


REVIEWED

LEGAL COUNSEL



For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code *
Title 18, Deschutes County Zoning, and Title 23, the *
Deschutes County Comprehensive Plan, to *
incorporate provisions related to division of certain *
split zoned property containing Flood Plain zoning *
and Declaring an Emergency. *

ORDINANCE NO. 2019-019

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. 247-19-000532-TA) to the Deschutes County Code (DCC) Title 18, 18.96 Flood Plain Zone Chapter and Deschutes County Comprehensive Plan Chapter 2.5, Water Resources; and

WHEREAS, the Deschutes County Planning Commission considered this matter after a duly noticed public hearing on August 8, 2019, with continuations to September 12, 2019, and September 26, 2019 and reviewed the proposed changes on October 10, 2019 and forwarded to the Deschutes County Board of County Commissioners ("Board"), a recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on December 4, 2019, and concluded that the public will benefit from the proposed changes to the Deschutes County Code ("DCC") Title 18.

NOW, THEREFORE,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS
as follows:

Section 1. AMENDMENT. DCC 18.96, is amended to read as described in Exhibit "A", attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 2. AMENDMENT. DCC Title 23.01.010, Introduction, is amended to read as described in Exhibit "B", attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 3. AMENDMENT. Deschutes County Comprehensive Plan Chapter 2.5 Water Resources, is amended to read as described in Exhibit "C", attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

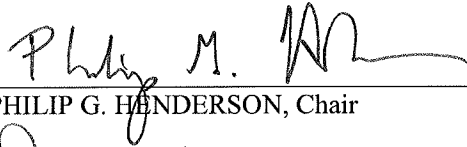
Section 4. AMENDMENT. Deschutes County Comprehensive Plan Chapter 5.12, Supplementary Section – Legislative History, is amended to read as described in Exhibit “D”, attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strike through~~.

Section 5. FINDINGS. The Board adopts as its findings in support of this decision, Exhibit “E,” attached and incorporated by reference herein.

Section 6. EMERGENCY. This Ordinance being necessary for the public peace, health and safety, an emergency is declared to exist and this Ordinance takes effect on its passage.

Dated this 11 of December, 2019

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON


PHILIP G. HENDERSON, Chair


PATTI ADAIR, Vice Chair

ATTEST: 
Recording Secretary


ANTHONY DeBONE, Commissioner

Date of 1st Reading: 11 day of December, 2019.

Date of 2nd Reading: 11 day of December, 2019.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Philip G. Henderson	✓	—	—	—
Patti Adair	✓	—	—	—
Anthony DeBone	✓	—	—	—

Effective date: 11 day of December, 2019.

Chapter 18.96. FLOOD PLAIN ZONE - FP

- 18.96.010. Purposes.**
- 18.96.020. Designated Areas.**
- 18.96.030. Uses Permitted Outright.**
- 18.96.040. Conditional Uses Permitted.**
- 18.96.050. Prohibited Uses.**
- 18.96.060. Limitations on Conditional Uses.**
- 18.96.070. Application for Conditional Use.**
- 18.96.080. Criteria to Evaluate Conditional Uses.**
- 18.96.085. Elevation Certification.**
- 18.96.090. Yard and Setback Requirements.**
- 18.96.100. Stream Setback.**
- 18.96.110. Dimensional Standards.**
- 18.96.120. Warning and Disclaimer of Liability.**
- 18.96.130. Interpretation of FIRM Boundaries**
- 18.96.140. Use Variances.**
- 18.96.150. Acreage Calculation for Partition or Subdivision of Certain Properties Containing Flood Plain Zoned Lands**

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18.96.150. Acreage Calculation for Partition or Subdivision of Certain Properties Containing Flood Plain Zoned Lands

Partitions of certain split-zoned properties are subject to the following area calculation and configuration standards.

A. Eligibility

1. Property contains two base zones, Flood Plain and Exclusive Farm Use; and
2. Property contains one Comprehensive Plan designation, Agricultural; and
3. Property is not located in a WA Combining Zone and does not contain significant riparian habitat per Ordinance 94-007,
4. Property adjoins or was formerly adjacent to or bisected by an irrigation canal or lateral that has been removed or piped; and
5. Parent property must meet the minimum lot size requirements for partitions set forth in 18.16.055.

B. Procedure

1. The Flood Plain and Exclusive Farm Use zoned area shall be summed for the purposes of lot area calculation.
2. The minimum lot size for new parcels resulting from such partitions shall be determined by applying the minimum parcel sizes of DCC 18.16.055 and 18.16.065.
3. All Flood Plain zoned lands from the parent lot or parcel must be contained within a single partition parcel.

(Ord 2019-019 §1, 2019)

Chapter 23.01 COMPREHENSIVE PLAN

Chapter 23.01 COMPREHENSIVE PLAN

23.01.010. Introduction.

- A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.
- B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.
- C. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-005, are incorporated by reference herein.
- D. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.
- E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.
- F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.
- G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.
- H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.
- I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.
- J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.
- K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.
- L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.
- M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.
- N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.
- O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.
- P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-029, are incorporated by reference herein.
- Q. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-018, are incorporated by reference herein.
- R. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-010, are incorporated by reference herein.
- S. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-001, are incorporated by reference herein.
- T. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-022, are incorporated by reference herein.
- U. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-005, are incorporated by reference herein.

- V. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-027, are incorporated by reference herein.
- W. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-029, are incorporated by reference herein.
- X. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2017-007, are incorporated by reference herein.
- Y. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-002, are incorporated by reference herein.
- Z. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-006, are incorporated by reference herein.
- AA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-011, are incorporated by reference herein.
- BB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-005, are incorporated by reference herein.
- CC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-008, are incorporated by reference herein.
- DD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-002, are incorporated by reference herein.
- EE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-001, are incorporated by reference herein.
- FF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-003, are incorporated by reference herein.
- GG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-004, are incorporated by reference herein.
- HH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-011, are incorporated by reference herein.
- II. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-006, are incorporated by reference herein.
- JJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-016, are incorporated by reference herein.
- KK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-018, are incorporated by reference herein.
- LL. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-019, are incorporated by reference herein.

(Ord. 2019-019 §2, 2019; Ord. 2019-018 §26, 2019; Ord. 2019-016 §3, 2019; Ord. 2019-006 § 1, 2019; Ord. 2019-011 § 1, 2019; Ord. 2019-004 §1, 2019; Ord. 2019-003 §1, 2019; Ord. 2019-001 §1, 2019; Ord. 2019-002 §1, 2019; Ord. 2018-008 §1, 2018; Ord. 2018-005 §2, 2018; Ord. 2018-011 §1, 2018; Ord. 2018-006 §1, 2018; Ord. 2018-002 §1, 2018; Ord. 2017-007 §1, 2017; Ord. 2016-029 §1, 2016; Ord. 2016-027 §1, 2016; Ord. 2016-005 §1, 2016; Ord. 2016-022 §1, 2016; Ord. 2016-001 §1, 2016; Ord. 2015-010 §1, 2015; Ord. 2015-018 § 1, 2015; Ord. 2015-029 § 1, 2015; Ord. 2015-021 § 1, 2015; Ord. 2014-027 § 1, 2014; Ord. 2014-021 §1, 2014; Ord. 2014-12 §1, 2014; Ord. 2014-006 §2, 2014; Ord. 2014-005 §2, 2014; Ord. 2013-012 §2, 2013; Ord. 2013-009 §2, 2013; Ord. 2013-007 §1, 2013; Ord. 2013-002 §1, 2013; Ord. 2013-001 §1, 2013; Ord. 2012-016 §1, 2012; Ord. 2012-013 §1, 2012; Ord. 2012-005 §1, 2012; Ord. 2011-027 §1 through 12, 2011; Ord. 2011-017 repealed; Ord.2011-003 §3, 2011)

Click here to be directed to the Comprehensive Plan (<http://www.deschutes.org/compplan>)

Section 2.5 Water Resources

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Riparian Areas

Riparian areas are areas adjacent to rivers, streams, lakes or ponds where there is vegetation that requires free or unbound water or conditions that are more moist than normal. Riparian areas form an interconnected system within a watershed. At the water's edge they define the transition zone between aquatic and terrestrial systems. Riparian areas often contain a diversity of vegetation not found in upland areas. Riparian areas are limited in Deschutes County and are important habitats for both fish and wildlife.

The Deschutes County Comprehensive Plan, adopted in 1979 and revised, mapped riparian areas along the following rivers and streams.

Table 2.5.5 - Riparian Acreage in Deschutes County

Streams	Riparian Acres
Deschutes River	1,440
Little Deschutes River	2,920
Paulina Creek	846
Indian Ford Creek	573
Tumalo Creek	50
Whychus Creek	47
Fall River	43
Crooked River	38
TOTAL	5,966

Source: Deschutes County/City of Bend River Study 1986

Significant riparian habitat is located in one or more of the following three areas:

- The area within 100 feet of the ordinary high water mark of an inventoried river or stream. The 100 foot wide area may contain both riparian vegetation and upland vegetation.
- Wetlands and flood plain are also frequently within 100 feet of a stream or river. In some cases the riparian vegetation may extend beyond 100 feet from the ordinary high water mark if it is a designated wetland or flood plain.
- The area adjacent to an inventoried river or stream and located within a flood plain mapped by the Federal Emergency Management Agency and zoned Flood Plain by the County. The flood plain may extend beyond 100 feet from the ordinary high water mark of the stream and may contain wetland.

The County has not conducted an inventory of riparian areas adjacent to lakes and ponds on private land. However, many of these areas are included in National Wetland Inventory Maps and are subject to County, State and/or Federal wetland fill and removal regulations. Riparian areas adjacent to the many lakes on federal lands are managed and protected under federal land and resource management plans and are not included in the County inventory.

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Floodplains

Federal Emergency Management Agency Maps

The Federal Emergency Management Agency (FEMA) maps flood-plains adjacent to the following rivers and streams in Deschutes County. The floodplain along these rivers and streams is recognized in a Flood Plain zone by the County.

Table 2.5.6 - Floodplains Adjacent to Rivers and Streams

• Deschutes River	• Long Prairie
• Little Deschutes River	• Dry River
• Whychus Creek	• Spring River
• Crooked River	• Indian Ford Creek
• Paulina Creek	

Source: Deschutes County GIS

Floodplains are defined as the lowland and relatively flat areas adjoining inland waters including at a minimum, that area subject to a one percent (100-year recurrence) or greater chance of flooding in any one year. Generally, river flooding along the Deschutes River has not historically been a serious problem in Deschutes County. This is due to the porous nature of the local geology, irrigation diversion canals and reservoir retention. Studies completed by the U.S. Army Corp of Engineers have resulted in designating a 100 year flood-plain for the Little Deschutes River and Whychus Creek. Regular flooding events have occurred near the headwaters of Tumalo Creek and in the Tumalo community. Along Whychus Creek, the city of Sisters frequently experiences flooding, with the most significant event occurring in 1964 (see also Section 3.5).

In 2019, Deschutes County amended the Flood Plain Zone to define split zoned properties as they exist in the Flood Plain Zone and created procedures to guide division of these split zoned properties.

Section 5.12 Legislative History

Background

This section contains the legislative history of this Comprehensive Plan.

Table 5.12.1 Comprehensive Plan Ordinance History

Ordinance	Date Adopted/ Effective	Chapter/Section	Amendment
2011-003	8-10-11/11-9-11	All, except Transportation, Tumalo and Terrebonne Community Plans, Deschutes Junction, Destination Resorts and ordinances adopted in 2011	Comprehensive Plan update
2011-027	10-31-11/11-9-11	2.5, 2.6, 3.4, 3.10, 3.5, 4.6, 5.3, 5.8, 5.11, 23.40A, 23.40B, 23.40.065, 23.01.010	Housekeeping amendments to ensure a smooth transition to the updated Plan
2012-005	8-20-12/11-19-12	23.60, 23.64 (repealed), 3.7 (revised), Appendix C (added)	Updated Transportation System Plan
2012-012	8-20-12/8-20-12	4.1, 4.2	La Pine Urban Growth Boundary
2012-016	12-3-12/3-4-13	3.9	Housekeeping amendments to Destination Resort Chapter
2013-002	1-7-13/1-7-13	4.2	Central Oregon Regional Large-lot Employment Land Need Analysis
2013-009	2-6-13/5-8-13	1.3	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2013-012	5-8-13/8-6-13	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Bend Urban Growth Boundary
2013-007	5-29-13/8-27-13	3.10, 3.11	Newberry Country: A Plan for Southern Deschutes County

2013-016	10-21-13/10-21-13	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Sisters Urban Growth Boundary
2014-005	2-26-14/2-26-14	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Bend Urban Growth Boundary
2014-012	4-2-14/7-1-14	3.10, 3.11	Housekeeping amendments to Title 23.
2014-021	8-27-14/11-25-14	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Sunriver Urban Unincorporated Community Forest to Sunriver Urban Unincorporated Community Utility
2014-021	8-27-14/11-25-14	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Sunriver Urban Unincorporated Community Forest to Sunriver Urban Unincorporated Community Utility
2014-027	12-15-14/3-31-15	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Industrial
2015-021	11-9-15/2-22-16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Surface Mining.
2015-029	11-23-15/11-30-15	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Tumalo Residential 5-Acre Minimum to Tumalo Industrial
2015-018	12-9-15/3-27-16	23.01.010, 2.2, 4.3	Housekeeping Amendments to Title 23.

2015-010	12-2-15/12-2-15	2.6	Comprehensive Plan Text and Map Amendment recognizing Greater Sage-Grouse Habitat Inventories
2016-001	12-21-15/04-5-16	23.01.010; 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial (exception area)
2016-007	2-10-16/5-10-16	23.01.010; 5.10	Comprehensive Plan Amendment to add an exception to Statewide Planning Goal II to allow sewers in unincorporated lands in Southern Deschutes County
2016-005	11-28-16/2-16-17	23.01.010, 2.2, 3.3	Comprehensive Plan Amendment recognizing non-resource lands process allowed under State law to change EFU zoning
2016-022	9-28-16/11-14-16	23.01.010, 1.3, 4.2	Comprehensive plan Amendment, including certain property within City of Bend Urban Growth Boundary
2016-029	12-14-16/12/28/16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial
2017-007	10-30-17/10-30-17	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-002	1-3-18/1-25-18	23.01, 2.6	Comprehensive Plan Amendment permitting churches in the Wildlife Area Combining Zone

2018-006	8-22-18/11-20-18	23.01.010, 5.8, 5.9	Housekeeping Amendments correcting tax lot numbers in Non-Significant Mining Mineral and Aggregate Inventory; modifying Goal 5 Inventory of Cultural and Historic Resources
2018-011	9-12-18/12-11-18	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-005	9-19-18/10-10-18	23.01.010, 2.5, Tumalo Community Plan, Newberry Country Plan	Comprehensive Plan Map Amendment, removing Flood Plain Comprehensive Plan Designation; Comprehensive Plan Amendment adding Flood Plain Combining Zone purpose statement.
2018-008	9-26-18/10-26-18	23.01.010, 3.4	Comprehensive Plan Amendment allowing for the potential of new properties to be designated as Rural Commercial or Rural Industrial
2019-002	1-2-19/4-2-19	23.01.010, 5.8	Comprehensive Plan Map Amendment changing designation of certain property from Surface Mining to Rural Residential Exception Area; Modifying Goal 5 Mineral and Aggregate Inventory; Modifying Non-Significant Mining Mineral and Aggregate Inventory
2019-001	1-16-19/4-16-19	1.3, 3.3, 4.2, 5.10, 23.01	Comprehensive Plan and Text Amendment to add a new zone to Title 19: Westside Transect Zone.

2019-003	02-12-19/03-12-19	23.01.010, 4.2	Comprehensive Plan Map Amendment changing designation of certain property from Agriculture to Redmond Urban Growth Area for the Large Lot Industrial Program
2019-004	02-12-19/03-12-19	23.01.010, 4.2	Comprehensive Plan Map Amendment changing designation of certain property from Agriculture to Redmond Urban Growth Area for the expansion of the Deschutes County Fairgrounds and relocation of Oregon Military Department National Guard Armory.
2019-011	05-01-19/05-16/19	23.01.010, 4.2	Comprehensive Plan Map Amendment to adjust the Bend Urban Growth Boundary to accommodate the refinement of the Skyline Ranch Road alignment and the refinement of the West Area Master Plan Area I boundary. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB.
2019-006	03-13-19/06-11-19	23.01.010,	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
<u>2019-016</u>	<u>11-25-19/02-24-20</u>	<u>23.01.01, 2.5</u>	<u>Comprehensive Plan and Text amendments incorporating language from DLCD's 2014 Model Flood Ordinance and Establishing a purpose statement for the Flood Plain Zone.</u>

<u>2019-018</u>	<u>TBD/TBD</u>	<u>23.01.01, 2.6, 3.5, 5.2</u>	<u>Comprehensive Plan and Text amendments relating to Religious Institutions to ensure compliance with RLUIPA.</u>
<u>2019-019</u>	<u>TBD/TBD</u>	<u>23.01.01, 2.5</u>	<u>Comprehensive Plan and Text amendments to provide procedures related to the division of certain split zoned properties containing Flood Plain zoning and involving a former or piped irrigation canal.</u>

**FINDINGS –
LAND DIVISIONS OF SPLIT ZONED FLOOD PLAIN PROPERTIES**

I. SUMMARY

Deschutes County, through File No. 247-19-000532-TA is amending the Deschutes County Zoning Ordinance to establish procedures for divisions involving split zoned properties that contain Flood Plain zoning as a result of a former irrigation canal or lateral. The current County Code does not contain procedures or direction related to the division of split zoned properties, and previous hearings officer interpretations of County Code have been contradictory and caused confusion. The amendments do not alter the mapped Federal Emergency Management Agency (FEMA) Flood Plain zone boundary or the standards applicable to development within the Special Flood Hazard Area, also known as the 100-year Flood Plain.

The Flood Plain Zone was adopted through Ordinance No. 88-030. Since adoption, there have been several amendments to the Flood Plain Zone addressing allowed uses and applicable standards, although ambiguities in the regulations still remain. Many properties in the County are split zoned, meaning they contain more than one base zone. Base zones control development and land division requirements including: permitted and conditional uses, setbacks, and minimum lots sizes for the creation of new parcels. When a property has two base zones, there is no explicit code direction on whether or not both set of standards need to be met, or if one set of standards supersedes the other. These amendments are intended to clarify the requirements for and allow such land divisions in specific circumstances.

II. 2017-2018 FLOOD PLAIN AMENDMENT PROCESS

Between March 2017 and September 2018, Deschutes County planning staff initiated a Post Acknowledgement Plan Amendment (PAPA) to the Department of Land Conservation and Development (DLCD) related to Flood Plain amendments to the Deschutes County Comprehensive Plan and Zoning Ordinance. Staff conducted public outreach through four open houses, five Planning Commission public hearings, two citizen involvement group meetings, and one Board of County Commissioners (Board) public hearing.

On September 19, 2018, the Board adopted Ordinance 2018-005, reflecting large scale changes to the Flood Plain Zone, including a proposal to change the base zone to a combining zone, and proposed text changes to clarify procedures on cluster developments and land divisions on property zoned Flood Plain.

The ordinance was then appealed to the Land Use Board of Appeals (LUBA), on the basis that the findings were incomplete and did not adequately address State Land Use Planning Goal 5, among other issues. Prior to the LUBA hearing and in consultation with County Legal Counsel, the Board found the need for substantial record additions. To provide greater

clarity on the intent of the amendments, the County opted to repeal the ordinance (Ordinance 2019-010), and begin a new PAPA to refine the amendments effectively demonstrate the proposed amendments comply with state and local regulations. This application is specific to adding criteria for the review of land divisions of split zoned Flood Plain.

III. NATIONAL FLOOD INSURANCE PROGRAM (NFIP)

The National Flood Insurance Program (NFIP) is based on a mutual agreement between the federal government and Deschutes County. Federally backed flood insurance is made available in Deschutes County, provided that the County agrees to regulate development in mapped Flood Plains. So long as Deschutes County serves its role in ensuring future Flood Plain development meets certain criteria, FEMA provides subsidized flood insurance for properties in rural Deschutes County.

FEMA has prepared a Flood Plain map and flood hazard data for Deschutes County. The NFIP underwrites flood insurance coverage only in those communities that adopt and enforce Flood Plain regulations that meet or exceed NFIP criteria. The County's Flood Plain regulations are designed to meet FEMA regulations and to ensure that new buildings will be protected from the flood levels shown on the FEMA-provided Flood Insurance Rate Map (FIRM) and that development will not make the flood hazard worse.

Beginning in 1988, Deschutes County adopted the FIRM as the Flood Plain Zone and also adopted Comprehensive Plan policies and implementing zoning code to comply with FEMA requirements. These maps, policies, and zoning code have been periodically updated to match the latest information and requirements provided by FEMA. It is important to note that the FIRM maps and FEMA regulations explicitly recognize that the mapped Flood Plain is subject to refinement. The map does not capture property-specific topographic details and FEMA regulations allow the County to waive FEMA requirements, such as special construction standards, where development is located above the Base Flood Elevation.

IV. CURRENT REGULATIONS AND CHALLENGES

Unlike many jurisdictions, the Flood Plain Zone in Deschutes County serves three distinct purposes:

- (1) **Hazard Mitigation:** the Flood Plain Zone provides special standards, and limitations on division and development of property within the mapped FIRM Flood Plain. The Flood Plain area is defined and monitored by NFIP.

(2) **Goal 5 Inventoried Resource:** land within the mapped FEMA Flood Plain adjacent to inventoried perennial streams such as the Deschutes River and its tributaries¹, are identified as part of an inventoried Goal 5² Resource referred to as "Significant Riparian Area"³. This area also includes mapped wetlands adjacent to an inventoried river or stream and land within 100 feet of a river or stream's ordinary high water mark. These "Significant Riparian Areas" are protected as a Goal 5 resource from conflicts by a variety of measures, including the Flood Plain Zone, as the zone highly regulates almost all uses. Areas that contain a wetland or Flood Plain zoned land that are not adjacent to a river or stream are not considered a Goal 5 resource. These areas may include irrigation ponds, historically low drainage areas, or irrigation canals.

(3) **Goal 5 Program to Achieve the Goal of Conserving Certain Habitat:** land within the "Significant Riparian Area" defined above is also recognized as an implementation measure to conserve the following inventoried Goal 5 fish and wildlife resources:⁴

- Deer Migration Corridor
- Elk Habitat
- Fish Habitat
- Furbearer Habitat
- Deer Winter Range
- Upland Game Bird Habitat
- Waterfowl Habitat

These three purposes integrate hazard mitigation measures and the program to achieve Goal 5 in protecting inventoried riparian areas, as well as inventoried fish and wildlife habitats.

It is important to note that in Deschutes County, base zones are used to identify those uses that are appropriate to a geographic area and provide standards for those uses. Base zone standards include outright and conditional uses, minimum lot sizes, setbacks, height limitations and other similar standards. Combining zones are used to identify geographical areas that require additional considerations, frequently for special protection of Goal 5 resources such as wildlife, scenic corridors, or surface mining impact areas. The combining zones may intersect a number of base zones and are intended to modify the standards in the underlying base zones.

When Deschutes County implemented the Flood Plain Zone, few properties were located entirely within the Flood Plain Zone. This created confusion because DCC does not explicitly explain how to deal with land divisions of split zoned properties.

¹ Note: Not all properties containing Flood Plain zoned land in Deschutes County are located adjacent to inventoried perennial streams and tributaries.

² Goal 5 relates to *Natural Resources, Scenic and Historic Areas, and Open Spaces*

³ Added to Goal 5 Inventory in 1994 (Ordinance No. 94-007).

⁴ Ordinance Nos. 92-041, 92-052, 94-004

A. CHALLENGE: FLOOD PLAIN ZONING AND FORMER IRRIGATION CANALS/LATERALS:

Because the Flood Plain Zone follows topographical contours, rather than property ownership boundaries, many properties have partial Flood Plain zoning, with the remainder of the area being another base zone such as Exclusive Farm Use (EFU). The boundary is determined by FEMA Flood Plain maps, which are infrequently updated and costly to change at an individual property level.

In Deschutes County, the Flood Plain Zone encompasses areas with surrounding irrigation canals and laterals. At the time this designation was placed on properties, these canals and laterals were open bodies of water that could present a possible flood risk due to the rise and fall of water throughout the irrigation cycle and off season. Since that time, irrigation districts are piping open canals and laterals due to the availability of funds from the federal government, and advances in monitoring technology. Several properties now have an outdated Flood Plain designation.

The majority of the Flood Plain Zone chapter prescribes special construction standards and review requirements to mitigate flood risk. The properties impacted by the piping of irrigation canals can be exempted from special construction standards with a simple survey noting the irrigation canal or lateral is now underground or removed from the property. The difficulty these property owner's typically face is in dividing their property.

Under the most recent Hearings Officer's ruling on the matter, a parcel that is equal to or exceeds the minimum lot size for the non-Flood Plain base zone (i.e. 160 acres of EFU land) and contains a narrow strip of Flood Plain zoned land associated with an irrigation canal (i.e. 1 acre), becomes wholly indivisible due to the failure to have 80 acres of non-resource designated Flood Plain zoned lands. This ruling precludes the development of the piped canal situation described above.

The proposed amendments allow a limited set of split zoned properties to become eligible for land divisions under specific criteria and procedures. Specifically, those Flood Plain, split zoned properties that are zoned EFU, designated Agriculture in the Comprehensive Plan, and are adjacent or bisected by a former irrigation canal or lateral would be eligible. Additionally, properties could not contain a Wildlife Area Combining Zone or contain "significant riparian habitat" described in Ordinance 94-007, to prevent impacts to sensitive County wildlife resources.

V. PROPOSED AMENDMENTS

The proposed amendments are detailed in Exhibits A-D. Changes in the exhibits are identified by underline for new text and ~~striketrough~~ for deleted text. Below are explanations of the proposed changes.

A. TITLE 18, ZONING ORDINANCE TEXT AMENDMENTS

The proposed amendments include:

CHAPTER 18.96. FLOOD PLAIN ZONE

- 18.96.150: Adds a section outlining eligibility criteria and procedures for review of division of split zoned properties (Exhibit A).

B. TITLE 23, COMPREHENSIVE PLAN AMENDMENTS

CHAPTER 2 RESOURCE MANAGEMENT, SECTION 2.5 WATER RESOURCES

- Chapter 2 Resource Management, Section 2.5 Water Resources: Addition of language describing the purpose of the proposed amendments to ensure adequate record keeping of the intent and purpose of the amendments (Exhibit C).

VI. REVIEW CRITERIA

Deschutes County lacks specific criteria in DCC Titles 18, 22, or 23 for reviewing a legislative plan and text amendment. Nonetheless, because this is a Deschutes County initiated amendment, the County bears the responsibility for justifying that the amendments are consistent with the Statewide Planning Goals, Oregon Administrative Rules, and its Comprehensive Plan.

VII. APPLICABLE CRITERIA

A. CHAPTER 22.12, LEGISLATIVE PROCEDURES

1. Section 22.12.010.
Hearing Required

FINDING: This criterion was met as two sets of public hearings were conducted. The Deschutes County Planning Commission held a public hearing on August 8, 2019 which was continued to September 12 and September 26, 2019. The Board of County Commissioners held an additional public hearing on December 4, 2019.

2. Section 22.12.020, Notice
 - A. ***Published Notice***
 1. ***Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.***

2. ***The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.***

FINDING: This criterion was met as notice was published in the Bend Bulletin newspaper on July 20, 2019 for the Planning Commission public hearing, and again on November 23, 2019

- B. Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.***

FINDING: This criterion is met as notices for the respective hearings were posted on the bulletin board in the lobby of the Deschutes County Community Development Department, 117 NW Lafayette, Bend.

- C. Individual notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.***

FINDING: As this is a legislative process and is not property specific, individual notice is not required. Therefore, this criterion does not apply.

- D. Media notice. Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.***

FINDING: Notice was provided to the County public information official for wider media distribution. This criterion has been met.

3. Section 22.12.030 Initiation of Legislative Changes.
A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of County Commissioners.

FINDING: The application was initiated by the Deschutes County Planning Division at the direction of the Board of County Commissioners, and has received a fee waiver. This criterion has been met.

4. Section 22.12.040. Hearings Body
 - A. The following shall serve as hearings or review body for legislative changes in this order:***
 - 1. The Planning Commission.***
 - 2. The Board of County Commissioners.***

B. Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.

FINDING: The Deschutes County Planning Commission held the initial public hearing on August 8, 2019. Following deliberations, the Planning Commission forwarded a unanimous recommendation of approval of the amendments (6-0) to the Board of County Commissioners. The Board held a second public hearing on December 4, 2019. Therefore these criteria have been met.

5. Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: The legislative changes included in file no. 247-19-000532-TA will be implemented by ordinance upon approval and adoption by the Board. This criterion will be met.

B. STATEWIDE PLANNING GOALS

The parameters for evaluating these specific amendments are based on an adequate factual basis and supportive evidence demonstrating consistency with Statewide Planning Goals. The following findings demonstrate the proposed amendments comply with applicable goals and state law.

- **Goal 1, Citizen Involvement**

The adoption process for the proposed amendments included public hearings before the Planning Commission and the Board, consistent with ORS 215.060 and DCC 22.12.010. This goal is met.

- **Goal 2, Land Use Planning**

ORS 197.610 allows local governments to initiate PAPAs. An Oregon Department of Land Conservation and Development 35-day notice was initiated on July 2, 2019. This findings document provides the adequate factual basis and documented analysis for the plan amendment and zoning text amendments. This goal is met.

- **Goals 3 and 4, Agricultural Lands and Forest Lands**

The proposed amendments allow the use of non-Flood Plain base zone standards in determining minimum lot sizes when dividing split zoned property. Eligible properties must be zoned Exclusive Farm Use (EFU) and must meet the resource minimum lot size requirements of the Exclusive Farm Use zone. The requirement that the property has a single comprehensive plan designation precludes division of resource land under non-resource zone standards. Properties zoned Forest Use are ineligible for

the proposed amendments Therefore, staff finds the proposed amendments do not impact Goals 3 and 4.

- **Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces**
The proposed amendments do not apply to properties that are located in a Wildlife Area Combining Zone or that contain significant riparian habitat as described in Ordinance 94-007, which established the County's goal 5 program to protect riparian areas. Staff finds that the proposal does not negatively impact Goal 5 resources and no additional analysis is required.
- **Goal 6, Air, Water and Land Resources Quality**
The County has code provisions pertaining to development in the Flood Plain Zone that are designed to protect air, water and land resources quality and to assure that development does not occur in areas subject to natural resources. Those provisions will not be altered by the proposed amendments. Staff finds this goal is met.
- **Goal 7, Natural Hazards**
The County has code provisions pertaining to the mitigation of flood risk for development in the Flood Plain Zone. Those provisions will not be altered by the proposed amendments. Staff finds this goal is met.
- **Goal 8, Recreational Needs**
The proposed changes are not addressing a recreational use or need. This goal is met.
- **Goal 9, Economic Development**
The proposed amendments seek to allow for greater opportunities for division of EFU property and residential development where appropriate, but at a very limited scale. The amendments may result in additional land divisions and related development but such opportunities are extremely limited due to the prescribed eligibility requirements and existing development patterns. In addition, the amendments will not result in significant industrial or commercial developments due to rural zoning restrictions. This goal is met.
- **Goal 10, Housing**
Unlike municipalities, unincorporated areas in Deschutes County are not obligated to fulfill certain housing requirements as detailed in Goal 10. Therefore, this goal does not apply.
- **Goal 11, Public Facilities**
The proposed amendments provide for the potential of greater rural residential development at an appropriate scale. The proposed amendments do not impact any existing public facilities nor do they substantiate a need for the development of new public facilities. Therefore, this goal does not apply.

- **Goal 12, Transportation**

The proposed text amendments will add procedures pertaining to the division of Flood Plain, split zoned properties that meet certain criteria. The proposed amendments do not approve any specific development proposal or land use change. Development projects will be reviewed individually for compliance with the Transportation Planning Rule. Therefore, this goal does not apply.

- **Goal 13, Energy Conservation**

The proposed text amendments will add procedures pertaining to the division of Flood Plain, split zoned properties that meet certain criteria. The proposed amendments do not approve any specific development proposal or land use change. Any future site-specific applications will be subject to Deschutes County's Solar Height Restrictions, DCC 18.116.170 and the Uniform Building Code.. Therefore, this goal does not apply.

- **Goal 14, Urbanization**

The purpose of Goal 14 is to direct urban uses to areas inside urban growth boundaries. As proposed amendments do not seek to allow urban uses on rural land, nor do they seek to expand an existing urban growth boundary, this goal does not apply.

- **Goals 15 through 19**

Goals 15 through 19 are not applicable to any amendments to the County's Comprehensive Plan as the County does not contain any of the relevant land types included in the goals.

B. Deschutes County Comprehensive Plan

Chapter 2, Resource Management

Section 2.5, Water Resources

2.5.10 Support educational efforts and identify areas where the County could provide information on the Deschutes River ecosystem, including rivers, riparian areas, floodplains and wetlands.

a. Explore methods of ensuring property owners know and understand regulations for rivers, riparian areas, floodplains and wetlands.

FINDING: In order to ensure all interested persons are aware of the current proposed changes, staff presented an overview of the proposed amendments and administration of the Flood Plain Zone during the Planning Commission and Board public hearings and through a dedicated project website.

2.5.16 Use a combination of incentives and/or regulations to mitigate development impacts on river and riparian ecosystems and wetlands.

FINDING: The Flood Plain Zone limits development and establishes standards to mitigate impacts. The proposed amendments target split zoned properties that contain only a portion of Flood Plain zoned land that is not associated with riverine systems or significant riparian habitat per Ordinance 94-007. In the procedures for dividing a split zoned property, applicants will be required to maintain the Flood Plain zone on a single parcel so as not to divide and parcelize any portion of the Flood Plain. The proposed amendments will continue to support the restoration and preservation of significant wildlife.

Section 2.7, Open Spaces, Scenic Views and Site

2.7.4 Encourage new development to be sensitive to scenic views and sites.

FINDING: The Landscape Management Combining Zone will continue to protect scenic resources near river and streams and major transportation corridors. Any new development associated with the proposed amendments will be required to abide by these requirements.

2.7.6 Review County Code and revise as needed to protect open space and scenic views and sites, including:

- b. Work with private property owners to provide incentives and mitigations for protecting visually important areas from development impacts.**
- e. Review County Code for ways to mitigate for developments that significantly impact scenic views.**

FINDING: The setback and building requirements of the Flood Plain Zone will not be impacted by the proposed amendments. These standards, along with the setback standards associated with the landscape management combining zone, protect open space and scenic views and sites.

Section 3.5, Natural Hazards

3.5.10 Regulate development in designated floodplains identified on the Deschutes County Zoning Map based on Federal Emergency Management Act regulations.

- a. Participate in and implement the Community Rating System as part of the National Flood Insurance Program.**

FINDING: The amendments to the Flood Plain Zone section will not impact the County's ability to participate in and implement the Community Rating System as part of the NFIP program.

3.5.11 Review and revise County Code as needed to:

- f. Make the Floodplain Zone a combining zone and explore ways to minimize and mitigate floodplain impacts.**

FINDING: Although the proposed amendments do not alter the Flood Plain Zone from a base zone to a combining zone, they provide procedures for divisions involving split zoned properties that contain Flood Plain zoning as a result of a former irrigation canal or lateral. The piped canals or laterals now prevent the possibility of flooding.



Deschutes County Board of Commissioners
1300 NW Wall St, Bend, OR 97703
(541) 388-6570 – Fax (541) 385-3202 – <https://www.deschutes.org/>

AGENDA REQUEST & STAFF REPORT

For Board of Commissioners BOCC Wednesday Meeting of December 11, 2019

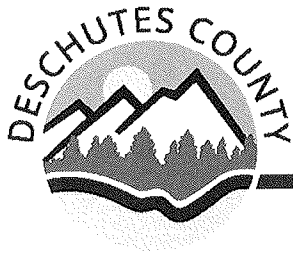
DATE: December 4, 2019

FROM: Tanya Saltzman, Community Development,

TITLE OF AGENDA ITEM:

DELIBERATIONS: Split Zone/Piped Canal Amendments and Consideration of Ordinance No. 2019-019

On December 11, 2019, the Board of County Commissioners will conduct deliberations on Ordinance No. 2019-019, text amendments outlining procedures in the Deschutes County Code for divisions involving split zoned Flood Plain properties.



MEMORANDUM

TO: Deschutes County Board of County Commissioners ("Board")

FROM: Tanya Saltzman, AICP, Associate Planner
Peter Gutowsky, AICP, Planning Manager

DATE: December 5, 2019

SUBJECT: Split Zone Amendments / "Piped Irrigation Canal Amendments"
(247-19-000532-TA) – Deliberations

On December 11, 2019, the Board of County Commissioners is scheduled to conduct deliberations on Ordinance No. 2019-019, text amendments outlining procedures in the Deschutes County Code for divisions involving split zoned Flood Plain properties.

A public hearing with the Board was held on December 4, 2019, during which two individuals provided testimony in favor of the amendments. The Board then closed the oral and written records. The entirety of the record was provided to the Board for the December 4 public hearing.¹

I. EMERGENCY ADOPTION OPTION

Both emergency and non-emergency versions of the ordinance are included as attachments to this memorandum for the Board's consideration. During the hearing, a party whose property is eligible for the proposed amendments respectfully requested that the Board consider adoption of the ordinance by emergency, given concerns for potential future state legislation that could affect criteria for nonfarm dwellings.

II. NEXT STEPS

At the conclusion of the meeting, the Board can choose one of the following:

- Continue deliberations to a scheduled date;
- Conclude deliberations and recommend approval of the amendments as proposed;

¹ https://deschutescountyor.iqm2.com/Citizens/Detail_Meeting.aspx?ID=2394

- Conclude deliberations and recommend approval of the amendments with additional minor changes; or
- Conclude deliberations and recommend denial of the proposed amendments.

Attachments:

1. Draft Ordinance No. 2019-019 – Emergency
2. Draft Ordinance No. 2019-019 – Non-Emergency

Exhibits:

- A. DCC 18.96 Zoning Text Changes
- B. DCC 23.01 Text Changes
- C. Chapter 2.5 – Comprehensive Plan Amendments
- D. Chapter 5.12 – Comprehensive Plan Amendments
- E. Staff Findings