



# Board Session Agenda Review Form

**October 25, 2023**

Meeting date:

Department:

Public Works

Title

Public hearing to consider an amendment to allow accessory dwelling units in the Acreage Residential zone

Agenda Planning Date:

October 12, 2023

Management Update/Work Session Date:

July 11, 1023

Audio/Visual aids

Time Required

10 min

Contact:

Brandon Reich

Phone:

x4175

Requested Action:

Consider approving an amendment to permit rural accessory dwelling units in the Acreage Residential zone and direct staff to return with an ordinance reflecting the board's decision.

Issue, Description & Background:

Recent legislative changes allow the county to permit accessory dwelling units (ADUs) in the Acreage Residential zone SB 644 (2023) without adopted wildfire maps. Staff brought a discussion about initiating amendments to management update on July 11, 2023 and the board initiated consideration of amendments on September 13, 2023. Before the board today is a hearing to consider amendment the Marion County rural code to permit rural accessory dwelling units in the Acreage Residential zone.

Financial Impacts:

None

Impacts to Department & External Agencies:

None

List of attachments:

Staff report

Presenter:

Brandon Reich

Department Head Signature:

County Commissioners  
Colm Willis, Chair  
Kevin Cameron  
Danielle Bethell



Chief Administrative  
Officer  
Jan Fritz

Director  
Brian Nicholas

Deputy Director  
Dennis Manfield

## MARION COUNTY PUBLIC WORKS

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### MEMORANDUM

DATE: September 25, 2023  
TO: Marion County Board of Commissioners  
FROM: Marion County Public Works – Brandon Reich, Planning Director  
SUBJECT: Public Hearing on an Amendment to the Marion County Rural Zone Code Chapter 17 to permit accessory dwelling units in the Acreage Residential zone.

### BACKGROUND

Recent legislative changes allow the county to permit accessory dwelling units (ADUs) in the Acreage Residential zone. SB 391 (2021) allowed a county to permit ADUs in a rural residential zone subject to certain criteria. One of the requirements of the bill was that statewide wildfire maps be created by the state and then adopted by the local jurisdiction. Those are still in the process of being created. SB 644 (2023) amended the statute to allow a county to permit ADUs in a rural residential zone before wildfire maps are created subject to certain criteria.

### COMMENTS

At the time this staff report was prepared, no comments were received.

### FACTS AND ANALYSIS

The proposed code amendment implements ORS 215.495 by adding accessory dwelling units to the Acreage Residential zone subject to certain standards for development.

### **Siting Standards**

The land upon which an accessory dwelling unit would be sited has to meet these requirements in statute:

- a. Be at least 2 acres in size.

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- b. Not be located within an urban reserve.
- c. Not be located within a designated area of critical state concern for water.
- d. Not be located in an area in which new or existing ground water uses have been restricted by the Water Resources Commission unless the accessory dwelling unit and associated lands and gardens will not be served by a well.

These standards better ensure that the land has the capacity, in size and water availability, to support the additional dwelling unit. These standards also ensure that the accessory dwelling unit will not be built on land planned for future urban development.

### **Development Standards**

Additionally, statute requires the accessory dwelling unit itself be constructed to meet certain standards:

- a. Have a living space of a maximum of 900 square feet.
- b. Be located within 100 feet of the primary dwelling.
- c. Have adequate setbacks from adjacent lands in resource use, which can be achieved by implementing the existing special siting setbacks in 17.128.050.
- d. Obtain all necessary building permits and meet the construction provisions of the Oregon Residential Specialty Code Wildfire Hazard Mitigation section.
- e. Obtain all necessary septic disposal permits.
- f. Meet local fire district standards for access, evacuation, and defensible space.
- g. Not be used for vacation occupancy as other than a primary residence for a person or persons and not be rented for periods of less than 45 days.
- h. Not be divided off from the primary dwelling on the property.

These standards ensure that the accessory dwelling unit remains accessory to the primary home with which it is associated. The standards also seek to ensure the accessory dwelling unit has adequate rural services, such as septic and access to a roadway network. The standards also seek to keep the unit safer from wildfire hazard by requiring it meet construction provisions in the Oregon Residential Specialty Code related to wildfire hazard mitigation, maintain special setbacks from surrounding land in resource use, and meet fire district standards for access and defensible space. Existing roadways are designed to provide access and egress to both homeowners and firefighting equipment. The applicant would work with their local fire districts

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when preparing site plans to ensure adequate access for the fire district equipment. The evacuation and staged evacuation areas that are required to be provided can be indicated on the site plan associated with the accessory dwelling unit by the property owner through consultation with the local fire district. County code would require the property owner to record a declaratory agreement demonstrating the intent to continuously comply with these standards.

The statute allows the county to require that an accessory dwelling unit be served by the same water source as the primary dwelling. The county may also restrict construction of garages and outbuildings that support the accessory dwelling unit. Staff is not recommending adopting these provisions into code. Because the state allows, but doesn't require, the county to permit rural ADUs, the county may also adopt other more restrictive standards than the minimums in statute.

## **Water Areas**

### Area of Critical State Concern

The statute prohibits accessory dwelling units located in a designated area of critical state concern for water. There are none of these areas designated in Marion County.

### Ground Water Uses Restricted Areas

The statute also prohibits accessory dwelling units in an area where new or existing ground water uses have been restricted by the Water Resources Commission, unless served by a water supply other than a well. There is one of these areas in Marion County southeast of Silverton (see attached maps). In this area, an accessory dwelling unit could be served by a water source other than a well, such as a water tank. However, this alternate source of water could be a significant cost to the dwelling; therefore, staff is recommending rural ADUs not be allowed in the ground water restricted area southeast of Silverton. If the board were to allow ADUs in this area, county code would require that the ADU be served by a source other than a well (**code amendments yellow highlights**).

### Ground Water Limited Areas

The statute does not restrict accessory dwelling units in groundwater limited areas. In Marion County, these areas are identified by the Marion County sensitive groundwater overlay zone. Staff is not recommending limiting the placement of accessory dwelling units in the Marion County sensitive groundwater overlay area for the following reasons:

- The unit is limited in size to 900 square feet, the size of which has the potential to limit any impact on water usage in the area.

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- The unit may share a well with the dwelling on the property, further limiting any impact on water used in the area by reducing the need to drill additional wells on a property.
- Installing a tank in association with the ADU can minimize the impact to the aquifer by minimizing the need for immediate draws from the aquifer when flows might otherwise be low (code amendments blue highlights).

### **RECOMMENDATION**

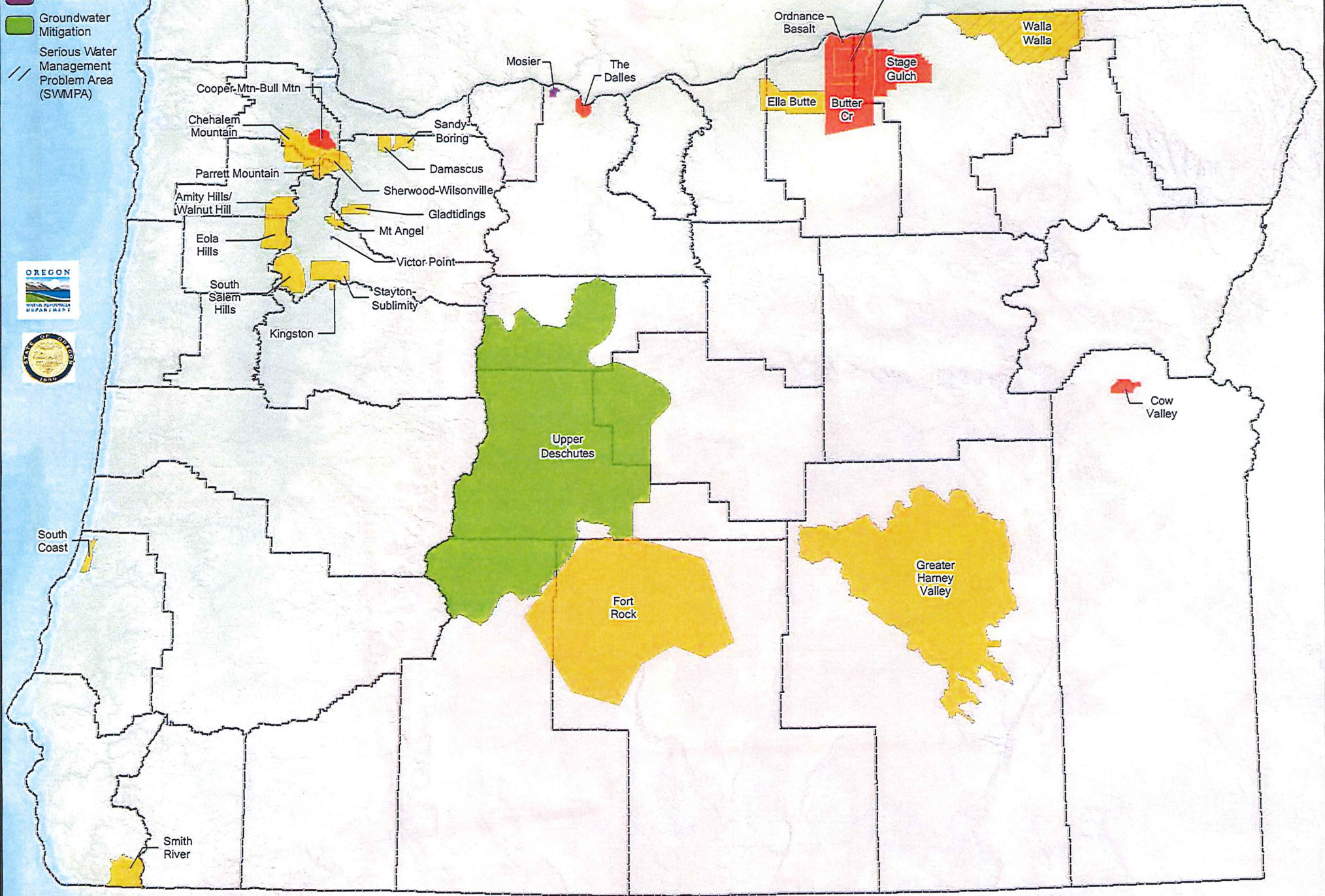
Staff recommends the board review the suggested amendments and direct staff how to prepare a final set of amendments for its consideration of adoption.

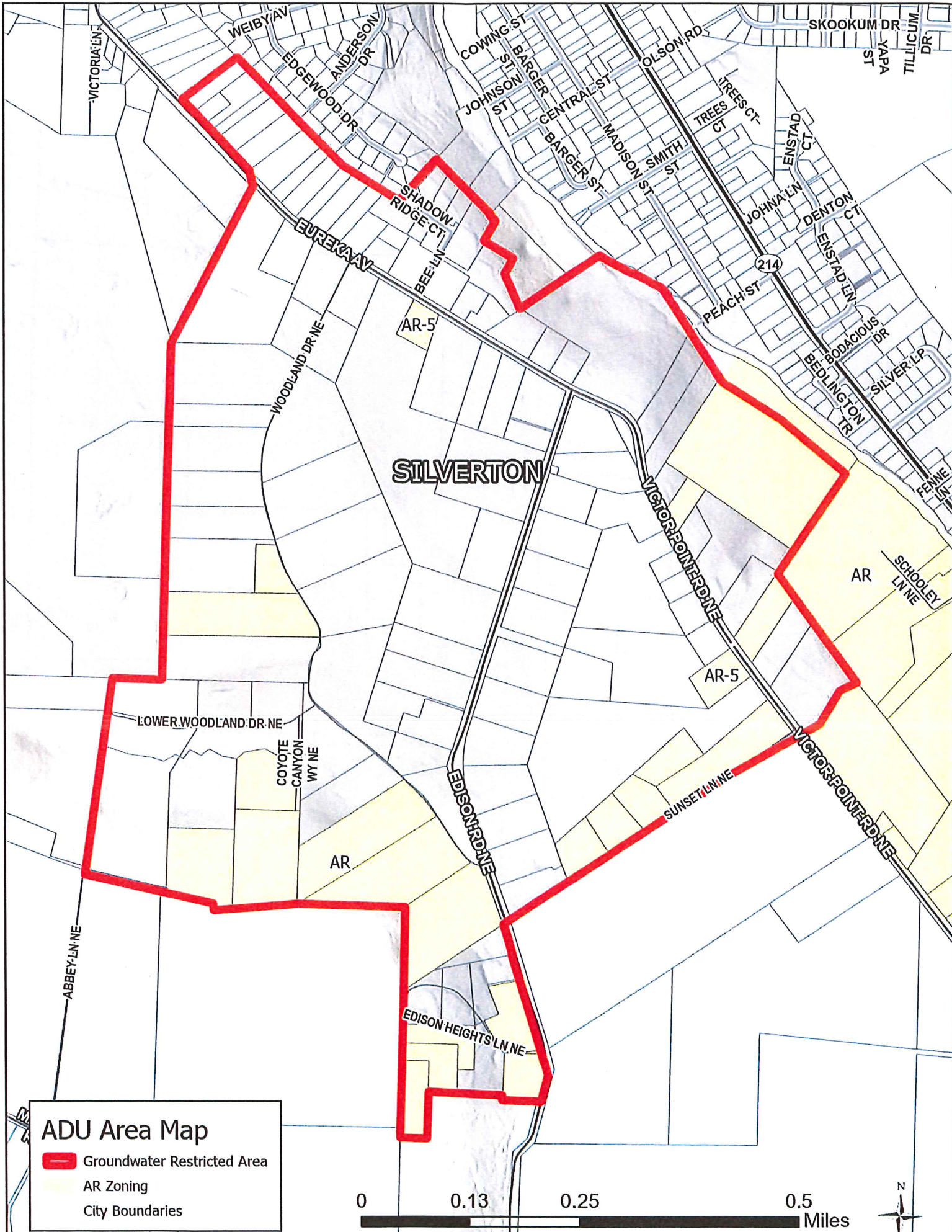
#### Attachments:

Groundwater Restricted Areas  
Victor Point Groundwater Critical Area  
Recommended Code Amendments  
Senate Bill 644 (2023)

# OREGON WATER RESOURCES DEPARTMENT GROUNDWATER RESTRICTED AREAS

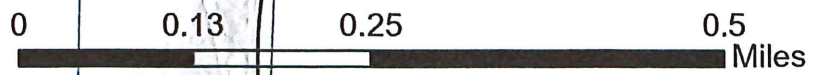
- Classified
- Critical
- Withdrawn
- Groundwater Mitigation
- Serious Water Management Problem Area (SWMPA)





### ADU Area Map

- Groundwater Restricted Area
- AR Zoning
- City Boundaries



**Chapter 17.128**

**AR (ACREAGE RESIDENTIAL) ZONE**

**17.128.020 Permitted uses.**

Within an AR (acreage residential) zone no building, structure or premises shall be used or arranged except for the following purposes:

- A. Single-family dwelling.
- B. Farm use, including the sale of produce that is raised on the premises, but not including a medical marijuana processor (see MCC 17.110.376), medical marijuana producer (see MCC 17.110.378), or a medical marijuana dispensary (see MCC 17.110.374).
- C. Planned developments.
- D. Playgrounds and parks operated by governmental agencies.
- E. Public and private utility facilities and public buildings such as fire stations, sheriff and police substations.
- F. Creation, restoration, or enhancement of wetlands as defined in ORS Chapter 197.
- G. Limited home occupations (see limited use, MCC 17.125.100).
- H. Wireless communication facilities, attached subject to MCC 17.125.110 and pursuant to MCC 17.115.110.
- I. Religious organizations and expansions of existing religious organizations where the religious organization or the expanded religious organization will be less than 20,000 square feet in total area.
- J. Replacement of a lawfully established dwelling, subject to the special siting standards in MCC 17.128.050(B), when the dwelling:
  - 1. Is a manufactured dwelling, mobile home, or manufactured home, the replaced dwelling shall be removed or demolished within 90 days of the occupancy of the replacement dwelling.
  - 2. Is a site-built dwelling, the replaced dwelling shall be removed, demolished or converted to an allowable nonresidential use within 90 days of the occupancy of the replacement dwelling.
  - 3. A dwelling constructed between 1850 and 1945 on a parcel at least two acres in size outside of any area designated as an urban reserve may remain on the parcel as an accessory dwelling unit if replaced by a new single-family dwelling on the parcel subject to the following conditions:



- a. The property owner shall obtain all required permits from Marion County building inspection to convert the existing residence to an accessory dwelling unit upon completion of the new single-family dwelling, including permits for sanitation and wastewater disposal and treatment.
- b. The land containing the accessory dwelling cannot be divided from the land containing the new single-family dwelling.
- c. The accessory dwelling unit cannot be renovated or remodeled 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.
- d. The accessory dwelling cannot be rebuilt if the structure is lost to fire.
- e. The property owner shall record a declaratory statement acknowledging compliance with the conditions in subsections (J)(3)(b), (c) and (d) of this section.

**K. One accessory dwelling unit on a lot or parcel with an existing single-family dwelling subject to the following:**

**1. The property where the accessory dwelling unit will be located shall:**

- a. Be at least 2 acres in size.**
- b. Not be located within an urban reserve.**
- c. Not be located within a designated area of critical state concern for water.**
- d. Not be located in an area in which new or existing ground water uses have been restricted by the Water Resources Commission unless the accessory dwelling until and associated lands and gardens will not be served by a well.**

**2. The accessory dwelling unit shall:**

- a. Have living space of a maximum of 900 square feet.**
- b. Be located within 100 feet of the primary dwelling.**
- c. Meet the special siting setbacks in 17.128.050.**
- d. Obtain all necessary building permits and meet the construction provisions of the Oregon Residential Specialty Code Wildfire Hazard Mitigation section.**
- e. Obtain all necessary septic disposal permits.**
- f. Meet local fire district standards for access, evacuation, and defensible space. The property owner shall indicate an evacuation and staged evacuation areas on the site plan for the accessory dwelling unit.**

**g. Not be used for vacation occupancy as other than a primary residence for a person or persons and shall not be rented for periods of less than 45 days.**

**h. Not be divided off from the primary dwelling on the property.**

**i. If located on a property in the Marion County Sensitive Ground Overlay, the ADUs shall be connected to a 1000 gallon water storage tank for use in conjunction with the well.**

**j. If located in an area in which new or existing ground water uses have been restricted by the Water Resources Commission, the ADU shall not be served by a well. The property owner is responsible to obtain water from a source or sources other than a well.**

**k. The property owner shall record a declaratory agreement demonstrating the intent to continuously comply with the standards in this subsection.**

**17.128.050 Special siting standards for dwellings near resource zones.**

A. Any new dwelling in an AR zone shall be required to maintain a special setback from any parcel in the EFU, SA, FT, or TC zones. A 100-foot setback is the standard adjacent to farm use and 200 feet is the standard adjacent to forest uses. These setbacks may be reduced if it is determined, concurrently with any land use application or as provided in Chapter 17.116 MCC, that a lesser setback will meet the following review criteria for alternative home sites:

1. The location of the home site will have the least impact on nearby or adjoining forest or agricultural lands.
2. The location of the home site ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized.
3. The amount of agricultural and forestlands used to site access roads, service corridors, the dwelling and structures is minimized.
4. The risks associated with wildfire are minimized.

B. The owner of a proposed dwelling to be located within 500 feet of the EFU, SA, FT, or TC zones shall be required to concur in the filing of the declaratory statement prescribed in the respective resource zone.

C. The owner of a proposed dwelling located on a parcel adjacent to the FT or TC zone shall, as a condition of approval, be required to provide for fire hazard management in accordance with Chapter 3 of "Fire Safety Considerations for Developments in Forested Areas, 1978" and any revisions thereto.

D. The special setback in subsection (A) of this section shall not be applied in a manner that prohibits dwellings approved pursuant to ORS 195.300 through 195.336 nor should the special setback in subsection (A) of this section prohibit a claimant's application for homesites under

ORS 195.300 through 195.336. [Ord. 1313 § 4 (Exh. A), 2011; Ord. 1271 § 5, 2008; Ord. 1227 § 4, 2006; Ord. 1168 § 5, 2002; Ord. 1125 § 7, 2000. RZ Ord. § 128.050.]

**Enrolled**  
**Senate Bill 644**

Sponsored by Senators KNOPP, FINDLEY; Senators DEMBROW, HAYDEN, SMITH DB, Representative HIEB (Presession filed.)

CHAPTER .....

AN ACT

Relating to accessory dwelling units on lands zoned for rural residential use; amending ORS 215.495; and declaring an emergency.

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

**SECTION 1.** ORS 215.495, as amended by section 5, chapter 85, Oregon Laws 2022, 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 usable 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 any applicable minimum defensible space requirements for wildfire risk reduction es-

tablished 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]* **The accessory dwelling unit complies with the construction provisions of section R327 of the Oregon Residential Specialty Code, if:**

**(A) The lot or parcel is in an area identified as extreme or high wildfire risk on the statewide map of wildfire risk described in ORS 477.490; or**

**(B) No statewide map of wildfire risk has been adopted; 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 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 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 2. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage.**

Passed by Senate March 28, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House April 26, 2023

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Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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Shemia Fagan, Secretary of State