



**MEMORANDUM**

**TO:** Deschutes County Planning Commission

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

**DATE:** June 29, 2023

**SUBJECT:** Rural Accessory Dwelling Unit (ADU) Legislative Amendments – Planning Commission Recommendations, Public Comments, and Agency Comments

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The Deschutes County Planning Commission (Commission) will conduct a work session on July 13, 2023 concerning local provisions for rural ADUs as identified in Senate Bill (SB) 391<sup>1</sup> (file no. 247-22-000671-TA). This will be second work session with the Commission on these proposed amendments following previous actions during fall 2022.

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

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

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

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

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

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

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

Based on the newest alterations and PAPA notice, the Commission will review the proposed amendments during the July 13, 2023 work session and offer any revised or new recommendations for the Board's consideration. No additional public hearings will be held before the Commission regarding the new amendments and any deliberative comments must be submitted during the work session proceedings. Recommendations from the Commission will be provided to the Board during a public hearing on July 26, 2023.

## I. PREVIOUS PLANNING COMMISSION RECOMMENDATIONS

As noted above, 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. Many of these recommendations correspond with staff's initial draft amendments while others would require new language and modifications to the proposed amendments:

- **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 Statewide Map of Wildfire Risk (Statewide Wildfire Hazard Map) has been released by the Oregon Department of Forestry (ODF).
  - This recommendation was made prior to adoption of SB 644 and the corresponding impacts on SB 391 and the Statewide Map of Wildfire Risk (Statewide Wildfire Hazard Map).
  - SB 644 effectively decouples the Statewide Map of Wildfire Risk (Statewide Wildfire Hazard Map) from the adoption of any local rules allowing rural ADUs. During any interim period where a local jurisdiction has adopted rules allowing ADUs and prior to the release of the final risk map, any constructed ADUs will be subject to the home hardening building codes as described in section R327 of the 2021 Oregon Residential Specialty Code.
- **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](#))<sup>4</sup>. Of these items, only the SB 762 mapping and wildfire mitigation efforts received a majority vote recommending delay of the proposed amendments. Should the Board elect to follow the Commission’s recommendation to delay adoption of the proposed amendments until release of the final Statewide Map of Wildfire Risk (Statewide Wildfire Hazard Map) by ODF, it is unclear when these maps will be formally released and may delay adoption and implementation of any local ADU standards.

## II. WRITTEN TESTIMONY & DISCUSSION

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

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

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<sup>4</sup> As of June 26, 2023, the Board elected to withdraw the proposed Goal 5 habitat inventory update for mule deer.

- 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 the Board:

- Delaying the amendment process until final versions of the Statewide Map of Wildfire Risk 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.

### **III. PLANNING COMMISSION HEARING TESTIMONY & 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.

### **IV. AGENCY COMMENTS & 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 particularly pertinent:

#### **Deschutes County Environmental Soils Division**

Due to concerns regarding failing treatment systems and groundwater impacts, the Onsite Wastewater Division recommends the following:

- Increasing the minimum lot or parcel size for rural ADUs to be at least five (5) acres in size in this specific geographic area. 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.

- Limiting properties constructed with ADUs from all future residential dwelling development, including additional ADUs, medical hardship dwellings, and temporary dwellings within recreational vehicles or similar uses.

### **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:

- The siting and fencing standards of Deschutes County Code (DCC) 18.88<sup>5</sup> be maintained for all rural ADU development in the WA Combining Zone.
- 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.
- 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 could 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 above and within the attached Recommendation Matrix (Attachment 1), the Commission initially recommended 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.

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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)

Attachments:

1. Planning Commission Recommendation Matrix

## PLANNING COMMISSION RECOMMENDATION MATRIX

SENATE BILL (SB) 391 – RURAL ACCESSORY DWELLING UNIT (ADU) TEXT AMENDMENTS				
Land Use File No. 247-22-000671-TA				
	Issue Area	SB 391 Criterion	Planning Commission Recommendation	Possible Alternatives
1	Should rural ADUs be allowed with additional standards or prohibited?	None	<ul style="list-style-type: none"> <li>Allows an owner of a lot or parcel within an area zoned for rural residential use to construct one accessory dwelling unit on the lot or parcel subject to additional local standards and restrictions.</li> <li>Recommended by Planning Commission 5 to 1</li> </ul>	<ol style="list-style-type: none"> <li>Prohibit rural ADU development in Deschutes County.</li> </ol>
2	How should “Useable Floor Area” be defined?	The ADU cannot include more than 900 square feet of “useable floor area.”	<ul style="list-style-type: none"> <li>“Useable floor area” is undefined within SB 391 and the administering statutes.</li> <li>The 900 square-foot limit to applies to the entire ADU structure, including garages and accessory components</li> <li>Recommended by Planning Commission 5 to 1</li> </ul>	<ol style="list-style-type: none"> <li>Exclude items such as garages and accessory components from the 900 square-foot “useable floor area” definition.</li> <li>Set a maximum size limit to accessory components of ADUs such as garages.</li> <li>Additional requirements for permitting standards on habitable versus non-habitable space (i.e. – Group R-3 building permits for habitable space and Group U permits for non-habitable space).</li> </ol>
3	How should the 100-Foot Siting Distance requirement be interpreted?	The accessory dwelling unit will be located no farther than 100 feet from the existing single-family dwelling.	<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> <li>Unchanged by the Planning Commission from staff’s initial recommendation</li> </ul>	<ol style="list-style-type: none"> <li>Requiring the entire footprint of an ADU to be located within 100 feet of the existing single-family dwelling.</li> </ol>



**PLANNING COMMISSION RECOMMENDATION MATRIX**

**SENATE BILL (SB) 391 – RURAL ACCESSORY DWELLING UNIT (ADU) TEXT AMENDMENTS**  
 Land Use File No. 247-22-000671-TA

	<b>Issue Area</b>	<b>SB 391 Criterion</b>	<b>Planning Commission Recommendation</b>	<b>Possible Alternatives</b>
4	Are specific limitations warranted for Southern Deschutes County Groundwater Protection?	None	<ul style="list-style-type: none"> <li>• Due to vulnerable groundwater characteristics in southern Deschutes County, 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.</li> <li>• Unchanged by the Planning Commission from staff’s initial recommendation</li> </ul>	<ol style="list-style-type: none"> <li>1. Prohibit all rural ADU development in the identified southern Deschutes County boundaries.</li> <li>2. Maintain 5-acre minimum parcel size for rural ADU development and require advanced nitrogen reducing systems for wastewater treatment for both existing single-family dwellings and proposed ADUs.</li> <li>3. Set a larger minimum parcel size requirement for all southern Deschutes County properties to qualify for rural ADU development.</li> <li>4. Remove the minimum size requirements for all southern Deschutes County properties to qualify for rural ADU development.</li> </ol>
5	Do the current amendments and ESEE analysis adequately address and protect Goal 5 and Natural Resources?	None	<ul style="list-style-type: none"> <li>• Prohibit 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)</li> <li>• Recommended by Planning Commission 5 to 1</li> </ul>	<ol style="list-style-type: none"> <li>1. Allow rural ADU development in designated Goal 5 areas such as the Wildlife Area Combining Zone, subject to existing standards and requirements. Any development within Goal 5 sites such as the Flood Plain Zone or jurisdiction wetlands requires a Conditional Use Permit and review by local, state, and federal agencies to ensure compliance with environmental and natural hazard mitigation regulations.</li> <li>2. Prohibit rural ADU development in some, but not all, designated Goal 5 resource areas.</li> <li>3. Develop additional restrictions in coordination with the Oregon Department of Fish and Wildlife (ODFW) for rural ADU development in designated Goal 5 resources areas such as minimum parcel sizes, driveway access consolidation, etc.</li> </ol>

**PLANNING COMMISSION RECOMMENDATION MATRIX**

**SENATE BILL (SB) 391 – RURAL ACCESSORY DWELLING UNIT (ADU) TEXT AMENDMENTS**  
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	Issue Area	SB 391 Criterion	Planning Commission Recommendation	Possible Alternatives
6	Do the current amendments adequately address Senate Bill 762 and Wildfire Mitigation?	<ul style="list-style-type: none"> <li>• If the Statewide Wildfire Risk Map (Statewide Wildfire Hazard Map) has been approved, the accessory dwelling unit complies with the Oregon residential specialty code relating to wildfire hazard mitigation for the mapped area or, statewide wildfire risk maps have not been approved and any rural ADUs must comply with the Oregon Residential Specialty Code relating to wildfire hazard mitigation;</li> <li>• The accessory dwelling unit has adequate setbacks from adjacent lands zoned for resource use;</li> <li>• The accessory dwelling unit has adequate access for firefighting equipment, safe evacuation and staged evacuation areas.</li> </ul>	<ul style="list-style-type: none"> <li>• Delay the adoption of rural ADU legislation until such time as the final Statewide Map of Wildfire Risk (Statewide Wildfire Hazard Map) has been released by the Oregon Department of Forestry</li> <li>• Recommended by Planning Commission 6 to 0</li> <li>• Vote undertaken prior to passage of SB 644, which effectively decouples adoption of the Statewide Map of Wildfire Risk (Statewide Wildfire Hazard Map) from local ADU code adoption</li> </ul>	<ol style="list-style-type: none"> <li>1. Continue the adoption of rural ADU legislation with the SB 391 fire mitigation standards prior to the release of the final Statewide Map of Wildfire Risk by the Oregon Department of Forestry. Development of any rural ADU project would be subject to the Oregon Residential Specialty Code relating to wildfire hazard mitigation.</li> <li>2. Require all rural ADUs contain fire sprinklers (per recommendation from former Chief Mike Supkis of La Pine Rural Fire Protection District).</li> </ol>

**PLANNING COMMISSION RECOMMENDATION MATRIX**

**SENATE BILL (SB) 391 – RURAL ACCESSORY DWELLING UNIT (ADU) TEXT AMENDMENTS**  
 Land Use File No. 247-22-000671-TA

	<b>Issue Area</b>	<b>SB 391 Criterion</b>	<b>Planning Commission Recommendation</b>	<b>Possible Alternatives</b>
7	Should ADUs be allowed in the Westside Transect Zone (WTZ)?	None	<ul style="list-style-type: none"> <li>Prohibit rural ADU development in the WTZ.</li> <li>Recommended by Planning Commission 6 to 0</li> </ul>	<ol style="list-style-type: none"> <li>Allow rural ADU development in the WTZ. All existing requirements related to development within the WTZ including subdivision and property scale fuel treatments, wildfire mitigation building code standards, and maintenance of designated open space corridors would be unaffected by the proposed amendments.</li> <li>Develop additional restrictions for rural ADU development in the WTZ such as siting standards, etc.</li> </ol>
8	Should Vacation Occupancy be prohibited in the existing residence, as well as the ADU?	A county may not allow an accessory dwelling unit allowed under this section to be used for vacation occupancy, as defined in ORS 90.100.	<ul style="list-style-type: none"> <li>Prohibit both the existing single-family dwelling and the ADU for vacation occupancy use, as defined in DCC 18.116.355(A)(10) or 19.92.160(A)(10), and consistent with ORS 90.100</li> <li>Recommended by Planning Commission 6 to 0</li> </ul>	<ol style="list-style-type: none"> <li>Allow the existing single-family dwelling to be utilized for vacation occupancy use. The applicant shall be required to sign and record with the County Clerk, prior to the issuance of a building permit, a restrictive covenant stating an accessory dwelling unit allowed under this section cannot be used for vacation occupancy, as defined in DCC 18.116.355(A)(10) or 19.92.160(A)(10), and consistent with ORS 90.100</li> </ol>