



MEMORANDUM

TO: Board of County Commissioners

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

DATE: November 9, 2022

SUBJECT: Senate Bill (SB) 391 Work Session – Rural Accessory Dwelling Unit (ADU) Legislative Amendments

I. OVERVIEW

The Board of County Commissioners (Board) will conduct a work session on November 14, 2022 concerning local provisions for rural ADUs as identified in Senate Bill (SB) 391¹ (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. A public hearing was held with the Deschutes County Planning Commission (Commission) on September 22, 2022². The Commission held deliberations on October 27, 2022³ and the recommendations from that meeting are discussed herein.

Attached to this memorandum are the proposed text amendments, a staff report summarizing the changes, and a matrix illustrating the proposed recommendations from the Commission. Within the proposed amendments, added language is shown underlined and deleted shown as ~~strikethrough~~. The proposed amendments currently reflect the recommendations from the Commission.

Board Decision Matrix

A summary review and discussion of the primary issue areas, themes, and decision options is provided in the associated Board Decision Matrix, prepared in conjunction with this work session memorandum. Staff notes that the recommendations from the Commission on primary issue areas are highlighted within this matrix.

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

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

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

II. WRITTEN 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 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"> Applies to Rural Residential (RR10), Multiple Use Agricultural (MUA10), Urban Area Reserve (UAR-10), Suburban Residential (SR 2.5), and Westside Transect (WTZ) zones. Lot or parcel must be at least two (2) acres in size. One (1) single-family dwelling must be sited on the lot or parcel.
2. Existing Dwelling Nuisance	<ul style="list-style-type: none"> 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.
3. ADU Sanitation Requirements	<ul style="list-style-type: none"> The ADU must comply with all applicable laws and regulations relating to sanitization and wastewater disposal and treatment.
4. ADU Square Footage Requirements	<ul style="list-style-type: none"> The ADU cannot include more than 900 square feet of useable floor area.
5. ADU Distance Requirements	<ul style="list-style-type: none"> The ADU is required to be located no farther than 100 feet from the existing single-family dwelling.
6. ADU Water Supply Requirements	<ul style="list-style-type: none"> 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.
7. ADU Water Supply Source Option	<ul style="list-style-type: none"> 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).⁴
8. ADU / Metolius Area of Critical State Concern / Limitations	<ul style="list-style-type: none"> No portion of a lot or parcel can be within a designated area of critical state concern.
9. ADU Setback Requirements	<ul style="list-style-type: none"> The ADU is required to have adequate setbacks from adjacent lands zoned Exclusive Farm Use (EFU) or Forest Use.
10. ADU / Wildland-Urban Interface Requirements	<ul style="list-style-type: none"> The lot or parcel must comply with the rules of the State Board of Forestry under ORS 477.015 to 477.061.
11. ADU / Outside Wildland-Urban Interface (WUI) Area Requirements	<ul style="list-style-type: none"> 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.

⁴ https://oregon.public.law/statutes/ors_537.545

Eligibility	Restrictions
12. ADU / Statewide Wildfire Map Requirements	<ul style="list-style-type: none"> 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. ADUs are then required to comply with the Oregon residential specialty code relating to wildfire hazard mitigation for the mapped area (R327.4).
13. ADU Adequate Access and Evacuation for Firefighting Requirements	<ul style="list-style-type: none"> Local regulations must ensure the ADU has adequate access for firefighting equipment, safe evacuation and staged evacuation areas
14. ADU Occupancy Requirements	<ul style="list-style-type: none"> ADUs cannot be allowed for vacation occupancy, as defined in ORS 90.100.
15. ADU Land Division Requirements	<ul style="list-style-type: none"> If an eligible property with an ADU is divided, the single family dwelling and ADU cannot be situated on a different lot or parcel.
16. ADU / Additional Units	<ul style="list-style-type: none"> A second ADU is not allowed.

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 Standard	Draft County Interpretation
Useable Floor Area	<ul style="list-style-type: none"> Means the area of the accessory dwelling unit included within the surrounding exterior walls, including garages and other accessory components.
100-Foot Siting Distance	<ul style="list-style-type: none"> 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.

Undefined SB 391 Standard	Draft County Interpretation
Adequate Access and Evacuation for Firefighting Requirements	<ul style="list-style-type: none"> • “Safe evacuation plan” means an identifiable route from the rural accessory dwelling unit to the staged evacuation area. • “Staged evacuation area” means a public or private location that occupants of the rural accessory dwelling unit may evacuate to reorganize. • Adequate access for firefighting equipment, safe evacuation and staged evacuation areas are met by providing: <ul style="list-style-type: none"> ○ 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; ○ A safe evacuation plan; and ○ 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.

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. 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 recommendation matrix.

V. SB 762 WILDFIRE STANDARDS & TIMING

Certain properties in Deschutes County will be subject to new wildfire mitigation measures as approved under SB 762.⁵ 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, 2022.⁶ 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**.

Due to the current unavailability of fire risk maps, staff cannot 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.

⁵ SB 762 (2021)

⁶ <https://oregonexplorer.info/tools>

Once these risk maps are finalized, 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:

- 1) Home hardening building codes as described in section R327 of the 2021 Oregon Residential Specialty Code

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.

- 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. SB 762 requires these standards to be developed on or before December 31, 2022.

VI. WRITTEN TESTIMONY AND DISCUSSION

To date, a total of sixteen (16) comments from members of the public have been received by staff concerning the proposed amendments.

Seven (7) of the submitted comments generally expressed support for the proposed ADU amendments, citing the following items:

- Opportunities for a general increase in housing supply, particular given ongoing housing shortages and burdensome rental costs in Central Oregon.
- Increased opportunities for intergenerational living as many aging parents and family members pursue housing with other family members on existing developed properties.
- Increased economic activity from rural ADU development.
- In conjunction with the initially proposed County standards, the existing requirements in SB 391 will serve to limit the effects of increased development in rural areas of the county.

Alternatively, nine (9) of the submitted comments expressed general disapproval of the proposed ADU amendments, citing the following items:

- Negative impacts from increased traffic.
- Additional risk from adding residential development in high wildfire risk areas.
- Impacts to pre-existing water resources from adding additional exempt, private residential wells in the rural county.
- Loss of open space and rural quality of life expected from increased rural density.
- Impacts to wildlife populations and habitat related to increased development density.
- General skepticism around the impact that rural ADUs would have on housing availability and affordability in the region.
- Concerns that certain restrictions, such as the limitation of utilizing rural ADUs for short term vacation rental purposes, can be accurately tracked and enforced by county staff.

Among those comments expressing general disapproval, not all requested a full denial of the proposed amendments. Certain commenters suggested additional actions or details that should accompany any ADU program if ultimately approved by county decision makers:

- Delaying the amendment process until final versions of the State Wildfire Risk Map required by Senate Bill (SB) 762 has been released by the Oregon Department of Forestry.
- Prohibit ADUs in all Goal 5 inventories captured by Deschutes County, including the Wildlife Area Combining Zone, Greater Sage-Grouse Area Combining Zone, and the Flood Plain Zone.
- Prohibit ADUs in the Westside Transect Zone
- Delay the amendment process until the County's proposed Goal 5 inventory update is completed.

VII. PLANNING COMMISSION HEARING TESTIMONY AND DISCUSSION

During the public hearing before the Commission, nine (9) individuals provided testimony. Some testimony expressed dissatisfaction regarding the proposed text amendments in general. These comments focused primarily on the following items:

- Negative impacts to wildlife populations.
- Negative impacts on ground water supplies.
- Potential code compliance issues, specifically related to the required prohibition on vacation rentals.
- Additional wildfire risk from increased development in the rural county.
- A lack of compatibility between the proposed amendments, the statewide land use goals, and the Deschutes County Comprehensive Plan.

Some testimony expressed support for the proposed text amendments in general. These comments focused primarily on the following items:

- Opportunities for a general increase in housing supply, particular given ongoing housing shortages and burdensome rental costs in Central Oregon.
- Increased opportunities for intergenerational living as many aging parents and family members pursue housing with other family members on existing developed properties.
- Increased economic activity from rural ADU development.

VIII. AGENCY COMMENTS AND DISCUSSION

As part of the record, seven (7) comments have been included from several state and local agencies with an interest in the proposed ADU amendments. Staff will attempt to highlight some of those specific comments that are relevant to the deliberation discussion:

Oregon Department of Fish and Wildlife

The Oregon Department of Fish and Wildlife (ODFW) has requested certain mitigation standards for any ADUs that may be developed within the Wildlife Area (WA) Combining Zone. Specifically, ODFW has requested the following:

1. The siting and fencing standards of Deschutes County Code (DCC) 18.88⁷ be maintained for all rural ADU development in the WA Combining Zone.
2. A specific size limitation be instituted for all accessory components (i.e. - garages, storage structures, etc.) of any developed ADU not included in the 900 square-foot “useable floor area” required by SB 391.
3. Access to properties should utilize existing roads and driveways for all rural ADU development.

Staff believes that the siting and fencing standards of DCC 18.88 would apply to all rural ADU development, regardless of specific language included in the proposed text amendments. To maintain clarity, should rural ADUs be allowed within the Wildlife Area Combining Zone, staff will modify the proposed amendment language to explicitly state the referenced standards from DCC 18.88 will apply to any future ADU development.

Options for specific size limitations have been proposed and discussed by the Commission regarding accessory components of an ADU. As discussed below and within the attached recommendation matrix, the Commission recommends limiting the definition of “useable floor area” to encompass both living areas and accessory components of an ADU. As recommended, the total footprint of any proposed ADU, including components such as garages or storage areas, would be limited to 900 square feet.

Finally, staff notes that construction of new roads is typically reviewed through a subdivision or partition process against the standards of DCC Title 17. These proposals are generally distinct from specific physical development on an individual property, such as the construction of an ADU. Additionally, driveway permits are issued and reviewed through the Road Department primarily for compliance with clear sighting and other safety requirements. If driveway access to rural ADUs is required to be consolidated to existing access points, it is unclear how this specific standard would be reviewed or enforced over time.

IX. PLANNING COMMISSION RECOMMENDATIONS

As discussed previously, a public hearing was held with the Commission on September 22, 2022. The Commission held deliberations on October 27, 2022 and made recommendations concerning the proposed amendments as follows:

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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)

- **Recommendation #1** (*approved 4 to 2*): The Commission recommended adoption of the proposed amendments, with substantial changes to the initial proposal as discussed herein.
- **Recommendation #2** (*approved 5 to 1*): “Useable floor area” is undefined within SB 391 and the administering statutes. The Commission recommends “Useable Floor Area” be defined as “the area of the accessory dwelling unit included within the surrounding exterior walls, including garages and other accessory components.” To clarify, the 900 square-foot size limitation for rural ADUs would apply to the entire ADU structure, including garages and accessory components
- **Recommendation #3**: 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. This recommendation was unchanged by the Commission from staff’s initial proposal and thus no approval vote was taken.
- **Recommendation #4**: Due to vulnerable groundwater characteristics in southern Deschutes County, the Commission recommends the minimum lot or parcel size for rural ADUs to be at least five (5) acres in size. The boundaries of this recommendation were defined by the upper Deschutes watershed area studied during the La Pine Demonstration Project, US Geological Survey report 2007-5237, USGS Fact Sheet 2007-3103. This recommendation was unchanged by the Commission from staff’s initial proposal and thus no approval vote was taken.
- **Recommendation #5** (*approved 5 to 1*): The Commission recommends prohibiting rural ADU development in designated Goal 5 resource areas (i.e. – Wildlife Area Combining Zone, Greater Sage-Grouse Area Combining Zone, and the Sensitive Bird and Mammal Habitat Combining Zone)
- **Recommendation #6** (*approved 6 to 0*): Pursuant to SB 762, the Commission recommends delaying the adoption of any local rural ADU legislation until such time as the final State Wildfire Risk Map has been released by the Oregon Department of Forestry.
- **Recommendation #7** (*approved 6 to 0*): The Commission recommends prohibiting rural ADU development the Westside Transect Zone (WTZ) Zone.
- **Recommendation #8** (*approved 6 to 0*): The Commission recommends prohibiting both the existing single-family dwelling and the ADU for vacation occupancy use, as defined in DCC 18.116.370(A)(8) and consistent with ORS 90.100.

Outside of the explicit recommendations above, the Commission engaged in numerous discussion points relevant to the proposed amendments. A number of Commissioners expressed concern that the rural ADU amendments were being presented prior to completion of other ongoing long range planning initiatives which may have significant bearing on the proposal. Specifically, some Commissioners highlighted the importance of the ongoing state wildfire mitigation efforts and SB 762, the ongoing Deschutes County Comprehensive Plan update ([Deschutes 2040](#)), and the ongoing Goal 5 habitat inventory update for mule deer ([Wildlife Inventory Update](#)). Of these items, only the

SB 762 mapping and wildfire mitigation efforts received a majority vote recommending delay of the proposed amendments. As discussed above, should the Board elect to follow the Commission's recommendation to delay adoption of local ADU amendments until release of the final Statewide Map of Wildfire Risk by ODF, staff anticipates that these maps will be available by **late fall** or **early winter 2023**.

Staff has edited the proposed amendments, staff report, and ESEE analysis for Goal 5 resources to account for the Commission's recommendations. If the Board desires to change the amendments outside of the initial recommendations, alterations to supporting documents will need to be made prior to adoption of any final implementing ordinance.

X. ANTICIPATED PROPERTY ELIGIBILITY

This proposal amends 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), and Urban Area Reserve (UAR-10) Zones. 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 **8,660** tax lots in Deschutes County could potentially qualify for a rural ADU. This includes properties which do not currently have a single-family dwelling onsite, but otherwise meet the qualifying standards. Additionally, this includes parcels which the Commission has recommended be prohibited from rural ADU development. However, staff notes the following limitations and revisions to that initial estimate:

- 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 incorporate significant upgrades to onsite wastewater treatment systems prior to establishment of rural ADUs.
- This estimate includes 765 potentially eligible tax lots in the Wildlife Area Combining Zone (includes Deer Migration Corridor, Deer Winter Range, and Significant Elk Habitat). There are no potentially eligible tax lots within the Greater Sage Grouse Area Combining Zone.
 - As noted previously, the Commission recommends that all properties within the Wildlife Area Combining Zone be prohibited from qualifying for an ADU
- This estimate includes 120 potentially eligible parcels in the Westside Transect Zone.
 - As noted previously, the Commission recommends that all properties within the Wildlife Area Combining Zone be prohibited from qualifying for an ADU
- This estimate is based on a 5-acre minimum parcel size in southern Deschutes County. There are approximately 319 potentially eligible tax lots in southern Deschutes County based on a

5-acre minimum parcel size. There are approximately 1,129 potentially eligible tax lots in this area based on a 2-acre minimum parcel size.

- As noted previously, the Commission recommends a 5-acre minimum parcel size in southern Deschutes County for ADU development.

XI. NEXT STEPS

At the conclusion of the meeting, the Board can:

- Set a date for a future public hearing;
- Delay a public hearing of the proposed amendments until additional information is available;

Attachments:

1. Planning Commission Recommendation Matrix
2. Map of Potentially Eligible Properties
3. Staff Report & Proposed Text Amendments