MEMORANDUM

TO: Deschutes County Planning Commission
FROM: Nicole Mardell, Associate Planner
DATE: August 1, 2019
SUBJECT: Land Division of Split Zoned Flood Plain Property Amendments (247-19-000532-TA) – Public Hearing

I. PROPOSAL
Deschutes County, through File No. 247-19-000532-TA is amending the Deschutes County Zoning Ordinance to add procedures for divisions involving split zoned Flood Plain properties. 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. These amendments are intended to clarify the requirements for and allow the division of split zoned Flood Plain properties under certain circumstances.

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 division of split zone properties that contain Flood Plain Zoning.

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. Approximately 2,125 tax lots in Deschutes County (approximately 2.0% of all County tax lots) are split zoned properties that include some Flood Plain zoned land. The other adjoining base zones consist of resource zones (Exclusive Farm Use, Forest Use), Surface Mining, Open Space & Conservation, or a residential zone (Rural Residential, Multiple Use Agricultural, Tumalo Residential, etc.).

The current county code is unclear as it pertains to division of Flood Plain, split zoned properties, and staff had to rely on previous staff and Hearings Officers decisions to determine division eligibility. These amendments are intended to clarify the requirements for land divisions as long as the property contains no more than two base zones and one comprehensive plan designation, and the Flood Plain portion of the property is entirely located on one parcel resulting from the division.

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.

Commissioners 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.

IV. PUBLIC COMMENTS
Staff received two comments from Attorney Liz Fancher related to the amendments. Attachment 1 is a comment letter submitted on her own behalf, Attachment 2 is a comment

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letter submitted on behalf of her clients, Fred and Teresa Netter. Nunzie Gould submitted general comments directed at all three flood plain amendments (Attachment 3).

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) Comment Letter – Fancher
2) Comment Letter – Netter
3) Comment Letter - Gould
Nicole:

I am writing to express a concern and to seek information about proposed DCC 18.96.150. My concern is that it is unclear what is meant when the new code language requires that a parcel “have only one comprehensive plan designation.” I believe, from reading the ESEE findings, that this is likely meant to refer to what might be considered a base map plan designation on a particular County’s comprehensive plan map (I couldn’t readily find the comp plan map on line) and does not exclude properties that have been designated by comp plan maps for overlay zone protections e.g. the wildlife area zones. Is my understanding of the County’s intent correct? If it is, it seems to me that the text should make this explicit – assuming there is any reason to include this requirement in addition to the single other primary zone requirement.

I notice that the ESEE analysis analyzes only the impacts of the zoning restriction. To increase the odds of approval of the amendment, the County should either: (a) delete the comprehensive plan requirement and rely just on zoning designation (my preference); or (b) prepare an analysis of the impact of this restriction and clarify the language so it makes it clear it is referring to plan map designations that correspond to base zoning only – not to overlay zoning.

Thank you for your consideration of my concerns. Thank you for all the hard work you have done on the many flood plain ordinances, findings, etc. It looks to me, on a quick initial review, that you have done a very nice job of analyzing impacts and proposing reasonable legislative changes.

Liz Fancher
Liz Fancher, Attorney
644 NW Broadway Street
Bend, OR 97703
541-385-3067 (telephone)

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Nicole Mardell

From: Liz Fancher <liz@lizfancher.com>
Sent: Thursday, July 25, 2019 11:58 AM
To: Nicole Mardell
Cc: Fred Netter
Subject: Draft Flood Plain Ordinance re Split-Zoned Lots and Parcels
Attachments: floodplainsplitzone.docx

[EXTERNAL EMAIL]

Nicole:

The attachment contains minor proposed changes to the text amendment for split-zoned properties in the FP zone. Fred and Teresa Netter have asked that I ask you to consider these minor changes. The reason for the proposed changes is provided in the attached document as well.

FYI, the prior comments I provided about the flood plain amendment were provided on my own behalf. They were not filed on behalf of the Netters.

Thank you,

Liz Fancher

Liz Fancher, Attorney
644 NW Broadway Street
Bend, OR 97703
541-385-3067 (telephone)

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Partitions or subdivision of properties that contain both Flood Plain zoned lands and exactly on other primary zone and which have only one comprehensive plan designation are subject to the following area calculation and configuration standards.

1. The Flood Plain and non-Flood Plain zoned area shall be summed for the purposes of lot area calculation.

2. The minimum lot size for new lots or parcels resulting from such partitions or subdivisions shall be determined by the applicable minimum lot and parcel size(s) and land division rules of the non-Flood Plain zone.

3. All Flood Plain zoned lands from the parent lot or parcel must be contained within a single subdivision lot or partition parcel.

**Reason for Requested Changes:**

Paragraph 2 The term “lot” means a unit of land created by a subdivision. The term “parcel” means a unit of land created by a partition. DCC Chapter 18.16 has a minimum parcel size only. See, DCC 18.16.060. Referring to “lot and parcel” size makes it clear that the code applies to the EFU zoning district, as intended.

In the EFU zone, there are a variety of parcel size requirements. Adding an “(s)” to the word “size” recognizes this fact. Adding the word “applicable” will help makes it clearer that the minimum parcel size applicable to a land division will be the one set for the type of division requested. Additionally, in a nonfarm/farm division, there is no minimum parcel size for many new nonfarm dwelling parcels. The addition of word “applicable” and “land division rules” is intended to make it clear that the rules for divisions in the EFU zone that vary based of date of lot creation and irrigation status are to be applied as appropriate. For instance, the default 80 acre minimum parcel size in the EFU zone would not apply to an irrigated land partition or to a nonfarm/farm partition. Instead, the County’s acknowledged minimum parcel sizes for irrigated parcels would be used.
Nick Lelack, AICP
Deschutes County
Community Development Director
541-639-5585

Sent from my iPhone

Begin forwarded message:

From: Nunzie <nunzie@pacifier.com>
Date: August 1, 2019 at 4:43:13 AM PDT
To: Nick Lelack <Nick.Lelack@deschutes.org>
Subject: flood plain text amendment

Please enter this email into the record for this evenings flood plain text amendment.

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