



**MEMORANDUM**

**TO:** Board of County Commissioners

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

**DATE:** July 19, 2023

**SUBJECT:** Senate Bills (SBs) 391 and 644 Public Hearing – Rural Accessory Dwelling Unit (ADU) Legislative Amendments

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**I. OVERVIEW & RECENT CHANGES**

The Board of County Commissioners (Board) will conduct a public hearing on July 26, 2023 concerning local provisions for rural ADUs as identified in Senate Bill (SB) 391<sup>1</sup> (file no. 247-22-000671-TA).

Staff submitted an initial 35-day Post-Acknowledgement Plan Amendment (PAPA) notice to the Department of Land Conservation and Development (DLCD) on August 17, 2022. A public hearing was held with the Deschutes County Planning Commission (Commission) on September 22, 2022<sup>2</sup>. The Commission held deliberations on October 27, 2022<sup>3</sup> and the recommendations from that meeting are discussed within provided attachments.

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

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

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<sup>1</sup> <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB0391/A-Engrossed>

<sup>2</sup> See Deschutes County Planning Commission September 22, 2022 Agenda for more information: <https://www.deschutes.org/bc-pc/page/planning-commission-17>

<sup>3</sup> See Deschutes County Planning Commission October 27, 2022 Agenda for more information: <https://www.deschutes.org/bc-pc/page/planning-commission-21>

PAPA notice proceedings with DLCD to capture the newest version of the amendments and provide the Commission with an opportunity to review the revised amendments. Per Board direction, staff submitted a revised 35-day PAPA notice to DLCD on June 7, 2023 and held a new work session with the Commission on July 13, 2023.

Attached to this memorandum are:

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

## II. RECORD

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

## III. STATE REGULATIONS

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

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

Eligibility	Restrictions
<b>1. Rural Residential Exception Areas, Minimum Lot Size, and Dwelling Requirements</b>	<ul style="list-style-type: none"> <li>• Applies to Rural Residential (RR10), Multiple Use Agricultural (MUA10), Urban Area Reserve (UAR-10), Suburban Residential (SR 2.5), and Westside Transect (WTZ) zones.</li> <li>• Lot or parcel must be at least two (2) acres in size.</li> <li>• One (1) single-family dwelling must be sited on the lot or parcel.</li> </ul>
<b>2. Existing Dwelling Nuisance</b>	<ul style="list-style-type: none"> <li>• The existing single-family dwelling is not subject to an order declaring it a nuisance or pending action under ORS 105.550 to 105.600.</li> </ul>
<b>3. ADU Sanitation Requirements</b>	<ul style="list-style-type: none"> <li>• The ADU must comply with all applicable laws and regulations relating to sanitization and wastewater disposal and treatment.</li> </ul>
<b>4. ADU Square Footage Requirements</b>	<ul style="list-style-type: none"> <li>• The ADU cannot include more than 900 square feet of useable floor area.</li> </ul>
<b>5. ADU Distance Requirements</b>	<ul style="list-style-type: none"> <li>• The ADU is required to be located no farther than 100 feet from the existing single-family dwelling.</li> </ul>
<b>6. ADU Water Supply Requirements</b>	<ul style="list-style-type: none"> <li>• If the ADU is relying on a domestic well, no portion of the lot or parcel can be within new or existing ground water uses restricted by the Water Resource Commission.</li> </ul>

<sup>4</sup> Within the proposed amendments, added language is shown underlined and deleted shown as strikethrough.

Eligibility	Restrictions
<b>7. ADU Water Supply Source Option</b>	<ul style="list-style-type: none"> <li>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).<sup>5</sup></li> </ul>
<b>8. ADU / Metolius Area of Critical State Concern / Limitations</b>	<ul style="list-style-type: none"> <li>No portion of a lot or parcel can be within a designated area of critical state concern.</li> </ul>
<b>9. ADU Setback Requirements</b>	<ul style="list-style-type: none"> <li>The ADU is required to have adequate setbacks from adjacent lands zoned Exclusive Farm Use (EFU) or Forest Use (F1 or F2).</li> </ul>
<b>10. ADU / Statewide Wildfire Map Requirements</b>	<ul style="list-style-type: none"> <li>Applies to properties identified as high hazard and/or located within a designated wildland urban interface (WUI) on the statewide wildfire hazard maps established per SB 762 and SB 80.</li> <li>ADUs on properties identified as high hazard are required to comply with the Oregon Residential Specialty Code relating to wildfire hazard mitigation for the mapped area (R327.4).</li> <li>ADUs identified within a designated WUI on the statewide wildfire hazard maps are required to comply with the minimum defensible space requirements for wildfire risk reduction established by the State Fire Marshal under ORS 476.392.</li> <li>Per SB 644, prior to release of the statewide wildfire hazard maps, all ADUs, regardless of future hazard classification, are required to comply with the Oregon Residential Specialty Code relating to wildfire hazard mitigation (R327.4).</li> </ul>
<b>11. ADU / Outside Wildland-Urban Interface (WUI) Area Requirements</b>	<ul style="list-style-type: none"> <li>If the ADU is not subject to ORS 477.015 to 477.061 (i.e. outside of the newly-defined WUI), local jurisdictions can impose supplemental defensible space and fuel break standards.</li> </ul>
<b>12. ADU Adequate Access and Evacuation for Firefighting Requirements</b>	<ul style="list-style-type: none"> <li>Local regulations must ensure the ADU has adequate access for firefighting equipment, safe evacuation, and staged evacuation areas</li> </ul>
<b>13. ADU Occupancy Requirements</b>	<ul style="list-style-type: none"> <li>ADUs cannot be allowed for vacation occupancy, as defined in ORS 90.100.</li> </ul>
<b>14. ADU Land Division Requirements</b>	<ul style="list-style-type: none"> <li>If an eligible property with an ADU is divided, the single-family dwelling and ADU cannot be situated on a different lot or parcel.</li> </ul>
<b>15. ADU / Additional Units</b>	<ul style="list-style-type: none"> <li>A second ADU is not allowed.</li> </ul>

<sup>5</sup> [https://oregon.public.law/statutes/ors\\_537.545](https://oregon.public.law/statutes/ors_537.545)

#### IV. DESCHUTES COUNTY INTERPRETATIONS

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

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

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

**Table 2: Draft Interpretations**

Undefined SB 391/SB 644 Standard	Draft County Interpretation
<b>Useable Floor Area</b>	<ul style="list-style-type: none"> <li>• Means the living space area of the accessory dwelling unit included within the surrounding insulated exterior walls, exclusive of garages, carports, decks and porch covers.</li> </ul>
<b>100-Foot Siting Distance</b>	<ul style="list-style-type: none"> <li>• A unit must be located no farther than 100 feet from the existing single family dwelling, measured from a wall of the single-family dwelling to the nearest part of the “useable floor area” of the accessory dwelling unit.</li> </ul>
<b>Adequate Access and Evacuation for Firefighting Requirements</b>	<ul style="list-style-type: none"> <li>• “Safe evacuation plan” means an identifiable route on a right(s)-of-way and any onsite driveways from the rural accessory dwelling unit to the staged evacuation area.</li> <li>• “Staged evacuation area” means a public or private location that occupants of the rural accessory dwelling unit may evacuate to reorganize.</li> <li>• “Adequate access” will be met by demonstrating a continuous, minimum 20-foot width right(s)-of-way and any onsite driveways with a minimum vertical clearance of 13.5 feet, connecting an accessory dwelling unit with a fire protection service provider with professionals who have received training or certification described in ORS 181A.410. Any onsite driveways providing access to an accessory dwelling unit must be improved and composed of an all-weather surface including asphalt or concrete.               <ul style="list-style-type: none"> <li>○ Alternatively, property owners may demonstrate adequate access by providing written certification from a fire protection service provider with professionals who have received training or certification described in ORS 181A.410, on a form prepared by Deschutes County, that access to the property meets minimum fire district requirements to provide emergency services to the property.</li> </ul> </li> </ul>

The following items describe supplemental development standards to ensure efficient operations for County staff and safe operations for any ADUs constructed within Deschutes County.

### **Miscellaneous Code Changes**

These edits are broadly unrelated to updates from SB 644 or SB 80, but were completed based on recommendations from agency partners, direction from County Legal Counsel, and to provide for clear and objective standards. These supplementary edits are as follows:

- Updated the “adequate access” requirements for ADUs to provide a clear and objective option for compliance, along with a more discretionary standard based on fire protection district review.
- Included language to clarify that an ADU may be constructed simultaneously with a primary dwelling.
- Included language to clarify that a previously constructed primary dwelling may be converted to a lawful ADU, provided all relevant criteria are met.
- Included requirements confirming that any supplier of water is “Willing and Able to Serve” the accessory dwelling unit shall be provided if the accessory dwelling unit is to be served by any water source other than an onsite domestic well.
- Included language clarifying that any standards mandated by the Oregon Revised Statutes (ORS) or the Oregon Administrative Rules (OAR) are not subject to the local variance provisions of Deschutes County. This includes several components of the proposed ADU legislation.

### **Groundwater Protection**

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

### **Additional Dwelling Units**

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

## V. WILDFIRE STANDARDS

### Senate Bill 762

Certain properties in rural Deschutes County will likely be subject to new wildfire mitigation measures as approved under SB 762.<sup>6</sup> One of the primary pieces of SB 762 is the creation of a comprehensive Statewide Wildfire Hazard Map to guide new wildfire regulations for development. The initial hazard map was made available on June 30, 2022.<sup>7</sup> However, based on significant concern from citizens and interest groups through the state, the Oregon Department of Forestry (ODF) withdrew the initial map to provide more time for additional public outreach and refinement of hazard classification methodologies. At this time, it is staff's understanding that ODF anticipates releasing new draft hazard maps in late 2023 or early 2024.

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

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

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

- 1) Home hardening building codes as described in section R327 of the Oregon Residential Specialty Code.
- 2) Defensible space standards as determined by the Oregon State Fire Marshal.

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

### Senate Bill 644

SB 644 was recently passed by the Oregon State Legislature<sup>9</sup>. SB 644 temporarily decouples the Statewide Wildfire Hazard Map from the adoption of any local rules allowing rural ADUs. During any

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<sup>6</sup> SB 762 (2021)

<sup>7</sup> <https://oregonexplorer.info/tools>

<sup>8</sup> See Board of County Commissioners November 14, 2022 Agenda for more information:

<https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-71>

<sup>9</sup> <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB644/Enrolled>

interim period where a local jurisdiction has adopted rules allowing rural ADUs and prior to the release of the final hazard map, any constructed ADUs will be subject to the home hardening building codes as described in section R327 of the Oregon Residential Specialty Code. Additionally, SB 644 requires that any ADUs constructed within a designated WUI shall meet the minimum defensible space rules established by the State Fire Marshal.

SB 644 does not identify defensible space standards for ADUs constructed prior to the release of the Statewide Wildfire Hazard Map. At the urging of County Legal Counsel, and to provide for clear and objective standards, staff has proposed supplemental defensible space rules for all ADU development which occurs prior to adoption and release of the Statewide Wildfire Hazard Map. The proposed defensible space standards are based on existing rules within the Forest Use Zones (F1 and F2) and would be effectively removed after final adoption of the hazard map.

### **Senate Bill 80**

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

### **VI. NEXT STEPS**

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

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

#### Attachments:

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

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<sup>10</sup> <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB80/Enrolled>