MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Nicole Mardell, AICP, Senior Planner
Will Groves, Planning Manager

DATE: September 3, 2025

SUBJECT: Public Hearing: Property Line Adjustment / Minor Variance Text Amendments

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The Deschutes County Board of Commissioners (Board) will conduct a public hearing on September 10, 2025, to consider amendments to the Deschutes County Code (file no. 247-25-000399-TA). These amendments propose removing local criteria for property line adjustments involving parcels smaller than the minimum lot size and aim to directly apply state standards. The amendments also seek to clarify that variances are not required for this type of property line adjustment. The hearing will take place in the Barnes and Sawyer Rooms, 1300 NW Wall Street, Bend, and virtually via Zoom.

Attached to this memorandum are the proposed text amendments (Attachment A) and findings (Attachment B) summarizing the changes. Within the proposed amendments, added language is shown underlined and deleted shown as ~~strikethrough~~.

All record materials can be found on the project website: bit.ly/399TA.

I. BACKGROUND

Requirements for property line adjustments involving substandard lots have historically been ambiguous under local code and state statute. No significant limitations on the use of property line adjustments existed in state or local code prior to 1991.

In 1991, County Code was amended (Ord. 91-038) to limit area reduction of lots smaller than the minimum lot size (to a maximum reduction of ten percent) without a more complicated variance review process. This minor variance process for line adjustments applied to all zones in Deschutes County.

In 2010, the Board of County Commissioners adopted Ordinance 2010-003, which created the current minor variance provisions to allow property line adjustments resulting in a reduction of more than 10 percent in all zones, except the farm and forest zones. This

provision was added to relieve an ongoing property line issue in the Dustan Road area of the county, although it was able to be applied to other historically platted subdivisions. The Board did not address issues in the EFU and Forest zone at that time, likely due to the narrow scope of the text amendment.

Beginning in 2008, state statute (ORS 92.192) has been repeatedly updated to increase protections for lot-area-based standards. Over time, these state statutory requirements have become more robust and nuanced than the County Code provision. Currently, both the state and county protections apply.

However, because the older County provisions are less nuanced when compared with newer state statute, the local code can cause unexpected problems for property owners. Specifically, the local 10% limitation can preclude beneficial property line adjustments that would otherwise comply with the modern, robust protections of 92.192. Staff added the proposed amendment to the department's work plan beginning in 2020, to explore deconflicting state and local property line adjustment provisions.

The Board directed that this text amendment be initiated during review of the Community Development Department's 2025-2026 work plan. An individual testified to the unintended consequences of this provision, noting its impact on large farm owners. Specifically, the minimum lot size for most farm-zoned properties is 80 acres. The transfer of sub-80-acre pieces between neighboring farm operations is unnecessarily complicated by the provisions of the County Code. Property line adjustments may be used to correct issues between property owners, such as a fence or building being located over a property line. For larger resource-zoned properties, the most efficient and streamlined process to correct this type of issue is unavailable due to the ten percent (10%) limitation.

The amendments seek to clarify otherwise ambiguous code provisions and reduce the risk of litigation by directly applying ORS 92.192.

II. STATE REQUIREMENTS – ORS 92.192

Under ORS 92.192, a county **may** approve a property line adjustment on land outside of city limits under the following scenarios.

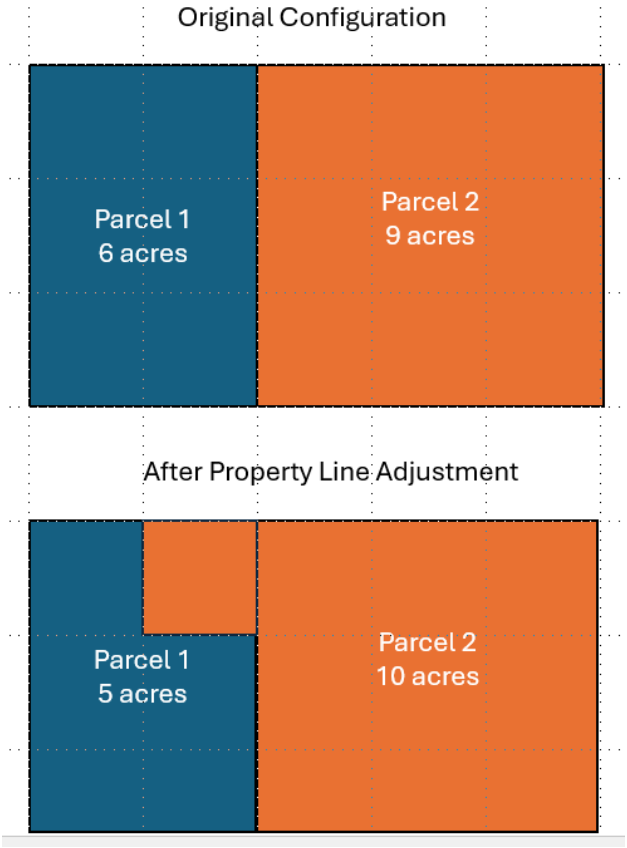
ORS 92.192(3)(a)
One or both parcels are smaller than the minimum lot size for the applicable zone before the property line adjustment, and after the adjustment, one is as large or larger than the minimum parcel size.

Figure 1 demonstrates a situation under this scenario. Both parcels are in the MUA-10 zone with a minimum lot size of 10 acres. Before the adjustment, Parcel 1 is six (6) acres (below the minimum lot size), and Parcel 2 is 15 acres (greater than the minimum lot size). Following the adjustment, Parcel 1 is increased in size to 9 acres but remains below the minimum lot size, and Parcel 2 is decreased to 12 acres, but remains larger than the minimum lot size.

Figure 1

Figure 2 demonstrates another situation under this scenario. Both parcels are in the MUA-10 zone with a minimum lot size of 10 acres. Before the adjustment, each parcel is below the minimum lot size. Following the adjustment, Parcel 1 is decreased in size and remains below the minimum, while Parcel 2 is increased to meet the minimum lot size for the zone.

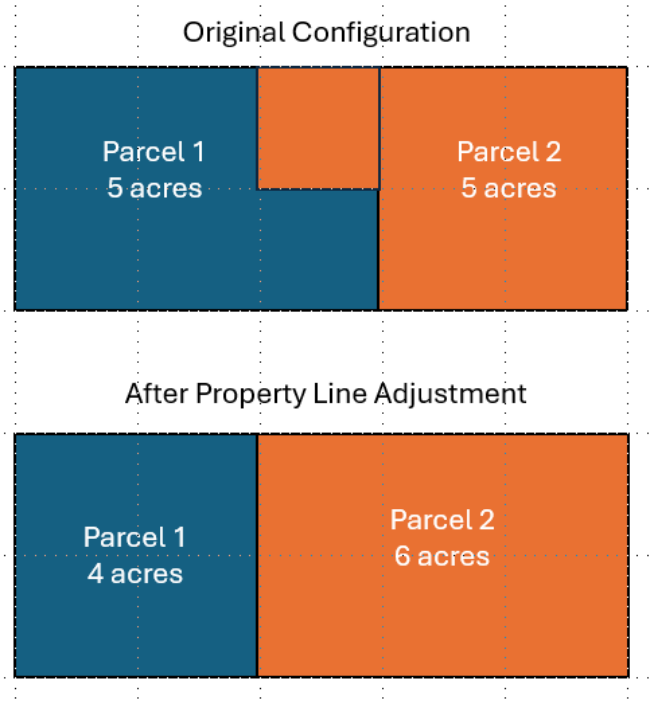
Figure 2



ORS 92.192(3)(b)
Both parcels are smaller than the minimum lot size before and after the property line adjustment.

Figure 3 demonstrates a situation under this scenario. Both parcels are in the MUA-10 zone with a minimum lot size of 10 acres. Before the adjustment, both parcels are below the minimum lot size. Following the adjustment, Parcel 1 is decreased in size and Parcel 2 is increased in size, with both parcels remaining smaller than the minimum lot size.

Figure 3



Farm and Forest Restrictions - ORS 92.192(4)(a)-(d)
In addition to the requirements above, the statute places additional restrictions on property line adjustments in the Exclusive Farm Use and Forest zones. Counties **may not** approve a property line adjustment involving properties smaller than the minimum lot size if:

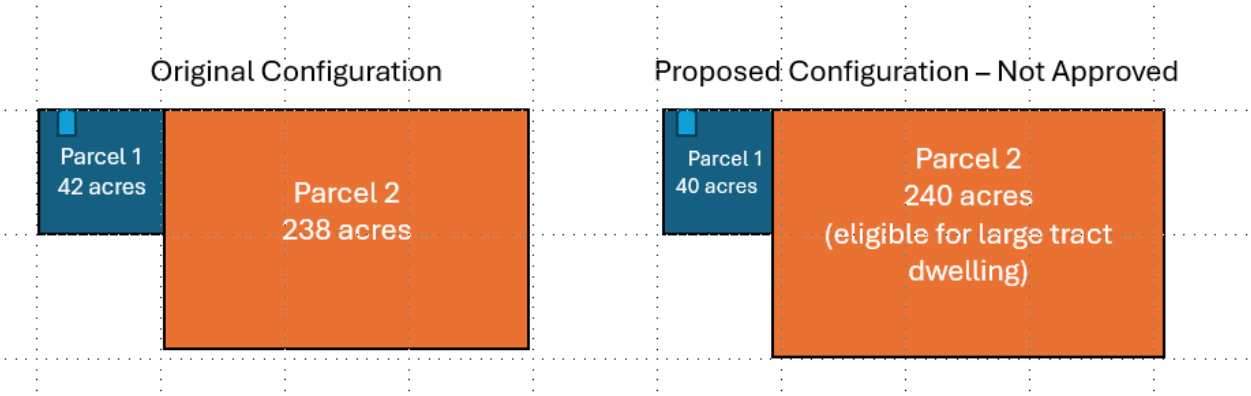
a. The adjustment decreases the size of a parcel that is already smaller than the minimum lot size and contains an existing dwelling (or has received approval for the construction of a dwelling), while increasing the other parcel to at least the minimum lot size required to qualify for a dwelling.

   In Deschutes County, minimum lot size requirements apply to farm-related dwellings in farm zones and large tract dwellings in forest zones.

   Figure 4 provides an example under this scenario. Parcel 1 is below the minimum lot size and is developed with a dwelling. Parcel 2 is undeveloped and above the minimum lot size for the Forest Use 1 zone (80 acres), but does not meet the minimum lot size for a large tract dwelling, which is 240 acres. If property owners

proposed a property line adjustment to shift two acres from Parcel 1 to Parcel 2, it could not be approved. The effect of the property line adjustment would be to decrease the size of Parcel 1, already below the minimum lot size and containing a dwelling, and would increase Parcel 2, making it newly eligible for a large tract dwelling. This would trigger the restriction in ORS 192.192(4)(a).

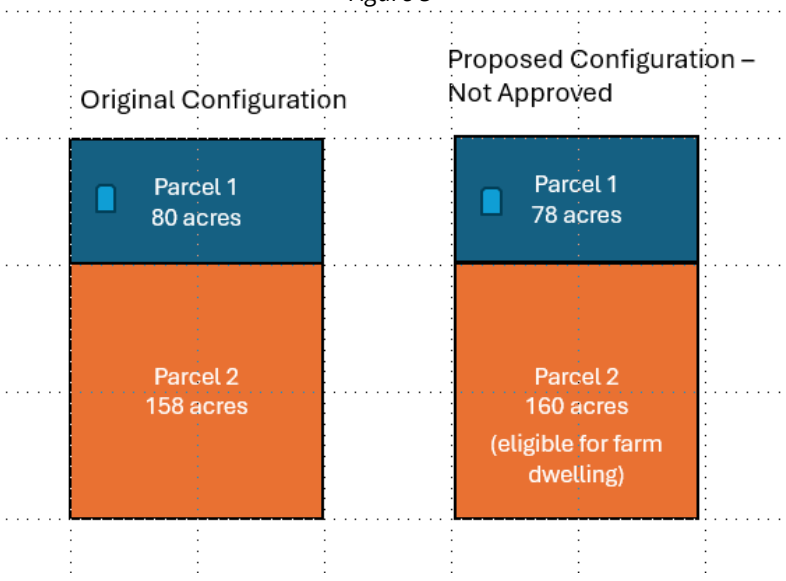
Figure 4



b. The adjustment decreases the size of a parcel that currently meets or exceeds the minimum lot size and contains an existing dwelling (or is approved for the construction of a dwelling) to below the minimum lot size and increases the other parcel to or above the minimum lot size for a dwelling.

Figure 5 provides an example of this scenario. Each parcel is in the Exclusive Farm Use Zone with a minimum lot size of 80 acres. Parcel 1 was developed with a dwelling prior to the creation of the state land use system and meets the minimum lot size. Parcel 2 is undeveloped and meets the minimum lot size for the zone, but is just under the minimum lot size required to qualify for a farm dwelling (160 acres). The County could not approve the property line adjustment proposed, as it would decrease Parcel 1 to below the minimum lot size and increase Parcel 2 to the minimum lot size needed for a farm dwelling.

Figure 5

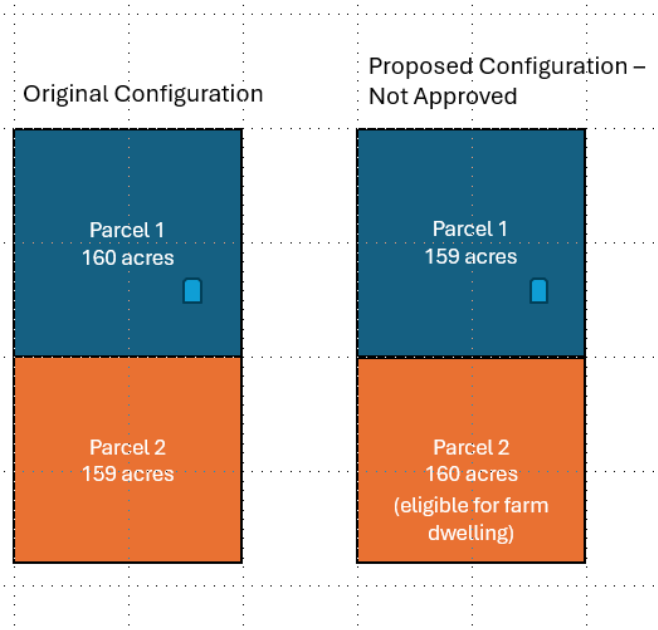


c. The adjustment allows an area of land used to qualify a parcel for a dwelling based on an acreage standard to be used to qualify another parcel for a dwelling based on an acreage standard.

   This practice is considered "double dipping," as the property owner would be using a portion of a property to qualify for a dwelling by meeting all standard code provisions, and subsequently adjusting the property line to make the dwelling noncompliant, thereby enabling the construction of another dwelling on an adjacent property.

   Figure 6 provides an example of this scenario. Each parcel is in the Exclusive Farm Use Zone. Parcel 1 contains a farm-related dwelling approved under an acreage test that required 160 acres. Parcel 2 is undeveloped and is seeking approval for a farm-related dwelling that requires meeting an acreage test that requires 160 acres. The County could not approve the property line adjustment reducing Parcel 1 below 160 acres, as the adjustment would involve land used to qualify Parcel 1's dwelling for another dwelling on Parcel 2.

Figure 6



d. Adjust a property line on a parcel created through Measure 36 or 49 claim, to adjust any parcel to be larger than:
   A. Two acres, if previously under two acres and is high-value farmland or forestland.
   B. Five acres, if previously under five acres and not high-value farmland or forestland.

   The provision above is relatively straightforward and intends to limit adjustments to properties approved under the special allowances within the state's Measures 36 and 49 claim process.

Staff finds that these requirements efficiently evaluate property line adjustments involving parcels below the minimum lot size.

III. OVERVIEW OF AMENDMENTS

At the direction of the Board, staff is proposing the following amendments:

- Add 18.132.020(D) to clarify that property line adjustments are not eligible for variances, and that property line adjustments complying with ORS 92.192 do not require a variance.
- Delete existing 18.132.025(B) to remove the variance requirement for property line adjustments involving parcels smaller than the minimum lot area.
- Delete existing 18.132.025(C) to remove local limitations on property line adjustments involving substandard parcels beyond the requirements in ORS 92.192.
- Add new 18.132.025(C) to clarify that property line adjustments are not eligible for minor variances, and that property line adjustments complying with ORS 92.192 do not require a minor variance.

Staff may propose additional amendments during the hearing process following review from the public, Planning Commission, and Board of County Commissioners.

IV. AGENCY AND PUBLIC COMMENTS

Notice of the Post-Acknowledgement Plan Amendment (PAPA) was submitted to the Department of Land Conservation and Development on June 18, 2025. One public comment has been received from the requester of the amendments, Adam Smith, suggesting minor revisions. These comments have been integrated into the findings.

V. PLANNING COMMISSION RECOMMENDATION AND BOARD CONSIDERATION

The Planning Commission held a public hearing on July 24, 2025. No public or agency testimony was received. The Commission closed the public hearing, deliberated, and voted unanimously to recommend approval of the proposed amendments.

Planning staff is aware of several property owners who are awaiting the outcome of this process to determine next steps for their development applications. As this text amendment was requested to be expedited by the Board during the work plan process, staff recommends the Board consider adoption by emergency. Draft Ordinance 2025-017 is included in this package for potential consideration following public testimony.

VI. NEXT STEPS

At the conclusion of the public hearing, the Board can choose one of the following options:

- Continue the hearing to a date and time certain;
- Close the oral portion of the hearing and leave the written record open to a date and time certain;

- Close the hearing and commence deliberations; or
- Close the hearing and schedule deliberations for a date and time to be determined.

Attachments
Draft Ordinance 2025-017
Exhibit A Text Amendments
Exhibit B Proposed Findings