Zone from the County Zoning Ordinance.

The Department of Land Conservation and Development review of the Deschutes County proposed periodic review order, dated August 27, 1990 reviewed and made comments and recommendations on the proposed periodic review order. The County segmented the comments into related areas in order more reasonably to deal with the large amount of work involved. Factors relating to Goal 5 open space issues were separated into two parts. Part 1 involved the landscape management combining zone (LMCZ) resources and State and Federal Scenic Waterways. Part 2 includes adoption of the changes proposed in the periodic review order as well as several more minor changes recommended in DLCD's review. This package deals with part 1, LMCZ's.

A. DLCD recommendations for periodic review requiring changes in the LMCZ:

1. "The County did not include an analysis of the cumulative effects of a development decisions on the protection of Goal 5 resources. At a minimum the County must assess the cumulative effects of implementing actions on Goal 5 resource which are currently being protected under the (1) Landscape Management Combining Zone; (2) Wildlife Area Combining Zone; (3) Deschutes River Combining Zone; and (4) Floodplain Zone. The County developed these zones to protect several significant Goal 5 resources. A finding that individual decisions have been made consist with acknowledged Goal 5 standards is not adequate. The County must assess (cumulative effects) of development decisions since

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acknowledgement. The purpose of this analysis is to test whether the original assumption upon, which the 1980 plan was based, continue to comply with Goal 5. Discretionary review criteria can also be tested. If the County finds that cumulative effects of implementation actions have resulted in a significant lose of habitat areas or resource values, amendments to these regulations will be necessary to satisfy periodic review (OAR 660-19-055(1))."

2. Potential and Approved Federal Wild and Scenic Rivers and State Scenic Waterways

"The proposed order identified, as a Goal 5 resource, "the Upper Deschutes River within Deschutes County and all land within 1/4 mile of each bank, beginning at Wickiup Dam and extending downstream to Lake Billy Chinook, excluding approximately 12 miles within the Bend Urban Growth Boundary." Conflicting uses and the ESEE consequences analysis is discussed in the Deschutes County/City of Bend River Study, April 1986. Implementing measures which carry out the proposed "3C" designation is set forth in the Deschutes River Combining Zone (Zoning Ordinance, section 4.195) (See below, Implementing Measures, for discussion of the Deschutes River Combining Zone).

The proposed order does not discuss the Deschutes River from Little Lava Lake downstream to Crane Prairie Reservoir as a designated state scenic waterway under Ballot Measure No. 7. The proposed order does not discuss other portions of the Deschutes Rive designated as a federal Wild and Scenic River and their classification under the Omnibus Oregon Wild and Scenic Rivers Act of 1988 are also not discussed. The federal Wild and Scenic River section of Squaw Creek is also not discussed. To comply with Goal 5, the county needs to address these resources under Goal 5 and explain how its resource protection program under Goal 5 coordinates with state and federal agencies responsible for managing these river segments".

3. Goal 5 Implementing Measures

"The county's proposed periodic review order contain ESEE consequences analyses for several Goal 5 resources. The Deschutes County/City of Bend River Study, April 1986 is a major component of the county's plan and provides most of the analyses required under Goal 5. No amendments to the county's Goal 5 implementing measures are proposed under periodic review.

The following standards do not comply with the requirements for clear and objective standards and

conditions under OAR 660-16-010(3) because they provide too much discretion and not enough certainty:

Landscape Management Combining Zone

1. Subsection (6)(B). "If upon...the Hearings Officer finds the established setbacks inappropriate to carry out the purpose of the LM zone, he may require more or less restrictive dimensions."
2. Subsection (8)(A): "visually compatible" and "unduly generate glare"; and (8)(D): "unduly diminishes the aesthetic qualities...".

B. CUMULATIVE IMPACTS:

In conducting a cumulative effects analysis of development decisions in LM zones the County encountered a great deal of difficulty. It is extremely difficult to quantify impacts on aesthetic resources. It was found to be impractical to assess and quantify the impacts of hundreds of land use and building permits issued in a Landscape Management Combining Zones. For this reason the County chose to have an evaluation conducted by the County Planning Commission. The Planning Commission serves as the county's citizen involvement program. The Planning Commission, assisted by the planning staff analyzed impacts in the landscape management corridors of the county by individually considering the impacts structures which effected view corridors. The Planning Commission evaluated impacts in a subjective manner considering the relevant zoning ordinance standards and criteria and the comprehensive plan policies. The findings were discussed by the Planning Commission at regular Planning Commission meetings. Several staff reports were prepared to discuss the various issues. The problem issues identified and agreed to by the Planning Commission were as follows:

1. The design review standards in the Landscape Management Zone were not clear and objective.
2. Properties which were not visible from the river or road were subject to requirements of the zoning ordinance to file site plans and pay related fees for review.
3. The ordinance did not specify that vistas to be protected are those as seen from the river or road.
4. The Landscape Management Combining Zone width of 200 feet was not adequate to protect the visual corridors along rivers and streams.
5. The standards of the LM zone were inconsistent with the State Scenic Waterway standards in some respects.

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6. The State Scenic Waterway includes review of development within 1/4 mile on either side of designated sections of a river compared to 200 feet by the County.
7. The 20 feet rimrock setback standard was not adequate to comply with the purpose of the zone to maintain scenic and natural resources of the zone. The rimrock setback does not accomplish the comprehensive plan policy to minimize the visual impact of structures as viewed from the river.

The Planning Commission held work sessions on March 27th, July 10th and August 14th 1991. Public Hearings were held by the Planning Commission on September 4th and October 23rd and additional work sessions were held October 9th and November 13th with a recommendation to the Board of County Commissioners. The Board of County Commissioners held a public hearing on January 15, 1991. The Board concurs with the findings of the Planning Commission that the cumulative effects of implementation actions have resulted in development which did not carry out the intent of the comprehensive plan. The Board finds that amendments are necessary to satisfy the requirements for periodic review established by OAR 660-19-055(1).

C. SUMMARY OF AMENDMENTS TO TITLE 18.84 OF THE COUNTY CODE:

1. Section 18.84.010 is amended to specify that the vistas and natural landscapes to be protected are those as seen from the stream, river or road.
2. Section 18.84.020 is amended to expand the landscape management corridors to include all areas within the boundaries of a State Scenic Waterway of Federal Wild and Scenic River Corridor and all area within 660 feet of rivers and streams identified as landscape management corridors in the comprehensive plan. The inclusion of the State and Federal Scenic Waterway's will require that all structures will be subject to a land use permit involving public notice. This will improve coordination with other governmental agencies by insuring adequate time and notice to address issues of mutual concern.

The expansion of other landscape management corridors along rivers and streams to 660 feet will improve visual resource management along streams and rivers. This will satisfy the deficiency identified in the cumulative impact analysis of the Planning Commission. This also is consistent with the current comprehensive plan, Deschutes River Corridor Open Space, policy #1. This policy requires inclusion of the "areas" along certain rivers and streams, in the LMCZ. This distance is not

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defined but may include all riparian areas, wetlands and canyons.

3. Section 18.84.050 requires site plan review for structures within the LM zone, clarifies the amount of alteration allowed without site plan review and exempts structures which will not be and will remain invisible from a designated roadway, river or stream from the provisions of site plan review.
4. Section 18.84.070 establishes more clearly the type of site plan needed to apply for a structure in the LM Combining Zone.
5. Section 18.84.080 establishes design review standards which are more clear and objective than previous standards. It is very difficult to develop clear and objective standards for aesthetic purposes. Clear and objective standards reduce flexibility and do not allow consideration of site specific features and characteristics. For this reason site plan review requires some discretionary standards which will be subject to land use permits involving public notice.

The Board has chosen not to mandate specific colors but to make them a recommendation. This was a particularly controversial issue in the public hearings and the Board finds that requirements for colors which blend into the surrounding landscape are subjective and not clear and objective. Further, the Board finds that the recommendation of the Planning Commission to allow traditional red barns and white farmhouses, though clear and objective, creates certain inequities since these colors would not blend with the surrounding landscape.

There was much controversy over the county's requirements for conservation easements as a condition of approval of a landscape management site plan. The Board finds that there is not a reasonable nexus between a LM review for a permitted use and public access to streams. For this reason public access will not be required as a condition of approval of a landscape management site plan. The Board finds that conservation easements do promote the purposes of the LM zone and should be required, as they are for all other land use permits.

6. Section 18.84.090 establishes setback standards in Landscape Management Combining Zones. These are clear and objective standards which did not previously exist in the Landscape Management Combining Zone. The 100 foot setback is consistent with requirements for structures which currently exist from all streams and river in the county. This section expands this setback

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to include areas along roadways in the LM Combining Zone. This section allows exceptions to setback standards for situations that would be severely restricted by the new setbacks.

By far the most controversial issue in the Landscape Management Combining Zone review is the rimrock setback standards. The county comprehensive plan goals and policies on open space, amended by Ordinance 86-019, adopting the requirements of the Deschutes River Study, states "Deschutes County shall modify its existing rimrock setback ordinance to assure that visual impacts of structures viewed from rivers or streams are minimized". The cumulative impact analysis indicates that the current 20 foot rimrock setback is not adequate, in all cases, to protect the visual resource values along rivers and streams.

The Board finds that increasing the setback to 50 feet will satisfy the comprehensive plan policy to minimize impacts along rivers. However considerable testimony, in the record indicates that the 50 foot setback creates a significant burden on some existing parcels. Testimony in the record indicates that significant loss of property value can occur with the increase in setback from 20 to 50 feet. For this reason a structures within 50 feet of a rimrock will be allowed on existing lots when certain criteria are met. These criteria allow dwellings when compliance with the setback standards would be completely screened from the river, houses on both abutting lots are located closer than 50 feet or adherence to the 50 foot setback would prevent a structure from being located on the lot. Additionally, structures located closer than 50 feet of a rimrock are allowed if they satisfy certain site plan criteria to minimize visual impact when viewed from the river or stream. Trees and shrubs are retained to screen the structure, the height of the structure can not exceed the setback from the edge of the rim, and no visible portion of the structure is located within 20 feet of the rimrock. The Board finds that these provisions minimize the impacts of structures on the scenic values of the area while recognizing setback expectations of property owners and the value of rimrock views. This balancing is consistent with the treatment of other conflicting values in the county's Goal 5 element of the comprehensive plan. This represents a "3C" decision as identified in the "Goal 5 Rule".

The Board finds that the acknowledged ESEE analysis and findings relating to open space and recreation consequences contained in the Deschutes River Study and incorporated into the comprehensive plan are adequate to support this decision.

7. Section 18.84.090(6) State and Federal Scenic Waterways. The goals and policies of the comprehensive plan enacted by the Deschutes River Study in 1986 encourage the designation of appropriate segments of the Deschutes River, Fall River, Little Deschutes River and Crooked River under the Federal Wild and Scenic River program and the State Scenic Waterways program. Since that time certain areas have been so designated. DLCD required the County to address these resources and explain how its resource protection program under Goal 5 coordinates with State and Federal agencies responsible for managing these river segments.

All State Scenic and Federal Wild and Scenic Waterway designations are included in the comprehensive plan in order to satisfy included the periodic review requirements, under Factor 2, new or amended goals or rule adopted since the date of acknowledgement. The LMCZ requires that structures in the State Scenic Waterway meet all standards of the State. For this reason no building permit would be issued until the applicant obtains approval from the State of Oregon to build in the State Scenic Waterway. The County has attempted to make its standards as consistent as possible with the State Scenic Waterway standards. It should be noted that the rule making process in adopting specific land management standards for the State Scenic Waterways in Deschutes County took into consideration local ordinances. The State adopted many of the county land use development standards in an effort to balance the protection of the rivers special attributes with the local planning regulations. State parks has submitted a letter in the record which indicates that it supports the proposed changes. This letter also indicates that the State will make every effort to revise the administrative rule to be consistent with the new county standards.

The Federal Wild and Scenic Waterway standards are currently being developed. The letter in the record from the Deschutes National Forest states that the proposed changes are consistent with the Wild and Scenic River requirements. The County is currently working to coordinate planning efforts with the Bureau of Land Management and Forest Service for the standards being developed within the Wild and Scenic River designations.

8. Section 18.116.160 of the County Code is being amended to regulate development along rimrocks outside of a LM Combining Zone. Rimrock setback outside of a LM zone have been regulated since the county's comprehensive plan was adopted in November of 1979. The subject changes would require site plan review for all

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structures within 50 foot of a rimrock. The changes would require that all structures visible from the protected view corridor of a designated river would be required to be setback a minimum of 20 feet from the edge of the rimrock. The height of a structure shall not exceed the setback from the edge of a rimrock. Existing trees and shrubs which reduce visibility of the proposed structure would be required to be retained. These changes are made to maintain consistency with the rimrock standards in LM zone.

D. SUMMARY OF AMENDMENTS TO THE COMPREHENSIVE PLAN:

1. The Board finds that the with few exceptions subject Landscape Management Combining Zone requirements are consistent with all existing comprehensive plan goals and policies.

Changes to the comprehensive plan include:

- a. Recognition of appropriate segments of the Deschutes River and Squaw Creek as Federal Wild, Scenic or Recreational River and State Scenic Waterways and expansion of the LMCZ to include these areas.
- b. Expansion of LM corridors along certain rivers and streams from 200 feet to 660 feet to include them in the LMCZ.
- c. Listing of Landscape Management Corridors along highways and roads currently designated only on zoning and comprehensive plan maps.
- d. Housekeeping clarifications to improve plan readability and increase plan consistency with the LMCZ.

All of these changes are consistent with and supported by the acknowledged ESEE analysis, findings, and supporting documentation adopted by the Board in the Deschutes River Study or currently existing in the acknowledged county comprehensive plan.

2. Other comprehensive plan amendments specified in the proposed periodic review order and necessitated by the DLCDC review of the proposed periodic review order of August 27, 1990 will be adopted as part of the final periodic review order.

/mjz



Deschutes County Board of Commissioners
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AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of December 28, 2015

DATE: December 15, 2015

FROM: Matthew Martin CDD 541-330-4620

TITLE OF AGENDA ITEM:

Consideration of Second Reading by Title Only and Adoption of:
Ordinances Nos. 2015-013 through 2015-018, Amending Deschutes County Code (DCC) Titles 9, 11, 17, 18, 22, and 23 to incorporate "housekeeping" changes that correct errors, incorporate changes to state law, and provide clarification of existing regulations, procedures, and policies.

PUBLIC HEARING ON THIS DATE? Yes

BACKGROUND AND POLICY IMPLICATIONS:

The Planning Division has compiled "housekeeping" text amendments based on experience with current code language. The amendments are an effort to correct noted errors, incorporate changes to state law, and provide clarification to existing land use regulations, procedures, and policies. These housekeeping amendments do not alter the permitted uses or use standards of the code. Additionally, no state statutes, rules, or land use goals apply to these changes. Six ordinances are required to make changes to DCC Titles 9, 11, 17, 18, 22, and 23.

The Board of County Commissioners held a public hearing and conducted first reading of these ordinances on December 9, 2015. The Board may conduct the second reading by title only of each ordinance since the second reading will be more than 13 days from the date of the first reading. It is expected that the adoption of the ordinances will be on the day of the second reading. The ordinances will become effective 90 days after adoption.

FISCAL IMPLICATIONS:

None.

RECOMMENDATION & ACTION REQUESTED:

MOTION 1: Move Second Readings by title only of Ordinances 2015-013 through 018.

MOTION 2: Move Adoption of Ordinances 2015-013 through 018.

ATTENDANCE: Matthew Martin and Legal Counsel

DISTRIBUTION OF DOCUMENTS:

Matt Martin, CDD and Legal



Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005
(541)388-6575 FAX (541)385-1764
<http://www.co.deschutes.or.us/cdd/>

TO: Deschutes County Board of County Commissioners
FROM: Matthew Martin, Associate Planner
DATE: December 2, 2015
SUBJECT: Public Hearing on County Land Use File No. 247-15-000256-TA - text amendments to make "housekeeping" changes to the Deschutes County code.

I. SUMMARY

The Planning Division is bringing a package of text amendments to the Board of Commissioners (Board) for a public hearing on December 9, 2015. These amendments are necessary to correct errors, incorporate changes to state law, and provide clarification to existing provisions of the county code. Staff and the Planning Commission recommend approval.

II. BACKGROUND

The Planning Division has compiled "housekeeping" text amendments based on our experiences with the current code language. The amendments are an effort to correct noted errors and provide clarification to existing land use regulations and policies. These housekeeping amendments do not alter the permitted uses or use standards of the code. In addition, no state statutes, rules, or land use goals apply to these changes.

The County Planning Commission held a public hearing on July 9, 2015 to review the proposed amendments. Then, on August 13th, the Planning Commission voted unanimously to recommend approval of the proposed amendments to the Board. The Planning Commission also formally recommended the Board consider adding the provisions of HB 2830, legislation related to review of remands, to the proposed amendments. It was not included in the amendments considered by the Planning Commission because this new legislation was identified after the initial public hearing and inclusion would have required restarting the process with new notice and another public hearing.

III. SCHEDULE

The public hearing before the Board is scheduled for December 9, 2015. Staff recommends the Board:

- *Open the public hearing and take oral and written testimony; then*
- *Close the hearing, commence deliberations, and consider first reading of the ordinances.*

Attachments: Staff Report
Ordinance 2015-013
Ordinance 2015-014
Ordinance 2015-015
Ordinance 2015-016
Ordinance 2015-017
Ordinance 2015-018

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Community Development Department

Planning Division Building Safety Division Environmental Health Division

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Staff Report

FILE NUMBER: 247-15-000256-TA

APPLICANT: Deschutes County Community Development
117 NW Lafayette Avenue
Bend, Oregon 97701

PROPERTY OWNER: N/A

REQUEST: Text Amendments to clarify existing standards and procedural requirements, incorporate changes to state law, and to correct errors found in various sections of the Deschutes County Code.

STAFF CONTACT: Matthew Martin, AICP, Associate Planner

I. APPLICABLE CRITERIA:

Title 22, Deschutes County Development Procedures Ordinance

II. BASIC FINDINGS:

A. **PROPOSAL:** The Planning Division determined minor changes were necessary to clarify existing standards and procedural requirements, incorporate changes to state law, and correct errors found in various sections of the Deschutes County Code (DCC). Staff initiated the proposed changes and notified the Oregon Department of Land Conservation and Development. The Deschutes County Board of County Commissioners will review the proposed changes at a public hearing on December 9, 2015.

III. CONCLUSIONARY FINDINGS:

A. **CHAPTER 22.12, LEGISLATIVE PROCEDURES**

1. Section 22.12.010.

Hearing Required

FINDING: This criterion will be met because a public hearing will be held before the Deschutes County Board of County Commissioners on December 9, 2015.

2. Section 22.12.020, Notice

Notice

A. Published Notice

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

FINDING: Notice of the public hearing before the Board of County Commissioners reviewing the proposed legislative changes was published in the Bend Bulletin newspaper on November 29, 2015. This criterion has been met.

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

FINDING: Notice was posted in the bulletin board in the lobby of the Deschutes County Community Development Department, 117 NW Lafayette, Bend. This criterion has been met.

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 will be provided to the County public information official for wider media distribution. This criterion has been met.

3. 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, which received a fee waiver. This criterion has been met.

4. 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 Planning Commission held a public hearing on July 9, 2015, to review the proposed amendments. Then, on August 13, 2015, the Planning Commission voted unanimously to recommend approval of the proposed amendments as amended. These criteria have been met.

5. Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: The proposed legislative changes included in file no. 247-15-000256-TA will be implemented by ordinances upon approval and adoption by the Board. This criterion will be met.

IV. PROPOSED TEXT AMENDMENTS:

The proposed text amendments are detailed in the referenced ordinance attached hereto with additional text identified by underline and deleted text by ~~strikethrough~~. Below are explanations of the proposed changes.

A. Title 9 of the Deschutes County Code:

Chapter 9.04. DRUG PARAPHERNALIA

In March of 2014, the Board of County Commissioners adopted an ordinance establishing a moratorium on the operation of any marijuana dispensary in any area subject to the jurisdiction of Deschutes County. This ordinance included a sunset May 1, 2015, repealing the moratorium. The proposed amendment removes the moratorium from the County code. ***(Ord. 2015-013 Exhibit A)***

B. Title 11, County Owned Land and Property:

**Chapter 11.12. TRANSFERABLE DEVELOPMENT CREDIT PROGRAM
Section 11.12.020. TDC Transactions.**

DCC 11.12.020(B)(3)(c) includes a typo incorrectly referring to DCC 11.12.010, Definitions, and not the appropriate section of DCC 11.12.020, TDC Transactions. The proposed amendment corrects the reference. ***(Ord. 2015-014 Exhibit A)***

C. Title 17, Subdivisions:

Table A Minimum Design Standards

Note #20 of the table references zones and standards for the La Pine Urban Unincorporated Community that are now within the city limits of La Pine and no longer under the jurisdiction of Deschutes County. The proposed amendments remove these references. ***(Ord. 2015-015 Exhibit A)***

D. Title 18, County Zoning:

Chapter 18.04. TITLE, PURPOSE AND DEFINITIONS

Section 18.04.030. Definitions.

DCC 18.04.030 includes several definitions that are associated solely with the La Pine Neighborhood Planning Area that is now located entirely within the city limits of La Pine and no longer under the jurisdiction of Deschutes County. The proposed amendments delete these definitions from the code. **(Ord. 2015-016 Exhibit A)**

Chapter 18.18 EXCLUSIVE FARM USE ZONE

Section 18.16.040. Limitations on Conditional Uses.

DCC 18.16.040 currently only references conditional uses permitted in DCC 18.16.030. However, the conditional uses permitted under sections 18.16.031 and 18.16.033 are allowed either under Oregon Revised Statute (ORS) 215.283(2) or Oregon Administrative Rule (OAR) 660-033-0120 and also subject to ORS 215.296. The proposed amendment adds reference to DCC 18.16.031 and 18.16.033 for clarification. **(Ord. 2015-016 Exhibit B)**

Chapter 18.60 RURAL RESIDENTIAL ZONE – RR-10

Section 18.60.090. Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone.

The County Comprehensive Plan was updated and reformatted in 2011. The proposed amendment corrects this reference to reflect the format change and identifies the new section number. **(Ord. 2015-016 Exhibit C)**

Chapter 18.67. TUMALO RURAL COMMUNITY ZONING DISTRICTS

Section 18.67.080. Standards for All Districts.

DCC 18.67.080(G), river setback, currently only refers to structures located within 100-feet of the river and the requirement that a setback exception to the 100-foot setback shall be approved. Instead, this section should state the required setback is a minimum of 100-feet while also noting there is opportunity for an exception. The proposed amendment clarifies the standard. **(Ord. 2015-016 Exhibit D)**

Chapter 18.84. LANDSCAPE MANAGEMENT COMBINING - LM ZONE

Section 18.84.050. Use limitations.

As currently worded, this section requires that all substantial alterations, interior or exterior, requiring a building permit receive LM site plan approval. The regulation and review of interior alterations is not related to the purpose of the LM zone which is "...to maintain scenic and natural resources of the designated areas and to maintain and enhance scenic vistas and natural landscapes as seen from designated roads, rivers, or streams." Staff believes this is an oversight from previous amendments that were not related to the interior alterations.

In Ordinance 91-20, Section 18.84.050, Use limitations, previously stated:

No structure, including agricultural buildings, shall be erected or substantially altered externally within one-quarter mile (measured at right angles from centerline of any identified landscape management roadway or within 200 feet of the ordinary [mean] high water mark of any identified landscape management corridor along a river) without first obtaining the approval of the Planning Director or Hearings Body. (emphasis added)

Then, Ordinance 92-034 amended 18.84.050 to its current wording which omitted the reference to exterior alterations. Exhibit “C” of Ordinance 92-034 summarizes the amendments noting, “Section 18.84.050 requires site plan review for structures within the LM zone, clarifies the amount of alteration allowed without site plan review and exempts structures which will not be and will remain invisible from a designated roadway, river, or stream from the provision of site plan review.” Staff concludes the omission of reference to exterior alterations was done in error.

This section also included a reference to DCC 18.124, Site Plan Review. However, DCC 18.124 is not applicable to the LM zone. The site plan review requirements and standards that are applicable to the LM zone are outlined in the Chapter 18.84. The proposed amendment removes this reference.

Section 18.84.080. Design Review

DCC 18.84.080(D) includes a typo in the reference to DCC18.84.090(E). The proposed amendment removes this error.

DCC 18.84.080(E) as currently worded erroneously exempts agricultural structures located at least 50 feet from a rimrock for the standards of DCC18.84.080, instead of the height limit of the section as intended. The proposed amendment corrects this error.

DCC 18.84.080(J) currently refers to Squaw Creek, the previous name of Whychus Creek. The proposed amendment corrects the name.

(Ord. 2015-016 Exhibit E)

Chapter 18.108. URBAN UNINCORPORATED COMMUNITY ZONE - SUNRIVER

Section 18.108.055 Town Center – TC District

The County Comprehensive Plan was updated and reformatted in 2011. The proposed amendments correct this reference to reflect the format change and identify the new section number. ***(Ord. 2015-016 Exhibit F)***

Chapter 18.113. DESTINATION RESORTS ZONES - DR

Section 18.113.060. Standards for Destination Resorts.

Ordinance 2013-008 approved a ratio of 2.5:1 for residential units to overnight available in destination resorts. Section 18.113.060(A)(1)(b)(iv) was not previously updated to reflect this new standard. The proposed amendment makes the approved change to this section. ***(Ord. 2015-016 Exhibit G)***

Chapter 18.128. CONDITIONAL USE

Section 18.128.200. Cluster Development (Single-Family Residential Uses Only).

The County Comprehensive Plan was updated and reformatted in 2011. The proposed amendment corrects this reference to reflect the format change. *(Ord. 2015-016 Exhibit H)*

E. Title 22, Deschutes county Development Procedures Ordinances:

Chapter 22.08. GENERAL PROVISIONS

Section 22.08.010. Application Requirements.

The review of select land applications requires a hearings officer deposit for cost of services to be submitted as part of an application. Currently there is no reference to this deposit in the application requirements. The proposed amendment specifies that a hearings officer deposit shall be submitted or requested prior to deeming the application complete. *(Ord. 2015-017 Exhibit A)*

Chapter 22.28. LAND USE ACTION DECISIONS

Section 22.28.020. Notice of decision.

This section currently requires hearings body decisions be mailed to all parties. This can be and has been a considerable expense and may not be necessary given the availability of decisions online or upon request. Instead, the proposed amendment indicates notice of the decision will be sent to all parties. Decisions will continue to be available online or upon request. *(Ord. 2015-017 Exhibit B)*

Chapter 22.32. APPEALS

Section 22.32.015. Filing appeals.

DCC 22.32.015(D) specifies that appeal fees shall be paid by cash, check, money order, or purchase order for government agencies. This standard was added by Ord. 98-019 (TA98-6) to explicitly allow governmental agencies to pay for an appeal with a purchase order in addition to cash, check, or money order. Since the adoption of Ord. 98-019, the Community Development Department is now able to accept payments via credit card. Instead of adding credit cards to the list of payment options, the terminology is simplified to acknowledge all acceptable forms of payment.

Section 22.32.024. Transcript requirement.

DCC 22.32.024 currently requires an appellant to provide a complete transcript of for the appeal hearing. However, with the availability of audio and video recordings of hearings, such a transcript is not always necessary. Therefore, this change provides opportunity for the appeal hearings body to waive the requirement of providing a complete transcript.

(Ord. 2015-017 Exhibit C)

Chapter 22.34. PROCEEDINGS ON REMAND

Section 22.34.030. Notice and hearings requirements.

DCC 22.34.030 as written restricts the time period for a final decision for the Board on remand to within 90 days of the date the remand order becomes effective. This provides no

flexibility for the applicant to respond or extend this time period. The originally proposed amendment clarified this procedural requirement providing flexibility for an applicant.

After the public hearing before the Planning Commission reviewing the proposal, Staff became aware that the Oregon Legislature recently enacted House Bill (HB) 2830 amending the LUBA remand procedures. In summary, the amendment extends the 90-day review time period to 120-days upon request from the applicant that the county proceed with review. The amendment also provides opportunity for this time period to be extended an additional 365 days if the parties enter into mediation as provided by ORS 197.860 prior to the expiration of the initial 120-day period. If the county does not receive the request to proceed from the applicant within 180 days of the effective date of the final order or the final resolution of the judicial review or if not resolved through mediation prior to the expiration of the 365-day extension, the county shall deem the application terminated.

Because this new information was provided after the public hearing, the Planning Commission did not include it in the recommended package of amendments. Instead, the Planning Commission recommended to Board of County Commissioners consider replacing the proposed amendment with the new language of HB 2830. The proposed amendment now reflects this legislation. **(Ord. 2015-017 Exhibit D)**

Chapter 22.36. LIMITATIONS ON APPROVALS
Section 22.36.010. Expiration of approval.

DCC 22.36.010(B)(4)(a) indicates the approval period for replacement dwellings in the EFU zone is for 4 years. However, recent amendments to ORS 215.417 removed replacement dwellings from the list of uses with 4 year approval periods. Instead, replacement dwellings are subject to the general 2 year approval period. The proposed amendment corrects this error. **(Ord. 2015-017 Exhibit E)**

F Title 23, Deschutes County Comprehensive Plan:

Chapter 4. URBAN GROWTH MANAGEMENT
Section 4.3 Unincorporated Communities/
Table 4.3.1 – Deschutes County Unincorporated Communities 2010

The narrative after the table notes the Community Plans for Tumalo and Terrebonne are in Sections 4.5 and 4.6, respectively. However, text amendments previously approved renumbered these Sections to 4.6 and 4.7. The proposed amendment corrects error. **(Ord. 2015-018 Exhibit B)**

APPENDIX C – TRANSPORTATION SYSTEM PLAN
Section 2.2 Existing Transportation System and Current Needs

The County TSP does not currently include a description of SE 27th Street, which forms portions of the southeast boundary of the city limits and urban growth boundary the City of Bend. Because portions of the road and property adjacent are located in areas under County jurisdiction, inclusion of the road on the TSP is warranted. The County Road Department road inventory identifies this segment of road as a rural arterial and the most recent traffic count in 2008 found 7,656 average daily trips (ADT). The proposed amendment adds SE 27th Street to the existing description of Baker Road and Knott Road because it is natural extension of the same corridor. **(Ord. 2015-018 Exhibit C)**

V. CONCLUSION:

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

Attachments: Ordinance 2015-013
Ordinance 2015-014
Ordinance 2015-015
Ordinance 2015-016
Ordinance 2015-017
Ordinance 2015-018

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance repealing Ordinance 2014-008.

*
*
*
*

ORDINANCE NO. 2015-013

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. 247-15-000256-TA) to the Deschutes County Code (DCC) Title 9, Chapter 9.04, Drug Paraphernalia to incorporate “housekeeping” changes correct errors, incorporate changes to state law, and provide clarification of existing regulations, procedures, and policies; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on August 13, 2015 and forwarded to the Deschutes County Board of County Commissioners (“Board”), a recommendation to repeal Ordinance No. 2014-008; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on December 9, 2015, and concluded that the public will benefit from the proposed changes to Deschutes County Code (“DCC”) Title 9; now, therefore,

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

Section 1. REPEALED. DCC 9.04.040, Controlled Substances, is hereby repealed in its entirety.

///

Section 2. FINDINGS. The Board adopts as its findings in support of this decision attached to Ordinance 2015-018 as Exhibit "E" and incorporated by reference herein.

Dated this _____ of _____, 2015

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

ALAN UNGER, Vice Chair

ATTEST:

Recording Secretary

TAMMY BANEY, Commissioner

Date of 1st Reading: _____ day of _____, 2015.

Date of 2nd Reading: _____ day of _____, 2015.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Tammy Baney	___	___	___	___
Anthony DeBone	___	___	___	___
Alan Unger	___	___	___	___

Effective date: _____ day of _____, 2015.

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code *
Title 11 to Incorporate "Housekeeping" Changes that * ORDINANCE NO. 2015-014
Correct Errors, Incorporate Changes to State Law, *
and Provide Clarification of Existing Regulations, *
Procedures, and Policies.

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. 247-15-000256-TA) to the Deschutes County Code (DCC) Title 11, Chapter 11.12, Transfer Development Credit Program to incorporate "housekeeping" changes correct errors, incorporate changes to state law, and provide clarification of existing regulations, procedures, and policies; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on August 13, 2015 and forwarded to the Deschutes County Board of County Commissioners ("Board"), a recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on December 9, 2015, and concluded that the public will benefit from the proposed changes to Deschutes County Code ("DCC") Title 11; now, therefore,

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

Section 1. AMENDMENT. DCC 11.12.020, TDC Transactions, is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strike through~~.

///

Section 2. FINDINGS. The Board adopts as its findings in support of this decision attached to Ordinance 2015-018 as Exhibit "E" and incorporated by reference herein.

Dated this _____ of _____, 2015

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

ALAN UNGER, Vice Chair

ATTEST:

Recording Secretary

TAMMY BANEY, Commissioner

Date of 1st Reading: _____ day of _____, 2015.

Date of 2nd Reading: _____ day of _____, 2015.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Tammy Baney	___	___	___	___
Anthony DeBone	___	___	___	___
Alan Unger	___	___	___	___

Effective date: _____ day of _____, 2015.

Chapter 11.12. TRANSFERABLE DEVELOPMENT CREDIT PROGRAM

11.12.020. TDC Transactions.

- A. Sale of TDCs from the Sending Area. Either Section B or C shall be followed for the creation of TDCs,
- B. Restrictive Covenant
 - 1. The property owner or any other interested person shall request verification from the County that the subject property is eligible for a TDC.
 - 2. The Department shall send the property owner or interested person written verification confirming the number of TDCs the subject property is eligible for based on the criteria in DCC 11.12.030.
 - 3. Upon mutual agreement of a sale between the property owner and TDC purchaser, the following transactions shall occur:
 - a. The property owner shall provide a TDC Report to the Department.
 - b. If the TDC purchaser is other than the County then the property owner and TDC purchaser shall sign a TDC Contract form provided by the County.
 - c. Upon Department review and approval of the TDC Report and receipt of payment of the consideration in accordance with the County's agreement with the property owner or the TDC Contract pursuant to DCC 11.12.020(AB)(3)(b), the County shall prepare a Restrictive Covenant that restricts development on the subject property. This Restrictive Covenant shall be signed by the County and the property owner. The County shall record the Restrictive Covenant.
 - d. Contemporaneously with the recording of the Restrictive Covenant, County shall provide the TDC purchaser with documentation of the TDC purchase.
- C. PRC.
 - 1. The property owner or any other interested person shall request verification from the County that the subject property is eligible for a PRC.
 - 2. The Department shall provide the property owner or interested person written verification confirming the subject property is eligible for a PRC based on the criteria in DCC 11.12.030.
 - 3. The County shall grant a PRC to a developer in the Receiving Area if the developer provides one of the following:
 - a. A Retrofit, in cooperation with the property owner of a property eligible for a PRC, Existing Wastewater Treatment System and documentation submitted to the County that includes proof of ownership of the subject property, proof of consent of the property owner for the Retrofit, and final County inspection of the Retrofit; or
 - b. Payment into the County's Financial Assistance Fund the proportional cost established by Board of County Commissioner Resolution for a Retrofit. The County's fund shall be used to aid property owners in reducing the overall discharge of nitrogen into the basin groundwater of in south Deschutes County.
- D. Assignment of TDCs to the Receiving Area.
 - 1. The total number of required TDCs, including PRCs, applicable to a subdivision in the Receiving Area shall be established and made a condition of approval at the time of tentative plan approval.
 - 2. The tract or lot shall be located within the La Pine Neighborhood Planning Area in the La Pine Urban Unincorporated Community and be zoned Residential General or Residential Center. The Receiving Area is identified on a map prepared and maintained by the Department.
 - 3. TDCs shall be assigned to a lot or tract based on the Net Developable Acres at a rate approved by Board of County Commissioner resolution.
 - 4. PRCs shall be assigned to a tract at a rate established by Board of County Commissioner resolution.
 - 5. The Board may, by resolution, adjust the number of TDCs required per acre or alter the factors for which TDCs are required in the Receiving Area.
 - 6. At the time of final plat approval, any remaining required PRCs for the partition or subdivision shall be divided by the number of residential lots approved for the partition or subdivision.

7. The required PRCs and their cost for each lot shall be shown on the final plat.
8. Prior to issuance of a building permit for a residential lot in the Receiving Area, the Department must have payment of the required number of PRCs for that lot.

E. Non-Residential Districts. Where permitted under DCC 18.61.050, uses in non-residential districts in the Receiving Area do not require TDCs.

F. Right to Develop. If an owner of a lot or parcel of land eligible for a TDC chooses not to participate in the TDC program, the owner shall not be restricted from developing said lot or parcel in accordance with the applicable zoning standards in DCC Title 18, and any other applicable regulations, rules or standards.

| ([Ord. 2015-014 § 1, 2015](#); Ord. 2009-003 § 1, 2008; Ord. 2006-016 §1, 2006; Ord. 2004-007 §1, 2004; Ord. 2002-010 §1, 2002)

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code *
Title 17 to Incorporate "Housekeeping" Changes that * ORDINANCE NO. 2015-015
Correct Errors, Incorporate Changes to State Law, *
and Provide Clarification of Existing Regulations, *
Procedures, and Policies.

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. 247-15-000256-TA) to the Deschutes County Code (DCC) Title 17, Chapter 17.48, Design and Construction Specifications to incorporate "housekeeping" changes correct errors and provide clarification of existing regulations, procedures, and policies; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on August 13, 2015 and forwarded to the Deschutes County Board of County Commissioners ("Board"), a recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on December 9, 2015, and concluded that the public will benefit from the proposed changes to Deschutes County Code ("DCC") Title 17; now, therefore,

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

Section 1. AMENDMENT. DCC 17.48 Table A, is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strike~~through.

///

Section 2. FINDINGS. The Board adopts as its findings in support of this decision attached to Ordinance 2015-018 as Exhibit "E" and incorporated by reference herein.

Dated this _____ of _____, 2015

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

ALAN UNGER, Vice Chair

ATTEST:

Recording Secretary

TAMMY BANEY, Commissioner

Date of 1st Reading: _____ day of _____, 2015.

Date of 2nd Reading: _____ day of _____, 2015.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Tammy Baney	___	___	___	___
Anthony DeBone	___	___	___	___
Alan Unger	___	___	___	___

Effective date: _____ day of _____, 2015.

“****” Denotes portions of this Section not amended by Ordinance 2015-015.

Chapter 17.48. DESIGN AND CONSTRUCTION SPECIFICATIONS

Table A MINIMUM DESIGN STANDARDS

Notes:

- (1) Design shall be in accordance with Oregon Department of Transportation Design Standards.
- (2) Design shall be in accordance with AASHTO standards.
- (3) Pavement widths are variable, depending on such factors as anticipated traffic volumes, and whether the road section involves turn lanes, bike lanes, and whether frontage roads border an arterial or collector, etc.
- (4) The required base depth may be increased when a C.B.R., or R-value is required by the Road Department.
- (5) Cul-de-sac bulb to be constructed with a 45-foot minimum radius.
- (6) Increase in grade of 2 percent may be allowed in unusually steep areas.
- (7) No curb for rural frontage roads.
- (8) 20' allowed for cul-de-sac's and roads with low anticipated traffic volumes as long as separate multiple use paths are provided. 28' width required (including the required 4' striped shoulder bikeway in each direction) for circulator and primary subdivision access roads and other roads when separate multiple use paths are not provided.
- (9) The larger of the two widths is necessary if a shoulder bikeway is required (4' for collector and 5' for arterial).
- (10) 20' allowed for cul-de-sac's and roads with low anticipated traffic volumes. 24' width required for circulator and primary subdivision access roads.
- (11) Sidewalks required for new subdivisions and partitions, within Unincorporated Communities, that result in an average lot size of 11,000 square feet or less.
- (12) Widths are variable, but in no case shall a swale be less than 6 feet in width. Swales shall conform as much as practicable to DEQ best management practices for non-underground injection control (UIC) systems such as grassy or vegetated bioswales designed (sized) to mitigate anticipated storm water runoff.
- (13) Where drainage swales are not required, the standards for drainage in Title 17, Chapter 17.48 shall still apply.
- (14) 6-foot sidewalks required on both sides of Highway 97 between South 11th Avenue and Central Avenue intersections. Includes pedestrian crossing improvement at B Avenue and C Avenue intersection (see Terrebonne Comprehensive Plan Map D-3).
- (15) 5-foot curbless sidewalks with a drainage swale required on both sides of the road.
- (16) 5-foot curbless sidewalks with drainage swales required in Terrebonne from West 19th Street to 15th Street on the south side of C Avenue (see Terrebonne Comprehensive Plan Map D-3), or those roads in Tumalo designated for sidewalks (see Tumalo Comprehensive Plan Map D2).
- (17) 5-foot curbless sidewalks with drainage swales required along school frontage on B Avenue and 5th Street (see Terrebonne Comprehensive Plan Map D-3).
- (18) Where allowed, parking must be off pavement.
- (19) 40 feet immediately adjacent to arterial road, or 60 feet when frontage road is separated from arterial by private land.
- (20) In the ~~Neighborhood Commercial, Community Facility, Community Facility Limited and Residential Center~~ Districts, ~~where a paved multi-use path is not required in Figure 16 (Non-Motorized Plan) of Title 23,~~ sidewalks at least five feet wide shall be installed at the time of development. The sidewalks shall be property line tight and meet ADA accessibility requirements. ~~The sidewalks shall be connected to the required paths identified on Figure 16, the Non-Motorized Plan.~~
- (21) 10-foot sidewalks required on both sides of US Highway 97 between First/Reed and 6th Street intersections.
- (22) Rather than a continuous paved parking shoulder, parking in designated pullout areas can be provided along the collectors for access to open space, parks and residential lots.
- (23) The minimum width is 8 ft. However, 8 ft. wide multiuse paths are not recommended in most situations because they may become over-crowded. They should only be constructed as short connectors, or where long term usage is expected to be low, and with proper horizontal and vertical alignment to assure good sight distances. 10 ft is the standard width for a two-way multi-use path but they should be 12 ft wide in areas with high mixed-use. Optimum width should be based on the relative use by cyclists and pedestrians. High use by skaters may also require greater width.

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code *
Title 18 to Incorporate "Housekeeping" Changes that * ORDINANCE NO. 2015-016
Correct Errors, Incorporate Changes to State Law, *
and Provide Clarification of Existing Regulations, *
Procedures, and Policies.

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. 247-15-000256-TA) to the Deschutes County Code (DCC) Title 18, Chapter 18.04, Title, Purpose and Definitions; Chapter 18.16, Exclusive Farm Use Zones; Chapter 18.60, Rural Residential Zone; Chapter 18.67, Tumalo Rural Community Zoning Districts; Chapter 18.84, Landscape Management Combining; Chapter 18.108, Urban Unincorporated Community Zone; Chapter 18.113, Destination Resorts Zone; and Chapter 18.128, Conditional Use to incorporate "housekeeping" changes correct errors, incorporate changes to state law, and provide clarification of existing regulations, procedures, and policies; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on August 13, 2015 and forwarded to the Deschutes County Board of County Commissioners ("Board"), a recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on December 9, 2015, and concluded that the public will benefit from the proposed changes to Deschutes County Code ("DCC") Title 18; now, therefore,

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

Section 1. AMENDMENT. DCC 18.04.030, Definitions, is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 2. AMENDMENT. DCC 18.16.040, Limitations on Conditional Uses, is amended to read as described in Exhibit "B," attached hereto and by this referenced incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 3. AMENDMENT. DCC 18.60.090, Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone, is amended to read as described in Exhibit "C," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 4. AMENDMENT. DCC 18.67.080, Standards for All Districts, is amended to read as described in Exhibit "D," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

///

Section 5. AMENDMENT. DCC 18.84.050, Use limitations, and DCC 18.84.080, Design review standards, are amended to read as described in Exhibit “E,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 6. AMENDMENT. DCC 18.108.055, Town Center, is amended to read as described in Exhibit “F,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 7. AMENDMENT. DCC 18.113.060, Standards for Destination Resorts, is amended to read as described in Exhibit “G,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 8. AMENDMENT. DCC 18.128.200, Cluster Development (Single-Family Residential Uses Only), is amended to read as described in Exhibit “H,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 9. FINDINGS. The Board adopts as its findings in support of this decision attached to Ordinance 2015-018 as Exhibit “E” and incorporated by reference herein.

Dated this _____ of _____, 2015

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

ALAN UNGER, Vice Chair

ATTEST:

Recording Secretary

TAMMY BANEY, Commissioner

Date of 1st Reading: _____ day of _____, 2015.

Date of 2nd Reading: _____ day of _____, 2015.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Tammy Baney	___	___	___	___
Anthony DeBone	___	___	___	___
Alan Unger	___	___	___	___

Effective date: _____ day of _____, 2015.

“****” Denotes portions of this Section not amended by Ordinance 2015-016.

Chapter 18.04. TITLE, PURPOSE AND DEFINITIONS

18.04.030. Definitions.

~~“Accessory dwelling” as applied in the La Pine Urban Unincorporated Community, La Pine Neighborhood Planning Area, means a complete dwelling unit either attached to or separate from the primary dwelling unit. An accessory dwelling may be no larger than 33 percent of the living area, excluding the garage, of the primary dwelling, or 800 square feet, whichever is less. Maximum height for a detached accessory dwelling is 24 feet.~~

~~“La Pine Collector Street” means a collector street in the La Pine Urban Unincorporated Community, La Pine Neighborhood Planning Area as depicted on the Neighborhood Planning Area Street Plan, Figure 15, in DCC 23.36.052, the Deschutes County Comprehensive Plan.~~

~~“La Pine central collector” means the collector street running north and south through the center of the La Pine Urban Unincorporated Community, La Pine Neighborhood Planning Area. The generalized corridor location for the Central Collector is depicted on the Neighborhood Planning Area Street Plan, Figure 15, in DCC 23.36.052.~~

~~“Live/work dwelling” is a use permitted in the La Pine Urban Unincorporated Community, La Pine Neighborhood Planning Area, and Residential Center District in which a business may be operated on the ground floor. The ground floor commercial or office space has visibility, signage and access from the primary street. To preserve the pedestrian orientation of the commercial or office space, alley access is required for parking. The location of lots where live/work dwellings may be sited shall be specified on the subdivision plat. The live/work housing types are defined below:~~

~~A. Live/work house: A single family detached house with no more than 50 percent of the first story of the building available as commercial or office space.~~

~~B. Live/work town home: A residential, fee simple town home unit in which a business may be operated. The commercial or office portion of the building shall be limited to the ground floor and may not exceed 50 percent of the square footage of the entire building, excluding the garage.~~

~~“Neighborhood” means one of four areas in the La Pine Urban Unincorporated Community, La Pine Neighborhood Planning Area, as depicted on the Neighborhood Planning Area Neighborhood and Quadrant Plan, Figure 11, in DCC 23.36.052, the Deschutes County Comprehensive Plan. Each Neighborhood has a Residential Center District including a Neighborhood Park and is divided into Quadrants by neighborhood collector streets.~~

~~“Neighborhood commercial building” means a building located in the La Pine Urban Unincorporated Community, La Pine Neighborhood Planning Area, Residential Center District that does not exceed a total of 4,000 square feet of gross floor area and may contain retail, service, office, or food service establishment, excluding drive-through. A neighborhood commercial building is a stand-alone~~

~~commercial use to serve neighborhood needs. It is not intended to draw large numbers of patrons from outside of the neighborhood. The design of the building shall be residential in scale and character. Off-street parking is limited to a maximum of one space per 500 square feet of building. Off-street parking must be located at the side or rear of the building. The public entrance to the building shall be from the primary street frontage.~~

~~“Neighborhood park” means a public park located in the central area of each Neighborhood in the La Pine Neighborhood Planning Area. Neighborhood Park size ranges from two to five acres.~~

~~“Neighborhood quadrant” means one of the four sub-areas in each of the four neighborhoods in the La Pine Urban Unincorporated Community, La Pine Neighborhood Planning Area. The Quadrants are depicted on the Quadrant Plan, Figure 11, in DCC 23.36.052, the Deschutes County Comprehensive Plan.~~

~~“Open space buffer” means the open space designated on the La Pine Urban Unincorporated Community, La Pine Neighborhood Planning Area Parks and Open Space Plan, Figure 17 in DCC 23.36.052, the Deschutes County Comprehensive Plan. The open space buffer provides space between the Neighborhoods and Highway 97, Huntington Road, Burgess Road and the existing subdivision adjacent to the La Pine Neighborhood Planning Area.~~

~~“Open space corridor” means the corridors designated on the La Pine Urban Unincorporated Community, La Pine Neighborhood Planning Area Parks and Open Space Plan, Figure 17 in DCC 23.36.052, the Deschutes County Comprehensive Plan. The open space corridors define the boundaries between the Neighborhoods and are the locations for paths in the non-motorized circulation network.~~

~~“Quadrant plan” means a development plan for a Neighborhood Quadrant in the La Pine Neighborhood Planning Area.~~

~~([Ord. 2015-016 §1, 2015](#); Ord. 2015-004 §1, 2015; Ord. 2014-009 §1, 2014; Ord. 2013-008 §1, 2013; Ord. 2012-007 §1, 2012; Ord. 2012-004 §1, 2012; Ord. 2011-009 §1, 2011; Ord. 2010-022 §1, 2010; Ord. 2010-018 §3, 2010; Ord. 2008-007 §1, 2008; Ord. 2008-015 §1, 2008; Ord. 2007-005 §1, 2007; Ord. 2007-020 §1, 2007; Ord. 2007-019 §1, 2007; Ord. 2006-008 §1, 2006; Ord. 2005-041 §1, 2005; Ord. Chapter 18.04 35 (04/2015) 2004-024 §1, 2004; Ord. 2004-001 §1, 2004; Ord. 2003-028 §1, 2003; Ord. 2001-048 §1, 2001; Ord. 2001-044 §2, 2001; Ord. 2001-037 §1, 2001; Ord. 2001-033 §2, 2001; Ord. 97-078 §5, 1997; Ord. 97-017 §1, 1997; Ord. 97-003 §1, 1997; Ord. 96-082 §1, 1996; Ord. 96-003 §2, 1996; Ord. 95-077 §2, 1995; Ord. 95-075 §1, 1975; Ord. 95-007 §1, 1995; Ord. 95-001 §1, 1995; Ord. 94-053 §1, 1994; Ord. 94-041 §§2 and 3, 1994; Ord. 94-038 §3, 1994; Ord. 94-008 §§1, 2, 3, 4, 5, 6, 7 and 8, 1994; Ord. 94-001 §§1, 2, and 3, 1994; Ord. 93-043 §§1, 1A and 1B, 1993; Ord. 93-038 §1, 1993; Ord. 93-005 §§1 and 2, 1993; Ord. 93-002 §§1, 2 and 3, 1993; Ord. 92-066 §1, 1992; Ord. 92-065 §§1 and 2, 1992; Ord. 92-034 §1, 1992; Ord. 92-025 §1, 1992; Ord. 92-004 1 and 2, 1992; Ord. 91-038 §§3 and 4, 1991; Ord. 91-020 §1, 1991; Ord. 91-005 §1, 1991; Ord. 91-002 §11, 1991; Ord. 90-014 §2, 1990; Ord. 89-009 §2, 1989; Ord. 89-004 §1, 1989; Ord. 88-050 §3, 1988; Ord. 88-030 §3, 1988; Ord. 88-009 §1, 1988; Ord. 87-015 §1, 1987; Ord. 86-056 2, 1986; Ord. 86-054 §1, 1986; Ord. 86-032 §1, 1986; Ord. 86-018 §1, 1986; Ord. 85-002 §2, 1985; Ord. 84-023 §1, 1984; Ord. 83-037 §2, 1983; Ord. 83-033 §1, 1983; Ord. 82-013 §1, 1982)~~

“****” Denotes portions of this Section not amended by Ordinance 2015-016.

Chapter 18.16. EXCLUSIVE FARM USE ZONES

18.16.040. Limitations on Conditional Uses.

- A. Conditional uses permitted by DCC 18.16.030, 18.16.031, and 18.16.033 may be established subject to ORS 215.296 ~~and~~, applicable provisions in DCC 18.128, and upon a finding by the Planning Director or Hearings Body that the proposed use:
1. Will not force a significant change in accepted farm or forest practices as defined in ORS 215.203(2)(c) on surrounding lands devoted to farm or forest uses; and
 2. Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
 3. That the actual site on which the use is to be located is the least suitable for the production of farm crops or livestock.

(Ord. 2015-016 §2, 2015; Ord. 2014-010 §1, 2014; Ord. 2012-007 §2, 2012; Ord. 2009-014 §1, 2009; Ord. 2008-001 §2, 2008; Ord. 2006-008 §3, 2006; Ord. 2004-001 §2, 2004; Ord. 98-030 §1, 1998; Ord. 95-075 §1, 1995; Ord. 95-007 §14, 1995; Ord. 92-065 §3, 1992; Ord. 91-038 §1 and 2, 1991; Ord. 91-020 §1, 1991; Ord. 91-011 §1, 1991)

Chapter 18.60. RURAL RESIDENTIAL ZONE - RR-10

18.60.090. Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone.

- A. Uses Permitted Outright. In the Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone, uses shall be permitted as follows, the following uses and their accessory uses are allowed outright:
 - a. Agricultural use as defined in DCC Title 18.
 - b. Propagation or harvesting of a forest product.
 - c. Ground application of treated effluent.
- B. Uses Permitted Subject to Site Plan Review. In the Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone, uses shall be permitted as follows, the following uses and their accessory uses are permitted subject to applicable provisions of DCC 18.116, Supplementary Provisions, and DCC 18.124, Site Plan Review:
 - a. Sewage Treatment Facility.
 - b. Treated Effluent Ponds.
- C. Uses Permitted Conditionally. In the Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone, Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B), and their accessory uses are permitted conditionally subject to the applicable provisions of DCC 18.128, Conditional Uses.
- D. Definitions. For the purpose of this section, the use Sewage Treatment Facility includes any buildings or structures associated with the operations of a sewer treatment plant including, but not limited to, treatment station or pump station.
- E. Special Conditions. Pursuant to ~~DCC-Deschutes County Comprehensive Plan~~ Section ~~23.120.170~~ 5.10, an application for site plan review to establish a sewage treatment facility must include a conservation easement and a plan of implementing the conservation easement that provides standards and implementation methods for managing the conservation easement, along with a recorded road maintenance agreement between Oregon Water Wonderland Unit 2 Sewer District and the Beaver Special Road District, with the site plan review application. The road maintenance agreement between the applicant and the Beaver Special Road District shall include Oregon Water Wonderland Unit 2 Sewer District's pro rata share for the maintenance cost of Foster Road through Section 25.

| (Ord. 2015-016 §3, 2015; Ord. 2010-016§1, 2010; Ord. 2003-012 §1, 2003).

Chapter 18.67. TUMALO RURAL COMMUNITY ZONING DISTRICTS

18.67.080. Standards for All Districts.

- A. Solar Setback. The setback from the north lot line shall meet the solar setback requirements in DCC 18.116.180.
- B. Building Code Setbacks. In addition to the setbacks set forth herein, any greater setbacks required by the applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.
- C. Off-Street Parking and Loading. Off-street parking and loading shall be provided subject to the applicable provisions of DCC 18.116.
- D. Lot Coverage. Except where otherwise noted, the primary and accessory buildings located on any lot or parcel shall not cover more than 30 percent of the total lot or parcel.
- E. Building Height. Except where otherwise indicated, no building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.
- F. Rimrock Setback. Setbacks from the rimrock are subject to the applicable provisions of DCC 18.116.160.
- G. River setback. All new structures or additions to existing structures ~~within~~ shall be set back a minimum of 100 feet from the ordinary high water mark of designated streams and rivers ~~are subject to the applicable provisions of~~ obtain a setback exception in accordance DCC 18.120.030. For the purpose of DCC 18.67.070, decks are considered part of a structure.

(Ord. 2015-016 §4, 2015; Ord. 97-033 §2, 1997)

“****” Denotes portions of this Section not amended by Ordinance 2015-016.

Chapter 18.84. LANDSCAPE MANAGEMENT COMBINING - LM ZONE

18.84.050. Use limitations.

- A. Any new structure or substantial exterior alteration of a structure requiring a building permit, an agricultural structure, within an LM Zone shall obtain site plan approval in accordance with ~~the~~ DCC 18.84 and DCC 18.124, Site Plan Review, prior to construction. As used in DCC 18.84 substantial exterior alteration consists of an alteration which exceeds 25 percent in the size or 25 percent of the assessed value of the structure.
- B. Structures which are not visible from the designated roadway, river or stream and which are assured of remaining not visible because of vegetation, topography or existing development are exempt from the provisions of DCC 18.84.080 (Design Review Standards) and DCC 18.84.090 (Setbacks). An applicant for site plan review in the LM Zone shall conform with the provisions of DCC 18.84, or may submit evidence that the proposed structure will not be visible from the designated road, river or stream. Structures not visible from the designated road, river or stream must meet setback standards of the underlying zone.
(Ord. 2015-016, §5, 2015; Ord. 2001-016, §2, 2001; Ord. 95-075 §3, 1995; Ord. 92-034 §2, 1992; Ord. 91-020 §1, 1991; Ord. 90-020 §1 1990; PL-15 1979)

18.84.080. Design review standards.

The following standards will be used to evaluate the proposed site plan:

- A. Except as necessary for construction of access roads, building pads, septic drainfields, public utility easements, parking areas, etc., the existing tree and shrub cover screening the development from the designated road, river, or stream shall be retained. This provision does not prohibit maintenance of existing lawns, removal of dead, diseased or hazardous vegetation; the commercial harvest of forest products in accordance with the Oregon Forest Practices Act, or agricultural use of the land.
- B. It is recommended that new structures and additions to existing structures be finished in muted earth tones that blend with and reduce contrast with the surrounding vegetation and landscape of the building site.
- C. No large areas, including roofs, shall be finished with white, bright or reflective materials. Roofing, including metal roofing, shall be nonreflective and of a color which blends with the surrounding vegetation and landscape. DCC 18.84.080 shall not apply to attached additions to structures lawfully in existence on April 8, 1992, unless substantial improvement to the roof of the existing structure occurs.
- D. Subject to applicable rimrock setback requirements or rimrock setback exception standards in DCC 18.084.090(E), all structures shall be sited to take advantage of existing vegetation, trees and topographic features in order to reduce visual impact as seen from the designated road, river or stream. When more than one nonagricultural structure is to exist and no vegetation, trees or topographic features exist which can reduce visual impact of the subject structure, such structure shall be clustered in a manner which reduces their visual impact as seen from the designated road, river, or stream.
- E. Structures shall not exceed 30 feet in height measured from the natural grade on the side(s) facing the road, river or stream. Within the LM Zone along a state scenic waterway or federal wild and scenic river, the height of a structure shall include chimneys, antennas, flag poles or other projections from the roof of the structure. DCC 18.84.080(E) shall not apply to agricultural structures located at least 50 feet from a rimrock.
- F. New residential or commercial driveway access to designated landscape management roads shall be consolidated wherever possible.

- G. New exterior lighting, including security lighting, shall be sited and shielded so that it is directed downward and is not directly visible from the designated road, river or stream.
 - H. The Planning Director or Hearings Body may require the establishment of introduced landscape material to screen the development, assure compatibility with existing vegetation, reduce glare, direct automobile and pedestrian circulation or enhance the overall appearance of the development while not interfering with the views of oncoming traffic at access points, or views of mountains, forests and other open and scenic areas as seen from the designated landscape management road, river or stream. Use of native species shall be encouraged. (Formerly section 18.84.080 (C))
 - I. No signs or other forms of outdoor advertising that are visible from a designated landscape management river or stream shall be permitted. Property protection signs (No Trespassing, No Hunting, etc.) are permitted.
 - J. A conservation easement as defined in DCC 18.04.280 "Conservation Easement" and specified in DCC 18.116.220 shall be required as a condition of approval for all landscape management site plans involving property adjacent to the Deschutes River, Crooked River, Fall River, Little Deschutes River, Spring River, ~~Squaaw~~Whychus Creek and Tumalo Creek. Conservation easements required as a condition of landscape management site plans shall not require public access.
- (Ord. 2015-016, §5, 2015; Ord. 2001-016, §2, 2001; Ord. 97-068 §1, 1997; Ord. 95-075 §3, 1995; Ord. 93-043 §12A and 12B, 1993; Ord. 92-034 §2, 1992; Ord. 91-020 §1, 1991; Ord. 90-020 §1 1990; PL-15 1979)

“****” Denotes portions of this Section not amended by Ordinance 2015-016.

Chapter 18.108. URBAN UNINCORPORATED COMMUNITY ZONE – SUNRIVER

18.108.055 Town Center – TC District

K. Conceptual Site Plan.

5. A Conceptual Site Plan shall be approved if it demonstrates that future development is located on the subject property so that, in addition to the requirements of DCC 18.108.055, the following standards can be met at the time of site plan review:

- a. ~~DCC 23.40.025~~ Deschutes County Comprehensive Plan Section 4.5; and

- b. DCC 18.124.060 (A) - (E) and (I); interpreted as described in ~~DCC 23.40.025(E)(1)(d)(3)~~ Deschutes County Comprehensive Plan Policy 4.5.14.

(Ord. 2015-016 §6, 2015; Ord. 2015-004 §9, 2015; Ord. 2008-015 §2, 2008)

“****” Denotes portions of this Section not amended by Ordinance 2015-016.

Chapter 18.113. DESTINATION RESORTS ZONE - DR

18.113.060. Standards for Destination Resorts.

The following standards shall govern consideration of destination resorts:

- A. The destination resort shall, in the first phase, provide for and include as part of the CMP the following minimum requirements:
1. At least 150 separate rentable units for visitor-oriented overnight lodging as follows:
 - a. The first 50 overnight lodging units must be constructed prior to the closure of sales, rental or lease of any residential dwellings or lots.
 - b. The resort may elect to phase in the remaining 100 overnight lodging units as follows:
 - i. At least 50 of the remaining 100 required overnight lodging units shall be constructed or guaranteed through surety bonding or equivalent financial assurance within 5 years of the closure of sale of individual lots or units, and;
 - ii. The remaining 50 required overnight lodging units shall be constructed or guaranteed through surety bonding or equivalent financial assurance within 10 years of the closure of sale of individual lots or units.
 - iii. If the developer of a resort guarantees a portion of the overnight lodging units required under subsection 18.113.060(A)(1)(b) through surety bonding or other equivalent financial assurance, the overnight lodging units must be constructed within 4 years of the date of execution of the surety bond or other equivalent financial assurance.
 - iv. The 2.5:1 accommodation ratio required by DCC 18.113.060(D)(2) must be maintained at all times.
 - c. If a resort does not chose to phase the overnight lodging units as described in 18.113.060(A)(1)(b), then the required 150 units of overnight lodging must be constructed prior to the closure of sales, rental or lease of any residential dwellings or lots.

| (Ord. 2015-016 §7, 2015; Ord. 2013-008 §2, 2013; Ord. 2007-05 §2, 2007; Ord. 92-004 §13, 1992)

“****” Denotes portions of this Section not amended by Ordinance 2015-016.

Chapter 18.128. CONDITIONAL USE

18.128.200. Cluster Development (Single-Family Residential Uses Only).

B. The conditional use shall not be granted unless the following findings are made:

3. In the Wildlife Area Combining Zone, in addition to compliance with the WA zone development restrictions, uses and activities must be consistent with the required Wildlife Management Plan. The Plan shall be approved if it proposes all of the following in the required open space area:
 - a. Preserves, protects and enhances wildlife habitat for WA zone protected species as specified in the Deschutes County Comprehensive Plan (~~DCC Title 23~~); and

(Ord. 2015-016 §8, 2015; Ord. 2004-024 §2, 2004; Ord. 95-075 §1, 1995; Ord. 93-005 §11, 1993; Ord. 91-020 §1, 1991)

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code *
Title 22 to Incorporate "Housekeeping" Changes that * ORDINANCE NO. 2015-017
Correct Errors, Incorporate Changes to State Law, *
and Provide Clarification of Existing Regulations, *
Procedures, and Policies.

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. 247-15-000256-TA) to the Deschutes County Code (DCC) Title 22, Chapter 22.08, General Provisions; Chapter 22.28, Land Use Action Decisions; Chapter 22.32, Appeals; Chapter 22.34, Proceedings on Remand; and Chapter 22.36, Limitations on Approvals to incorporate “housekeeping” changes correct errors, incorporate changes to state law, and provide clarification of existing regulations, procedures, and policies; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on August 13, 2015 and forwarded to the Deschutes County Board of County Commissioners (“Board”), a recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on December 9, 2015, and concluded that the public will benefit from the proposed changes to Deschutes County Code (“DCC”) Title 22; now, therefore,

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

Section 1. AMENDMENT. DCC 22.08.010, Application Requirements, is amended to read as described in Exhibit “A,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 2. AMENDMENT. DCC 22.28.020, Notice of Decision, is amended to read as described in Exhibit “B,” attached hereto and by this referenced incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 3. AMENDMENT. DCC 22.32.015, Filing appeals, and DCC 22.32.024, Transcript Requirement, are amended to read as described in Exhibit “C,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 4. AMENDMENT. DCC 22.34.030, Notice and Hearings Requirements, is amended to read as described in Exhibit “D,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

///

Section 5. AMENDMENT. DCC 22.36.010, Expiration of Approval, is amended to read as described in Exhibit "E," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 6. FINDINGS. The Board adopts as its findings in support of this decision attached to Ordinance 2015-018 as Exhibit "E" and incorporated by reference herein.

Dated this _____ of _____, 2015

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

ALAN UNGER, Vice Chair

ATTEST:

Recording Secretary

TAMMY BANEY, Commissioner

Date of 1st Reading: _____ day of _____, 2015.

Date of 2nd Reading: _____ day of _____, 2015.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Tammy Baney	___	___	___	___
Anthony DeBone	___	___	___	___
Alan Unger	___	___	___	___

Effective date: _____ day of _____, 2015.

Chapter 22.08. GENERAL PROVISIONS

22.08.010. Application Requirements.

- A. Property Owner. For the purposes of DCC 22.08.010, the term "property owner" shall mean the owner of record or the contract purchaser and does not include a person or organization that holds a security interest.
- B. Applications for development or land use actions shall:
 - 1. Be submitted by the property owner or a person who has written authorization from the property owner as defined herein to make the application;
 - 2. Be completed on a form prescribed by the Planning Director;
 - 3. Include supporting information required by the zoning ordinance and that information necessary to demonstrate compliance with applicable criteria; and
 - 4. Be accompanied by the appropriate filing fee, unless such fees are waived by the Board of County Commissioners.
 - 5. Include an affidavit attesting to the fact that the notice has been posted on the property in accordance with DCC 22.24.030(B).
- C. The following applications are not subject to the ownership requirement set forth in DCC 22.08.010(B)(1):
 - 1. Applications submitted by or on behalf of a public entity or public utility having the power of eminent domain with respect to the property subject to the application; or
 - 2. Applications for development proposals sited on lands owned by the state or the federal government.
- D. A deposit for hearings officers' fees may be requested at any time prior to the application being deemed complete and, if the application is heard by a hearings officer, the applicant will be responsible for the actual costs of the hearings officer.
(Ord. 2015-017 §1, 2015; Ord. 96-071 §1B, 1996; Ord. 95-045 §3, 1995; Ord. 90-077 §1, 1990)

Chapter 22.28. LAND USE ACTION DECISIONS

22.28.020. Notice of Decision.

~~A-Notice of a~~ Hearings Body's decision shall be in writing and mailed to all parties; however, one person may be designated by the Hearings Body to be the recipient of the notice of decision for a group, organization, group of petitioners or similar collection of individual participants.

~~(Ord. 2015-017 §2, 2015;~~ Ord. 90-007 §1, 1990)

“****” Denotes portions of this Section not amended by Ordinance 2015-017.

Chapter 22.32. APPEALS

22.32.015. Filing appeals.

- A. To file an appeal, an appellant must file a completed notice of appeal on a form prescribed by the Planning Division and an appeal fee.
- B. Unless a request for reconsideration has been filed, the notice of appeal and appeal fee must be received at the offices of the Deschutes County Community Development Department no later than 5:00 PM on the twelfth day following mailing of the decision. If a decision has been modified on reconsideration, an appeal must be filed no later than 5:00 PM on the twelfth day following mailing of the decision as modified. Notices of Appeals may not be received by facsimile machine.
- C. If the Board of County Commissioners is the Hearings Body and the Board declines review, a portion of the appeal fee may be refunded. The amount of any refund will depend upon the actual costs incurred by the County in reviewing the appeal. When the Board declines review and the decision is subsequently appealed to LUBA, the appeal fee may be applied toward the cost of preparing a transcript of the lower Hearings Body’s decision.
- D. The appeal fee shall be paid by method that is acceptable to Deschutes County~~by cash or check or money order, except that local, state or federal governmental agencies may supply a purchase order at the time of filing.~~

(Ord. 2015-017 §3, 2015; Ord. 99-031 §15, 1999; Ord. 98-019 §2, 1998; Ord. 96-071 §1G, 1996; Ord. 95-045 §32, 1995; Ord. 94-042 §2, 1994; Ord. 91-013 §11, 1991; Ord 90-007 §1, 1990)

22.32.024. Transcript Requirement.

- A. Except as otherwise provided in DCC 22.32.024, appellants shall provide a complete transcript of any hearing appealed from, from recorded magnetic tapes provided by the Planning Division.
- B. Appellants shall submit to the Planning Division the transcript no later than the close of the day five days prior to the date set for a de novo appeal hearing or, in on-the-record appeals, the date set for receipt of written arguments. Unless excused under DCC 22.32.024, an appellant's failure to provide a transcript shall cause the Board to decline to consider the appellant's appeal further and shall, upon notice mailed to the parties, cause the lower Hearings Body's decision to become final.
- C. An appellant shall be excused from providing a complete transcript if appellant was prevented from complying by: (1) the inability of the Planning Division to supply appellant with a magnetic tape or tapes of the prior proceeding; or (2) defects on the magnetic tape or tapes of the prior proceeding that make it not reasonably possible for applicant to supply a transcript. Appellants shall comply to the maximum extent reasonably and practicably possible.
- D. Notwithstanding any other provisions in DCC 22.32, the appeal hearings body may, at any time, waive the requirement that the appellant provide a complete transcript for the appeal hearing.

(Ord. 2015-017 §3, 2015; Ord. 96-071 §1G, 1996)

Chapter 22.34. PROCEEDINGS ON REMAND

22.34.030. Notice and Hearings Requirements.

- A. The County shall conduct a hearing on any remanded or withdrawn decision, the scope of which shall be determined in accordance with the applicable provisions of DCC 22.34 and state law. Unless state law requires otherwise, only those persons who were parties to the proceedings before the County shall be entitled to notice and be entitled to participate in any hearing on remand.
 - B. The hearing procedures shall comply with the minimum requirements of state law and due process for hearings on remand and need comply with the requirements of DCC 22.24 only to the extent that such procedures are applicable to remand proceedings under state law.
 - C. A final decision shall be made within 90-120 days of the date the ~~remand order becomes effective~~ applicant initiates the remand in accordance with state law.
 - D. In addition to the requirements of subsection (C) of this section, the 120-day period established under subsection (C) of this section shall not begin until the applicant requests in writing that the county proceed with the application on remand, but if the county does not receive the request within 180 days of the effective date of the final order or the final resolution of the judicial review, the county shall deem the application terminated.
 - E. The 120-day period established under subsection (C) of this section may be extended for up to an additional 365 days if the parties enter into mediation as provided by ORS 197.860 prior to the expiration of the initial 120-day period. The county shall deem the application terminated if the matter is not resolved through mediation prior to the expiration of the 365-day extension.
- (Ord. 2015-017 §4, 2015; Ord. 99-031 §17, 1999; Ord. 95-045 §§39 and 41A, 1995)

“****” Denotes portions of this Section not amended by Ordinance 2015-017.

Chapter 22.36. LIMITATIONS ON APPROVALS

22.36.010. Expiration of Approval.

A. Scope.

1. Except as otherwise provided herein, DCC 22.36.010 shall apply to and describe the duration of all approvals of land use permits provided for under the Deschutes County Land Use Procedures Ordinance, the various zoning ordinances administered by Deschutes County and the subdivision/partition ordinance.
2. DCC 22.36.010 does not apply to:
 - a. Those determinations made by declaratory ruling, such as verifications of nonconforming uses, lot of record determinations and expiration determinations, that involve a determination of the legal status of a property, land use or land use permit rather than whether a particular application for a specific land use meets the applicable standards of the zoning ordinance. Such determinations, whether favorable or not to the applicant or landowner, shall be final, unless appealed, and shall not be subject to any time limits.
 - b. Temporary use permits of all kinds, which shall be governed by applicable ordinance provisions specifying the duration of such permits.
 - c. Quasi-judicial map changes.

B. Duration of Approvals.

1. Except as otherwise provided under DCC 22.36.010 or under applicable zoning ordinance provisions, a land use permit is void two years after the date the discretionary decision becomes final if the use approved in the permit is not initiated within that time period.
2. Except as otherwise provided under applicable ordinance provisions, preliminary approval of plats or master plans shall be void after two years from the date of preliminary approval, unless the final plat has been submitted to the Planning Division for final approval within that time period, an extension is sought under DCC 22.36.010 or the preliminary plat or master plan approval has been initiated as defined herein.
3. In cases of a land use approval authorized under applicable approval criteria to be completed in phases, each phase must be initiated within the time specified in the approval, or initiated within two years of completion of the prior phase if no timetable is specified.
4. The approval period for the following dwellings in the Exclusive Farm Use and Forest Use Zones is for 4 years:
 - ~~a.~~ Replacement dwelling
 - ~~b.~~ Nonfarm dwelling
 - ~~c.~~ Lot of record dwelling
 - ~~d.~~ Large tract dwelling
 - ~~e.~~ Template dwelling.

(Ord. 2015-017 §5, 2015; Ord. 2011-016, 2011; Ord. 2004-001 §4, 2004; Ord. 95-045 §43A, 1995; Ord. 95-018 §1, 1995; Ord. 90-007 §1, 1990)

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code Title 23 and the Deschutes County Comprehensive Plan to Incorporate "Housekeeping" Changes that Correct Errors, Incorporate Changes to State Law, and Provide Clarification of Existing Regulations, Procedures, and Policies. *
*
*
*
ORDINANCE NO. 2015-018

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. 247-15-000256-TA) to the Deschutes County Comprehensive Plan Chapter 4, Urban Growth Management, and Appendix "C," Transportation System Plan to incorporate "housekeeping" changes correct errors, incorporate changes to state law, and provide clarification of existing regulations, procedures, and policies; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on August 13, 2015 and forwarded to the Deschutes County Board of County Commissioners ("Board"), a recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on December 9, 2015, and concluded that the public will benefit from the proposed changes to the Deschutes County Comprehensive Plan and Deschutes County Code ("DCC") Title 23; now, therefore,

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

Section 1. AMENDMENT. DCC 23.01.010, Introduction, is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 2. AMENDMENT. Deschutes County Comprehensive Plan Chapter 4, Urban Growth Management, is amended to read as described in Exhibit "B," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 3. AMENDMENT Deschutes County Comprehensive Plan Appendix "C," Transportation System Plan, is amended to read as described in Exhibit "C," attached hereto and by this referenced incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 4. AMENDMENT. Deschutes County Comprehensive Plan Chapter 5, Supplementary Sections, is amended to read as described in Exhibit "D," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

///

Section 5. FINDINGS. The Board adopts as its findings in support of this decision attached to Ordinance 2015-018 as Exhibit "E" and incorporated by reference herein.

Dated this _____ of _____, 2015

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

ALAN UNGER, Vice Chair

ATTEST:

Recording Secretary

TAMMY BANEY, Commissioner

Date of 1st Reading: _____ day of _____, 2015.

Date of 2nd Reading: _____ day of _____, 2015.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Tammy Baney	___	___	___	___
Anthony DeBone	___	___	___	___
Alan Unger	___	___	___	___

Effective date: _____ day of _____, 2015.

Chapter 23.01 COMPREHENSIVE PLAN

Chapter 23.01 COMPREHENSIVE PLAN

23.01.010. Introduction.

- A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.
- B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.
- C. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-005, are incorporated by reference herein.
- D. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.
- E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.
- F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.
- G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.
- H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.
- I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.
- J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.
- K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.
- L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.
- M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.
- N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.
- O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.
- P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-018, are incorporated by reference herein.
(Ord. 2015-018 § 1, 2015; Ord. 2015-021 § 1, 2015; Ord. 2014-027 § 1, 2014; Ord. 2014-021 § 1, 2014; Ord. 2014-12 § 1, 2014; Ord. 2014-006 § 2, 2014; Ord. 2014-005 § 2, 2014; Ord. 2013-012 § 2, 2013; Ord. 2013-009 § 2, 2013; Ord. 2013-007 § 1, 2013; Ord. 2013-002 § 1, 2013; Ord. 2013-001 § 1, 2013; Ord. 2012-016 § 1, 2012; Ord. 2012-013 § 1, 2012; Ord. 2012-005 § 1, 2012; Ord. 2011-027 § 1 through 12, 2011; Ord. 2011-017 repealed; Ord. 2011-003 § 3, 2011)

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

“***” Denotes portions of this Section not amended by Ordinance 2015-018.

Deschutes County Comprehensive Plan

Section 4.3 Unincorporated Communities

Table 4.3.1 – Deschutes County Unincorporated Communities 2010

Community	Type	Approval Date
Sunriver	Urban Unincorporated Community	1997
Terrebonne	Rural Community	1997
Tumalo	Rural Community	1997
Black Butte Ranch	Resort Community	2001
Inn of the 7 th Mountain/ Widgi Creek	Resort Community	2001
Alfalfa	Rural Service Center	2002
Brothers	Rural Service Center	2002
Hampton	Rural Service Center	2002
Millican	Rural Service Center	2002
Whistlestop	Rural Service Center	2002
Wildhunt	Rural Service Center	2002

Source: Deschutes County Planning Division

The policies for unincorporated communities are based on extensive, relatively recent public input and are for the most part still relevant as of 2010. Consequently, only minor changes have been made to those sections of this Plan. The exceptions are the Community Plans for Tumalo and Terrebonne which are being adopted separately. These have been incorporated into this plan as Sections 4.56 and 4.67.

“****” Denotes portions of this Section not amended by Ordinance 2015-018.

2.2 Existing Transportation System and Current Needs

Rural Arterials

Baker Road/Knott Road/ SE 27th Street

These roads connect to the US 97 Baker Road interchange at the far south end of Bend. Baker Road provides access to the Deschutes River Woods neighborhoods just south of Bend and then connects to Brookwood Boulevard, Bend’s west side ring road. Knott Road provides access to the Deschutes County Landfill before turning north and becoming SE 27th Street. The Knott/27th combination is the ring road for Bend’s east side. SE 27th Street continues north into the City of Bend, where this County arterial becomes a City arterial north of Diamond Back Lane. Some travelers use a routing of Knott and Rickard Road to reach US 20 to avoid the congestion of 27th Street, which also intersect US 20 in east-central Bend

Baker Road

2009 traffic volumes

- 0.10 miles west of Cinder Butte Road 6,174 ADT
- 0.10 miles west of US 97 8,404 ADT

Knott Road

2009 traffic volumes

- 0.10 miles east of US 97 6,269 ADT
- 0.20 miles east of 15th St. (Bend) 6,508 ADT

2008 traffic volumes

- 0.25 miles west of 27th St. (Bend) 6,039 ADT

SE 27th Street

2008 traffic volumes

- 0.10 miles south of Diamond Back Ln 7,656 ADT

Section 5.12 Legislative History

Background

This section contains the legislative history of this Comprehensive Plan.

Table 5.11.1 Comprehensive Plan Ordinance History

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

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

FINDINGS

I. APPLICABLE CRITERIA:

Title 22, Deschutes County Development Procedures Ordinance

II. BASIC FINDINGS:

- A. **PROPOSAL:** The Planning Division determined minor changes were necessary to clarify existing standards and procedural requirements, incorporated changes to state law, and correct errors found in various sections of the Deschutes County Code (DCC). Staff initiated the proposed changes and notified the Oregon Department of Land Conservation and Development. The Deschutes County Board of County Commissioners will review the proposed changes on December 9, 2015.

III. CONCLUSIONARY FINDINGS:

A. CHAPTER 22.12, LEGISLATIVE PROCEDURES

1. Section 22.12.010.

Hearing Required

FINDING: The applicant meets this criterion because a public hearing will be held before the Deschutes County Board of County Commissioners on December 9, 2015.

2. Section 22.12.020, Notice

Notice

A. Published Notice

1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.

2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.

FINDING: Notice of proposed legislative changes was published in the Bend Bulletin newspaper on November 29, 2015. This criterion has been met.

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

FINDING: Notice was posted in the bulletin board in the lobby of the Deschutes County Community Development Department, 117 NW Lafayette, Bend. This criterion has been met.

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. This criterion has been met.

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

FINDING: Notice will be provided to the County public information official for wider media distribution. This criterion has been met.

3. 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, which received a fee waiver. This criterion has been met.

4. 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 Planning Commission held a public hearing on July 9, 2015, to review the proposed amendments. Then, on August 13, 2015, the Planning Commission voted unanimously to recommend approval of the proposed amendments as amended. These criteria have been met.

5. Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: The proposed legislative changes included in file no. 247-15-000256-TA will be implemented by ordinances upon approval and adoption by the Board; this criterion will be met.

IV. PROPOSED TEXT AMENDMENTS:

The text amendments are detailed in the corresponding and referenced ordinance attached hereto with additional text identified by underline and deleted text by ~~strikethrough~~. Below are explanations of the changes.

A. Title 9 of the Deschutes County Code:

Chapter 9.04. DRUG PARAPHERNALIA

In March of 2014, the Board adopted an ordinance establishing a moratorium on the operation of any marijuana dispensary in any area subject to the jurisdiction of Deschutes

County. This ordinance included a sunset May 1, 2015, repealing the moratorium. The amendment removes the moratorium from the County code. **(Ord. 2015-013 Exhibit A)**

B. Title 11, County Owned Land and Property:

Chapter 11.12. TRANSFERABLE DEVELOPMENT CREDIT PROGRAM

Section 11.12.020. TDC Transactions.

DCC 11.12.020(B)(3)(c) includes a typo incorrectly referring to DCC 11.12.010, Definitions, and not the appropriate section of DCC 11.12.020, TDC Transactions. The amendment corrects the reference. **(Ord. 2015-014 Exhibit A)**

C. Title 17, Subdivisions:

Table A Minimum Design Standards

Note #20 of the table references zones and standards for the La Pine Urban Unincorporated Community that are now within the city limits of La Pine and no longer under the jurisdiction of Deschutes County. The amendments remove these references. **(Ord. 2015-015 Exhibit A)**

D. Title 18, County Zoning:

Chapter 18.04. TITLE, PURPOSE AND DEFINITIONS

Section 18.04.030. Definitions.

DCC 18.04.030 includes several definitions that are associated solely with the La Pine Neighborhood Planning Area that is now located entirely within the city limits of La Pine and no longer under the jurisdiction of Deschutes County. The amendments delete these definitions from the code. **(Ord. 2015-016 Exhibit A)**

Chapter 18.18 EXCLUSIVE FARM USE ZONE

Section 18.16.040. Limitations on Conditional Uses.

DCC 18.16.040 currently only references conditional uses permitted in DCC 18.16.030. However, the conditional uses permitted under sections 18.16.031 and 18.16.033 are allowed either under Oregon Revised Statute (ORS) 215.283(2) or Oregon Administrative Rule (OAR) 660-033-0120 and also subject to ORS 215.296. The amendment adds reference to DCC 18.16.031 and 18.16.033 for clarification. **(Ord. 2015-016 Exhibit B)**

Chapter 18.60 RURAL RESIDENTIAL ZONE – RR-10

Section 18.60.090. Oregon Water Wonderland Unit 2 Sewer District Limited Use Combining Zone.

The County Comprehensive Plan was updated and reformatted in 2011. The amendment corrects this reference to reflect the format change and identifies the new section number. **(Ord. 2015-016 Exhibit C)**

Chapter 18.67. TUMALO RURAL COMMUNITY ZONING DISTRICTS

Section 18.67.080. Standards for All Districts.

DCC 18.67.080(G), river setback, currently only refers to structures located within 100-feet of the river and the requirement that a setback exception to the 100-foot setback shall be approved. Instead, this section should state the required setback is a minimum of 100-feet while also noting there is opportunity for an exception. The amendment clarifies the standard. *(Ord. 2015-016 Exhibit D)*

Chapter 18.84. LANDSCAPE MANAGEMENT COMBINING - LM ZONE

Section 18.84.050. Use limitations.

As currently worded, this section requires that all substantial alterations, interior or exterior, requiring a building permit receive LM site plan approval. The regulation and review of interior alterations is not related to the purpose of the LM zone which is "...to maintain scenic and natural resources of the designated areas and to maintain and enhance scenic vistas and natural landscapes as seen from designated roads, rivers, or streams." Staff believes this is an oversight from previous amendments that were not related to the interior alterations.

In Ordinance 91-20, Section 18.84.050, Use limitations, previously stated:

No structure, including agricultural buildings, shall be erected or substantially altered externally within one-quarter mile (measured at right angles from centerline of any identified landscape management roadway or within 200 feet of the ordinary [mean] high water mark of any identified landscape management corridor along a river) without first obtaining the approval of the Planning Director or Hearings Body. (emphasis added)

Then, Ordinance 92-034 amended 18.84.050 to its current wording which omitted the reference to exterior alterations. Exhibit "C" of Ordinance 92-034 summarizes the amendments noting, "Section 18.84.050 requires site plan review for structures within the LM zone, clarifies the amount of alteration allowed without site plan review and exempts structures which will not be and will remain invisible from a designated roadway, river, or stream from the provision of site plan review." Staff concludes the omission of reference to exterior alterations was done in error.

This section also included a reference to DCC 18.124, Site Plan Review. However, DCC 18.124 is not applicable to the LM zone. The site plan review requirements and standards that are applicable to the LM zone are outlined in the Chapter 18.84. The amendment removes this reference.

Section 18.84.080. Design Review

DCC 18.84.080(D) includes a typo in the reference to DCC18.84.090(E). The amendment removes this error.

DCC 18.84.080(E) as currently worded erroneously exempts agricultural structures located at least 50 feet from a rimrock for the standards of DCC18.84.080, instead of the height limit of the section as intended. The amendment corrects this error.

DCC 18.84.080(J) currently refers to Squaw Creek, the previous name of Whychus Creek. The amendment corrects the name.

(Ord. 2015-016 Exhibit E)

Chapter 18.108. URBAN UNINCORPORATED COMMUNITY ZONE - SUNRIVER
Section 18.108.055 Town Center – TC District

The County Comprehensive Plan was updated and reformatted in 2011. The amendments correct this reference to reflect the format change and identify the new section number.
(Ord. 2015-016 Exhibit F)

Chapter 18.113. DESTINATION RESORTS ZONES - DR
Section 18.113.060. Standards for Destination Resorts.

Ordinance 2013-008 approved a ratio of 2.5:1 for residential units to overnight available in destination resorts. Section 18.113.060(A)(1)(b)(iv) was not previously updated to reflect this new standard. The amendment makes the approved change to this section. *(Ord. 2015-016 Exhibit G)*

Chapter 18.128. CONDITIONAL USE
Section 18.128.200. Cluster Development (Single-Family Residential Uses Only).

The County Comprehensive Plan was updated and reformatted in 2011. The amendment corrects this reference to reflect the format change. *(Ord. 2015-016 Exhibit H)*

E. Title 22, Deschutes county Development Procedures Ordinances:

Chapter 22.08. GENERAL PROVISIONS
Section 22.08.010. Application Requirements.

The review of select land applications requires a hearings officer deposit for cost of services to be submitted as part of an application. Currently there is no reference to this deposit in the application requirements. The amendment specifies that a hearings officer deposit shall be submitted or requested prior to deeming the application complete. *(Ord. 2015-017 Exhibit A)*

Chapter 22.28. LAND USE ACTION DECISIONS
Section 22.28.020. Notice of decision.

This section currently requires hearings body decisions be mailed to all parties. This can be and has been a considerable expense and may not be necessary given the availability of decisions online or upon request. Instead, the amendment indicates notice of the decision will be sent to all parties. Decisions will continue to be available online or upon request. *(Ord. 2015-017 Exhibit B)*

Chapter 22.32. APPEALS
Section 22.32.015. Filing appeals.

DCC 22.32.015(D) specifies that appeal fees shall be paid by cash, check, money order, or purchase order for government agencies. This standard was added by Ord. 98-019 (TA98-

6) to explicitly allow governmental agencies to pay for an appeal with a purchase order in addition to cash, check, or money order. Since the adoption of Ord. 98-019, the Community Development Department is now able to accept payments via credit card. Instead of adding credit cards to the list of payment options, the terminology is simplified to acknowledge all acceptable forms of payment.

Section 22.32.024. Transcript requirement.

DCC 22.32.024 currently requires an appellant to provide a complete transcript of for the appeal hearing. However, with the availability of audio and video recordings of hearings, such a transcript is not always necessary. Therefore, this change provides opportunity for the appeal hearings body to waive the requirement of providing a complete transcript.

(Ord. 2015-017 Exhibit C)

Chapter 22.34. PROCEEDINGS ON REMAND

Section 22.34.030. Notice and hearings requirements.

Oregon Legislature enacted House Bill (HB) 2830 amending the LUBA remand procedures. In summary, the amendment extends the 90-day review time period to 120-days upon request from the applicant that the county proceed with review. The amendment also provides opportunity for this time period to be extended an additional 365 days if the parties enter into mediation as provided by ORS 197.860 prior to the expiration of the initial 120-day period. If the county does not receive the request to proceed from the applicant within 180 days of the effective date of the final order or the final resolution of the judicial review or if not resolved through mediation prior to the expiration of the 365-day extension, the county shall deem the application terminated. The amendment reflects this legislation. *(Ord. 2015-017 Exhibit D)*

Chapter 22.36. LIMITATIONS ON APPROVALS

Section 22.36.010. Expiration of approval.

DCC 22.36.010(B)(4)(a) indicates the approval period for replacement dwellings in the EFU zone is for 4 years. However, recent amendments to ORS 215.417 removed replacement dwellings from the list of uses with 4 year approval periods. Instead, replacement dwellings are subject to the general 2 year approval period. The amendment corrects this error. *(Ord. 2015-017 Exhibit E)*

F. Title 23, Deschutes County Comprehensive Plan:

Chapter 4. URBAN GROWTH MANAGEMENT

Section 4.3 Unincorporated Communities/

Table 4.3.1 – Deschutes County Unincorporated Communities 2010

The narrative after the table notes the Community Plans for Tumalo and Terrebonne are in Sections 4.5 and 4.6, respectively. However, text amendments previously approved renumbered these Sections to 4.6 and 4.7. The amendment corrects error. *(Ord. 2015-018 Exhibit B)*

APPENDIX C – TRANSPORTATION SYSTEM PLAN

Section 2.2 Existing Transportation System and Current Needs

The County TSP does not currently include a description of SE 27th Street, which forms portions of the southeast boundary of the city limits and urban growth boundary the City of Bend. Because portions of the road and property adjacent are located in areas under County jurisdiction, inclusion of the road on the TSP is warranted. The County Road Department road inventory identifies this segment of road as a rural arterial and the most recent traffic count in 2008 found 7,656 average daily trips (ADT). The amendment adds SE 27th Street to the existing description of Baker Road and Knott Road because it is natural extension of the same corridor. **(Ord. 2015-018 Exhibit C)**

V. CONCLUSION:

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