AGENDA

DESCHUTES COUNTY PLANNING COMMISSION
AUGUST 8, 2019, 5:30 PM
BARNES SAWYER ROOMS
DESCHUTES SERVICES CENTER
1300 NW WALL STREET BEND, OR, 97703

I. Call to Order

II. Approval of July 9, 2019 Minutes

III. Public Comments

IV. US 97 / Terrebonne Refinement Plan / TSP Amendment / Deliberation

1. Deliberations on Terrebonne Refinement Plan (247-19-000464-PA) to amend the Deschutes County Transportation System Plan map to add a U.S. 97 couplet and a Lower Bridge Way/U.S. interchange with a roundabout ramp termini on Lower Bridge Way - Peter Russell, Senior Planner

V. Religious Land Use and Institutionalized Persons Act Amendments / Public Hearing

1. Religious Institution Text Amendment - Public Hearing - Nicole Mardell, Associate Planner

VI. Flood Plain Amendments / Public Hearing
1. Model Flood Amendments (247-19-000530-TA/533-PA) Public Hearing - Nicole Mardell, Associate Planner

2. Land Division of Split Zoned Flood Plain Property Amendments (247-19-0005320TA) Public Hearing - Nicole Mardell, Associate Planner

3. Flood Plain Cluster and Planned Unit Development Amendments (247-19-000531-TA) Public Hearing - Nicole Mardell, Associate Planner

VII. Planning Commission and Staff Comments

VIII. Adjourn

IX. Planning Commission Action Items
RELIGIOUS INSTITUTION TEXT AMENDMENT - PUBLIC HEARING

The Planning Division is proposing amendments to Deschutes County Code Title 18, County Zoning, Title 19, Bend Urban Area Zoning, and Title 23, Comprehensive Plan to address potential conflicts with the Religious Land Use and Institutionalized Persons Act (RLUIPA).
MEMORANDUM

TO: Deschutes County Planning Commission
FROM: Nicole Mardell, Associate Planner
DATE: August 1, 2019
SUBJECT: Religious Institution Text Amendment – Public Hearing

I. PROPOSAL
The Planning Division is proposing amendments to Deschutes County Code Title 18, County Zoning, Title 19, Bend Urban Area Zoning, and Title 23, Comprehensive Plan to address potential conflicts with the Religious Land Use and Institutionalized Persons Act (RLUIPA).

II. BACKGROUND
RLUIPA was adopted in 2000 by the United States Congress following testimony that land use and zoning regulations often placed a substantial burden on religious groups, thereby inhibiting their ability to express their religious freedom. In many cases, similar secular uses such as assembly halls, fraternal organizations, and museums were not facing the same burden and were receiving favorable treatment. RLUIPA established four general concepts for local governments to comply:

1) Bars “substantial burden” on religious exercise
2) Requires “equal terms” treatment of religious and secular uses
3) Bars discrimination on the basis of religion or type of religious practice
4) Bars total or unreasonable exclusion of religious institutions

Many of Deschutes County’s regulations were established prior to the establishment of RLUIPA. In 2017, Deschutes County attempted to amend its zoning ordinance and comprehensive plan to allow churches in the Wildlife Area (WA) Combining Zone on the basis that first amendment rights were being infringed as described in RLUIPA. Deschutes County found that a risk of lawsuit from a property owner, associated with the infringement of these rights was so imminent that the code should be amended to address RLUIPA property issues.
at a countywide scale. Those changes were remanded by the Land Use Board of Appeals, due to the need for additional information on the impacts to Goal 5, including the need for an Economic, Social, Environmental, and Energy (ESEE) analysis.

In 2018, through a separate land use decision, the County approved a church on an Exclusive Farm Use zoned property located in the WA Combining Zone, again on the basis that the County was potentially liable for litigation due to noncompliance with RLUIPA. On April 3, 2019, the Oregon Court of Appeals affirmed without opinion a Land Use Board of Appeals (LUBA) decision allowing a church on the property. LUBA agreed with the County that the WA Combining Zone section in the Deschutes County Code (DCC) violates the equal terms clause of RLUIPA. As a result of this decision, the County determined the need to audit the remaining chapters of the Deschutes County Code to find other areas of noncompliance with RLUIPA.

III. WORK SESSION DISCUSSION AND MATERIALS
The Planning Commission held a work session at the Terrebonne Community School on July 25, 2019. Staff presented the staff findings, Economic, Social, Environment, and Energy (ESEE) analysis, and proposed amendments in the meeting packet, found on the Deschutes County public meetings page.

At the meeting the Planning Commissioners presented two questions:

1. What are the parameters of a religious institution? Can the County add or define these parameters within the amendments?

Assistant County Legal Counsel Adam Smith clarified during the work session that the definition of a religious institution remains undefined in RLUIPA case law. In order to ensure equal treatment of religious institutions as compared to similar secular uses, the County cannot add distinct parameters on what a religious institution must be in terms of size or scale. Instead, the County can regulate the impacts of religious institutions by having infrastructure requirements that apply to all types of public or semi-public uses (i.e. septic capacity, road improvements, parking, etc.)

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1 Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces. ESEE required per OAR 660-023-0040
2 LUBA Decision No. 2018-095 Central Oregon LandWatch v. Deschutes County and Shepherd
3 http://deschutescounty.or.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=2126&Inline=True
2. How does the County ensure the zoning ordinance and comprehensive plan remain compliant with RLUIPA as new interpretations from case law emerge?

Staff is proposing to add an RLUIPA compliance statement in the Basic Provisions section of Titles 18 and 19 of the Deschutes County Code. This section ensures that compliance with RLUIPA supersedes all other aspects of Titles 18 and 19.

Additionally, following the work session, staff received updated data for Table 2, Page 11 of the Appendix A: ESEE analysis. The number of properties located in the WA Combining Zone and in the impact area was quoted as 15,148 properties. In distilling this information to exclude federally owned public lands, the number of parcels is approximately 3,213. This information will be added to the final version of the ESEE analysis.

<table>
<thead>
<tr>
<th>Zone</th>
<th># of Properties</th>
</tr>
</thead>
<tbody>
<tr>
<td>SURA</td>
<td>1</td>
</tr>
<tr>
<td>SURN</td>
<td>1</td>
</tr>
<tr>
<td>SURG</td>
<td>1</td>
</tr>
<tr>
<td>WA</td>
<td>3,213</td>
</tr>
<tr>
<td>TOTAL</td>
<td>3,216</td>
</tr>
</tbody>
</table>

IV. PUBLIC COMMENTS
No public comments have been received by staff to date.

V. NEXT STEPS
The public hearing to take testimony on the proposed amendments will be held on Thursday, August 8, 2019 at 5:30 pm, in the Barnes and Sawyer Room, 1300 NW Wall Street, Bend, OR. At the conclusion of the public hearing, the Planning Commission can:

1) Continue the hearing to a date certain;
2) Close the hearing and leave the written record open to a date certain; or
3) Close the hearing, and commence deliberations.

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4 Title 18 pertains to County Zoning, Title 19 pertains to Bend Urban Area Zoning