



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

January 2, 2009



TO: Subscribers to Notice of Adopted Plan or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Deschutes County Plan Amendment
DLCD File Number 009-08

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: January 20, 2009

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

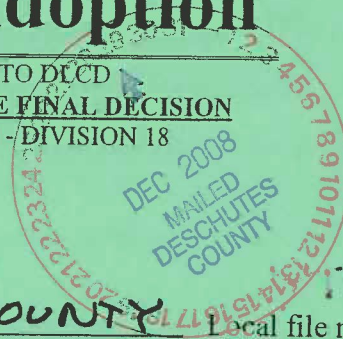
***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE DATE SPECIFIED ABOVE.**

Cc: Chris Bedsaul, Deschutes County
Doug White, DLCD Community Services Specialist

<paa> ya

2 Notice of Adoption

THIS FORM MUST BE MAILED TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: DESCHUTES COUNTY Local file number: TA08-7

Date of Adoption: 12-15-08 Date Mailed: 12-29-08

Date original Notice of Proposed Amendment was mailed to DLCD: JUNE 25, 2008

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation
- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other: _____

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

TEXT ADDENDUM TO TITLE 17 OF DESCHUTES COUNTY CODE TO INCORPORATE THE 2007 LEGISLATIVE CHANGES TO ORS 92.176 THRU 92.179 AND OTHER MINOR TEXT CHANGES AS NECESSARY TO UPDATE TITLE 17

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME". If you did not give Notice for the Proposed Amendment, write "N/A".

- SAME -

Plan Map Changed from: N/A to: _____

Zone Map Changed from: N/A to: _____

Location: N/A Acres Involved: _____

Specify Density: Previous: N/A New: N/A

Applicable Statewide Planning Goals: _____

Was and Exception Adopted? YES NO

DLCD File No.: 009-08 (16971)

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

Forty-five (45) days prior to first evidentiary hearing? Yes No

If no, do the statewide planning goals apply? Yes No

If no, did Emergency Circumstances require immediate adoption? Yes No

Affected State or Federal Agencies, Local Governments or Special Districts:

DESCHUTES COUNTY

Local Contact: CHRIS BEDSAUL Phone: (541) 383-6719 Extension: _____

Address: 117 NW LAFAYETTE City: BEND

Zip Code + 4: 97701 Email Address: CHRIS.BEDSAUL@co.deschutes.or.us

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. ~~Send this Form and TWO (2) Copies of the Adopted Amendment to:~~ ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.

3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.

4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.

5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.

6. In addition to sending the Notice of Adoption to DLCD, you must **notify** persons who participated in the local hearing and requested notice of the final decision.

7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to mara.ulloa@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.



For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 17, of the Deschutes County Code to Incorporate the 2007 Legislative Text of ORS 92.176 and ORS 92.177. * * * ORDINANCE NO. 2008-030

WHEREAS, Paul David Yager requested a text amendment to Title 17 in order incorporate the 2007 Legislative Text of ORS 92.176 and ORS 92.177, and

WHEREAS the Planning Commission considered this matter after a public hearing on October 9, 2008, and forwarded a recommendation to the Board to approve the proposed text amendments to Title 17 as modified by the Planning Commission; and

WHEREAS, notice of public hearing before the Board of County Commissioners ("Board") was published in the Bend Bulletin on November 2, 2008; and

WHEREAS the Board considered this matter after a public hearing was held on November 24, 2008 and concluded that Title 17 should be amended to adopt the 2007 Edition of ORS 92.176 and 92.177 and other minor text changes in Title 17; now, therefore,

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

Section 1. AMENDMENT. DCC 17.04, General Provisions, are 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 strikethrough.

Section 2. AMENDMENT. DCC 17.08, Definitions, 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 strikethrough.

Section 3. AMENDMENT. DCC 17.16, Approval of Subdivision Tentative Plan and Master Development Plans, 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 strikethrough.

Section 4. AMENDMENT. DCC 17.22, Approval of Tentative Plans For Partitions, 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 strikethrough.

///

Section 5. FINDINGS. The Board of Commissioners adopts as its findings in support of this amendment Exhibit "E", attached and incorporated by reference herein.

Dated this 15th of Dec., 2008

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Dennis R. Luke
DENNIS R. LUKE, CHAIR

Tammy Baney
TAMMY BANEY, VICE CHAIR

ATTEST:

Bonnie Baker
Recording Secretary

- absent -
MICHAEL M. DALY, COMMISSIONER

Date of 1st Reading: 15th day of Dec., 2008.

Date of 2nd Reading: 15th day of Dec., 2008.

Record of Adoption Vote

Commissioner	Yes	No	Abstained	Excused
Dennis R. Luke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tammy Baney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Michael M. Daly	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Effective date: 16th day of March, 2009, 2008.

ATTEST:

Bonnie Baker
Recording Secretary

**PLANNING COMMISSION
AMENDED AND RECOMMENDED
TEXT FOR BOCC TO ADOPT
FOR
TA-08-7**

Chapter 17.04. GENERAL PROVISIONS

17.04.010. Short Title.

17.04.020. Purpose.

17.04.030. Interpretation.

17.04.040. Amendments.

17.04.050. Corrections.

17.04.010. Short Title.

DCC Title 17 shall be known as the County Subdivision and Partition Ordinance, and may be so cited and plead.

(Ord. 90-003 §1, 1990; Ord. 81-043 §§1 and 1.005, 1981)

17.04.020. Purpose.

- A. In accordance with the provisions of ORS 92, 197 and 215, DCC Title 17 sets forth the minimum standards governing the approval of land development, including subdivisions and partitionings, as necessary to carry out the County comprehensive plan and to promote the public health, safety and general welfare. The purpose of these provisions and regulations are to:
1. Encourage well planned subdivision and partition development to the end that good liveable neighborhoods with all needed amenities and community facilities may be created.
 2. Encourage development in harmony with the natural environment and within resource carrying capacities.
 3. Safeguard the interest of the public, the applicant and the future lot owner.
 4. Improve land records and boundary monumentation.
 5. Insure equitable processing of subdivision plats and partitioning plans, and accomplish to the greatest extent possible the goals and objectives of the comprehensive plan for the County.
 6. To regulate the orientation of streets, lots and parcels; the placement, height and bulk of buildings; and the placement and growth of vegetation within the County to insure access to solar energy by reasonably regulating interests in property within the County, as authorized under ORS 215.044, 105.880 through 105.890 and 92.044 to promote and maximize the conservation of energy by preserving the option to utilize solar energy and to implement the comprehensive plan policies relating to solar energy.
 7. To encourage the design of new buildings, structures and developments which use solar energy and protect future options to use solar energy by protecting solar access.
 8. To permit the validation of a unit of land not lawfully established pursuant to the provisions of ORS 92.176 and the creation of a parcel by less than all owners of a unit of land pursuant to the provisions of ORS 92.177.
- B. No person may subdivide or partition land within the County except in accordance with ORS 92 and the provisions of DCC Title 17.
- C. The provisions of DCC Title 17 shall apply only to subdivisions and partitions within the County, unless otherwise noted. All references to "subdivisions" and "partitions" are made in that context unless otherwise noted.
- D. DCC Title 17 shall not apply to the lands lying outside the city limits of the city of Bend and within the Bend Urban Growth Boundary, as that term is defined in that certain intergovernmental agreement entered into between the city of Bend and the County dated February 18, 1998. The city of Bend Subdivision Ordinance, No. NS-1349, as adopted by the Board of County Commissioners as DCC Title 17A, and as supplemented by such other supplementing and/or amending ordinances as might from time to time be adopted shall apply to those lands instead.
- E. Filing Procedures and Requirements.

1. Any person seeking to lawfully establish a unit of land pursuant to the provisions of ORS 92.176 shall apply for approval of a partition as provided by 17.22.010.
2. Deschutes County shall consider and may approve an application for the creation of a parcel pursuant to ORS 92.176, notwithstanding that less than all of the owners of the existing lawfully established unit of land have applied for approval.

(Ord. 2008-030 § 1, 2008; Ord. 98-041 §1, 1998; Ord. 95-065 §1, 1995; Ord. 90-003 §1, 1990, Exhibit A; Ord. 83-039 §1, 1983; Ord. 81-043 §1, Exhibit A, §1.010, 1981)

17.04.030. Interpretation.

The provisions of DCC Title 17 shall be construed to effect the purposes set forth in DCC 17.04.020. These provisions are declared to be the minimum requirements fulfilling such objectives, and the County may impose additional requirements deemed necessary to promote the health, safety and general welfare, and to carry out the comprehensive plan of the County. Where conditions set forth in DCC 17.04 are less restrictive than comparative conditions imposed by any other provision of DCC Title 17, by provision of any other local ordinance, resolution or regulation, or by provision of state statute or administrative regulation, the more restrictive shall govern.

(Ord. 95-065 §1, 1995; Ord. 81-043 §1, Exhibit A, §1.020, 1981)

17.04.040. Amendments.

DCC Title 17 may be amended or repealed as provided by law.

(Ord. 81-043 §1, Exhibit A, §1.020, 1981)

17.04.050. Corrections.

DCC Title 17 may be corrected by order of the Board to cure editorial and clerical errors.

(Ord. 90-003 § 1, Exhibit A, 1990; Ord. 81-043 § 1, Exhibit A, §12.080, 1981)

**** Denotes sections of the County Code not amended.

Chapter 17.08. DEFINITIONS AND INTERPRETATION OF LANGUAGE

17.08.010. Construction.

17.08.020. Definitions.

17.08.030. Definitions Generally.

“Lawfully Established Unit of Land” means:

1. A lot or parcel created pursuant to ORS 92.010 to 92.190, or the provisions of this code; or,
2. Another unit of land created:
 - A. In compliance with all applicable planning, zoning and subdivision or partition ordinances and regulations; or
 - B. By deed or land sales contract, if there were no applicable planning, zoning or subdivision or partition ordinances or regulations.
3. “Lawfully established unit of land” does not mean a unit of land created solely to establish a separate tax account.

"Partition land" means to divide land to create not more than three parcels of land within a calendar year but does not include:

- A. A division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots;
- B. An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with any applicable zoning ordinance; or
- C. A sale or grant by a person to a public agency or public body for state highway, County road, city street or other right of way purposes provided that such road or right of way complies with the applicable comprehensive plan and ORS 215.213 (2)(p) to (r) and 215.283 (2)(q) to (s). However, any property divided by the sale or grant of property for state highway, County road, city street or other right of way purposes shall continue to be considered a single unit of land until such time as the property is further subdivided or partitioned.

(Ord. 2008-030 § 2, 2008; Ord. 97-005 §1, 1997; Ord. 96-003 §10, 1996; Ord. 950065 §1, 1995; Ord. 93-012 §§2-7, 1993; Ord. 90-003 §1, Exhibit A, 1990; Ord. 88-015 §1, 1988; Ord. 86-015 §2, 1986; Ord. 83-039 §2, 1983; Ord. 81-043 §1, Exhibit A, §1.040, 1981)

17.16.030. Informational Requirements.

The following information shall be shown on the tentative plan or provided in accompanying materials. No tentative plan shall be considered complete unless all such information is provided.

A. General Information Required.

1. Proposed name of the subdivision;
2. Names, addresses and phone numbers of the owners of record, authorized agents or representatives, engineer or surveyor, and any assumed business names filed or to be filed with the Corporation Commission by the applicant;
3. Date of preparation, true north, scale and gross area of the proposed subdivision;
4. Appropriate identification of the drawing as a tentative plan for a subdivision;
5. Location and tract designation sufficient to define its location and boundaries, and a legal description of the tract boundaries in relation to existing plats and streets;
6. ~~Certified copy of the recorded instrument under which the applicant claims an ownership interest, such as a copy of a land sales agreement or similar binding agreement, which binds the applicant in the event of tentative approval;~~
7. Title report or subdivision guarantee.

B. Information Concerning Existing Conditions.

1. Location, names and widths of existing improved and unimproved streets and roads in relation to existing right-of-way, bikeways and access corridors in the proposed subdivision and within 200 feet of the proposed subdivision;
2. Location of any existing features, such as section lines, section corners, special district boundary lines and survey monuments;
3. Location of existing structures, irrigation canals and ditches, pipelines, waterways, railroads and any natural features, such as rock outcroppings, marshes, wooded areas and natural hazards;
4. Location and direction of watercourses, and the location of areas subject to flooding and high water tables;
5. Location, width and use or purpose of any existing easement or right of way for utilities, bikeways and access corridors within and adjacent to the proposed subdivision;
6. Existing sewer lines, water mains, culverts and other underground and overhead utilities within and adjacent to the proposed subdivision, together with pipe sizes, grades and locations;
7. Contour lines related to some established benchmark or other engineering acceptable datum and having minimum intervals of two feet for slopes of less than five percent, 10 feet for slopes of five to 20 percent, and 20 feet for slopes greater than 20 percent;
8. Zoning classification of lands within and adjacent to the proposed subdivision;
9. A map showing the location of any site zoned SM, Surface Mining, under DCC Title 18, within one-half mile of the proposed subdivision or partition boundary;
10. The structures, trees, rock outcroppings or other shade producing objects, if the object will cast shade from or onto the subdivision.

C. Information Concerning Proposed Subdivision.

1. Location, names, width, typical improvements, cross-sections, bridges, culverts, approximate grades, curve radii and centerline lengths of all proposed streets, and the relationship to all existing and proposed streets;
2. Location, width and purpose of all proposed easements or rights of way for roads, utilities, bikeways and access corridors, and relationship to all existing easements and rights of way;
3. Location of at least one temporary benchmark within the subdivision boundary;
4. Location, approximate area and dimensions of each lot, and proposed lot numbers;
5. Location, approximate area and dimensions of any lot or area proposed for public use, the use proposed, and plans for improvements or development thereof;

6. Proposed use, location, approximate area and dimensions of any lot intended for nonresidential use;
 7. Phase boundaries outlined in bold lines, if phasing is contemplated for the subdivision;
 8. Source, method and preliminary plans for domestic and other water supplies, sewage disposal, solid waste disposal and all utilities;
 9. Description and location of any proposed community facility;
 10. Storm water and other drainage facility plans;
 11. Statement from each utility company proposed to serve the subdivision, stating that each such company is able and willing to serve the subdivision as set forth in the tentative plan;
 12. Proposed fire protection system for the subdivision;
 13. Solar access:
 - a. Provide a statement relative to the solar access to be provided by the subdivision plan.
 - b. Determine the location and type of street trees, if proposed.
 14. Location and design of all proposed bicycle and pedestrian facilities;
 15. Location and design of all proposed facilities providing for public transit.
 16. Appropriate Traffic Impact Study as specified in 17.16.115.
- D. Information for lots located in Surface Mining Impact Area (SMIA) zones. For each lot located wholly or partially within a SMIA zone, an applicant shall submit a site plan, accompanied by appropriate site plan fees, indicating the location of proposed noise or dust sensitive uses (as defined in DCC Title 18), the location and dimensions of any mitigating berms or vegetation and data addressing the standards of DCC 18.56, as amended, with respect to proposed noise or dust sensitive uses.
- (Ord. 2008-030 § 3, 2008; Ord. 2006-007 §2, 2006; Ord. 2006-004 §1, 2006; Ord. 93-012 §15, 1993; Ord. 90-003 §1, Exhibit A, 1990; Ord. 83-039 §§3-5, 1983; Ord. 81-043 §1, Exhibit A, §3.025, 1981)

17.22.010. Filing Procedures and Requirements.

- A. Any person, or his authorized agent or representative, proposing a land partition, shall prepare and submit a minimum of 10 copies of the tentative plan and one (1) reduced scale copy 8 1/2" x 11" or 11" x 17", hereinafter described, unless more copies are required by the Planning Director, in accordance with the prescribed procedures, and the appropriate filing fee, to the Planning Division.
- B. The tentative plan shall include the following:
1. A vicinity map locating the proposed partition in relation to parcels zoned SM, Surface Mining, under DCC Title 18, which are within one-half mile of the subject partition, and to adjacent subdivisions, roadways and adjoining land use and ownership patterns. The map must include names of all existing roadways shown therein;
 2. A plan of the proposed partitioning showing tract boundaries and dimensions, the area of each tract or parcel, locations of all easements, and the names, rights of way, widths and improvement standards of existing roads in relation to the existing right-of-way. The tentative plan shall also show the location of all existing buildings, canals, ditches, septic tanks and drainfields; it shall also show the location of any topographical feature which could impact the partition, such as canyons, bluffs, rock outcroppings, natural springs and floodplains. In addition, the tentative plan shall show the location width, curve radius and grade of proposed rights of way;
 3. If the partition is to be accessed by a U.S. Forest Service or Bureau of Land Management road, the applicant shall submit a written agreement with the appropriate land management agency providing for permanent legal access to the road and any required maintenance;
 4. Names and addresses of the landowner, the applicant (if different), a mortgagee if applicable and the engineer or surveyor employed or to be employed to make the necessary surveys;
 5. A statement regarding contemplated water supply, telephone and electric service, sewage disposal, fire protection and access, etc. If domestic water is to be provided by an on-site well, the application must include at least two well logs for wells in the area;
 6. True north, scale and date of map and property identification by tax lot, section, township and range;
 7. Statement regarding present and intended use of the parcels to be created, or the use for which the parcels are to be offered;
 8. If a tract of land has water rights, the application shall be accompanied by a water rights division plan which can be reviewed by the irrigation district or other water district holding the water rights, or when there is no such district, the County Watermaster;
 9. Title report or subdivision guarantee.
- C. Information for parcels located within a Surface Mining Impact Area (SMIA) zones. For each parcel wholly or partially within a SMIA zone under DCC Title 18, an applicant shall submit a site plan, accompanied by appropriate site plan fees, indicating the location of proposed noise or dust sensitive uses (as defined in DCC Title 18), the location and dimensions of any mitigating berms or vegetation and data addressing the standards of DCC 18.56, with respect to allowed noise or dust sensitive uses.
- D. An application for approval to validate a unit of land that was created by a sale that did not comply with the applicable criteria for creation of a unit of land may be approved as provided in this ordinance if the unit of land:
1. Is not a lawfully established unit of land; and,
 2. Could have complied with the applicable criteria for the creation of a lawfully established unit of land in effect when the unit of land was sold.
 3. Notwithstanding subparagraph (2) of this section, an application to validate a unit of land may also be approved if the county has previously approved a permit, as defined in ORS 215.402, for the construction or placement of a dwelling or other building on the unit of land after the sale.
 4. If the permit was approved for a dwelling, it must be determined that the dwelling qualifies for replacement under the criteria set forth in ORS 215.755 (1) (A) to (E).

5. If there is an existing dwelling or other building on a unit of land that was not lawfully established, an application for a permit as defined in ORS 215.402 or a permit under the applicable building code, may be approved if:
- (a) The dwelling or other building was lawfully established prior to January 1, 2007, and
 - (b) The permit does not change or intensify the use of the dwelling or other building.
- E. Notwithstanding subsection (D)(2) of this section, an application to validate a unit of land may be approved if the county has previously approved a permit, as defined in ORS 215.402, for the construction or placement of a dwelling or other building on the unit of land after the sale.
- 1. If the permit was approved for a dwelling, it must be determined that the dwelling qualifies for replacement under the criteria set forth in ORS 215.755(1)(a) to (e).
 - 2. An application for a permit, as defined in ORS 215.402, or a permit under the applicable state or local building code for the continued use of a dwelling or other building on a unit of land that was not lawfully established permit under the applicable building code, may be approved if:
 - a. The dwelling or other building was lawfully established prior to January 1, 2007, and
 - b. The permit does not change or intensify the use of the dwelling or other building.
- E. The application to validate a unit of land under these sections is an application for a permit as defined in ORS 215.402.
- F. The application to validate a unit of land is not subject to the minimum lot or parcel sizes established by ORS 215.780 and Chapter 18.16 of the Deschutes County Code.
- G. A unit of land becomes a lawfully established unit of land only upon recordation of a final plat in accordance with Chapter 17.24 of this code.
- 1. The final partition plat shall be recorded within 90 days of tentative plan approval.
 - 2. If the final plat is not recorded within 90 days, the applicant must recommence the process in order to validate a unit of land that was not a lawfully established unit of land
- H. An application to validate a unit of land that was unlawfully created on or after January 1, 2007 shall not be approved.
- I. Following validation of the unit of land, any development or improvement of the lawfully established unit of land shall comply with applicable laws in effect when a complete application for development is submitted.
- (Ord. 2008-030 § 4, 2008; Ord. 2006-007 §3, 2005; Ord. 93-012 §21, 1993; Ord. 90-003 §1, Exhibit A, 1990; Ord. 81-043 §1, Exhibit A, §5.015, 1981)

**DECISION OF THE DESCHUTES COUNTY
BOARD OF COUNTY COMMISSIONERS**

FILE NUMBERS: TA-08-7

**APPLICANTS/
PROPERTY OWNERS:** Paul David Yager
PO Box 2793
LaPine OR 97739

**APPLICANTS
ATTORNEY:** Paul Speck
1123 NW Bond Street
Bend OR 97701

REQUEST: The applicant requests a Text Amendment to the Deschutes County Code, Title 17, to Incorporate the 2007 Edition Text of ORS 92.176 and ORS 92.177

I. APPLICABLE STANDARDS AND CRITERIA:

1. Title 17 Subdivisions of the Deschutes County Code
 - Chapter 17.04
 - Chapter 17.08
 - Chapter 17.16
 - Chapter 17.22
2. Title 22 Deschutes County Development Procedures Ordinance
 - Chapter 22.08
 - Chapter 22.12
3. ORS92

II. FINDINGS OF FACT:

History:

The 74th Oregon Legislative Assembly – 2007 Regular Session adopted HB2723 and amended ORS 92 effective January 1, 2008. The Legislature's findings determined that cities and counties review land use applications to divide property either as a partition or a subdivision for compliance with local regulations governing minimum lots size, public facilities service and compliance with other policies or regulations. The Legislature found, typically, that the question of whether a property is lawfully created is also considered during the jurisdiction's application review process. Normally, if a property is found to have been unlawfully created, the result is to withhold all development permits (i.e. building and septic) involving that property until the issue is resolved. Unlawful property divisions, whether by design or error, can become complicated, given the cloud on the title that may exist and potentially involve multiple current or absentee property owners, all with a common interest in the property. Further complicating the issue is that a city or county may have issued a building permit or some other type of permit for development on the property, thereby resulting in the previous expenditures of money by the property owner(s).

3. Chapter 17.16. APPROVAL OF SUBDIVISION TENTATIVE PLANS AND MASTER DEVELOPMENT PLANS

* * *

17.16.030. Informational Requirements.

FINDING: The applicant did not make any recommended text changes to 17.16.030; however, The Board has determined that the inclusion of a title report or subdivision guarantee provides adequate evidence for a partition regarding ownership of property within an application. Therefore, an applicant should not need to provide a certified copy of a recorded instrument. The Board notes that this provision has been previously deleted from the application requirements for subdivision applications.

4. Chapter 17.22. APPROVAL OF TENTATIVE PLANS FOR PARTITIONS

17.22.010. Filing Procedures and Requirements.

FINDING: Applications received by CDD often do not include a reduced-scale copy of a partition or subdivision; thus the Staff has to make an additional request for the applicant to provide a reduced copy or Staff time may be expended in the creation a smaller copy to mail or to have available for interested parties during the review process. The Board has determined that 17.22.010(A) be amended to include the addition of a reference to a tentative plan instead of "documents", which may include other application material and specifying one (1) reduced scale drawing to permit ease in mailing a copy of the application tentative plan to interested parties.

The Board believes, however, that the proposed applicant text in (F) adds a reference "or the equivalent provision of this code" that may not be applicable because ORS 215.780 regulates only Farmland and Forestland Zones and the Deschutes County Code has created a unique Exclusive Farm zone minimum lot sizes. The Forest zones in Deschutes County duplicate state statutes.

The Board believes that the proposed applicant text in (H) should be changed to (I), therefore, the Board has added new item (H) that includes the language in ORS 92.176(6).

B. Title 22 - Deschutes County Development Procedures Ordinance

1. Chapter 22.08 General Provisions

22.08.005 Preapplication conference.

FINDING: The applicant conferred with appropriate staff of the County prior to making the text amendment application.

2. Chapter 22.12 Legislative Procedures

22.12.010 Hearing Required.

No legislative change shall be adopted without review by the Planning Commission and a public hearing before the Board

criteria set forth in ORS 215.755 (1)(a) to (e).

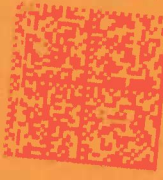
- (3) A county or city may approve an application for a permit, as defined in ORS 215.402 or 227.160, respectively, or a permit under the applicable state or local building code for the continued use of a dwelling or other building on a unit of land that was not lawfully established if:
 - (a) The dwelling or other building was lawfully established prior to January 1, 2007; and
 - (b) The permit does not change or intensify the use of the dwelling or other building.
- (4) An application to validate a unit of land under this section is an application for a permit, as defined in ORS 215.402 or 227.160. An application to a county under this section is not subject to the minimum lot or parcel sizes established by ORS 215.780.
- (5) A unit of land becomes a lawfully established parcel when the county or city validates the unit of land under this section if the owner of the unit of land causes a partition plat to be recorded within 90 days after the date the county or city validates the unit of land.
- (6) A county or city may not approve an application to validate a unit of land under this section if the unit of land was unlawfully created on or after January 1, 2007.
- (7) Development or improvement of a parcel created under subsection (5) of this section must comply with the applicable laws in effect when a complete application for the development or improvement is submitted as described in ORS 215.427 (3)(a) or 227.178 (3)(a). [2007 c.866 §2]

Note: 92.176 was added to and made a part of 92.010 to 92.190 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

ORS 92.177 Creation of parcel by less than all owners of lawfully established unit of land.

When a unit of land was sold before January 1, 2007, but was not a lawfully established unit of land, the governing body of the city or county or its designee shall consider and may approve an application for the creation of a parcel pursuant to ORS 92.176, notwithstanding that less than all of the owners of the existing lawfully established unit of land have applied for the approval. [1993 c.436 §2; 1995 c.595 §14; 2007 c.866 §6]

Note: 92.177 was added to and made a part of 92.010 to 92.190 by legislative action but was not added to any smaller series therein. See



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