



MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Will Groves, Planning Manager
Peter Gutowsky, AICP, Director

DATE: January 25, 2023

SUBJECT: Planning Division Work Plan Update / Long Range Planning / FY 2022-2023

I. WORK PLAN DIRECTION

The adopted Community Development Department (CDD) FY 2022-23 Work Plan contains several discretionary long range planning projects varying in complexity and anticipated staff effort.¹ This memorandum is intended to update the Board of County Commissioners (Board) on upcoming work plan projects and solicit any comments and revisions. The purpose is to ensure that long-range staff, which has emerging capacity following completion of prior projects, implements the Board's priorities within staff's available resources.²

In October 2022, the Board identified priorities for Long Range projects from the Work Plan for late 2022. Tables 1-3, starting on page 2, summarize projects that are completed, ongoing, and yet to be initiated. On January 11, 2023, the Board identified the Mule Deer Winter Range Inventory update and In-Conduit Hydroelectric code update as top priorities. This meeting is intended to identify priorities among the remaining discretionary items from the FY 2022-23 Work Plan.

Staff seeks Board direction on prioritizing the following projects:

- Non-initiated Long Range Planning Projects listed in Table 3, below

II. BACKGROUND

Each spring, CDD prepares an annual work plan describing proposed projects for the coming fiscal year. A review of the draft work plan provides the Planning Commission, Historic Landmarks Commission, County Administration, CDD's customers and partner agencies, and the Board the opportunity to provide

¹ https://www.deschutes.org/sites/default/files/fileattachments/community_development/page/110/2022-23_work_plan_annual_report_-_final.pdf. Pages 35-38.

² The Long Range Planning Section consists of two Senior Planners, a Senior Transportation Planner (FTE allocated across transportation, current and long range planning duties), and two Associate Planners.

input, including additions, modifications and possible re-prioritization. The work plan describes the most important objectives and proposed projects in each CDD division based on:

1. Board annual goals and policies;
2. Carry-over projects from current or prior years;
3. Changes in state law;
4. Grants/funding sources; and
5. Public comments.

It also serves as the context within which new projects that arise during the course of the year are prioritized and undertaken. The Planning Division Work Plan consistently generates public interest.

III. COMPLETED PLANNING PROJECTS

Table 1 lists completed projects identified in the FY 2022-23 work plan.

Table 1 - Completed Planning Projects

Project	Summary	Status
<i>HB 4079 / Affordable Housing Pilot Project</i>	Amendments to the Deschutes County Comprehensive Plan and Zoning Map to change the designation of a property to Bend Urban Growth Area and Urbanizable Area (UA) District, respectively. Amendment allows the City of Bend to annex, rezone and approve urban development of the future Parkside Place affordable housing development.	<u>Completed.</u> Board adopted City of Bend Urban Growth Boundary (UGB) amendment in June. City Council adopted similar amendments in July 2022.
<i>Historic Preservation (CLG Grant)</i>	Every 24 months, the State Historic Preservation Office (SHPO) offers matching grants to counties that have been “certified” as historic preservation partners with both the state and federal governments. Deschutes County is a Certified Local Government (CLG). Staff will apply for the next round of grants (2023-2024) in February, which includes coordinating with the Historic Landmarks Commission and City of Sisters.	<u>Completed/Ongoing.</u> Grant applications are due February 24, 2023.
<i>Historic Policy and Procedures Manual</i>	Staff prepared a <i>Historic Landmarks Commission Policies and Procedures Manual</i> . It is a reference guide describing the Commission’s purpose, authorities, roles, decision making process, applicable laws/regulations and public meeting requirements.	<u>Completed.</u> Board reviewed and approved the manual in September.
<i>Historic Preservation Strategic Plan</i>	Staff prepared a <i>Deschutes County and City of Sisters Historic Preservation Strategic Plan 2022-2027</i> . It provides a framework for shaping the county and City of Sisters’ preservation programs over the next five years and creates a blueprint for allocating CLG grant funding	<u>Completed.</u> Board reviewed and approved the strategic plan in September.
<i>Psilocybin Time, Place, and Manner (TPM) Amendments</i>	Measure 109, the Oregon Psilocybin Services Act, was passed by the voters of Oregon, allowing manufacture, delivery, and administration of psilocybin at supervised, licensed facilities beginning on January 2, 2023. Pursuant to Measure 109, the county adopted ordinances that impose reasonable TPM regulations on the location of and operation of psilocybin businesses.	<u>Completed.</u> Board completed second reading of TPM amendment on January 4, 2023. These ordinances will be effective in April 2023

IV. ONGOING PLANNING PROJECTS

Staff is currently processing or coordinating several land use projects.

Table 2 – Ongoing Planning Projects

Project	Summary	Comments
<i>Amateur Radio Code Updates</i>	Based on Board direction and in coordination with the Deschutes County Building Division, Oregon Department of Aviation, and amateur radio operators, staff has initiated legislative updates to the amateur radio facilities.	<u>Ongoing</u> . Planning Commission will conduct a public hearing to consider legislative amendments to streamline and clarify the review process for Amateur Radio facilities on January 12.
<i>Applicant-initiated Nonresource Land Amendments</i>	Staff is processing four applicant-initiated Plan Amendment and Zone Change applications to change Exclusive Farm Use (EFU) zoning. One is set for Board hearing in January 2023. One has received Hearings Officer review and will be brought to the Board in early 2023. The other two are in incomplete status and are anticipated for hearings in 2023.	<u>Ongoing</u> . Deschutes County has a long-standing policy to timely process applicant-initiated plan amendment, zone changes, and/or text amendments. These plan amendments and zone changes require significant resources and are becoming increasingly common.
<i>City of Bend Coordination</i>	Coordinate with City of Bend on growth management issues, including technical analyses related to housing and employment needs.	<u>Ongoing</u> . Staff is coordinating with city staff regarding HB 3318, Stevens Road Tract. In 2023, the City of Bend will initiate an application to expand its urban growth boundary to include this property.
<i>City of La Pine Coordination</i>	Participate with Property Management and the City of La Pine to update and amend the County owned Newberry Neighborhood comprehensive plan designations, master plan and implementing regulation.	<u>Ongoing</u> . Staff is coordinating with the Property Manager and Strategic Initiatives Manager.
<i>City of Redmond Coordination</i>	Coordinate with City of Redmond to implement their Comprehensive Plan update.	<u>Ongoing</u> . Staff is coordinating with the City of Redmond regarding their plans to relocate and expand their wastewater treatment plant.
<i>City of Sisters</i>	Participate in the implementation of Sisters Country Vision Plan and City of Sisters Comprehensive Plan Update.	<u>Ongoing</u> . Staff participates in regular coordination meetings with the Sisters Vision Implementation Team.
<i>Comprehensive Plan Update</i>	As directed by the Board, an updated Comprehensive Plan needs to incorporate community input to craft new and updated goals and policies regarding agriculture, forestry, housing, recreation, natural resources, natural hazards, economic development, and transportation. This updated community vision is an opportunity to carefully discuss and balance community values in the face of upcoming opportunities and challenges.	<u>Ongoing</u> . Staff, in coordination with the consultant, is conducting community conversations, stakeholder meetings, and open houses throughout Deschutes County. The focus in early 2023 is to work with the Planning Commission to consolidate community feedback into updated draft goals and policies.
<i>Coordination Projects</i>	o Destination Resort Overnight Lodging Unit Annual Reporting	<u>Ongoing</u> . Staff coordinates with relevant stakeholders for these

Project	Summary	Comments
	<ul style="list-style-type: none"> o Marijuana Annual Reporting / Inspections o Portland State University (PSU) Annual Population Estimate 	tasks and reports news, updates, and results to the Board annually.
<i>Dark Skies</i>	The Work Plan identifies updating the Outdoor Lighting Control Ordinance (aka Dark Skies Ordinance). As both the Planning Commission and Board have expressed support for revisiting the County's existing Outdoor Lighting ordinance, staff is preparing a report outlining opportunities and challenges.	<u>Ongoing</u> . This report will be presented to the Board in early 2023.
<i>Growth Management Committees</i>	Coordinate and/or participate on Deschutes County Bicycle and Pedestrian Committee (BPAC), Project Wildfire, and Deschutes County Mitigation and Enhancement Committee. BPAC is involved in the County's Transportation System (TSP) Plan Update, and Sisters Country Expansion Concept Plan.	<u>Ongoing</u> . These meetings occur monthly with the exception of the Mitigation and Enhancement Committee, which is an annual meeting.
<i>Housekeeping Amendments - Early 2023</i>	Initiate housekeeping amendments to ensure County Code complies with State law.	<u>Ongoing</u> . A Public Hearing will be conducted before the Planning Commission in January 2023, prior to a hearing before the Board
<i>Road Naming</i>	Process Road Naming requests associated with certain types of development on a semi-annual basis.	<u>Ongoing</u> .
<i>Rural Accessory Dwelling Units (SB 391)</i>	The Oregon Legislature adopted Senate Bill (SB) 391 into law on June 23, 2021. It authorizes a county to allow an owner of a lot or parcel within a rural residential zone to construct one ADU subject to certain restrictions and limitations.	<u>Ongoing</u> . Based on Board direction, Staff is monitoring the State 2023 Legislative session for changes to ADU or associated fire hardening requirements, prior to proceeding with local implementation.
<i>Sage Grouse Coordination</i>	Participate as a cooperating agency with the Bureau of Land Management (BLM) to evaluate alternative management approaches to contribute to the conservation of the Greater Sage-grouse and sagebrush habitats on federal lands.	<u>Ongoing</u> . Staff will continue to represent the County at multi-agency coordination meetings as part of the BLM's Greater Sage Grouse planning process.
<i>Short Term Rentals</i>	Based on Board direction, Staff is producing a summary of opportunities and challenges associated with residential short term residential rentals.	<u>Ongoing</u> . This summary will be presented to the Board in early 2023.
<i>Transportation Growth Management (TGM) Grant</i>	<p>CDD received a \$75,000 TGM grant to:</p> <ul style="list-style-type: none"> o Update the Tumalo Community Plan's bike, pedestrian, and transit elements; and o Implement the rural trails portion of the Sisters Country Vision Action Plan. 	<u>Ongoing</u> . The consultant has prepared draft concepts for both items and shared them with the respective stakeholder advisory committees. Staff will then begin the process to adopt the TGM Tumalo bike/ped/transit elements into the Tumalo Community Plan (TCP) and the process to add the proposed rural trails to the County TSP map of bike routes.

Project	Summary	Comments
<p><i>Transportation System Plan (TSP) 2020-2040</i></p>	<p>Road Department is funding a \$250,000 update to the TSP.</p>	<p><u>Ongoing</u>. Consultant has posted an online story map and draft list of projects with short description of project, planning level cost estimate, and prioritization. The online site was accepting public comments received until Dec. 31, 2022. Planning and Road Department will then review the comments and determine if any revisions are needed. Formal adoption of the TSP, including policies and the project list, is expected to begin in early 2023.</p>
<p><i>Tumalo Community Plan</i></p>	<p>CDD is preparing a 2020-2040 update to the Tumalo Community Plan (TCP)</p> <ul style="list-style-type: none"> o Review Community Vision o Update tables on basic information for population, developed lots, and traffic volumes o Review and revise policy language as needed based on community input 	<p><u>Ongoing</u>. Staff has held several open houses and online presentations on the TCP. Staff brought forth draft policies at the most recent open house on August 22, 2022. Based on public feedback, staff is revising several policies. Staff intends to hold more public outreach and at least one more open house in Tumalo prior to beginning Planning Commission hearings in early 2023.</p>
<p><i>Wildfire Mitigation (SB 762)</i></p>	<p>In 2021, the Oregon Legislature passed SB 762, which has significant impacts on wildfire mitigation efforts across all jurisdictions in Oregon. The initial risk map was made available on June 30, 2022. However, based on significant concern from citizens and interest groups through the state, ODF withdrew the initial risk map to provide more time for additional public outreach and refinement of risk classification methodologies. ODF anticipates new risk maps will be finalized by late fall or early winter 2023.</p>	<p><u>Ongoing</u>. Staff is monitoring SB 762 and will provide regular updates relating to forthcoming revisions and process related to the Oregon Department of Forestry's wildfire risk map.</p>
<p><i>Wildlife Inventory Update</i></p>	<p>In fall 2021, the Board directed staff to initiate a pilot project add a new mule deer winter range inventory from the Oregon Department of Fish and Wildlife (ODFW) to the county's Goal 5 protected resources. The County's existing mule deer winter range covers approximately 315,947 acres. ODFW's new inventory proposes an additional area of 188,132 acres, resulting in total of 503,979 acres. Incorporating the new inventory into DCC would require:</p> <ul style="list-style-type: none"> o Amending the Comprehensive Plan and zoning code o Drafting parcel-specific maps showing properties affected by the existing and proposed winter range o Writing extensive findings o Creating interactive website o Scheduling public open houses and hearing 	<p>Prioritized/Ongoing. This project was delayed until 2023, at Board direction, to prioritize TPM regulations for psilocybin.</p> <p>Staff is seeking Board prioritization of this work plan item as part of this update.</p>

V. PROJECTS NOT YET INITIATED

Table 3 lists long range planning projects that have not been initiated. It recognizes staffing resource requirements for each project. They range from “minor” to “significant” as noted below:

- A “minor” rating (2 to 6 months)
- A “moderate” rating (4 to 8 months)
- A “significant” rating (6 to 12 months)

Table 3 – Non-initiated Long Range Planning Projects

Project	Summary	County Resources
<i>Bend Airport</i>	Update and adopt the Bend Airport Master Plan and amend the Comprehensive Plan and Development Code to incorporate implementation measures to allow new airport-related businesses. Initial coordination meetings with City of Bend were held in late 2022.	Minor to Moderate
<i>Community Plans</i>	Engage Terrebonne and Newberry Country residents to determine if community plans should be updated.	Significant
<i>Legislative Session</i>	Participate in legislative or rulemaking work groups to shape state laws to benefit Deschutes County.	Minor
<i>Zoning Amendments³</i>	<ul style="list-style-type: none"> • Minor variance 10% lot area rule for farm and forest zoned properties. (Attachment A) 	Minor
	<ul style="list-style-type: none"> • Outdoor Mass Gatherings update. (Attachment B) 	Moderate
	<ul style="list-style-type: none"> • Lot Line Adjustments and Re-platting. (Attachment C) 	Moderate
	<ul style="list-style-type: none"> • Sign code to become consistent with federal law. (Attachment D) 	Moderate
	<ul style="list-style-type: none"> • Accessory structure amendments clarifying they must be built concurrent with or after the establishment of a primary residence. Specify allowed facilities (baths, cook tops, wet bar) in residential accessory structures. (Attachment E) 	Moderate
	<ul style="list-style-type: none"> • Section 6409(a) of the Spectrum Act (Attachment F) 	Minor
	<ul style="list-style-type: none"> • In conduit hydroelectric generation code amendments (Attachment G) <p><i>Prioritized</i></p>	Significant/ <i>Prioritized</i>
	<ul style="list-style-type: none"> • Repeal Conventional Housing Combining Zone (Attachment H) 	Minor
	<ul style="list-style-type: none"> • Define family for unrelated persons HB 2538, Non-familial Individuals (Attachment I) 	Moderate
	<ul style="list-style-type: none"> • Temporary use of recreational vehicles as dwellings (Attachment J) 	Moderate

VI. BOARD DIRECTION

Staff seeks Board direction on the priority of the following projects:

- Non-initiated Long Range Planning Projects listed in Table 3

Attachments

- Minor Variance /10% Lot Area Rule
- Outdoor Mass Gathering Update

³ Detailed descriptions of Zoning Amendment projects are provided as attachments to this memo, as noted.

- C. Lot Line Adjustment and Replatting
- D. Sign Code
- E. Accessory Structures
- F. Spectrum Act / Section 6409(a)
- G. In Conduit Hydroelectric Generation
- H. Conventional Housing Combining Zone
- I. Family Definition for Unrelated Persons (HB 2538)
- J. Temporary Use of Recreational Vehicles



Attachment A- Minor variance 10% lot area rule for farm and forest zoned properties

BACKGROUND & OVERVIEW

Lot line adjustments have been used to circumvent lot-area-based development standards both under local code and state statute. In 1991, County Code was amended (Ord. 91-038) to limit area reduction of lots that are currently smaller than the minimum lot size (to a maximum reduction of ten percent) without a more complicated variance review process.

In the past two decades, state statute (ORS 92.192) has been updated to include protections for lot-area-based standards that are more robust and nuanced than the County Code provision. Currently both the state and county protections apply. However, because the County provisions are more of a “blunt instrument”, they cause unexpected problems for operators of large farms. Specifically, because the minimum lot size for most farm-zoned properties is 80 acres, the transfer of sub-80 acre pieces between neighboring farm operations is needlessly complicated by County Code.

CURRENT PROCESS & CHANGES

Potential text amendments would remove the conflict between DCC and ORS by changing DCC 18.132.025 to exclude farm and forest zone properties from the County’s ten-percent reduction limitation.

Key Amendment Concerns	
Staff Effort/Resources	Medium/Low
Legal Complexity	Low
Implementation Urgency	Medium/Low



Attachment B - Outdoor Mass Gathering – Revise County Code to Reflect Changes in State Statute

BACKGROUND & OVERVIEW

Multi-day festivals have long been held in Oregon and multi-day music festivals became especially popular in Deschutes County in the mid-2000s. Between 2013 and 2022, the County processed 12 Outdoor Mass Gathering (OMG)¹ applications including Board Hearings on the dozen applications. Many of these applications were for the Four Peaks Music Festival. Issues for the OMG permits ranged from noise to traffic to incompatibility with adjacent land uses. The applicable review and approval criteria for Outdoor Mass Gatherings (OMG) are found in Deschutes County Code (DCC) 8.16 (Events, Parades, Funeral Processions, and Outdoor Mass Gatherings) specifically DCC 8.16.010 and DCC 8.16.150 through 8.16.340. This code language must be consistent with state statute, specifically Oregon Revised Statute (ORS) 433.735 to 433.770 (Regulation of Outdoor Mass Gatherings)

Concerns about the effects of OMGs as well as a patchwork approach in statute to outdoor events eventually led the Legislature to approve HB 2790 (2019) to modify Oregon Revised Statute (ORS) 433.735 to ORS 433.770. Previously, OMGs were regulated only for health and safety under ORS 433.750 and were not land use decisions under ORS 197.015(10)(d). HB 2790 made local review of a permit for a single gathering of more than 3,000 people and lasting more than 120 hours into a land use decision.

OMGs that are not a land use decision, but regulated by health and safety regulations only:

- Events of less than 3,000 people lasting up to 120 hours
- Events of more than 3,000 people, but lasting less than 24 hours
- Events of more than 3,000 people lasting up to 120 hours

CURRENT PROCESS & CHANGES

Under DCC 8.16.170(A), the County requires permits for OMGs and Extended OMGs with public hearings before the Board for OMGs and the Planning Commission for Extended OMGs. Under HB

¹ Defined in ORS 433.375(2) as a gathering in an open space with actual or reasonably anticipated attendance of more than 3,000 people and lasting between 24 and 120 hours and occurs once within a three-month period. DCC 8.16.010 defines an OMG sets actual or expected attendance of between 500 and 3,000 people and last for between more than 4 and less than 24 hours. DCC 8.16.010 defines an Extended OMG as attendance expected of more than 3,000 people or more than 500 persons for an event that last more than 240 hours, including set-up and breakdown.

2790, an application for an OMG becomes a land use decision – thus following the requirements of Title 22 - and the decision can be made administratively or before a hearings officer, and is appealable to the Board and ultimately the Land Use Board of Appeals (LUBA). Changes would need to be made to DCC 8.16 to reflect changes in definitions and processes.

Key Amendment Concerns	
Staff Effort/Resources	Medium
Legal Complexity	Low
Implementation Urgency	Low



Attachment C - Replatting and Property Line Adjustment Amendments

BACKGROUND & OVERVIEW

Property owners have two primary options for adjusting the boundaries of properties created through subdivisions or partitions:

1. Replats
2. Property line adjustments/consolidations

Simple lot line adjustments involving a single property line are adequately regulated under statute (ORS 92.192). Significant reconfiguration of partitions and subdivisions are regulated under replatting standards, which are more comprehensive and take into account how reconfiguration of properties might affect surrounding roads, emergency access, and infrastructure capacity. However, the Deschutes County Code contains ambiguous language defining when applicants should utilize replatting standards versus property line adjustments and property line consolidations.

CURRENT PROCESS & CHANGES

As noted by the by the Deschutes County Road Department, under current county code, the potential exists for an applicant to apply for a series of property line adjustments to convert adjoining undevelopable properties into developable properties without any consideration for transportation infrastructure impacts. This potential is particularly present in undeveloped portions of subdivisions platted prior to the statewide land use program. Notable examples include portions of the Hillman, Millican, Centralo, and Laidlaw townsite plats. While the Road Department does not have specific recommendations to correct these issues, they outline the following possibilities:

- Property line adjustments that would reconfigure existing adjoining undevelopable units of platted land into a certain number of developable units of land shall be processed as a replat.
- Property line adjustments that would allow for development that is not subject to site plan review with the potential to generate a certain number of weekday PM peak-hour trips shall be processed as a replat.

Code amendments to address these issues would allow a more clear understanding of the thresholds for applying replatting standards versus more simplified property line adjustment

standards. While generally uncommon, staff has encountered high profile applications wherein definitional clarity between these two application types would have avoided additional legal or consultant fees for the applicant while also addressing the impact concerns of the Road and Community Development Departments.

Key Amendment Concerns	
Staff Effort/Resources	Medium
Legal Complexity	Medium
Implementation Urgency	Medium



Attachment D - Sign Code Amendments

BACKGROUND & OVERVIEW

Currently, Deschutes County Code includes limitations on signs based on their content. In *Reed v. Town of Gilbert (2015)*, the U.S. Supreme Court found a content-based sign ordinance may impede on an applicant’s First Amendment right to Freedom of Speech based on the content of a given sign. Building on *Reed*, the Court reviewed a separate sign code-based case under *City of Austin v. Reagan National Advertising of Austin (2022)*. In *Austin*, the U.S. Supreme Court found that certain sign code provisions (such as requiring advertising signs to be placed on the premises of the entity being advertised) can be considered content-neutral under the right to Freedom of Speech under the First Amendment of the U.S. Constitution.

Deschutes County currently implements its Sign Code through Deschutes County Code Title 15.08. *Reed* implies that Deschutes County should ensure that their Sign Code provisions are “content-neutral” or else be subject to “strict scrutiny” under the First Amendment. *Austin* implies that not all provisions of a given sign code are automatically “content-based” and, therefore, some sign code provisions are subject to “intermediate scrutiny” rather than “strict scrutiny” under the First Amendment. In *Austin*, the U.S. Supreme Court found that, in order to survive intermediate scrutiny, a restriction on speech or expression must be “narrowly tailored to serve a significant government interest”.

CURRENT PROCESS & CHANGES

Revisions to the Sign Code could ultimately bring Title 15.08 into compliance with Federal case law and interpretations around sign content and Freedom of Speech included in *Reed (2015)* and *Austin (2022)*. Staff foresees working closely with County Legal Counsel to review the existing Sign Code, ensuring that content-based provisions are designed to be content-neutral.

Key Amendment Concerns	
Staff Effort/Resources	Medium/High
Legal Complexity	Medium/High
Implementation Urgency	Medium



Attachment E - Accessory Structure Amendments

BACKGROUND & OVERVIEW

The County regularly receives requests for residential accessory buildings with many of the features of dwelling units (e.g. kitchen-like areas, multiple full-baths, wet bars). Despite careful communication with developers, these residential accessory buildings are often converted to illegal dwelling units or are misrepresented as ADUs to subsequent buyers of the property.

The Deschutes County Code (DCC) lacks provisions common in other Counties' code such as:

- 1) Specification of allowed plumbing and other dwelling-like features permissible in residential accessory buildings,
- 2) A requirement for a recording to the property title, alerting future buyers that the residential accessory building is not an ADU, or
- 3) A requirement that that the dwelling (primary use) must be constructed first (or at the same time) as residential accessory buildings.

CURRENT PROCESS & CHANGES

The Board has expressed interest in creating clarity within the County Code around these potentially ambiguous provisions. As one example, the City of Bend currently utilizes a code system that provides specific definitions of certain improvement types, and clear standards of when and where these improvements are allowed. City of Bend also provides accessory structure-related code language, clearly specifying that primary uses must be established prior to accessory structures. Revisions to County Code related to residential accessory buildings could offer more clarity for residential property owners looking to develop and could help with the differentiation between primary and accessory structures.

Key Amendment Concerns	
Staff Effort/Resources	Medium
Legal Complexity	Medium
Implementation Urgency	Medium/High



Attachment F - Spectrum Act - Wireless Telecommunication Amendments

BACKGROUND & OVERVIEW

On February 22, 2012, the Middle Class Tax Relief and Job Creation Act of 2012 became law. Section 6409(a) of the act, also known as the Spectrum Act, was intended to advance wireless broadband service for public safety and commercial purposes and to provide for the creation of a broadband communications network for first responders. Along with Section 704 of the Telecommunications Act of 1996 (Public Law 104-104), the Spectrum Act can be viewed as part of the ongoing effort by the wireless industry to achieve federal preemption over local telecommunications zoning regulations. As such, Deschutes County (along with many other State and local governments) must alter existing telecommunication regulations which do not align with certain aspects of the Spectrum Act.

The Spectrum Act and corresponding Federal Communications Commission (FCC) rulings outline the following standards:

- Applies to collocations, removals, or modification of equipment on wireless towers or base stations;
- Mandates that a State or local government “may not deny, and shall approve” any application covered by section 6409(a);
- Does not apply to collocation on a structure that is not a wireless tower or base station; and
- Does not apply if action substantially changes the physical dimensions of a tower or base station.

Regarding the process for reviewing an application under Section 6409(a), the FCC also provides that:

- A State or local government may only require applicants to provide documentation that is reasonably related to determining whether the eligible facilities request meets the requirements of Section 6409(a);
- A state or local government must approve an application covered by Section 6409(a) within 60 days from the date of filing, subject to tolling; the running of the period may be tolled by mutual agreement or upon notice that an application is incomplete, but not by a moratorium (an incomplete notice must be provided according with the same deadlines and requirements applicable under Section 704 of the Telecommunications Act of 1996, codified as 47 U.S.C. § 332(c)(7)); and

- An application filed under Section 6409(a) is deemed granted if a State or local government fails to act on it within the requisite time period;

In the summary, Section 6409(a) restricts local land use review of modifications and collocations by establishing a “substantial change” test as the primary eligibility determinant for review exemptions afforded by the Spectrum Act and reduces the application processing “shot clock” from 90 days to 60 days.

CURRENT PROCESS & CHANGES

Deschutes County Code (DCC) Section 18.116.250 contains provisions which directly contradict the standards of the Spectrum Act described above. However, the Community Development Department (CDD) currently evaluates and approves applications for non-substantial changes to physical portions of existing wireless telecommunication facilities (such as collocations of infrastructure) pursuant to the standards of Section 6409(a).

However, code amendments would allow a more seamless understanding of the Spectrum Act approval standards for both staff and applicants by codified the Spectrum Act standards in formal Deschutes County documents and ordinances. Any proposed amendments would ultimately include an objective set of standards for what constitutes “substantial changes” to existing wireless telecommunication facilities.

Key Amendment Concerns	
Staff Effort/Resources	Medium/Low
Legal Complexity	Medium
Implementation Urgency	Medium/Low



Attachment G - Conduit Hydroelectric Facility Amendments

BACKGROUND & OVERVIEW

In 1986, Deschutes County adopted Ordinance No. 86-018, allowing hydroelectric facilities as a conditional use. In 2020, Three Sisters Irrigation District (TSID) applied for a hydroelectric facility to be integrated into their existing conduit system for the purpose of generating operational revenue for the district. The Board ultimately approved the request, only applying the provisions of DCC 18.128.260(A-B) that pertained to hydroelectric facilities located along existing conduit, not located directly adjacent to natural waterways or impoundments. The Board’s approval was ultimately upheld at the Land Use Board of Appeals (LUBA) in 2022.

CURRENT PROCESS & CHANGES

During final reading of the Board’s hydroelectric facility approval, the Commissioners expressed an interest in revisiting the code provisions at DCC 18.128.260(A-B) for the purpose of differentiating the “riverine” and “conduit” facilities, as characterized throughout the review of the TSID application¹. The Board mentioned the terms “affected stretch of river” and “maintain or enhance” as language that may be changed to differentiate between these types of hydroelectric facilities. Other changes to existing code language may be necessary to fully encapsulate the review criteria that may apply to riverine and conduit facilities, respectively. These revisions would ultimately create a more streamlined review process for conduit hydroelectric facility proposals which do not directly abut waterways or otherwise directly impact rivers or other water sources.

Key Amendment Concerns	
Staff Effort/Resources	Medium/High
Legal Complexity	Medium
Implementation Urgency	Medium

¹ Deschutes County BOCC Decision (Document No. 2021-223) pg. 20. 2021.



Attachment H - Conventional Housing Combining Zone Amendments

BACKGROUND & OVERVIEW

The purpose of these amendments is to repeal the Conventional Housing Combining Zone (CHC Zone) from the County's zoning map and zoning code. Deschutes County adopted the CHC in 1979 as part of Ordinance PL-15, the County's Zoning Ordinance. The CHC serves as an overlay district and restricts placement of manufactured or prefabricated homes in specific areas of the County with the following stated purpose:

"To provide a variety of residential environments in rural areas by maintaining areas reserved for conventional and modular housing permanently attached to real property".¹

The CHC applies to three areas – an area to the east of Tumalo, west of Tumalo and east of Bend². In 2020, the County produced a Rural Housing Profile, which outlined several potential strategies for removing barriers to housing production in rural Deschutes County. Repeal of the CHC was listed as a strategy as it would give those properties the potential to provide affordable housing in the form of mobile or manufactured homes, which are less expensive alternatives to stick-built or modular housing.

In addition to this, on March 23, 2022, Oregon House Bill 4064 became effective. The bill amended several sections of Oregon Revised Statute to prohibit local governments from prohibiting siting of prefabricated structures in residential areas where traditional single-family homes or other common dwelling types were allowed. Although the amendments were targeted toward cities and urban growth boundaries, several code provisions also limit the County's ability to limit manufactured prefabricated homes in residential areas.

PROPOSED CHANGES

The CHC is a mapped Combining Zone and removal of the zone from the three aforementioned areas would require:

- 1) Repeal of section 18.92 Conventional Housing Combining Zone from the Deschutes County Code
- 2) Zoning Map Amendment to repeal Conventional Housing Combining Zone

¹ DCC 18.92.010

² https://www.deschutes.org/sites/default/files/fileattachments/community_development/page/16511/housing_profile_-_conventional_housing_combining_zone_map.pdf

Key Amendment Concerns	
Staff Effort/Resources	Low/Medium
Legal Complexity	Medium
Implementation Urgency	Medium/High



Attachment I - Amend County Code to define family for unrelated persons, Non-familial Individuals (HB 2583)

BACKGROUND & OVERVIEW

Until the passage of House Bill 2583 in 2021, local law in Oregon dictated residential occupancy limits based on “family” or “related” persons, essentially limiting how many unrelated people could share a home, regardless of dwelling type, size, or ownership status. This restriction served to unnecessarily limit housing choices—a particular pressure point in the current housing crisis.

HB 2583 now precludes the “family” clause from single-family occupancy requirements, stating:

“A maximum occupancy limit may not be established or enforced by any local government, as defined in ORS 197.015, for any residential dwelling unit, as defined in ORS 90.100, if the restriction is based on the familial or nonfamilial relationships among any occupants.”

CURRENT PROCESS & CHANGES

Deschutes County Code (DCC) Section 18.04.030, Definitions, currently defines “family” as:

“an individual or two or more persons related by blood, marriage, legal adoption, or legal guardianship living together as one housekeeping unit using a common kitchen and providing meals or lodging to not more than three additional unrelated persons, excluding servants; or a group of not more than five unrelated persons living together as one housekeeping unit using a common kitchen.”

This allows a total of five people if the residents are unrelated, but an undetermined number if the dwelling houses a family (which could be any size) as well as three unrelated persons.

Staff is investigating how other Oregon Counties have approached House Bill 2583. Clackamas County, for example, allows a total of 15 persons, regardless of relationship.

Utilizing a flat occupancy rate (like Clackamas County) means that a small home would have the same occupancy limit as a large home, which seems relatively illogical and could result in overcrowding of smaller dwellings as well as overloading of septic systems. Relating occupancy to number of bedrooms appears reasonable in that the occupancy limits would relate to the size of the dwelling. However, this could also lead to complications with respect to what is considered a

bedroom. Often, rooms are used as bedrooms by residents even if they do not meet the definition in the building code with respect to windows, egress, and size.

This amendment would require choosing a policy direction for a preferred definition as it relates to occupancy.

Key Amendment Concerns	
Staff Effort/Resources	Medium/Low
Legal Complexity	Low
Implementation Urgency	Medium/Low



Attachment J – DCC 18.116.095 Recreational Vehicle as a Temporary Residence on an Individual Lot

BACKGROUND & OVERVIEW

County Code allows a vacant property to be occupied by a recreational vehicle (RV) for either 30 days in any 60-day period without a permit or 180 days with a permit. Ambiguity in the current regulations result in significant code enforcement burden and difficulty ensuring proper disposal of wastewater. Issue areas include:

- Failure to implement or maintain lawful wastewater disposal
- Fire safety concerns
- Occupancy beyond lawful duration
- Violation of Wetland or Floodplain regulations
- Establishment of Hipcamps (online nightly rentals of RV spaces)
- Construction of buildings accessory to the RV use of the property

CURRENT PROCESS & CHANGES

Under Board direction and with public outreach and input, Staff would update DCC 18.116.095 to better address these concerns.

Key Amendment Concerns	
Staff Effort/Resources	Medium
Legal Complexity	Low
Implementation Urgency	Medium