



**MEMORANDUM**

**TO:** Deschutes County Planning Commission

**FROM:** Kyle Collins, Associate Planner

**DATE:** September 15, 2022

**SUBJECT:** Senate Bill (SB) 391 Public Hearing – Rural Accessory Dwelling Unit (ADU) Legislative Amendments

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The Deschutes County Planning Commission (Commission) will conduct a public hearing on September 22, 2022 at 5:30 P.M. at the Deschutes Services Center, 1300 Wall Street, Barnes and Sawyer rooms to consider legislative text amendments to formally adopt provisions for rural ADUs as identified in Senate Bill (SB) 391<sup>1</sup> (file no. 247-22-000671-TA). Staff submitted a 35-day Post-Acknowledgement Plan Amendment (PAPA) notice to the Department of Land Conservation and Development (DLCD) on August 17, 2022. Staff presented the proposed amendments to the Planning Commission at a work session on September 8, 2022.<sup>2</sup> Attached to this memorandum are the proposed text amendments and a staff report summarizing the changes. Within the proposed amendments, added language is shown underlined and deleted shown as ~~strikethrough~~. The public hearing will be conducted in-person, electronically, and by phone.<sup>3</sup>

The record is available for inspection at the Planning Division and at the following website: <https://www.deschutes.org/adu>. Moreover, the complete record will be available at the public hearing.

**I. BACKGROUND**

Rural residential zones exist throughout Oregon. By definition, rural residential zones exist outside of urban growth boundaries (UGBs), but are excluded from the state’s resource land (farm and forest zone) protections. With certain exceptions, those protections allow residential uses only in conjunction with a farm or forest use. However, in rural residential zones, a dwelling can be a primary use of the land. Currently, state law allows counties to permit an additional dwelling on a property containing a house built prior to 1945.<sup>4</sup> However, unlike in urban zones, rural residential zones do not have any other by-right accessory dwelling options, making inter-generational and alternative housing options difficult to achieve.

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

<sup>2</sup> <https://www.deschutes.org/bc-pc/page/planning-commission-16>

<sup>3</sup> See Deschutes County Planning Commission September 22, 2022 Agenda for more information: <https://www.deschutes.org/bc-pc/page/planning-commission-17>

<sup>4</sup> House Bill 3012 (2017).

The Oregon Legislature adopted 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. SB 391 does not obligate a county to allow ADUs. It also does not prohibit a county from imposing any additional restrictions, including those relating to the construction of garages and outbuildings that support an ADU, property size restrictions, or other land use considerations.

## II. STATE REGULATIONS

SB 391 contains 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 – Rural Accessory Dwelling Unit Standards**

Eligibility	Restrictions
1. Rural Residential Exception Areas, Minimum Lot Size, and Dwelling Requirements	<ul style="list-style-type: none"> <li>Applies to Rural Residential (RR10), Multiple Use Agricultural (MUA10), Urban Area Reserve (UAR-10) and Suburban Residential (SR 2.5) 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>
2. Existing Dwelling Nuisance	<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>
3. ADU Sanitation Requirements	<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>
4. ADU Square Footage Requirements	<ul style="list-style-type: none"> <li>The ADU cannot include more than 900 square feet of useable floor area.</li> </ul>
5. ADU Distance Requirements	<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>
6. ADU Water Supply Requirements	<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>
7. ADU Water Supply Source Option	<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>
8. ADU / Metolius Area of Critical State Concern / Limitations	<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>
9. ADU Setback Requirements	<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.</li> </ul>
10. ADU / Wildland-Urban Interface Requirements	<ul style="list-style-type: none"> <li>The lot or parcel must comply with the rules of the State Board of Forestry under ORS 477.015 to 477.061.</li> </ul>
11. ADU / Outside Wildland-Urban Interface (WUI) Area Requirements	<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 wildland-urban interface), it must have defensible space and fuel break standards as developed in consultation with local fire protection service providers.</li> </ul>

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

Eligibility	Restrictions
12. ADU / Statewide Wildfire Map Requirements	<ul style="list-style-type: none"> <li>Applies to properties identified as high or extreme risk and located within a designated WUI on the statewide wildfire risk maps established per SB 762.</li> <li>ADUs are then required to comply with the Oregon residential specialty code relating to wildfire hazard mitigation for the mapped area (R327.4).</li> </ul>
13. ADU Adequate Access and Evacuation for Firefighting Requirements	<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>
14. ADU Occupancy Requirements	<ul style="list-style-type: none"> <li>ADUs cannot be allowed for vacation occupancy, as defined in ORS 90.100.</li> </ul>
15. ADU Land Division Requirements	<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>
16. ADU / Additional Units	<ul style="list-style-type: none"> <li>A second ADU is not allowed.</li> </ul>

### III. 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 Standard	Draft County Interpretation
Useable Floor Area	<ul style="list-style-type: none"> <li>Means the area of the accessory dwelling unit included within the surrounding insulated exterior walls, exclusive of garages, carports, decks and porch covers.</li> </ul>
100-Foot Siting Distance	<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>

Undefined SB 391 Standard	Draft County Interpretation
Adequate Access and Evacuation for Firefighting Requirements	<ul style="list-style-type: none"> <li>• “Safe evacuation plan” means an identifiable route 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 for firefighting equipment, safe evacuation and staged evacuation areas are met by providing: <ul style="list-style-type: none"> <li>○ Written certification from the applicable fire district, 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> <li>○ A safe evacuation plan; and</li> <li>○ Written authorization from the owner of the staged evacuation area that the occupants of the rural accessory dwelling unit may evacuate to the staged evacuation area.</li> </ul> </li> </ul>

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. The draft amendments as presented include this provision.

Legislative Revisions & Alterations

The Commission should be aware that these draft amendments and interpretations are subject to change throughout the legislative adoption process based on public input, professional recommendations, or direction from Commissioners. The information presented above is intended to provide staff's current understanding of the primary interpretive matters and major considerations of developing rural ADU legislation.

**IV. SB 762 WILDFIRE STANDARDS & TIMING**

Certain properties in Deschutes County will 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 State Wildfire Risk Map to guide new wildfire regulations for development. The initial risk map was made available on June 30, 2022.<sup>7</sup>

Properties included in **both** a designated Wildland Urban Interface (WUI) boundary and classified as either high or extreme risk within the State Wildfire Risk Map will be subject to additional development regulations. Properties meeting both of these standards will be subject to:

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

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

- 1) Home hardening building codes as described in section R327 of the 2021 Oregon Residential Specialty Code; and
- 2) Defensible space standards as determined by the Oregon State Fire Marshal.

The standards will apply to all residential and residential accessory construction within these properties, including the development of rural ADUs. SB 762 requires the Oregon State Fire Marshal, the Oregon Department of Forestry (ODF), and the State Building Codes Division to adopt new wildfire mitigation standards as described in the legislation and further developed through ongoing stakeholder committees. At present, the State Fire Marshal has yet to develop final statewide defensible space requirements. SB 762 requires these standards to be developed on or before December 31, 2022. The earliest date that the R327 building code standards may become effective is October 1, 2022, and they will become mandatory on April 1, 2023. Regardless of other qualifying characteristics, properties included in both a designated WUI boundary and classified as either high or extreme risk within the State Wildfire Risk Map will not be eligible for a rural ADU until **April 1, 2023** at the earliest.

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. It is unclear at this time when a new Statewide Map of Wildfire Risk will be finalized and released by ODF. As such, staff is currently unable to provide specific estimates on the number of properties which may be subject to additional wildfire mitigation standards. Additionally, as staff cannot currently determine which properties may be subject to additional standards, no properties in Deschutes County will be eligible for rural ADUs, despite any 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 Map of Wildfire Risk is formally released by ODF.

## **V. GOAL 5 RESOURCES & ESEE ANALYSIS**

Goal 5 of the Statewide Planning Goals and Guidelines deals with Open Spaces, Scenic and Historic Areas, and Natural Resources. Local governments generally apply Goal 5 to post-acknowledgment plan amendments (PAPAs) when the proposed amendment allows a new use that “could be” a conflicting use with a particular Goal 5 resource site on an acknowledged resource list.

In Deschutes County, Goal 5 resources are generally acknowledged and managed through the Wildlife Area Combining Zone (WA Zone). Certain rural residential exception areas in Deschutes County which may be eligible for rural ADUs through the current amendment process are also overlaid with a WA Zone. The WA Zone contains three separate Goal 5 resources:

- 1) Deer Migration Corridor
- 2) Deer Winter Range
- 3) Significant Elk Habitat

To evaluate potential rural ADU impacts to these Goal 5 resources, staff has conducted an economic, social, environmental, and energy (ESEE) analysis, attached as part of the staff report for the proposed amendments. An ESEE analysis serves as a decision making tool when evaluating potentially conflicting uses proposed in an area. The content of the ESEE is discretionary and is intended to be conducted by

planning staff using existing information. An ESEE is not meant to focus exclusively on environmental impacts, but rather evaluates the proposed uses through the four listed criteria (economic, social, environmental, and energy) and attempts to determine an appropriate course of action for decision makers. ESEE findings typically evaluate the following options for any proposed amendments:

- 1) Allowing a conflicting use outright
- 2) Prohibiting a conflicting use outright
- 3) Allowing a conflicting use with specified limitations

The conclusions of any ESEE analysis are not an immutable final decision. ESEE conclusions are subject to change based on additional information from professionals in a given field, significant public testimony, structural and environmental changes over time, or different weighting factors considered by decision makers. Staff's current ESEE analysis is an attempt to capture our current understanding of the possible conflicting issues, while acknowledging possible social and economic benefits in implementing a local rural ADU program as allowed by SB 391. At present, staff's ESEE analysis recommends allowing rural ADUs as an outright use within areas containing Goal 5 resources. Staff's current ESEE recommendation notes that certain foreseeable impacts from ADUs will be minimized by implementing existing siting and fencing standards applicable to all new dwellings and developments within the Wildlife Area Combining Zone (DCC 18.88<sup>8</sup>).

## **VI. ANTICIPATED PROPERTY ELIGIBILITY**

Staff is amending Deschutes County Code (DCC), Titles 18 and 19 to allow Rural ADUs consistent with SB 391 in the Multiple Use Agricultural (MUA-10), Rural Residential (RR-10), Suburban Low Density Residential (SR 2.5), Urban Area Reserve (UAR-10), and Westside Transect Zones (WTZ). Eligibility criteria will be incorporated in DCC Chapters 18.116, Supplementary Provisions and 19.92, Interpretations and Exceptions. Based on initial review of the qualifying characteristics, approximately 7,798 tax lots in Deschutes County could potentially qualify for a rural ADU. However, staff notes the following limitations and revisions to that initial estimate:

- Based on the recommended standard of a 5-acre minimum parcel size within southern Deschutes County, 645 properties are below 5 acres and would not qualify for a rural ADU. There are 224 properties 5 acres or larger that would qualify for a rural ADU.
- The estimate is only based on general requirements from SB 391 and does not evaluate properties on an individual level. Specific properties may have unique lot boundaries, geographic features, onsite wastewater limitations, or other characteristics which make the establishment of a rural ADU more challenging or impossible.
- Property owners may encounter additional costs and challenges when constructing a rural ADU above and beyond specific land use standards. It is likely that numerous properties will need to

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[https://deschutescounty.municipalcodeonline.com/book?type=ordinances#name=CHAPTER\\_18.88\\_WILDLIFE\\_AREA\\_COMBINING\\_ZONE;WA](https://deschutescounty.municipalcodeonline.com/book?type=ordinances#name=CHAPTER_18.88_WILDLIFE_AREA_COMBINING_ZONE;WA)

incorporate significant upgrades to onsite wastewater treatment systems prior to establishment of rural ADUs.

- By adopting SB 391 in 2021, the Oregon Legislature added a new use, ADU, to rural residential zones. To the extent that Statewide Planning Goal 5 (Wildlife) applies, staff findings address ADUs as a conflicting use. Certain areas in rural Deschutes County, zoned MUA-10 and RR-10 zones contain Goal 5 resources because they are overlaid with a Wildlife Area Combining Zone. The two zoning codes are being amended to allow ADUs and are therefore subject to an Economic, Social, Environmental and Energy (ESEE) analysis, which is included as part of the attached staff report.
- There are 1,293 potentially eligible tax lots in the Deer Migration Corridor, 455 in Deer Winter Range, and 39 in Significant Elk Habitat. Staff findings demonstrate that ADUs within the MUA-10 and RR-10 zones and within the Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat can be allowed fully, notwithstanding the possible impacts on these inventoried resources.

## **VII. NEXT STEPS**

At the conclusion of the public hearing, the Planning Commission 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.

Ultimately, the Planning Commission will provide a recommendation to the Board of County Commissioners. Options include:

- Approve amendments as drafted;
- Approve amendments with suggested edits;
- Approve certain amendments / deny others;
- Deny amendments altogether;
- Other

### Attachments

- 1) Staff Report & Proposed Text Amendments