MEMORANDUM

TO: Deschutes County Planning Commission

FROM: Nicole Mardell, Associate Planner

DATE: August 1, 2019

SUBJECT: Flood Plain Cluster and Planned Unit Development Amendments (247-19-000531-TA) – Public Hearing

I. PROPOSAL
Deschutes County, through File No. 247-19-000531-TA, is amending the Deschutes County Comprehensive Plan and Zoning Ordinance to add provisions for cluster and planned unit developments on property that contains partial Flood Plain zoning. 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 purpose of the proposed amendments is to codify past practices to allow Flood Plain Zoned land to be used in the acreage calculation as long as the Flood Plain land is used as open space.

II. BACKGROUND
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 incorporate DLCD’s 2014 Oregon Model Flood Ordinance language, and to clarify procedures on cluster developments and split zone 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 less substantial issues. Prior to the LUBA hearing and in consultation with County legal counsel, the Board found the need for substantial record additions. On May 8, 2019, the Board opted to repeal Ordinance No. 2018-005 (Ordinance 2019-010), and initiate a new Post Acknowledgement Plan Amendment (PAPA).
Following this process, the County determined the proposed amendments should be broken up into three separate packages in order to efficiently and effectively analyze the potential impacts to state and local goals and regulations. These amendments are solely focused on amendments to the Deschutes County Code (DCC) and Comprehensive Plan that pertain to the use of Flood Plain zoned land in cluster and planned unit developments.

Many properties in Deschutes County are split-zoned, meaning they contain more than one base zone. Each base zone has a specific set of development standards including allowed and conditional uses. In calculating the allowed density and open space requirements for cluster and planned unit developments in Deschutes County, staff has relied on nine Hearings Officer's interpretations of the code, which have allowed Flood Plain zoned land to be used in the acreage calculation as long as the Flood Plain land is used as open space. Recently, one Hearings Officer disagreed with this precedent and found that Flood Plain zoned land is not developable, cannot be included in this density and open space calculation, and instead should be seen as an additional riparian protection area.

This inconsistency causes uncertainty for property owners when determining the divisibility of their property. The purpose of the proposed amendments is to codify past practices to allow Flood Plain Zoned land to be used in the acreage calculation as long as the Flood Plain land is used as open space. The open space area will be managed by a Homeowners’ Association subject to a Riparian Area Management Plan (RAMP).

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, Environmental, and Energy (ESEE) analysis, and proposed amendments in the meeting packet, found on the Deschutes County public meetings page.

In discussing the proposed amendments, Commissioner Hudson noted a desire for Deschutes County to create a Wildlife Biologist position to review the aforementioned RAMP for projects, alongside other duties. The Commissioners also expressed a desire to translate the maps found in the ESEE analysis to an online interactive format. County GIS staff is currently working on this project; staff will post a link to the Flood Plain project website (https://www.deschutes.org/cd/page/flood-plain-information-and-text-amendments) when it becomes available prior to the public hearing.

1 File Nos. 247-15-000194-CU / 195-TP
2 http://deschutescountyor.igm2.com/Citizens/FileOpen.aspx?Type=1&ID=2126&Inline=True
IV. PUBLIC COMMENTS
Staff received a comment from Nunzie Gould, directed generally at all three flood plain amendments, included as Attachment 1.

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.

ATTACHMENTS
1) Public Comment – Gould
Human encroachment into and onto the floodplain is unwise especially with the following
CCR's are not enforced by Deschutes County: CCR's are set upon adjacent property owners to
take to civil court
Firewise treatments are occuring for views and in the guise of 'safety' where entire trees and
vegetation in the river setbacks are chopped down.
We have recently had another 25 year storm which when coupled with vegetative removal causes
huge sediment run offs into our river systems
Deschutes County Community Development does not actually implement conditions of
approval.  Our code is complaint enforced: again this befalls our willing citizens.
We do not need changes to the flood plain setbacks and we certainly should not include flood
plain lands into measurements or calculations to justify adding density along our river systems in
Deschutes County.
The proposed flood plain text amendment is a one off for the 'lower bridge llc' development: the
language is poorly thought thru and could apply to areas within our scenic portion of our scenic
waterway just downstream from Twin Bridges Road:
We do not need more human encroachment on our river ecosystems.
Thank you
Nunzie Gould