



MEMORANDUM

TO: Deschutes County Board of Commissioners
FROM: Peter Gutowsky, AICP, Planning Manager
Tanya Saltzman, AICP, Senior Planner
DATE: September 23, 2021
SUBJECT: Senate Bill 391 / Rural Accessory Dwelling Units

The purpose of this work session is to begin to address the first batch of decisions/interpretations pertaining to SB 391, as outlined to the Board of County Commissioners (Board) previously on September 1,¹ in order to begin creating legislative amendments to allow accessory dwelling units in rural residential exception areas. As noted in previous meetings, although implementation ultimately cannot take place until the adoption of statewide wildfire hazard maps in June 2022, there are numerous other provisions of the law that must be addressed at the County level, each with varying degrees of complexity.

The first set of proposed decisions/interpretations are listed below, and are interpretations that staff believes can be made directly by the Board.

Desired outcomes:

The Board may choose to make decisions on some or all of these criteria during this meeting, or they may choose to request additional information or continue the discussion to a later date.

Staff reiterates that decisions made during this process are not necessarily the final iteration of the eventual code amendments, but rather a starting point to allow staff to develop appropriate legislative amendments for the subsequent public process.

A. Criteria that can be determined directly by the Board

Topic	Description	Decision Point/Action
1. ADU Square Footage	ADUs cannot include more than 900 square feet of “useable floor area.”	Define “useable floor area”

The definition of “useable floor area” is not provided in SB 391. Staff researched similar definitions from other jurisdictions, which largely were more complex, including provisions for stairs, lavatories, etc. The

¹ <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-11>

County Building Safety Division also examined these other examples and determined that a simpler definition would be preferred and would more closely echo what is currently used in the division without issue. This resulted in two options:

1. Useable Floor Area: The area included within the surrounding insulated exterior walls.
2. Useable Floor Area: The area included within the surrounding insulated exterior walls, exclusive of garages, carports, decks and porch covers.

It is important to note that SB 391 allows additional restrictions to be placed on garages and other outbuildings related to the ADU. The question of if/how to regulate garages can be discussed at a later date, but it is important to be aware of this option when determining the definition of “useable floor area.” **Staff suggests beginning with the second option, and modifying as needed should a subsequent discussion concerning garages require it.**

Topic	Description	Decision Point/Action
2. ADU Distance Requirements	The ADU is required to be located no farther than 100 feet from the existing single-family dwelling.	Determine whether the ADU in its entirety must be within 100 feet of the existing single-family dwelling or just a portion.

Staff is not aware of any documentation of legislative intent regarding if the ADU must be fully within a 100-foot distance, or only a portion, and thus leaves this interpretation to the Board. Obviously, requiring the ADU to be fully within 100 feet of the primary dwelling is more restrictive and presents fewer siting options, particularly when considering other elements such as driveways, wells, and other features, but condensing the development area may have advantages with respect to compatibility.

Topic	Description	Decision Point/Action
3. ADU Occupancy	ADUs cannot be allowed for vacation occupancy	Determine how to enforce (i.e. restrictive covenant or other?)

Deschutes County does not currently regulate short-term rentals, so this provision will entail creating a new process. SB 391 states that the ADU cannot be used for vacation occupancy; it does not specify any restrictions on the single-family dwelling or how to enforce or record the prohibition.²

The Board may choose to:

- Require a restrictive covenant to be recorded on the property stating that the ADU shall not be used for short-term rentals.

² The Deschutes County Planning Commission on September 9, 2021 as staff debriefed them on SB 391, respectfully asked the Board to consider whether it was appropriate to also prohibit the primary dwelling for short-term rentals given Central Oregon’s housing challenges.

- Require a restrictive covenant to be recorded that also requires the primary dwelling shall not be used for short-term rentals.
- Enforcement: the assumption is that short-term rental enforcement would be governed by the same complaint-based process as all other land uses in the County.

Topic	Description	Decision Point/Action
4. ADU Water Supply	A county may require that an ADU be served by the same water supply source or water supply system as the existing single-family dwelling, provided such is allowed by an existing water right or a use under ORS 537.545 (exempt uses).	Determine if the county should require the ADU to be served by the same water supply

Staff has reached out to Oregon Water Resources Department on this matter and awaits guidance.

Topic	Description	Decision Point/Action
5. ADU Setback Requirements	The ADU is required to have adequate setbacks from adjacent lands zoned Exclusive Farm Use (EFU) or Forest Use.	Define “adequate setbacks”

Staff recommends “adequate setbacks” from resource lands be defined as 100 feet. This distance is used elsewhere in Deschutes County Code for similar siting standards, such as in the MUA-10 zone for the required distance between a dwelling and lots or parcels receiving special assessment for farm use.

Topic	Description	Decision Point/Action
6. Decision Type	While not part of the text of SB 391, the county may decide to process rural ADU applications ministerially or as a limited land use decision. This will have an effect on the requirements set forth in the code.	Decide preferred procedure for processing applications

The type of decision will determine the language in the code governing requirements on more complex issues.

1. Ministerial Decision. This type of decision entails that the amendments are structured with clear and objective standards for ADU applications, require no discretion from staff, and as such would not be subject to public notice or public hearings requirements.

2. Limited Land Use Decision. Limited land use decisions can, if desired, be structured so notice of application is sent to neighboring property owners. Regardless, these types of decisions require a mailed notice of decision to neighbors and those who have standing by commenting on an application. The land use decision can be appealed to a Hearings Officer and/or the Board.

One provision of SB 391 can help illustrate the comparison between a ministerial decision and a limited land use decision:

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

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

The Board may want to consider deferring this decision until they begin to address the criteria that would likely be directly affected by the decision type—for instance, the access and evacuation requirements.

Topic	Description	Decision Point/Action
7. Wildlife Area Combining Zone Compatibility	The introduction of rural ADUs in certain areas could require analysis relating to Goal 5 wildlife resources.	Decide if rural ADUs should be allowed in Wildlife Area Combining Zones

While not specifically addressed in SB 391, the Board may want to consider compatibility of rural ADUs with the Wildlife Area (WA) Combining Zone and **decide if ADUs should or should not be allowed to be built in the WA zone**. Under a separate process, the Board is considering if it will choose to update some of its existing wildlife inventories.

B. Next Steps

Staff seeks direction from the Board for its desired approach to the elements of the law as described above. Staff will return to the Board with follow up information on the above elements if necessary, or with a new batch of criteria at a later date.