

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: October 11, 2023 **Approx. Start Time:** 11:00 AM **Approx. Length:** 30 min.

Presentation Title: ZDO-285, *Minor and Time Sensitive Comprehensive Plan and Zoning and Development Ordinance (ZDO) Amendments:* Optional Housing Components (Rural Accessory Dwelling Units and RVs as Second Dwellings)

Department: Transportation and Development

Presenters: Dan Johnson, DTD Director; Martha Fritzie, Principal Planner; and Jennifer Hughes, Planning Director

Other Invitees: Karen Buehrig, Long Range Planning Manager; Cheryl Bell, DTD Assistant Director – Development

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Board direction on including the following two items in the forthcoming package of proposed amendments to the county's Zoning & Development Ordinance (ZDO) under file ZDO-285, *Minor and Time Sensitive Comprehensive Plan and Zoning and Development Ordinance (ZDO) Amendments:*

- Rural accessory dwelling units (ADUs); and
- RVs as Second Dwellings

EXECUTIVE SUMMARY:

The Board of County Commissioners (Board) recently approved the 2023-2025 Long-Range Planning Work Program. One of the projects the Board identified as a priority is *Minor and Time-Sensitive Comprehensive Plan and ZDO Amendments*, a project intended to be completed annually and focus on relatively minor changes to the County's Comprehensive Plan and Zoning and Development Ordinance (ZDO) to comply with any new state and federal mandates, clarify existing language, correct errors, or adopt optional provisions that require only minimal analysis.

The 2023-2024 *Minor and Time Sensitive Amendments* package (ZDO-285) will be a narrowly-focused package of amendments that primarily responds to certain land use items approved in the 2021, 2022 and 2023 Oregon legislative sessions and recent state rulemaking, including consideration of the following:

1. Accessory dwelling units (ADUs) in rural residential zones (optional).
2. Recreational vehicles (RVs) for residential use as second dwellings (optional).
3. Parking components of state's Climate Friendly and Equitable Communities rules (mandatory).
4. Changes to standards for replacement dwellings in Agriculture and Forest zones (mandatory).
5. Other minor housing-related amendments, generally inside the Metro urban growth boundary, which may include emergency shelters; affordable housing bonuses; affordable housing in commercial zones; prefabricated structures as dwellings and single-room occupancy allowances (mandatory).

Today's policy session will focus only on items #1 and #2 – ADUs in rural residential areas and RVs as second dwellings. CFEC parking issues (item #3) will be discussed with the Board at a policy session on October 25, 2023.

1. ADUs in Rural Residential Areas

Currently, in Clackamas County, accessory dwelling units (ADUs) are only allowed on properties located *inside* of an urban growth boundary (UGB) or *inside* certain unincorporated communities. This is because, until recent legislation, state law did not allow the county to permit ADUs outside of a UGB or unincorporated community.

In 2021, Senate Bill 391 included language that enabled counties to allow ADUs on rural residential lands outside a UGB, but only after the completion of the state's wildfire hazard map, which, to date, has not been adopted. SB 644 (2023) amended the earlier legislation so that counties can proceed with allowing ADUs in rural residential areas prior to the wildfire map adoption.

Per this legislation, counties may allow one ADU in "areas zoned for rural residential use," provided the site is *outside* of a UGB and *outside* of an urban reserve (see Attachment 1 for map of potentially affected area).

This legislation is not a mandate; the county may, but is not *required* to, allow ADUs on some rural residential lands. But if ADUs are allowed in rural residential areas they must, at a minimum, comply with certain standards identified in the state law, including:

- The lot must be two (2) acres or greater
- There is one single-family dwelling (includes manufactured dwellings) sited on the lot
- The lot must not be subject to order declaring it as a nuisance property or subject to pending action related to nuisance property
- The lot or parcel must be served by a fire protection service provider
- The ADU must comply with all applicable state laws relating to water supply, sanitation and wastewater disposal
- The living area of the ADU is limited to 900 square feet
- The ADU must be located within 100 feet of the single-family dwelling
- The ADU cannot be used as a short-term rental
- The lot cannot be subdivided to separate the primary dwelling and ADU
- An ADU is not allowed in groundwater restricted areas where domestic wells & ½-acre of lawn or garden have been restricted (see ORS 537.545(1)(b)&(d)). Staff does not believe any of these areas exist in Clackamas County.

In addition, until the statewide map of wildfire risk has been adopted, all rural ADUs must comply with the construction provisions of section R327 of the Oregon Residential Specialty Code –wildfire hazard mitigation standards in the building code. Once the statewide map of wildfire risk has been adopted, this requirement will only apply to properties within "high" and "extreme" designations.

The county may impose additional restrictions, including on construction of garages and outbuildings that support the ADU. The county has the option to be more restrictive than state law on the standards listed above, but may not be more permissive.

Considerations

Planning staff frequently hears from customers who would like to develop a rural ADU; however, consideration of both the advantages and disadvantages of allowing ADUs in rural residential areas is important.

On the one hand, a rural ADU could allow a property owner to help a family member by providing a small dwelling for someone looking to downsize, saving to buy their own home, or who cannot find an affordable alternative elsewhere. It can also provide a property owner with rental income, while

providing a household a potentially more affordable rental home, because it will be a relatively small dwelling.

On the other hand, staff frequently hears concerns from residents in rural areas about increasing density and the potential negative effects on neighborhoods, rural infrastructure, and loss of natural resources and habitat. Rural ADUs would not have access to public sewer and would need to be connected to an existing or new septic system; in some cases, they would not have access to public water and would need to rely on a well.

Given the housing crisis in our area, increasing supply is paramount. While it makes sense for most of the new supply to be in urban areas where infrastructure is more developed and access to employment, services and transportation options is better, reasonable increases in rural housing can be part of the solution. Staff supports allowing for and regulating rural ADUs with only the state-mandated standards; the development of additional local standards increases the complexity of both the code amendment project and ongoing administration of the new rules, increasing demand on limited available staff resources.

Discussion Questions

1. Should staff include amendments to allow ADUs in rural residential areas in the ZDO-285 proposed amendments package?
2. Should the county consider additional standards that are more restrictive than the state-mandated requirements?

2. RVs as Second Dwellings on Private Property

Currently, in Clackamas County, siting an RV as a residence is prohibited except in limited circumstances, such as temporary dwellings for care or while building a permanent dwelling.

SB 1013(2023) creates the potential to allow certain property owners to place an RV on their property and use it as a second dwelling. This legislation is not a mandate; the county may, but is not *required* to, allow for RVs as second dwellings.

The bill specifies that a county may allow property owners in a “rural area” to site one RV for residential purposes. Interestingly, the legislation defines “rural area” as *an area zoned for rural residential use as defined in ORS 215.501 or land that is within the urban growth boundary of a metropolitan service district, but not within the jurisdiction of any city, and zoned for residential use*. This means that in unincorporated Clackamas County, this legislation applies to urban *and* rural residential zones (i.e. both inside and outside the Metro UGB), but not to properties within the Barlow, Canby, Estacada, Molalla or Sandy UGB or an urban reserve (see Attachment 2 for map of potentially affected areas).

The bill further specifies that:

- The allowance is subject to a residential rental agreement
- The RV is not subject to state building code
- The single-family dwelling on the property must be occupied as the property owner’s primary residence
- There cannot be any other dwelling units on the property and no portion of the single-family dwelling can be rented for residential tenancy
- The property owner must provide utility hookups to the RV space
- The RV may not be used for vacation occupancy

In addition, a county *may* require property owner to:

- Register with the county
- Enter into a written rental agreement with tenant

- Limit amount of payments that the property owner can accept from tenant to those reasonably necessary to cover the owner’s costs or losses
- Require that the recreational vehicle comply with any reasonable appearance, repair, inspection or siting standards adopted by the county.

As with rural ADUs, the county has the option to be more restrictive than state law on the standards that apply to RVs as second dwellings but may not be more permissive. This means that the Board may consider whether this use would be appropriate in all urban and rural areas (as identified on the map) and if there are certain standards that may be appropriate to require, such as minimum lot size or property line setbacks for the RV.

Considerations

The optional items standards in the bill include items that are outside of zoning regulations and Planning’s purview. Implementing rules that directly relate to landlord-tenant laws may require the county to set up a new program, and Planning staff is unsure how limiting tenant payments could be enforced. Likewise, the county is not staffed to provide inspection services for RVs.

Another important consideration is whether there are reasons that this use may be more or less appropriate in urban locations, with smaller lots but with access to public utilities and other services, or in rural locations, with larger lots but more limited infrastructure.

And as with rural ADUs, allowing RVs as second dwellings has potential advantages and disadvantages. For example, this allowance provides an opportunity for a property owner to provide a safe living situation for a household that cannot find another type of housing they can afford. On the other hand, there may be public concern about (1) allowing more residential “density” and (2) the sited RVs being in disrepair.

Again, there is an urgent need to increase housing supply. RVs may provide a more affordable option for households otherwise at risk of being unsheltered or those requiring a supportive living environment near family/friends. Staff supports allowing for and regulating RVs as second dwellings with only the state-mandated standards; the development of additional local standards increases the complexity of both the code amendment project and ongoing administration of the new rules, increasing demand on limited available staff resources. In addition, some of the optional standards would require new County programs for which there is no identified staffing or funding.

Discussion Questions

3. Should staff include amendments to allow RVs as second dwellings in the ZDO-285 proposed amendments package?
4. Should this consideration be limited to only include certain geographic areas or zoning districts (i.e. only *inside* a UGB, only *outside* a UGB, only in certain residential zones)
5. Does the Board want to include the optional provisions noted above (registration, rental agreement, etc.), understanding that implementation of some of these standards will require the development and staffing of a new program?

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget? YES NO

What is the cost? Existing staff time for amendments to the ZDO and preliminary research on the programs unrelated to land use/zoning.

What is the funding source? Staff time is funded through existing budgeted General Fund allocation for the Long-Range Planning program.

STRATEGIC PLAN ALIGNMENT:

1. How does this item align with your Department's Strategic Business Plan goals?

The project aligns with the Long-Range Planning program's purpose of providing land use and transportation plan development, analysis, coordination and public engagement services to residents; businesses; local, regional and state partners; and County decision-makers so they can plan and invest based on a coordinated set of goals and policies that guide future development.

2. How does this item align with the County's Performance Clackamas goals?

The project aligns with the goal to "ensure safe, healthy, and secure communities".

LEGAL/POLICY REQUIREMENTS:

The County is not required to adopt zoning allowances for rural ADUs or RVs as second dwellings; however, if these allowances are adopted, they are subject to certain state-mandated standards discussed above.

PUBLIC/GOVERNMENTAL PARTICIPATION:

A *Minor and Time Sensitive Amendments* package does not include extensive public outreach; however, given the likely interest in the new housing options, something such as a virtual open house may be appropriate.

Public notice will be provided as required by law for any proposed amendments to the Comprehensive Plan or the ZDO that come before the Planning Commission or Board for consideration at public hearings.

OPTIONS:

1. Direct Staff to develop Comprehensive Plan and ZDO amendments to implement *both* the allowance for ADUs in rural residential areas *and* RVs as second dwellings and include in the forthcoming proposed amendments package under ZDO-285
 - a. Subject to only the minimum standards required by state law; or
 - b. Subject to the minimum standards required by state law and additional standards identified by the Board
2. Direct Staff to develop Comprehensive Plan and ZDO amendments to implement *only* the allowance for ADUs in rural residential areas and include in the forthcoming proposed amendments package under ZDO-285
 - a. Subject to only the minimum standards required by state law; or
 - b. Subject to the minimum standards required by state law and additional standards identified by the Board
3. Direct Staff to develop Comprehensive Plan and ZDO amendments to implement *only* the allowance for RVs as second dwellings
 - a. Subject to only the minimum standards required by state law; or
 - b. Subject to the minimum standards required by state law and additional standards identified by the Board
4. Direct Staff *not* to develop Comprehensive Plan and ZDO amendments to implement the allowances for ADUs in rural residential areas and RVs as second dwellings.

RECOMMENDATION:

Staff respectfully recommends Option 1a - Direct Staff to develop Comprehensive Plan and ZDO amendments to implement *both* the allowance for ADUs in rural residential areas *and* RVs as second dwellings and include in the forthcoming proposed amendments package under ZDO-285, subject to only the minimum standards required by state law.

ATTACHMENTS:

1. Map 1: Rural Residential Areas Where the County Could Allow Accessory Dwelling Units (ADUs)
2. Map: Urban and Rural Residential Areas Where the County Could Allow RVs as Second Dwellings

SUBMITTED BY:

Division Director/Head Approval _____

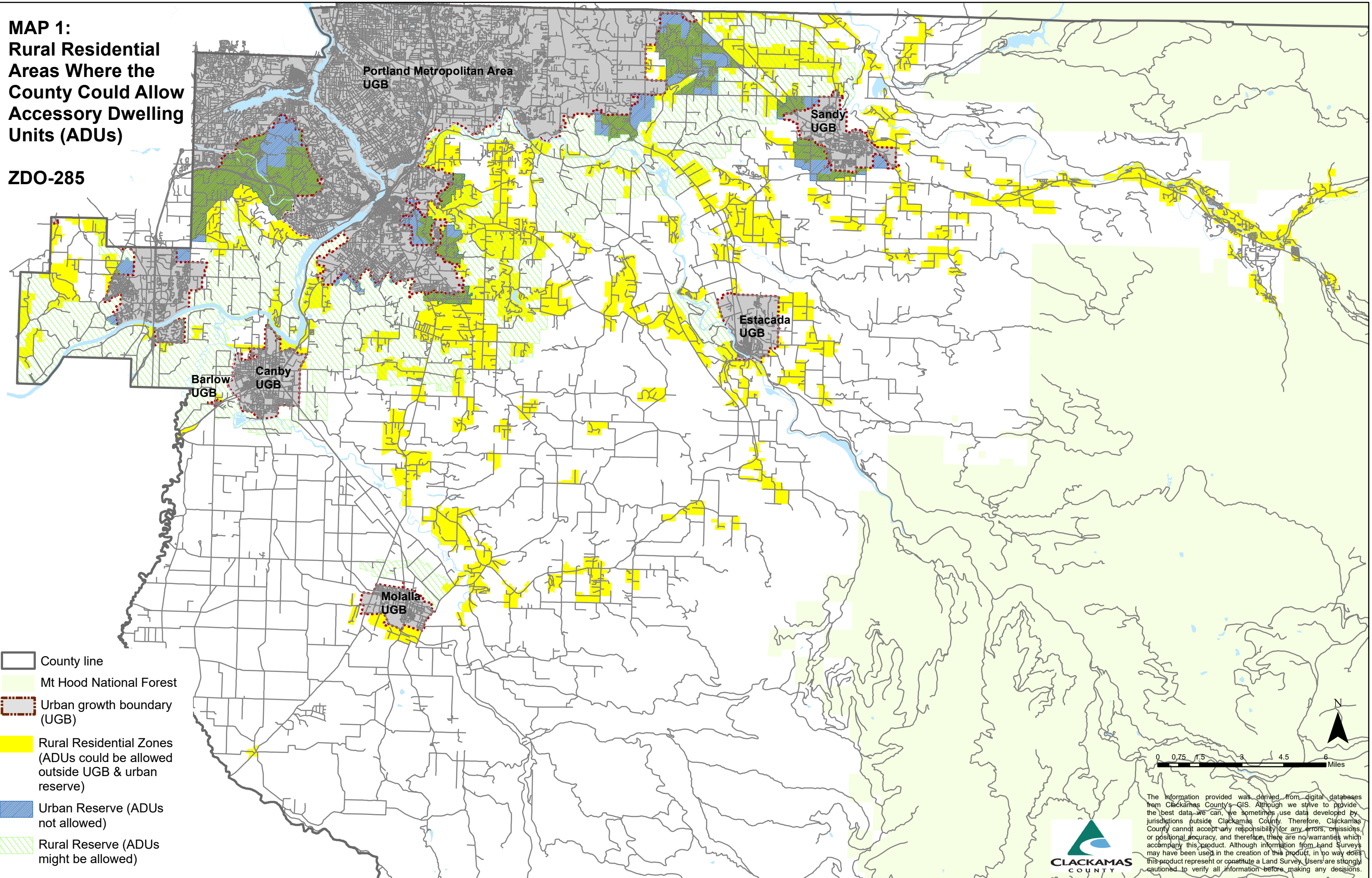
Department Director/Head Approval *Dan Johnson*







County Administrator Approval _____

For information on this issue or copies of attachments, please contact Martha Fritzie @ 503-742-4529 or mfritzie@clackamas.us

**MAP 1:
Rural Residential
Areas Where the
County Could Allow
Accessory Dwelling
Units (ADUs)**

ZDO-285



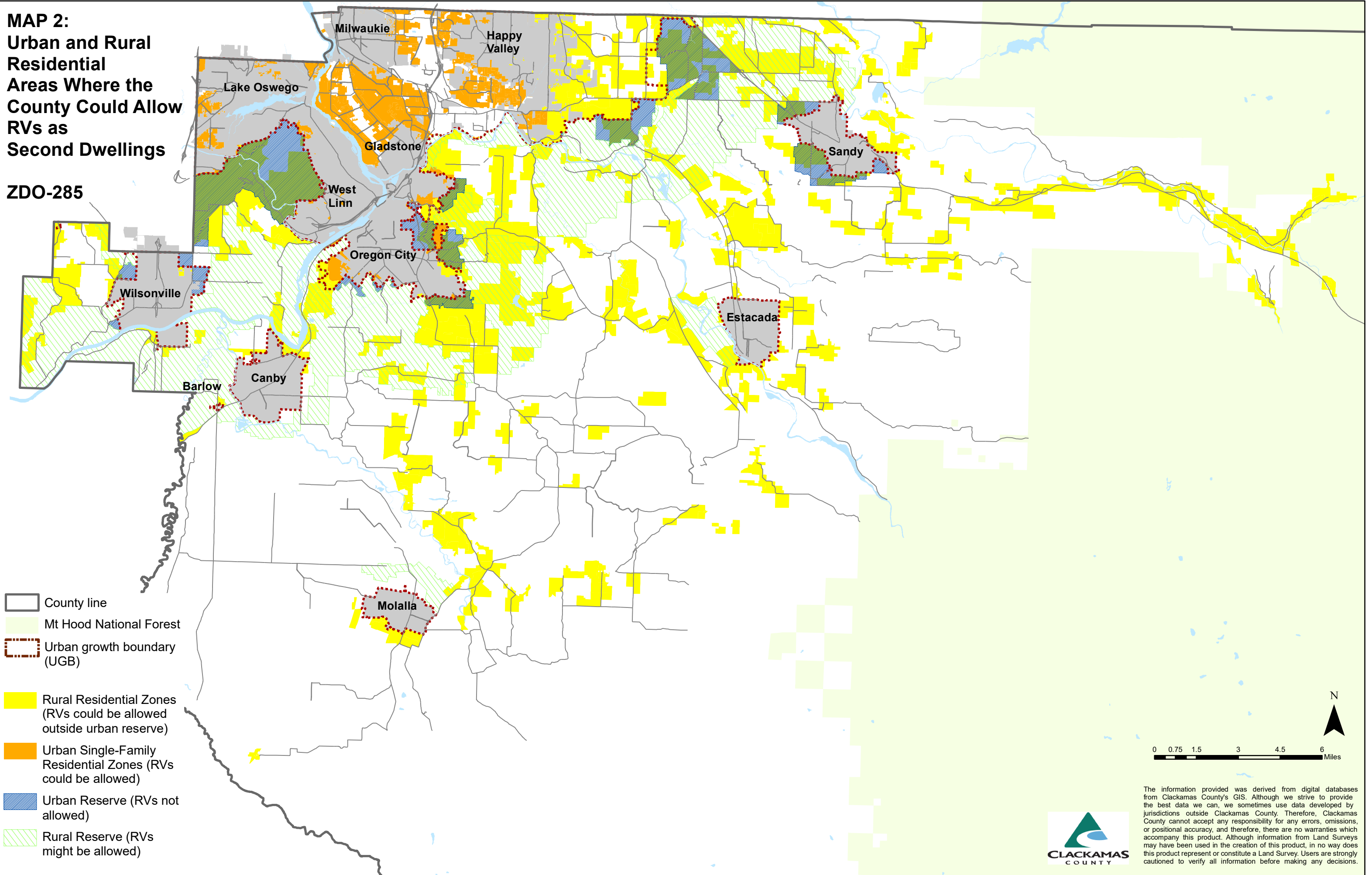
-  County line
-  Mt Hood National Forest
-  Urban growth boundary (UGB)
-  Rural Residential Zones (ADUs could be allowed outside UGB & urban reserve)
-  Urban Reserve (ADUs not allowed)
-  Rural Reserve (ADUs might be allowed)










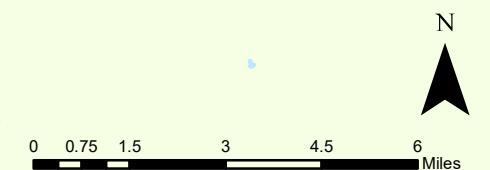
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**MAP 2:
Urban and Rural
Residential
Areas Where the
County Could Allow
RVs as
Second Dwellings**

ZDO-285



-  County line
-  Mt Hood National Forest
-  Urban growth boundary (UGB)
-  Rural Residential Zones (RVs could be allowed outside urban reserve)
-  Urban Single-Family Residential Zones (RVs could be allowed)
-  Urban Reserve (RVs not allowed)
-  Rural Reserve (RVs might be allowed)



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