



Lane County Planning Commission Memo

July 11, 2022 (Date of Memorandum)
July 19, 2022 (Public Hearing)

TO: Lane County Planning Commission
DEPARTMENT: Public Works / Land Management Division
PRESENTED BY: Rachel Serslev, Senior Planner
RE: **Department File No. 509-PA22-05378** / Amendments to Lane Code (LC) 16.290 to incorporate an allowance for accessory dwelling units (ADU) in rural residential zones as allowed by Senate Bill 391 and ORS 215.495, and an allowance for conversion of a historic dwelling to an ADU as allowed by House Bill 3012 and ORS 215.501.

I. PROPOSED MOTIONS FOR JULY 19, 2022, PUBLIC HEARING:

- 1) Move to forward a recommendation to the Board to adopt the proposed amendments to Lane Code as presented;
- 2) Move to forward a recommendation that the Board adopt the proposed amendments to Lane Code with specific revisions (state revisions); or
- 3) Move to direct staff to revise the proposed amendments and return to the Planning Commission for recommendation to the Board.

II. ISSUE:

The proposal before the Planning Commission is an amendment to Lane Code 16.290, initiated by the Land Management Division (LMD) in response to the passing of Senate Bill (SB) 391, which allows accessory dwelling units (ADU) in rural areas, subject to certain criteria. Staff also propose to implement an allowance for ADUs authorized by House Bill (HB) 3012 that allows conversion of a historic dwelling to an ADU.

III. DISCUSSION:

A. Background

Senate Bill 391 and Oregon Revised Statute (ORS) 215.495 allows ADUs in rural residential zoned areas, subject to certain conditions. While the bill included an emergency clause, meaning it went into effect on June 23, 2021, the day it was signed by the Governor, the bill includes several requirements for state action related to wildfire mitigation that prevent the allowance of ADUs countywide at this time.

On March 15, 2022, staff went before the Board of County Commissioners (the Board) to receive policy direction on implementation of the bill. At that work session, staff presented several policy questions regarding specific standards for allowing ADUs and sought direction for the future code amendment project. Specifically, provisions of SB 391 that relate to wildfire mitigation require that several state initiatives be complete prior to allowing ADUs. These wildfire mitigation initiatives, required by SB 762¹, task the State Board of Forestry with creating a statewide wildfire risk map, the State Fire Marshal with adopting minimum defensible space standards and with the Department of Consumer and Business Services adopting wildfire hazard building code standards. Implementation of SB 391 countywide is dependent on the completion of these tasks.

However, staff identified an alternative phased approach that will allow ADUs in certain parts of the County as soon as the statewide wildfire risk map is adopted on June 30, 2022. Staff offered that a code amendment could be initiated to allow ADUs outside of the wildland urban interface (WUI) once the wildfire risk map is adopted and published. ADUs cannot be established within the WUI until the State Fire Marshal adopts minimum defensible space standards by December 31, 2022.

The Board directed staff to move forward with the phased approach. In conjunction with the ADUs allowed by SB 391, staff is also incorporating an ADU allowance authorized by HB 3012 (2017) and ORS 215.501, which allows the conversion of a historic dwelling to an ADU. Therefore, staff have initiated this code amendment project.

Outreach and noticing of the proposed LC 16.290 amendments have included:

- On June 14, 2022, notice of the proposed change was provided to the Department of Land Conservation and Development (DLCD).
- On June 23, 2022, the ADU project webpage was updated and the proposed draft code was published.
- On June 28, 2022, a press release was published advertising the public hearing.
- On June 28, 2022, notice of public hearing was published in the Register Guard and sent to interested parties.

B. Overview of Proposed Code Revisions

SB 391 (**Attachment 1**) defines ADUs as residential structures that are used in connection with or that are auxiliary to a single-family dwelling, and defines single-family dwelling as a residential structure designed as a residence for one family and sharing no common wall with another residence of any type.

SB 391 only authorizes ADUs on lands zoned for rural residential use. Areas zoned for rural residential use are defined by ORS 215.501 and means *“land that is not located inside an urban growth boundary as defined in ORS 195.060 (Definitions) and that is subject to an acknowledged exception to a statewide land use planning goal relating to farmland or forestland and planned and zoned by the county to allow residential use as a primary use.”* The zoning designation in Lane County for these lands is Rural Residential (RR1, RR2, RR5 and RR10), designated by the Rural Comprehensive Plan (RCP). Currently, the Rural Residential zone in Lane County does not have an allowance for permanent second dwellings or accessory dwellings.

In addition to only applying to lands zoned Rural Residential, SB 391 also contains minimum criteria that must be met for a lot or parcel to qualify for an ADU. These criteria and associated policy questions are

¹ [Enrolled Senate Bill 762 \(2021\)](#)

summarized in the following table.

Topic	Description of SB 391 Requirement	Comment/Policy Question
Urban Reserve Areas	A lot or parcel within an urban reserves area cannot qualify for an ADU	Approximately 500 properties zoned rural residential exist within proposed urban reserve areas.
Minimum Lot Size	The subject lot or parcel must be at least two acres in size	A more restrictive standard could be adopted (e.g. a 5-acre or more lot or parcel minimum). The Board did not direct staff to draft code to be more restrictive.
Single Family Dwelling	One single family dwelling must be sited on the lot or parcel	Draft Lane Code language is consistent with bill language.
Nuisance	The single family dwelling is not subject to an order declaring a nuisance or any pending action for abatement of a nuisance	Draft Lane Code language is consistent with bill language.
Sanitation and Wastewater	The ADU will comply with applicable sanitation and wastewater regulations	Draft Lane Code language is consistent with bill language.
ADU Size	The ADU will not include more than 900 square feet of usable floor area	Draft Lane Code language is consistent with bill language, and "useable floor area" is defined by the draft code.
Distance from Dwelling	The ADU will be located no farther than 100 feet from the single family dwelling	The bill language is unclear if the entire ADU must be within 100 feet of the dwelling or just a portion of the ADU. Staff interpret this to mean that at least a portion of the ADU must be within 100 feet of the dwelling.

Groundwater Use Restriction	If the ADU is relying on a domestic well, no portion of the lot or parcel can be within a new or existing ground water use restricted area by the Water Resources Commission	Lane County does not contain any critical groundwater areas as defined by the Water Resources Commission. Draft Lane Code language is consistent with bill language.
Areas of Critical State Concern	No portion of the lot or parcel is within an area designated as having critical state concern	Lane County does not contain any areas of critical state concern. Draft Lane Code language is consistent with bill language.
Fire Protection District Service	The lot or parcel must be served by a fire protection service provider with professionals who received training or certification described in ORS 181A.410	The list of fire districts that comply with ORS 181A.410 is continuously updated by Department of Public Safety Standards & Training (DPSST) as local fire districts complete their training. Compliance of the districts will be verified prior to approval of the ADU.
WUI Defensible Space Requirements	ADUs on lots or parcels identified on the statewide wildfire risk map as being within the WUI must meet minimum defensible space requirements established by the State Fire Marshal and applicable local requirements	ADUs could not be allowed until the wildfire mapping is complete on June 30, 2022. ADUs cannot be allowed within WUI areas until statewide defensible space standards are adopted by December 31, 2022.
Wildfire Risk Maps	ADUs cannot be allowed until statewide wildfire risk maps have been adopted and ADUs within high or extreme wildfire risk areas must comply with the Oregon Residential Specialty Code (ORSC) relating to wildfire hazard mitigation (R327)	Wildfire mapping was completed June 30, 2022, per SB 762.
Setbacks	The ADU has adequate setbacks from adjacent lands zoned for	The Board provided direction that current setbacks in the RR zone already provide for adequate

	resource use	setbacks from resource zoned lands.
Access and Evacuation	The ADU has adequate access for firefighting equipment and safe evacuation and staged evacuation areas	The draft code requires certification of the access by the applicable fire district, and requires the applicant provide an evacuation plan.
Non-WUI Defensible Space Requirements	ADUs on lots or parcels identified on the statewide wildfire risk map as not being within the wildland-urban interface must comply with any applicable local requirements for defensible space	Currently, no local regulations exist that require defensible space in the Rural Residential zone. The Board did not direct staff to draft defensible space standards for ADUs. Implementation of SB 762 and/or future Lane Code amendments may result in defensible space standards for lands outside of the forest zone.
Vacation Occupancy	The ADU must not be allowed to be used for vacation occupancy as defined by ORS 90.100	Applicant to record a restrictive covenant stating that the ADU will not be used for vacation occupancy.
Land Division	A land division that separates the single family dwelling from the ADU cannot be allowed	Draft Lane Code language is consistent with bill language.
Additional ADU	Only one ADU is allowed per lot or parcel	Draft Lane Code language is consistent with bill language.
Water Supply	The county may require that the ADU be served by the same water source or water supply system as the existing single family dwelling	Not a required criterion. The Board did not direct staff to make this a condition of establishing an ADU.

C. Criteria Requiring Policy Discussion

Several of the criteria discussed above have associated policy questions that the County can interpret for implementation of the bill. These policy questions were brought before the Board during a work session on March 15, 2022, and the Board provided policy direction. The following sections include a more in depth discussion of each topic and the policy direction provided by the Board.

1. ADU Size

SB 391 limits the size of the ADU to 900 square feet of useable floor area, but the bill does not specify how this area should be calculated. This criterion could limit the overall size of the structure to 900 square feet, or the provision could be interpreted as allowing 900 square feet for areas of the structure dedicated to the ADU use. For example, a property owner could be allowed to construct a structure that is an ADU with an attached garage, where the area dedicated to the ADU is limited to 900 square feet and the area dedicated to the garage use is not counted towards the ADU square footage limitation. The benefit of allowing additional area to be constructed in conjunction with the ADU is that construction costs could be kept lower for a property owner who plans to build both a garage and ADU. A drawback is that it could lead to more cases of non-compliance, where part of the structure not initially planned to be part of the ADU is converted after the fact to provide additional space for the ADU.

Similarly, LMD's current policy in regards to the development of guest houses allows combined structure types. This is implemented through review of structure floor plans to ensure that area dedicated to the guest house use complies with the square footage requirements. Typically, the building code also has standards for separation of space for different occupancies (residential v. storage), which results in guest house spaces being physically separated from other types of occupancies.

The Board provided direction for staff to draft as permissive code language as possible. Therefore, staff has drafted the proposed code language to permit ADUs where the 900 square foot limitation only applies to areas of the structure used for the ADU and excludes garages and attached ancillary development (carports, decks, stairs and porch covers).

2. Distance from Dwelling

SB 391 requires that the ADU be no farther than 100 feet from the existing single-family dwelling, but the bill does not provide detail on how the distance should be measured. There are several ways that this criterion could be interpreted. The measurement could be made as 100 feet from the existing dwelling to include the entire ADU or just a portion of the ADU. Staff interpret the provision to mean that at least a portion of the ADU must be within 100 feet of the dwelling.

The interpretation is significant because it may influence a lot or parcel's eligibility for and ADU. For instance, a more restrictive read of the regulation (the ADU must be entirely within 100 feet of the existing dwelling) could make siting the ADU more difficult for some properties. However, a more restrictive measurement would result in more clustered development and be beneficial to compatibility between uses. The interpretation could also be less restrictive, such that the 100-foot measurement is made from the dwelling to a wall of the ADU. This may provide property owners more flexibility in siting an ADU.

Lane Code currently includes a similar regulation for resource zone properties for the siting of development accessory to dwellings. The standard requires that accessory development be located within a square with dimensions of 200 feet, which is centered on the footprint of the established dwelling. LMD's interpretation of this

provision is that development must be at least partially within the 200-foot square as measured from the center of the dwelling. Based on this interpretation, a similar provision could be adopted for the ADU code.

On March 15, 2022, the Board directed staff to draft code to be as permissive as possible and draft the code to allow the ADU to be partially within 100 feet of the dwelling. Staff have drafted code so that the nearest part of the ADU is not more than 100 feet from a wall of the single-family dwelling.

3. Setbacks

The SB requires that the ADU have “adequate setbacks from adjacent lands zoned for resource use.” However, the bill does not specify what adequate setbacks are. The minimum setback in the rural residential zone is 10 feet from property lines, and in certain circumstances, five feet from property lines.

Current standards in resource zones require that where possible development have setbacks from other resource zoned properties to mitigate any conflict between uses, such as residential and commercial forestry uses. These setbacks are larger (100 or 500 feet) because typically resource zoned properties are larger than residentially zoned properties and the uses between properties may be less compatible.

A larger setback than the minimum could provide sufficient separation between resource uses and non-resource uses for the purpose of compatibility and, in regards to forestland properties, for the purpose of wildfire safety. However, for certain residential properties, a larger setback could cause difficulties in siting an ADU if the property is at the two-acre minimum or irregularly shaped.

On March 15, 2022, the Board provided direction that this standard should be drafted in the most permissible way possible. Therefore, staff has drafted the code so that the minimum setbacks in the Rural Residential zone apply to ADUs.

4. Water Supply

The bill provides an option for counties to require that the ADU be served by the same water source or water supply system as the existing single-family dwelling. The law does not require this criterion. The Board provided policy direction to not include this additional standard.

However, staff have added a provision to ensure that the lot or parcel qualifying for the ADU has an adequate supply of water when the lot or parcel is located within the boundaries of an unincorporated community. Staff found that verifying adequate water supply is required for allowing ADUs within unincorporated communities due to OAR 660-002-0030(8)(B), which requires that zoning applied to lands within unincorporated communities must ensure that the cumulative development allowed will not exceed the carrying capacity of the soil, existing water supply resources, or sewer services.² Provided this requirement, staff have inserted language into the draft

² (8) Zoning applied to lands within unincorporated communities shall ensure that the cumulative development:
(B) Will not exceed the carrying capacity of the soil or of existing water supply resources and sewer services.

code that verifies water supply resources and sewer services will not be exceeded by allowing the ADU in compliance with the OAR. These provisions require that the applicant demonstrate adequate water supply when seeking approval for an ADU, and comply with any applicable sanitation regulations.

5. Adequate Access for Fire Fighting Equipment, Safe Evacuation, and Staged Evacuation Areas

SB 391 requires that accessory dwelling units have adequate access for firefighting equipment, safe evacuation and staged evacuation areas. “Adequate access,” “safe evacuation” and “staged evacuation areas” are terms left undefined by SB 391 and left up to local jurisdictions to determine how these standards will be evaluated. In general, the Board has directed staff to draft the ADU code language to be as permissible as possible.

The proposed draft code includes provisions that requires the applicant provide a certification from the fire district serving the property with the ADU that access to the property is adequate for the district’s equipment. This language is similar to language that already exists in Lane Code Chapter 15 that contains standards for roads. The current Chapter 15 standards require that this same type of certification be provided for access to new development on vacant properties. This provision addresses the language of SB 391 that requires adequate access for firefighting equipment.

The language of SB 391 also requires that the ADU have safe evacuation and staged evacuation areas. Staff researched the legislative intent and possible existing regulations that relate to evacuation, but did not find any additional detail on the intent of these standards or any existing regulations regarding evacuation that might inform drafting code to implement SB 391. Staff consulted with the Office of the State Fire Marshall, the Lane County Building Official, other counties implementing SB 391 and legal counsel to draft the proposed language. The proposed language aims to define safe evacuation and staged evacuation areas, and requires the applicant to propose an evacuation plan. Staff and legal counsel were careful to draft language that removes liability from the County for certifying that the evacuation plan provides adequate safety measures. Staff found this provision necessary because of the lack of specificity in the bill regarding the adequacy of an evacuation plan. The bill is silent on what constitutes safe evacuation or staged evacuation area, and County planning staff do not have the expertise to determine what constitutes safe evacuation, nor are there existing agencies that could sign off on the adequacy of an evacuation plan. Therefore, staff find that the best solutions is for the applicant/property owner to propose and certify the safety of the evacuation plan for their property.

6. WUI and Defensible Space

Certain provisions of SB 391 are guided by the implementation of SB 762, which is a comprehensive wildfire mitigation bill. The ADU bill can only be fully implemented once three tasks outlined by SB 762 are completed: 1. the statewide wildfire risk map showing the WUI and wildfire risk classifications is published; 2. the Oregon State Fire Marshal adopts defensible space standards for high and extreme wildfire risk areas within the WUI; and 3. The Department of Consumer and Business Services adopts wildfire hazard building code standards for dwellings and accessory structures within high and extreme wildfire risk areas within the WUI.

The statewide wildfire risk maps were adopted and published on June 30, 2022, consistent with the timelines set forth in SB 762.³ The Oregon State Fire Marshal defensible space standards must be adopted by December 31, 2022 and the building code may not be operative before April 1, 2023. Therefore, adopting allowances for ADUs throughout the county can only occur after April 1, 2023.

On March 15, 2022, the Board was provided with an option to direct staff to initiate a code amendment to allow ADUs in areas outside of the WUI, so that ADUs could be allowed in some areas of the County as soon as possible. The Board did direct staff move forward with a code amendment for areas outside of the WUI and staff initiated this code amendment.

Furthermore, a legislative fix bill, SB 1533 (**Attachment 2**), was passed in the spring of 2022. The language of SB 1533 fixed a reference error and removed language that requires defensible space and fuel break standards to be developed for ADUs in consultation with local fire protection service providers for areas outside of the WUI. The language of SB 1533 requires that any applicable local requirements for defensible space established by the local government pursuant to ORS 476.392 apply to ADUs. Staff understand that this provision requires that ADUs comply with any applicable local requirements for defensible space established by the local government, but does not compel the local government to establish defensible space standards for areas outside of the WUI. The Board was presented this policy decision, but directed staff to draft code that makes it as easy as possible to establish ADUs in the County. Staff understands this to mean that the Board was not interested in establishing standards for defensible space in areas outside of the WUI within the scope of this project. It is important to note an ongoing Board assignment for amending fire-siting standards and through the course of that project, fire protection, such as defensible space, may be considered on a countywide basis and ultimately may apply to areas where ADUs are allowed.

7. Limitations on ADUs, Guest Houses and Second Dwellings

Guest houses and lawfully established, pre-zoning second (or more) dwellings are uses allowed in the Rural Residential zone that have the potential to complicate the allowance for ADUs. Staff's understanding of SB 391 is that the intent of an ADU is to provide a second residence that is in conjunction with a single-family dwelling on a lot or parcel. This use is distinctly different from a guest house, which is a structure that is intended to provide detached, additional living space, accessory to a single family dwelling, but that does not contain a kitchen and does not act as an ADU or second dwelling. Further, staff's understanding of the intent of the ADU allowances is that an ADU cannot be construed as a lawfully established second dwelling because an ADU must occur in conjunction with an existing single-family dwelling, while a second dwelling is not accessory to any other dwelling that may exist on the property. Provided this understanding, staff have included language within the criteria for a guest house (LC 16.290(2)(u)) that the guest house standards do not apply to ADUs. The implications being that a guest house and an

³ The statewide wildfire risk mapping can be accessed here:
https://tools.oregonexplorer.info/oe_htmlviewer/index.html?viewer=wildfire

ADU could be allowed on the same lot or parcel if the criteria for each are met. The same holds true for a property with multiple lawfully established dwellings. However, the ADU criteria limit one ADU for per lot or parcel, so a property with multiple dwellings could still only qualify for one ADU. This is staffs understanding of the legislation and the current code. The Planning Commission may provide further policy guidance on the topic if necessary.

8. Procedure Type

While not explicitly addressed in SB 391, an important policy question relates to the procedure type for ADU applications. ADUs could be allowed through a Type I (ministerial/administrative) application or a Type II land use application (limited land use decision). The difference in these types of applications depends on the language of the approval criteria in Lane Code. If the code is written in a way that is clear and objective, the applications can be processed through a Type I process. If the criteria requires discretion to approve or deny the application, then the process must be Type II, which requires notice of application to neighboring property owners and can be appealed.

On March 15, 2022, the Board provided policy direction to allow ADUs through a Type I procedure. Therefore, the current draft code is written with clear and objective criteria for ADUs.

D. House Bill 3012

In conjunction with amending Lane Code to allow ADUs as authorized by SB 391, staff is also proposing amendments that implement an allowance for conversion of a historic dwelling to an ADU, authorized by HB 3012 (**Attachment 2**). This house bill was passed in 2017 and staff had planned to update Lane Code to implement allowances authorized by HB 3012 with other legislative housekeeping amendments, but these amendments have not been completed since 2015. Since HB 3012 authorizes ADUs in the rural residential zone, similar to SB 391, it seems logical to combine the code amendments.

Some of the criteria specific to HB 3012 and ORS 215.501 for conversion of a historic dwelling to an ADU are the same criteria that apply to ADUs authorized by SB 391, while some are specific to the allowance to the conversion of a dwelling to an ADU. Staff have drafted code language so that it matches the house bill language as much as possible.

One policy decision for implementing HB 3012 language is in regards to a provision of the bill that prohibits rebuilding of the ADU if the structure is lost to fire. To provide clarity, staff interprets the meaning of “lost to fire” in the proposed draft code by referencing the definition of “dangerous building” in the Uniform Code for the Abatement of Dangerous Buildings (UCADB). The UCADB defines dangerous building as one that has been damaged by fire to the extent that the structural strength or stability is less than the minimum required by the building code. Furthermore, staff has included language that requires a covenant be recorded by the applicant that acknowledges that the ADU may not be rebuilt if it is deemed a dangerous building due to fire to help ensure that the applicant is aware of the requirement.

A policy consideration regarding both allowances for ADUs is that both bills specify that only one ADU is allowed per lot or parcel. Despite the two avenues to qualify for an ADU, staff’s understanding of the

legislative intent is that only one ADU is authorized per lot or parcel regardless of if a lot or parcel could qualify for an ADU under SB 391 and HB 3012. Staff has provided the proposed draft code with both ADU paths as **Attachment 3** of this memo.

E. Comments Received

At the time of completion of this memo, no comments have been received on the proposed code amendments.

F. Applicable Criteria

The proposed amendments are subject to the applicable criteria identified in Lane Code 12.005, 12.050 and applicable Rural Comprehensive Plan/Statewide Planning Goals.

LC 12.100.005 Purpose.

A. The board shall adopt a comprehensive plan. The general purpose of the comprehensive plan is the guiding of the social, economic, and physical development of the County to best promote public health, safety, order, convenience, prosperity and general welfare.

The proposed amendments do not impair the purpose of the Rural Comprehensive Plan as the guiding document for Lane County. The proposed amendments update implementing regulations and follow the laws determined by the State of Oregon to best promote the will of the people. Adoption of the proposed amendments will bring the implementing regulations into compliance with State law, promote consistency at the local level with the applicable state laws, and will not affect compliance of the Rural Comprehensive Plan and implementing regulations with the Statewide Planning Goals or other applicable State law.

LC 12.100.050 Method of Adoption and Amendment

A. The adoption of the comprehensive plan or an amendment to such plan shall be by an ordinance.

The proposed amendments will be adopted by ordinance when enacted by the Board.

B. The Board may amend or supplement the comprehensive plan upon a finding of:

- 1. An error in the plan; or***
- 2. Changed circumstances affecting or pertaining to the plan; or***
- 3. A change in public policy; or***
- 4. A change in public need based on a reevaluation of factors affecting the plan; provided, the amendment or supplement does not impair the purpose of the plan as established by LC 12.100.005 above.***

The proposed amendments implement changes to state law, as such, meet this provision under subsection 3 above upon adoption by the Board.

LC 16.252 Procedures for Zoning, Re-zoning, and Amendments to Requirements.

(2) Amendments shall comply with this section and shall achieve the general purpose of this chapter and shall not be contrary to the public interest.

The proposed amendments implement changes to state law. The proposed amendments will provide clarity and consistency with state law. The proposed amendments are not contrary to the public interest in that they implement the laws determined by the State of Oregon to best promote the will of the people.

Goal Two: Land Use Planning

Policy 10. Lane County shall update the Rural Comprehensive Plan during periodic review to plan and zone unincorporated communities to comply with OAR 660 Division 22, "UNINCORPORATED COMMUNITIES", the "Unincorporated Community Rule., (UCR). Once updated, any changes in the planning and zoning for the unincorporated communities shall comply with the UCR. The UCR was adopted by the State Land Conservation and Development Commission (LCDC) on October 28, 1994 and became effective on December 5, 1994. The definitions in the UCR for "unincorporated community" and for the four types of unincorporated communities are included in Goal 2 Policy 10 a.-b., below. Section -0020(3)(a) of the UCR allows counties to plan and zone areas as communities if the, "Land has been acknowledged as an exception area and historically considered to be part of the community." The acknowledged exception areas historically considered by Lane County to be communities are identified in Goal 2 Policy 10 c., below.

The proposed amendments are not a periodic update to the RCP, but do revise the zoning regulations that apply to some lands within unincorporated communities. Therefore, staff must determine that the proposed amendments comply with OAR 660-022-0000, the Unincorporated Community Rule. Pursuant to OAR 660-002-0030(8)(B), zoning applied to lands within unincorporated communities must ensure that the cumulative development allowed will not exceed the carrying capacity of the soil, existing water supply resources, or sewer services. Provided this requirement, staff have inserted language into the draft code that addresses the OAR and ensures that water supply resources and sewer services will not be exceeded prior to allowing an ADU.

IV. ACTION:

A. Options

1. Forward a recommendation to the Board of Commissioners to adopt the proposed amendments as presented; or
2. Forward a recommendation that the Board adopt the proposed amendments with revisions (state revisions); or
3. Direct staff to revise the proposed amendments and to return to the Planning Commission for recommendation to the Board of Commissioners;

B. Recommendation

Staff recommends Option 1.

C. Follow Up

After the July 19, 2022 public hearing, should the Planning Commission choose options one or two, staff will schedule a public hearing with the Board of Commissioners. Should the Planning Commission so direct, staff may revise the proposed amendments as directed and return for a third public hearing on a date certain set by the Planning Commission.

V. ATTACHMENTS

1. Senate Bill 391 (3 pages)
2. Senate Bill 1533 (4 pages)
3. House Bill 3012 (2 pages)
4. Proposed Draft Code Amendments to LC 16.290 (4 Pages)

81st OREGON LEGISLATIVE ASSEMBLY--2021 Regular Session

Enrolled

Senate Bill 391

Sponsored by Senators DEMBROW, FINDLEY, KNOPP; Senators GOLDEN, HANSELL, JAMA, KENNEMER, Representatives BYNUM, LEVY, MORGAN, SMITH DB, ZIKA (Pre-session filed.)

CHAPTER

AN ACT

Relating to accessory dwelling units in rural residential areas; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 215.

SECTION 2. (1) As used in this section:

- (a) "Accessory dwelling unit" has the meaning given that term in ORS 215.501.
- (b) "Area zoned for rural residential use" has the meaning given that term in ORS 215.501.
- (c) "Single-family dwelling" has the meaning given that term in ORS 215.501.
- (2) Consistent with a county's comprehensive plan, a county may allow 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, provided:
 - (a) The lot or parcel is not located within an area designated as an urban reserve as defined in ORS 195.137;
 - (b) The lot or parcel is at least two acres in size;
 - (c) One single-family dwelling is sited on the lot or parcel;
 - (d) The existing single-family dwelling property on the lot or parcel is not subject to an order declaring it a nuisance or subject to any pending action under ORS 105.550 to 105.600;
 - (e) The accessory dwelling unit will comply with all applicable laws and regulations relating to sanitation and wastewater disposal and treatment;
 - (f) The accessory dwelling unit will not include more than 900 square feet of useable floor area;
 - (g) The accessory dwelling unit will be located no farther than 100 feet from the existing single-family dwelling;
 - (h) If the water supply source for the accessory dwelling unit or associated lands or gardens will be a well using water under ORS 537.545 (1)(b) or (d), no portion of the lot or parcel is within an area in which new or existing ground water uses under ORS 537.545 (1)(b) or (d) have been restricted by the Water Resources Commission;
 - (i) No portion of the lot or parcel is within a designated area of critical state concern;
 - (j) The lot or parcel is served by a fire protection service provider with professionals who have received training or certification described in ORS 181A.410;
 - (k) The lot or parcel and accessory dwelling unit comply with rules of the State Board of Forestry under ORS 477.015 to 477.061;

(L) Statewide wildfire risk maps have been approved and the accessory dwelling unit complies with the Oregon residential specialty code relating to wildfire hazard mitigation for the mapped area; and

(m) The county has adopted land use regulations that ensure that:

(A) The accessory dwelling unit has adequate setbacks from adjacent lands zoned for resource use;

(B) The accessory dwelling unit has adequate access for firefighting equipment, safe evacuation and staged evacuation areas; and

(C) If the accessory dwelling unit is not subject to ORS 477.015 to 477.061, the accessory dwelling unit has defensible space and fuel break standards as developed in consultation with local fire protection service providers.

(3) 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.

(4) A county that allows construction of an accessory dwelling unit under this section may not approve:

(a) A subdivision, partition or other division of the lot or parcel so that the existing single-family dwelling is situated on a different lot or parcel than the accessory dwelling unit.

(b) Construction of an additional accessory dwelling unit on the same lot or parcel.

(5) A county may require that an accessory dwelling unit constructed under this section be served by the same water supply source or water supply system as the existing single-family dwelling, provided such use is allowed for the accessory dwelling unit by an existing water right or a use under ORS 537.545. If the accessory dwelling unit is served by a well, the construction of the accessory dwelling unit shall maintain all setbacks from the well required by the Water Resources Commission or Water Resources Department.

(6) An existing single-family dwelling and an accessory dwelling unit allowed under this section are considered a single unit for the purposes of calculating exemptions under ORS 537.545 (1).

(7) Nothing in this section requires a county to allow any accessory dwelling units in areas zoned for rural residential use or prohibits a county from imposing any additional restrictions on accessory dwelling units in areas zoned for rural residential use, including restrictions on the construction of garages and outbuildings that support an accessory dwelling unit.

SECTION 3. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by Senate April 15, 2021

Repassed by Senate June 9, 2021

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 7, 2021

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State

81st OREGON LEGISLATIVE ASSEMBLY--2022 Regular Session

Enrolled
Senate Bill 1533

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CHAPTER

AN ACT

Relating to wildfire; amending ORS 215.495, 431A.410, 431A.412 and 476.694 and sections 11 and 14b, chapter 592, Oregon Laws 2021; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:**SECTION 1.** ORS 431A.410 is amended to read:

431A.410. (1) As used in this section[,]:

(a) **“Public education provider” has the meaning given that term in ORS 326.545.**

(b) “Smoke filtration system” means an air filtration system capable of removing particulates and other harmful components of wildfire smoke in a public building.

(2) In consultation and coordination with the Oregon Health Authority, the Department of Human Services shall establish and implement a grant program that allows local governments, **public education providers and federally recognized Indian tribes in Oregon** to:(a) Establish emergency [*clean air shelters*] **cleaner air spaces**.

(b) Equip public buildings with smoke filtration systems so the public buildings may serve as cleaner air spaces during wildfire smoke and other poor air quality events.

(3) The department shall require grantees to provide access to the [*clean air shelters*] **cleaner air spaces** at no charge.**SECTION 1a.** ORS 431A.412 is amended to read:431A.412. (1) **As used in this section, “public education provider” has the meaning given that term in ORS 326.545.**(2) The Department of Human Services is the lead state agency for [*clean air shelter*] **cleaner air space** operations. The department shall:

[(1)] (a) Consult and collaborate with the Oregon Health Authority to align practices for voluntary evacuations and emergency sheltering operations.

[(2)] (b) Coordinate with the authority in setting priorities for awarding grants described in ORS 431A.410.

[(3)] (c) Provide support to **the** local agencies, **public education providers and federally recognized Indian tribes in Oregon** that take lead roles in operating and planning [*clean air shelters*] **cleaner air spaces** [*in the local agencies’ jurisdictions*].**SECTION 2.** Section 14b, chapter 592, Oregon Laws 2021, is amended to read:**Sec. 14b.** No later than June 30, 2023, in consultation with the Oregon Health Authority, the Department of Human Services shall report to an appropriate committee or interim committee of the

Legislative Assembly, in the manner described in ORS 192.245, to the State Wildfire Programs Director and to the Wildfire Programs Advisory Council on:

(1) The grants administered pursuant to **ORS 431A.410** [section 14 of this 2021 Act], including information about which local governments, **public education providers and federally recognized Indian tribes in Oregon** received grants.

(2) Any barriers to administering the grants.

(3) Areas for improving the grant program described in **ORS 431A.410** [section 14 of this 2021 Act].

(4) Public health impacts from wildfire smoke events.

SECTION 3. ORS 476.694 is amended to read:

476.694. (1) The Oregon Conservation Corps Program is established for the purposes of:

(a) Reducing the risk wildfire poses to communities and critical infrastructure.

(b) Helping to create fire-adapted communities.

(c) Engaging youth and young adults in workforce training.

(2) Youth and young adults between [13] **16** years of age and 26 years of age who have been qualified by a youth development organization may participate in projects undertaken by the corps.

(3) Notwithstanding any contrary provision of law, participants in projects undertaken by the corps:

(a) Are not employees of the corps.

(b) Are exempt from prevailing wage laws.

(c) Must receive compensation for their participation of at least minimum wage or an allowance or stipend that, when combined with other sources of payment the participant is eligible to receive, including academic credit or an AmeriCorps education award, is equivalent to the value of minimum wage.

SECTION 4. Section 11, chapter 592, Oregon Laws 2021, is amended to read:

Sec. 11. (1) As used in this section, “defensible space” has the meaning given that term in **ORS 476.390** [section 8 of this 2021 Act].

(2) The Department of Land Conservation and Development shall identify [updates] **recommended changes** to the statewide land use planning program and local comprehensive plans and zoning codes that are needed in order to incorporate wildfire risk maps and minimize wildfire risk, including the appropriate levels of state and local resources necessary for effective implementation.

(3) [Updates] **Recommended changes** may include, but need not be limited to, provisions regarding sufficient defensible space, building codes, safe evacuation and development considerations in areas of extreme and high wildfire risk, allowing for regional differences.

(4) On or before October 1, 2022, the department [of Land Conservation and Development] shall[.]

[a) Complete the updates.]

[b)] report to a committee or interim committee of the Legislative Assembly related to wildfire, in the manner provided in ORS 192.245, to the State Wildfire Programs Director and to the Wildfire Programs Advisory Council on the [updates] **changes recommended by the department**. [The report must include recommendations concerning the updates.]

(5) As necessary to identify [needed updates and develop the recommendations required by subsection (4)(b) of this section] **recommended changes**, the department may consult with the State Fire Marshal, the State Forestry Department, the Department of Consumer and Business Services and local governments.

SECTION 5. ORS 215.495 is amended to read:

215.495. (1) As used in this section:

(a) “Accessory dwelling unit” has the meaning given that term in ORS 215.501.

(b) “Area zoned for rural residential use” has the meaning given that term in ORS 215.501.

(c) “Single-family dwelling” has the meaning given that term in ORS 215.501.

(2) Consistent with a county's comprehensive plan, a county may allow 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, provided:

(a) The lot or parcel is not located within an area designated as an urban reserve as defined in ORS 195.137;

(b) The lot or parcel is at least two acres in size;

(c) One single-family dwelling is sited on the lot or parcel;

(d) The existing single-family dwelling property on the lot or parcel is not subject to an order declaring it a nuisance or subject to any pending action under ORS 105.550 to 105.600;

(e) The accessory dwelling unit will comply with all applicable laws and regulations relating to sanitation and wastewater disposal and treatment;

(f) The accessory dwelling unit will not include more than 900 square feet of useable floor area;

(g) The accessory dwelling unit will be located no farther than 100 feet from the existing single-family dwelling;

(h) If the water supply source for the accessory dwelling unit or associated lands or gardens will be a well using water under ORS 537.545 (1)(b) or (d), no portion of the lot or parcel is within an area in which new or existing ground water uses under ORS 537.545 (1)(b) or (d) have been restricted by the Water Resources Commission;

(i) No portion of the lot or parcel is within a designated area of critical state concern;

(j) The lot or parcel is served by a fire protection service provider with professionals who have received training or certification described in ORS 181A.410;

(k) **If the lot or parcel is in an area identified on the statewide map of wildfire risk described in ORS 477.490 as within the wildland-urban interface**, the lot or parcel and accessory dwelling unit comply with *[rules of the State Board of Forestry under ORS 477.015, 477.025 and 477.027]* **any applicable minimum defensible space requirements for wildfire risk reduction established by the State Fire Marshal under ORS 476.392 and any applicable local requirements for defensible space established by a local government pursuant to ORS 476.392;**

(L) Statewide wildfire risk maps have been approved and the accessory dwelling unit complies with the Oregon residential specialty code relating to wildfire hazard mitigation for the mapped area; and

(m) The county has adopted land use regulations that ensure that:

(A) The accessory dwelling unit has adequate setbacks from adjacent lands zoned for resource use;

(B) The accessory dwelling unit has adequate access for firefighting equipment, safe evacuation and staged evacuation areas; and

(C) If the accessory dwelling unit is not *[subject to ORS 477.015, 477.025 and 477.027]* **in an area identified on the statewide map of wildfire risk described in ORS 477.490 as within the wildland-urban interface**, the accessory dwelling unit *[has defensible space and fuel break standards as developed in consultation with local fire protection service providers]* **complies with the provisions of this section and any applicable local requirements for defensible space established by a local government pursuant to ORS 476.392.**

(3) 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.

(4) A county that allows construction of an accessory dwelling unit under this section may not approve:

(a) A subdivision, partition or other division of the lot or parcel so that the existing single-family dwelling is situated on a different lot or parcel than the accessory dwelling unit.

(b) Construction of an additional accessory dwelling unit on the same lot or parcel.

(5) A county may require that an accessory dwelling unit constructed under this section be served by the same water supply source or water supply system as the existing single-family dwelling, provided such use is allowed for the accessory dwelling unit by an existing water right or a use under ORS 537.545. If the accessory dwelling unit is served by a well, the construction of the

accessory dwelling unit shall maintain all setbacks from the well required by the Water Resources Commission or Water Resources Department.

(6) An existing single-family dwelling and an accessory dwelling unit allowed under this section are considered a single unit for the purposes of calculating exemptions under ORS 537.545 (1).

(7) Nothing in this section requires a county to allow any accessory dwelling units in areas zoned for rural residential use or prohibits a county from imposing any additional restrictions on accessory dwelling units in areas zoned for rural residential use, including restrictions on the construction of garages and outbuildings that support an accessory dwelling unit.

SECTION 6. This 2022 Act takes effect on the 91st day after the date on which the 2022 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by Senate February 14, 2022

Received by Governor:

Repassed by Senate March 2, 2022

.....M.,....., 2022

Approved:

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Lori L. Brocker, Secretary of Senate

.....M.,....., 2022

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Peter Courtney, President of Senate

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Kate Brown, Governor

Passed by House February 28, 2022

Filed in Office of Secretary of State:

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Dan Rayfield, Speaker of House

.....M.,....., 2022

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Shemia Fagan, Secretary of State

79th OREGON LEGISLATIVE ASSEMBLY--2017 Regular Session

Enrolled House Bill 3012

Sponsored by Representatives LININGER, MEEK, SMITH DB; Representatives NEARMAN, STARK

CHAPTER

AN ACT

Relating to siting of residential structures on land zoned for certain uses.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS chapter 215.

SECTION 2. (1) As used in this section:

(a) "Accessory dwelling unit" means a residential structure that is used in connection with or that is auxiliary to a single-family dwelling.

(b) "Area zoned for rural residential use" means land that is not located inside an urban growth boundary as defined in ORS 195.060 and that is subject to an acknowledged exception to a statewide land use planning goal relating to farmland or forestland and planned and zoned by the county to allow residential use as a primary use.

(c) "Historic home" means a single-family dwelling constructed between 1850 and 1945.

(d) "New" means that the dwelling being constructed did not previously exist in residential or nonresidential form. "New" does not include the acquisition, alteration, renovation or remodeling of an existing structure.

(e) "Single-family dwelling" means a residential structure designed as a residence for one family and sharing no common wall with another residence of any type.

(2) Notwithstanding any local zoning or local regulation or ordinance pertaining to the siting of accessory dwelling units in areas zoned for rural residential use, a county may allow an owner of a lot or parcel within an area zoned for rural residential use to construct a new single-family dwelling on the lot or parcel, provided:

(a) The lot or parcel is not located in an area designated as an urban reserve as defined in ORS 195.137;

(b) The lot or parcel is at least two acres in size;

(c) A historic home is sited on the lot or parcel;

(d) The owner converts the historic home to an accessory dwelling unit upon completion of the new single-family dwelling; and

(e) The accessory dwelling unit complies with all applicable laws and regulations relating to sanitation and wastewater disposal and treatment.

(3) An owner that constructs a new single-family dwelling under subsection (2) of this section may not:

(a) Subdivide, partition or otherwise divide the lot or parcel so that the new single-family dwelling is situated on a different lot or parcel from the accessory dwelling unit.

(b) Alter, renovate or remodel the accessory dwelling unit so that the square footage of the accessory dwelling unit is more than 120 percent of the historic home’s square footage at the time construction of the new single-family dwelling commenced.

(c) Rebuild the accessory dwelling unit if the structure is lost to fire.

(d) Construct an additional accessory dwelling unit on the same lot or parcel.

(4) A county may require that a new single-family dwelling constructed under this section be served by the same water supply source as the accessory dwelling unit.

(5) A county may impose additional conditions of approval for construction of a new single-family dwelling or conversion of a historic home to an accessory dwelling unit under this section.

Passed by House April 27, 2017

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 6, 2017

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2017

Approved:

.....M,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2017

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Dennis Richardson, Secretary of State

Proposed Draft Accessory Dwelling Unit (ADU) Code

Presented to the Lane County Planning Commission for a public hearing on July 19, 2022. Language in **red** is draft language proposed to be inserted to Lane Code 16.290. The currently effective version of Lane Code 16.290 can be accessed [here](#).

Lane Code 16.290 Residential Zone (RR)

(2) Permitted Uses. The following uses and activities are allowed subject to the general provisions and exceptions specified by this chapter of Lane Code:

(v) Not more than one (1) accessory dwelling unit on a lot or parcel, consisting of at least 2 acres and meeting the standards of LC 16.290(8).

(u) – Guest House or Accessory Residential Structure. A structure that contains area of residential use or occupancy that includes a toilet or bathroom, and that complies with these requirements:

- (i) The total floor area of the structure is no more than 850 square feet;
- (ii) The structure does not contain a kitchen;
- (iii) The structure is located on a lot or parcel that has a lawfully existing dwelling or duplex on it and that does not have a guest house or another accessory residential structure on it;
- (iv) Sewage disposal for the structure is connected to the same onsite sewage disposal system, or community or public sewer connection, and the same electrical meter as the existing dwelling on the same lot or parcel; and,
- (v) The structure shall not have an address.
- (vi) The provisions of LC 16.290(2)(u) above do not apply to accessory dwelling units, as allowed by LC 16.290(2)(v) and 16.290(8).**

(8) Rural Accessory Dwelling Units.

(a) Purpose. The provisions of this section are intended to implement state law authorizing the development of accessory dwelling units (ADUs) to provide additional housing opportunities on rural lands and to encourage the preservation of historic housing stock.

(b) Definitions. For the purposes of LC 16.290(8), unless otherwise specifically provided, certain words, terms, and phrases are defined as follows:

- (i) “Accessory dwelling unit” (ADU) means a residential structure that is used in connection with or that is auxiliary to a single-family dwelling.
- (ii) “Area zoned for rural residential use” means lands that are zoned Rural Residential (RR, RCP), not located inside an urban growth boundary as defined in ORS 195.060, and that are subject to an acknowledged exception to a statewide land use planning goal relating to farmland or forestland and planned and zoned by the county to allow residential use as a primary use.

- (iii) “Historic home” means a single-family dwelling constructed between 1850 and 1945.
 - (iv) “New” means that the dwelling being constructed did not previously exist in residential or nonresidential form. “New” does not include the acquisition, alteration, renovation or remodeling of an existing structure.
 - (v) “Single-family dwelling” means a residential structure designated as a residence for one family and sharing no common wall with another residence of any type.
 - (vi) “Useable floor area” means the area included within the surrounding insulated exterior walls of a structure, exclusive of attached garages, carports, decks, exterior stairs, porch covers, or similar appurtenances.
 - (vii) “Vacation occupancy” means occupancy in a dwelling unit, not including transient occupancy in a hotel or motel, that has all of the following characteristics:
 - (aa) The occupant rents the unit for vacation purposes only, not as a principal residence;
 - (bb) The occupant has a principal residence other than at the unit; and
 - (cc) The period of authorized occupancy does not exceed 45 days.
- (c) Criteria for ADUs. A lot or parcel may qualify for one (1) ADU pursuant to the criteria under either subsection (xi) or (xii) below and provided:
- (i) The lot or parcel is at least two acres in size;
 - (ii) At least one single family dwelling is sited on the lot or parcel;
 - (iii) The lot or parcel is not located within an urban reserve area, consistent with ORS 195.137;
 - (iv) The ADU complies with all applicable laws and regulations relating to sanitation and wastewater disposal and treatment; and,
 - (v) The ADU must comply with the property development standards of LC 16.290(7).
 - (vi) A subdivision, partition or other division of the lot or parcel so that the existing single-family dwelling is situated on a different lot or parcel than the ADU may not be approved.
 - (vii) Only one ADU as defined by LC 16.290(8)(b)(i) and allowed by LC 16.290(2)(v) is allowed on a qualifying lot or parcel.
 - (viii) ADUs may be allowed subject to submittal of a Type I application pursuant to the procedures of LC Chapter 14.
 - (ix) The provisions of LC 16.290(8) do not apply to guest houses or accessory residential structures, as allowed by LC 16.290(2)(u).
 - (x) ADUs located on lots or parcels within the boundaries of an area designated by the Rural Comprehensive Plan as being an unincorporated community must have an adequate supply of water. If the lot or parcel is served by an individual water supply system, the system must meet the standards of Lane Manual 9.160, or if served by a public or community water system, the applicant must submit evidence that the service agency is mutually bound and able to serve the development.
 - (xi) An ADU in the rural residential zone is allowed subject to LC 16.290(8)(c)(i) through (x) and provided:

- (aa) The ADU will 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 ADU;
- (bb) The ADU will not include more than 900 square feet of useable floor area as defined by LC16.290(8)(b)(vi);
- (cc) The existing single-family dwelling on the lot or parcel is not subject to an order declaring it a nuisance or subject to any pending action under ORS 105.550 to 105.600;
- (dd) The lot or parcel on which the ADU is located is served by a fire protection district that complies with ORS 181A.401;
- (ee) The applicant provides written certification from the applicable fire district, on a form prepared by Lane County, that access to the property meets minimum fire district requirements to provide emergency services to the property;
- (ff) The applicant provides an evacuation plan that arranges for safe evacuation and identifies staged evacuation areas. As used in this section, “safe evacuation” means an identified route for evacuation from the ADU to the staged evacuation area. “Staged evacuation area” means a public or private location that occupants of the ADU may evacuate to.
 - (A) The applicant must provide written authorization from the owner of the staged evacuation area that the occupants of the ADU may evacuate to the staged evacuation area identified in the evacuation plan.
 - (B) A determination by the County that an evacuation plan meets the requirements of LC 16.290(8)(c)(ix)(ff) above is not a certification that the plan provides for safe evacuation and is not a certification of the safety of the identified staged evacuation areas. The County does not warrant or guarantee the effectiveness of any proposed evacuation plan and cannot be held liable in the event of property damage, injury, or death that may occur when an evacuation plan is used or followed.
- (gg) No portion of the lot or parcel is within a designated area of critical state concern;
- (hh) If the water supply source for the ADU or associated lands or gardens will be a well using water under ORS 537.545 (1)(b) or (d), no portion of the lot or parcel is within an area in which new or existing ground water uses under ORS 537.545 (1)(b) or (d) have been restricted by the Water Resources Commission;
- (ii) The applicant signs and records a restrictive covenant with Lane County Deeds and Records stating that the ADU allowed under this section will not be used for vacation occupancy, as defined by LC 16.290(8)(b)(vii);
- (jj) An existing single-family dwelling and an ADU allowed under this section are considered a single unit for the purposes of calculating exemptions under ORS 537.545(1); and
- (kk) The statewide wildfire risk map described in ORS 477.490 has been approved and the lot or parcel is not within an area identified on the statewide map of wildfire risk as within the wildland urban interface.

- (xii) Conversion of a historic home to an ADU in the rural residential zone is allowed subject to LC 16.290(8)(c)(i) through (x) and provided:
 - (aa) The owner of a lot or parcel within an area zoned for rural residential use constructs a new single family dwelling;
 - (bb) A historic home is sited on the lot or parcel;
 - (cc) The owner converts the historic home to an ADU upon completion of the new single family dwelling; and,
 - (dd) ADUs established pursuant to LC 16.290(8)(c)(xii) may not be:
 - (A) Altered, renovated, or remodeled so that the usable floor area of the ADU is more than 120 percent of the historic home’s usable floor area at the time construction of the new single-family dwelling commenced.
 - (B) Rebuilt if the structure is deemed a dangerous building due to fire, pursuant to the Uniform Code for the Abatement of Dangerous Buildings, which defines “dangerous building” as “Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or location.” The applicant must sign and record with Lane County Deeds and Records a restrictive covenant stating that an ADU allowed under this section cannot be rebuilt if deemed a dangerous building as described in this section.