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## STAFF REPORT TO THE PLANNING COMMISSION

TO: Clackamas County Planning Commission

FROM: Martha Fritzie, Principal Planner ([mfritzie@clackamas.us](mailto:mfritzie@clackamas.us))

DATE: April 15, 2024

RE: Planning File ZDO-285, **Minor and Time Sensitive Amendments and New Housing Options**: Responding to changes made by the State Legislature and other agencies

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### BACKGROUND

*Minor and Time-Sensitive Comprehensive Plan and ZDO Amendments* is a Planning project that is intended to be completed annually and focuses on changes, some of which are relatively minor, 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. This year, however, this amendment package is also proposed as a vehicle for the adoption of new land use allowances in state law.

The 2023-2024 *Minor and Time Sensitive Amendments and New Housing Options* package, **Ordinance ZDO-285**, is a narrowly-focused package of amendments that primarily responds to certain land use legislation approved in the 2021, 2022 and 2023 Oregon legislative sessions and recent state rulemaking.

The proposed changes are grouped in the following five categories.

1. Accessory dwelling units (ADUs) in rural residential zones (optional).
2. Recreational vehicles (RVs) for residential use as second dwellings (optional).
3. Changes to standards for replacement dwellings in Agriculture and Forest zones (mandatory).
4. Housing-related amendments, including additional allowances for affordable housing; prefabricated structures; and single-room occupancies (mandatory).
5. Minor, non-substantive changes to the Comprehensive Plan and ZDO for clarity and to correct errors.

The five items are discussed in more detail in the "Proposal" section below. The optional items – rural accessory dwelling units (ADUs) and recreational vehicles (RVs) as second dwellings – were the subject of a policy session with the Board of County Commissioners (Board) on October 11, 2023, at which time the Board directed staff to develop the amendments to

implement these items and bring them forward for public input and consideration at hearings. On February 20, 2024, staff held a work session with the Planning Commission to discuss rural ADUs and RVs as second dwellings, in anticipation of the forthcoming public hearings.

Before a decision will be made on the proposed amendments in ZDO-285, there will be at least two public hearings on this proposal: one before the Planning Commission (PC) on Monday, April 22, 2024, and another before the Board on Wednesday, May 8, 2024. The PC provides a recommendation to the Board, who would ultimately decide whether the proposal is adopted.

## **PROPOSAL**

ZDO-285 proposes text amendments to Comprehensive Plan Chapter 4, *Land Use* and to 21 separate sections of the ZDO<sup>1</sup>. The amendments are included in **Attachment A**.

The proposed amendments would accomplish **five actions**. Following is a list of these actions, as well as brief explanations of the context behind each action and how the action would be accomplished with the proposed amendments.

### **1. Allow accessory dwelling units (ADUs) in certain 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 (SB) 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.

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

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<sup>1</sup> Each ZDO section proposed for amendment is listed in the "List of Attachments" section, found on page 18 of this report.

- The lot cannot be subdivided to separate the primary dwelling and ADU
- The ADU is subject to certain wildfire siting and construction standards, including defensible space and fire-related construction provisions in the state building code.

The county has the option to be more restrictive than state law on the standards listed above, but may not be more permissive.

Ordinance ZDO-285 includes the amendments to allow for this use and, with the exception of specifying property line setbacks for the ADU, apply only the minimum standards required under the state law.

## **2. Allow recreational vehicles (RVs) to be used as second dwellings in certain urban and rural residential areas.**

Currently, in Clackamas County, siting and using a recreational vehicle (RV) as a residence is prohibited except in limited circumstances, such as temporary dwellings for care or while building a permanent dwelling or within an RV park.

SB 1013(2023) created 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. In this case, the legislation defines “rural area” to include unincorporated (outside cities) residential lands both outside and inside the Portland Metropolitan urban growth boundary (UGB). This means that in unincorporated Clackamas County, this legislation applies to certain 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.

The bill further specified 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 “essential services”, including utility hookups to the RV space
- The RV may not be used for vacation occupancy (short-term rental)

The county has the option to apply certain additional provisions and may be more restrictive than state law on the required standards, but may not be more permissive.

Ordinance ZDO-285 includes the amendments to allow for this use, and proposes including standards for the following, in addition to the minimum standards required under the state law.

- The RV would be subject to the same setbacks from property lines that apply to the primary dwelling;

- The RV would need to be sited at least 10 feet from the primary dwelling, but no farther than 100 feet from that dwelling.
- An RV as a second dwelling would be prohibited in regulated flood hazard areas.

### 3. Amend standards for replacement dwellings in Agriculture and Forest zones.

The alteration, restoration, and replacement of lawfully-established dwellings in Agriculture and Forest zones (EFU, AG/F, and TBR) is governed by state statutes and administrative rules. Prior to January 2, 2024, the effective date of HB 2192(2023), the rules for alteration, restoration, and replacement of dwellings were different in the Agriculture zones than in the Forest zones.

- In Forest zones, statutes allowed for the alteration, restoration or replacement of a lawfully established dwelling only if that building met specific structural requirements for a habitable dwelling at the time of the proposed replacement.
- In Agriculture zones, temporary provisions were in effect that allowed for alteration, restoration, and replacement of dwellings that formerly met the habitability requirements as far back as 1973.

HB 2192 (2023) aligned statutory requirements for the alteration, restoration, and replacement of dwellings in Agriculture and Forest zones. The provisions in this bill are already in effect and generally include the following.

- Retains the prior requirements for specific structural requirements for a habitable dwelling (intact exterior walls and roof, indoor plumbing with a sink, toilet, and bathing facilities connected to sanitary waste system, interior wiring for lights, and heating system).
- Allows lawfully established dwellings to be altered, restored, or replaced that have or “formerly had” – within the previous three years - the above structural requirements, if the dwelling to be replaced was assessed as a dwelling for the purposes of ad valorem taxation:
  - In the five years before permit application if the value of the dwelling has not been eliminated from such taxation because of destruction or demolition.
  - In the five years before the date of the destruction or demolition if the dwelling has been eliminated from such taxation as a result of destruction or demolition.
  - From the date the dwelling was established and became subject to taxation if the dwelling post-dates the beginning of the applicable five-year period.
- Includes certain siting standards and requires that construction must commence no later than four years after approval of the replacement application.
- Requires replacement dwellings comply with fire-related construction provisions in the state building code.

Ordinance ZDO-285 would include all the required provisions for alteration, restoration, and replacement of lawfully-established dwellings in Agriculture and Forest zones in the ZDO, so that the county would no longer be administering these provisions directly from state law.

4. **Make other housing-related amendments related to affordable housing, prefabricated structures, and single-room occupancy allowances.**

The Oregon Legislature passed several bills that included requirements that the county all for certain dwelling types and for affordable housing in certain areas. ZDO-285 includes amendments to include these mandatory items in the county's ZDO, including:

- Adding a definition for single room occupancies and allowing this type of housing in urban residential zones and rural residential zones inside a UGB.
- Adding a definition for prefabricated structures and allowing this type of dwelling consistent with allowances for manufactured dwellings.
- Allowing for the development of affordable housing, as defined in ORS 197A.445(1), on certain urban residential, commercial, and industrial properties, including:
  - Property owned by a public body, a housing authority, or certain types of non-profit organizations; or
  - Property zoned to allow religious assembly or commercial uses.
- Amending the affordable housing bonus density standards to include an additional option, as outlined in the state law.

5. **Make minor/non-substantive changes to the Comprehensive Plan and ZDO that:**

- Remove a reference to a zoning district that has been repealed;
- Clarify setback exemptions for middle housing land divisions;
- Remove a combined platting allowance for middle housing land divisions that may not be supported by state law;
- Add references to the new housing types allowed by state law to Chapter 4 of the Comprehensive Plan;
- Revise Comprehensive Plan policies that conflict with new requirements to allow affordable housing in certain areas; and
- Correct citations and typographical errors.

**PUBLIC NOTICE & COMMENTS**

Notice of the proposed amendments in ZDO-285 was sent to:

- All cities within the County;
- All County Community Planning Organizations (CPOs) and Hamlets;
- Oregon Department of Land Conservation & Development (DLCD), Metro, Oregon Department of Transportation (ODOT), and other interested agencies; and
- An interested parties list, specific to this planning project.

Notice was also published in the newspaper and online and was the subject of a countywide press release. To date, Planning and Zoning has received only four written comments (see **Attachment B**, Exhibits 3 through 6), from:

- (1) an individual, expressing support for rural ADUs;

- (2) the City of Molalla, stating that City Council is neutral on proposal, but did express concern about RVs as second dwellings in areas that might be brought into the city's urban growth boundary and whether they would adversely affect urbanization;
- (3) the Redland CPO, noting that most members are concerned about proposal, specifically the RV option; and
- (4) the Hamlet of Beavercreek, which is opposed to RV option, but not "as concerned" about rural ADUs. The Hamlet's letter notes concerns about the capacity of public facilities and infrastructure, like the transportation system, to support more population growth in area and also about enforcement.

The public was given two the other opportunities to learn about and respond to the optional parts of the proposal (rural ADUs and RVs) through:

1. A virtual question & answer (Q&A) "listening session" held by staff on April 2, 2024. The online Q&A session had 20 attendees, many of whom had questions for staff. Attendees who spoke also identified concerns related to enforcement, particularly the observation that there currently people living illegally in RVs and other unpermitted structures in the rural area, and about potential impacts of these uses related to the effect on the rural character, wildfire risks, traffic congestion, and other issues.
2. An online survey, available from March 18 through April 10, 2024. The online survey generated 631 responses (see **Attachment B**, Exhibit 2). These responses were generally supportive of rural ADUs, but were much more mixed about the RV option:
  - Approximately 71% of the respondents supported rural ADUs in all rural residential areas, while 21% were opposed.
  - Approximately 41% of the respondents support RVs as second dwellings in all locations whether they can be allowed, while 34% were opposed. An additional 12% supported this use only in the rural area and 4% supported it in only the urban area.

Survey respondents could provide written comments at various points in the survey and a large number of comments were provided. These comments are included in Exhibit 2 and include a very wide variety of thoughts and concerns about the options.

- Positive comments generally noted that these options could provide an opportunity for a property owner to allow family members or friends in need to live on the same property as them.
- Many respondent thought ADUs should actually be allowed more broadly in the rural area – on smaller lots than two acres and in agricultural zones (neither of which the state law allows at this time).
- Concerns noted included many of the same as those identified by attendees of the Q&A session, including enforcement, rural character, habitability of RVs, and concern about these units becoming short-term rentals.

## **ANALYSIS & FINDINGS**

The proposed Comprehensive Plan and ZDO text amendments are legislative in nature and are subject to the relevant Statewide Planning Goals, Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OARs), the Metro Urban Growth Management Functional Plan (UGMFP), County Comprehensive Plan policies, and procedural standards identified in the county's Zoning & Development Ordinance (ZDO). Compliance with the relevant portions of each is discussed in

subsections 1 through 4, below.

## 1. Statewide Planning Goals:

This section of the report includes findings on ZDO-285's consistency with Statewide Planning Goals. The analysis and findings are focused on the optional changes proposed in **Actions 1 through 2**. Proposed actions to conform to state laws, or to codify or clarify existing rules or definitions, do not warrant findings for consistency with Statewide Planning Goals.

### **Goal 1 – Citizen Involvement:**

Goal 1 calls for “the opportunity for citizens to be involved in all phases of the planning process” and requires the County to have a citizen involvement program with certain features.

ZDO-285 does not propose any change to the *Citizen Involvement* chapter (Chapter 2) of the County's Comprehensive Plan.

ZDO Section 1307 implements policies of Comprehensive Plan Chapter 2, and contains adopted and acknowledged procedures for citizen involvement and public notification of land use applications. Notice of ZDO-285 has been provided consistent with the requirements of Section 1307, including to DLCD, all cities in the County, and all active and recognized CPOs and Hamlets 35 days before the first public hearing. Notice of the proposal and its scheduled hearings was published in *The Oregonian* more than 10 days in advance and has also been posted on County websites. Before a final decision on ZDO-285 can be made, there will have been at least two public hearings: one before the Planning Commission and another before the Board.

### Public Outreach

In addition to meeting the minimum requirements for compliance with Goal 1, the county engaged in public outreach activities specifically related to the options for rural ADUs and RVs as second dwellings. The additional outreach effort included:

- An online survey to assess opinions about rural ADUs and RVs as second dwellings. This survey was available from March 18 through April 10, 2024. Notice of the survey was sent directly to people on the project's interested parties lists and was publicized through the news media, on social media and on the project webpage ([www.clackamas.us/planning/secondary-dwellings](http://www.clackamas.us/planning/secondary-dwellings)). The survey received a total of 631 responses.
- A virtual Q&A session, in which county staff gave a brief presentation about rural ADUs and RVs as second dwellings and gave the public the opportunity to ask questions about the topic. Notice of this meeting was posted on the project webpage, emailed to interested parties, and publicized through news media and on social media. A total of 20 members of the public attended the online session.

These public outreach efforts ensure any interested parties had more than ample opportunity to participate in this planning process.

**This proposal is consistent with Goal 1.**

### **Goal 2 – Land Use Planning:**

Goal 2 requires the County to have and to follow a comprehensive land use plan and implementing regulations. Comprehensive Plan provisions and regulations must be

consistent with Statewide Planning Goals, but Goal 2 also provides a process by which exceptions can be made to certain Goals.

ZDO-285 does not require an exception to any Statewide Planning Goal. The only Comprehensive Plan amendments that would be made by ZDO-285 would be to Chapter 4, *Land Use*, in order to ensure this chapter is consistent with recent state law changes for housing requirements in **Action 4** and that it clearly enables the proposed changes under **Action 1 and 2** in the ZDO-285 proposed amendments.

With the proposed amendments, the County's adopted and acknowledged Comprehensive Plan will continue to be consistent with Statewide Planning Goals, and the implementing regulations in state law.

**This proposal is consistent with Goal 2.**

**Goal 3 – Agricultural Lands:**

ZDO-285 would not amend Comprehensive Plan policies related to agricultural lands, nor would it change any property's land use plan designation or expand any UGB into agricultural lands (i.e., those zoned Exclusive Farm Use). ZDO-285 would not permit new land uses on agricultural lands. Rather, the ordinance would amend the ZDO to ensure consistency with existing state allowances for the alteration, restoration, and replacement of lawfully established dwellings and make other non-substantive changes to ensure consistency with state law.

**This proposal is consistent with Goal 3.**

**Goal 4 – Forest Lands:**

ZDO-285 would not amend Comprehensive Plan policies related to forest lands (i.e., those zoned AG/F or TBR), nor would it change any property's land use plan designation or expand any UGB into forest lands. Rather, the ordinance would amend the ZDO to ensure consistency with existing state allowances for the alteration, restoration, and replacement of lawfully established dwellings and make other non-substantive changes to ensure consistency with state law.

**This proposal is consistent with Goal 4.**

**Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces:**

Goal 5 requires the County to have programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. It requires an inventory of natural features, groundwater resources, energy sources, and cultural areas, and encourages the maintenance of inventories of historic resources.

ZDO-285 would not make any change to the County's Comprehensive Plan goals, policies, or inventories, or to ZDO provisions, related to the protection of scenic, historic, or open space resources. Any new development that might occur as a result of the amendments proposed in ZDO-285 would be required to meet the standard and processes that currently exist to ensure the county's Goal 5 resources are adequately protected.

**This proposal is consistent with Goal 5.**

**Goal 6 – Air, Water and Land Resources Quality:**

Goal 6 instructs the County to consider the protection of air, water, and land resources from pollution and pollutants when developing its Comprehensive Plan.



ZDO-285 would not change any Comprehensive Plan goal or policy, or implementing regulation, affecting a Goal 6 resource, nor would it modify the mapping of any protected resource. Any new development that might occur as a result of the amendments proposed in ZDO-285 would be required to meet the standards and processes that currently exist related to Goal 6 resources.

**This proposal is consistent with Goal 6.**

**Goal 7 – Areas Subject to Natural Hazards:**

Goal 7 requires the County's Comprehensive Plan to address Oregon's natural hazards.

ZDO-285 would not change the County's acknowledged Comprehensive Plan policies regarding natural disasters and hazards, nor would it modify the mapping of any hazard. Any new development that might occur as a result of the amendments proposed in ZDO-285 would be required to meet the standards and processes that currently exist to ensure the county's Goal 7 resources are adequately protected.

**This proposal is consistent with Goal 7.**

**Goal 8 – Recreational Needs:**

Goal 8 requires relevant jurisdictions to plan for the recreational needs of their residents and visitors. ZDO-285 would not change any existing, state-acknowledged County Comprehensive Plan policy or implementing regulation regarding recreational needs, nor would it reduce or otherwise modify a mapped recreational resource.

**This proposal is consistent with Goal 8.**

**Goal 9 – Economic Development:**

Goal 9 requires the County to provide an adequate supply of land for commercial and industrial development. As noted earlier, ZDO-285 would not change the Comprehensive Plan or zoning designation of any property. It also would not add any new restriction to land uses in areas of the County reserved for commercial and industrial development. ZDO-285 would allow for affordable housing in certain commercial and industrial areas that do not currently allow housing; however the statute that requires the county allow for this use specifically states that these affordable housing requirements *[d]o not trigger any requirement that a local government consider or update an analysis as required by a statewide planning goal relating to economic development (ORS 197A.445(4)(b))*.

While this goal is not directly applicable, the proposed amendments will support economic development goals by allowing more affordable types of housing (single-room occupancies, prefabricated structures, and RVs as second dwellings) in the urban area, thereby expanding housing options for the workforce in unincorporated Clackamas County and providing more opportunities for people to live where they work. Improving opportunities for workforce housing is one way in which the county can provide a supportive environment for the development and expansion of desired businesses.

**This proposal is consistent with Goal 9.**

**Goal 10 – Housing:**

The purpose of Goal 10 is to meet housing needs. Goal 10 requires Oregon's county plans to "encourage the availability of adequate numbers of needed housing units at

*price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.”*

The ZDO-285 amendments will allow development of housing types where they were previously prohibited—and, in some areas, at a higher density than currently permitted—which will increase the capacity of lands to accommodate identified housing need. The proposed amendments will also provide more housing choices within existing and new neighborhoods. These changes will provide additional opportunities to meet the housing needs of Clackamas County residents.

Specifically, the amendments proposed under ZDO-285 will increase opportunities for more housing by:

- Offering opportunities for property owners to provide additional housing on their own properties. Allowing ADUs in rural residential areas and RVs to be used as second dwellings in urban and rural residential areas could allow property owners to help family members, friends or renters needing lower cost housing, as these will be smaller dwelling units than many other housing options.
- Increasing housing variety and affordability by specifically allowing for single-room occupancies and for prefabricated structures to be used as dwellings within urban growth boundaries.
- Increasing opportunities for affordable housing to be built in the urban area by implementing state law to allow affordable housing that meets certain requirements to be built in nearly every urban zoning district and providing an alternate affordable housing density bonus to the one currently offered in the county.

All of these actions further the intent of Goal 10.

**This proposal is consistent with Goal 10.**

**Goal 11 – Public Facilities and Services:**

The purpose of Goal 11 is to ensure that local governments plan and develop a timely, orderly, and efficient arrangement of public facilities and services to act as a framework for urban and rural development.

ZDO-285 does not propose any change in adopted plans for the provision of water, sewer, or other public services. Any new development that might occur as a result of the amendments proposed in ZDO-285 would be required to be developed compliant with public facilities and services requirements applicable at the time of construction or placement of an RV as a second dwelling.

**This proposal is consistent with Goal 11.**

**Goal 12 – Transportation:**

Goal 12 is implemented by Oregon Administrative Rules (OAR) Chapter 660, Division 12. Local governments are required to adopt a transportation system plan (TSP) and land use regulations to implement the TSP. This proposal does not include amendments to the County’s TSP or transportation-related land use regulations.

OAR 660-012-0060 also requires any comprehensive plan and land use regulation amendment to be evaluated according to the terms outlined in that OAR to demonstrate whether they will have a significant impact on the transportation system.

ZDO-285 does not propose any explicit change in the County's buildable land supply, although by allowing for accessory dwelling units and RVs as second dwellings, this proposal would have the effect of allowing up to two dwellings on some lots in the rural area that are currently allowed only one dwelling plus a guest house. However, Staff does not find that these changes would have any significant impact the transportation system because:

- In urban areas (within urban growth boundaries), allowing for an RV to be used as a second dwelling would not increase the allowed housing density. This use would be allowed in urban low-density zones, which already allow for more than one dwelling on a property. Because establishing an RV as a second dwelling would limit the property owner to two dwellings (the primary dwelling and the RV), it is no different, from a density standpoint, than the current allowance for a primary dwelling plus an ADU, or a duplex. It is, in fact, a lower density than could be developed with other types of middle housing. Similarly, in rural residential inside an urban growth boundary, ADUs are already allowed, so the additional option of an RV instead of an ADU as a second dwelling, would not result in any net increase in density.
- In rural residential areas (outside urban growth boundaries), allowing for an ADU or an RVs as a second dwelling on a property, could potentially increase density in areas. Although arguably these zones already allow for another separate living space through the county's guest house provisions, a guest house is not a complete dwelling and is very limited in size, so the new allowances would be able to accommodate a slightly larger household.
  - Based on a GIS analysis, approximately 8,110 lots in the rural residential areas that are at least two acres in size and could therefore qualify for an ADU under this proposal.
  - Based on a GIS analysis, approximately 15,000 lots in the rural residential areas that could therefore qualify for an RV as a second dwelling ADU under this proposal (because there is no minimum lot size).
  - In both cases, these lots are very geographically dispersed out throughout the entire rural area of the county. And in both cases, there will be permitting costs and it will take time to establish the second dwelling, and therefore neither options is expected to result in a sudden proliferation of these uses, but rather a slow process to establish a relatively small number of each. For context, ADUs have been allowed in the urban area for more than 25 years and based on a permit search, less than 1% of the eligible lots in the urban area have developed with ADUs in that time.
  - The geographic distribution of the lots that would qualify for these second dwellings and the fact the lots are expected to develop over many years, means the road system is expected to be adequate to handle the traffic volumes generated by rural ADUs and RVs as second dwellings.

Notice of ZDO-285 was provided to ODOT and to county Engineering, neither of which have provided comments. As such, no additional analysis of the transportation system is needed.

**This proposal is consistent with Goal 12.**

**Goal 13 – Energy Conservation:**

Goal 13 encourages land use plans to consider lot size, building height, density, and other measures in order to help conserve energy. The proposed amendments would not change any policy or implementing regulation regarding energy conservation.

**This proposal is consistent with Goal 13.**

**Goal 14 – Urbanization:**

The purpose of Goal 14 is to provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities. The Goal primarily concerns the location of UGBs, the establishment of “urbanizable areas” and unincorporated communities, exception lands, and rural industrial uses.

ZDO-285 would not modify any UGB or the status or boundaries of any unincorporated community. The ordinance would not modify any urban or rural reserve boundary, allow any new land use in such reserve areas in a manner inconsistent with state law, change the land use plan designation or zoning of any property, or allow any new uses in exception lands in a manner inconsistent with state law.

**This proposal is consistent with Goal 14.**

**Goal 15 – Willamette River Greenway:**

ZDO-285 would not change any existing requirement related to development in the Willamette River Greenway.

**This proposal is consistent with Goal 15.**

**Goals 16-19:**

These four Statewide Planning Goals address estuarine resources, coastal shorelands, beaches and dunes, and ocean resources, respectively, and are **not applicable to Clackamas County**.

**2. Metro Urban Growth Management Functional Plan (UGMFP)**

The purpose of the Functional Plan is to implement certain regional goals and objectives adopted by the Metro Council as the Regional Urban Growth Goals and Objectives (RUGGO), including the Metro 2040 Growth Concept and the Regional Framework Plan.

ZDO-285 does not propose to change the boundaries of the UGB or of an urban or rural reserve, allow any new retail use in any zoning district, change the dimensional standards of any use in an urban area, or change any provision governing open spaces. ZDO-285 also does not propose any explicit change to the County’s residential, commercial, or industrial land supply. Three of the 11 sections of the UGMFP contain provisions relevant to this proposal:

- **Title 1** of the UGMFP is intended to promote efficient land use within the Metro UGB by increasing the capacity to accommodate housing. Much of this title is dedicated to the circumstances under which housing density can be reduced, which is not proposed under ZDO-285. Although it is likely to only have a minimal effect on housing density in the urban area, adding allowances for new housing types, including RVs as second dwellings, single-room occupancies, prefabricated structures and affordable housing in more locations, could marginally increase the housing capacity with the Metro UGB, thereby supporting the goals of this section.

- **Title 7** of the UGMFP is intended to ensure the production of affordable housing within the UGB. Under Title 7, the county is required to ensure that its Comprehensive Plan and implementing ordinances include strategies to: ensure the production of a diverse range of housing types, maintain the existing supply of affordable housing, increase opportunities for new affordable housing dispersed throughout the county, and increase opportunities for households of all income levels to live in affordable housing.

Although it is likely to have a negligible effect on housing density in the urban area, adding allowances for new housing types, including RVs as second dwellings, single-room occupancies, prefabricated structures and affordable housing in more locations, will further the goals of this section by increasing opportunities for housing choice with the Metro UGB.

- **Title 8** establishes a process for ensuring compliance with requirements of the UGMFP. An amendment to the county’s comprehensive plan or land use regulations is deemed to comply with the UGMFP only if the county provided notice to Metro as required by section 3.07.820(a). Notice of this proposal was provided to Metro on March 18, 2024 - 35 days prior to the first evidentiary hearing. To date, Metro has not submitted any comments related to ZDO-285.

**The proposal is consistent with the Metro Urban Growth Management Functional Plan.**

**3. Clackamas County’s Comprehensive Plan (Plan)**

Staff finds that the following four chapters of the County’s Comprehensive Plan contain policies that are applicable to this proposal.

**Chapter 2 – Citizen Involvement:** Chapter 2 aims to promote public participation in the County’s land use planning. Its policies largely focus on the County’s Community Planning Organization (CPO) program and methods for informing and involving the public. Chapter 2 includes these specific policies:

*2.A.1 – Require provisions for opportunities for citizen participation in preparing and revising local land use plans and ordinances. Insure opportunities for broad representations, not only of property owners and Countywide special interests, but also of those persons within the neighborhood or areas in question.*

*2.A.6 – Seek citizens' input not only through recognized community organizations, but also through service organizations, interest groups, granges, and other ways.*

*2.A.13 – Insure that the County responds to citizen recommendations through appropriate mechanisms and procedures.*

The amendments proposed in ZDO-285 were developed with consideration of feedback from a public engagement effort that included:

- An online survey;
- A virtual Q& A session; and
- Numerous press releases, emails, social media posts and a project webpage.

In addition, consideration of ZDO-285 has proceeded according to the noticing and public hearing requirements of ZDO Section 1307, which implements Chapter 2 of the Plan.

**This proposal is consistent with Chapter 2.**

**Chapter 4 – Land Use:** Chapter 4 generally includes goals and policies for how land in Clackamas County should be designated and zoned, and goals and policies for what land uses should be allowed in those designations and their implementing zoning districts.

ZDO-285 does not propose to change the Comprehensive Plan land use designation or zoning district of any property. The proposal does, however, change allowed uses in some zoning districts, which necessitated amendments to Chapter 4.

Amendments proposed to Chapter 4 would:

- Clarify the types of housing allowed and add single-room occupancies and prefabricated structures to the list of allowed housing types in certain areas; and
- Remove conflicts to ensure the Plan enable the housing types the county is required to allow in urban commercial areas that did not previously allow housing.

In addition, ZDO-285 would allow new uses in rural residential areas, some of which are located within the county’s designated rural reserves. These uses would not be allowed in areas designated as urban reserves because the enabling statutes for both the rural ADUs and RVs as second dwellings specifically prohibit these new uses in urban reserves, but these statutes do not prohibit them in rural reserves. Therefore, the following policy applies to this proposal:

*4.F.3 - The County shall not amend the Comprehensive Plan or Zoning and Development Ordinance, or the Comprehensive Plan Map or zoning designations:*

*4.F.3.1 - To allow within the Rural Reserve areas, new uses that were not allowed on the date Rural Reserve areas were designated, except as authorized by amendments to the Oregon Revised Statutes or Oregon Administrative Rules enacted after the designation of Rural Reserve areas.*

Staff finds that it is possible to allow for these new uses, because of the exceptions allowed under the Oregon Administrative Rules (OAR), OAR 660-027-0070, *Planning of Urban and Rural Reserves*, for the following reasons:

- Policy 4.F.3 was adopted into the county’s Comprehensive Plan and became effective August 25, 2010. At the time OAR 660-027-0070 did not include any exceptions to the prohibition to allowing new uses.
- However, beginning in October 2010, the Land Conservation and Development Commission (LCDC) adopted several amendments to this rule that included various exceptions to the prohibition. Because these exceptions were adopted after the county’s policy was adopted, it is possible to apply then directly from the Rules.
- The current language in OAR 660-027-0070 (5) is included below, with staff’s findings associated with each section:

*(5) Notwithstanding the prohibition in sections (2) through (4) of this rule a county may amend its comprehensive plan or land use regulations as they apply to land in*

*an urban or rural reserve that is subject to an exception to Goals 3 or 4, or both, acknowledged prior to designation of the subject property as urban or rural reserves, in order to authorize an alteration or expansion of uses or lot or parcel sizes allowed on the land under the exception provided:*

ZDO-285 proposes to allow new uses on lands zoned for rural residential use. Rural residential lands are, by definition, exception lands and are not subject to Goals 3 (Agriculture) and 4 (Forest). This provision allows for the alteration or expansion of uses on these lands within an urban or rural reserve in certain circumstances. Although the Rule does not explicitly define “alteration or expansion”, based on County Counsel’s research into these amendments, their applicable staff reports and discussions at the LCDC meetings to adopt this section, staff and Counsel have concluded that that OAR 660-027-0070(5) was intended to allow the alteration or expansion not just of a discrete “use” in an exception area but of “the uses” that are allowed in the exception area, provided that the criteria in subsections (a) to (d) are met.

*(a) The alteration or expansion would comply with the requirements described in ORS 215.296, applied whether the land is zoned for farm use, forest use, or mixed farm and forest use;*

ZDO-285 would allow new uses only in existing exception areas, not land zoned for farm, forest or mixed farm and forest use. This criterion is not applicable.

*(b) The alteration or expansion conforms to applicable requirements for exceptions and amendments to exceptions under OAR chapter 660, division 4, and all other applicable laws;*

ZDO-285 would allow for an expansion of uses in rural residential Exception areas. OAR 660-004-0018(2) specifies that within exception areas, “all plan and zone designations shall limit uses, density and public facilities and services to those that satisfy (a) or (b) or (c) and, if applicable (d).” In this case (b), included below, is applicable:

*(b) That meet the following requirements:*

*(A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals, and are consistent with all other applicable goal requirements;*

*(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to uses not allowed by the applicable goal as described in OAR 660-004-0028; and*

*(C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;*

The Statewide Planning Goals contain the following definition:

*“RURAL LAND. Rural lands are those which are outside the urban growth boundary and are:*

*(a) Non-urban agricultural, forest or open space lands or,*

*(b) Other lands suitable for sparse settlement, small farms or acreage homesites with no or hardly any public services, and which are not suitable, necessary or intended for urban use,*

Allowing for an accessory dwelling, be it an ADU or an RV used as a second dwelling, would not allow for smaller lot sizes than is currently allowed in the area, thus remaining in “acreage homesites.” In addition, these accessory uses would be established using onsite wastewater systems and water provision from an on-site well or public water provider (if one is available). These uses would be established using only service available and appropriate for rural lands. And finally, by providing for counties to allow these uses in rural exception lands, the state, in effect, is establishing that the use is appropriate for rural areas and that they would not need any public services that are not suitable for rural uses or commit the nearby resource lands to uses not otherwise allowed. If this were not the case, the state would require a new exception to Goal 14, *Urbanization*, before these proposed uses could be allowed.

As such, staff finds that the proposed uses under ZDO-285 are “rural” and allowing these uses would continue to maintain the land as “Rural Land.”

*(c) The alteration or expansion would not expand the boundaries of the exception area unless such alteration or expansion is necessary in response to a failing on-site wastewater disposal system; and*

ZDO-285 would not alter or expand the boundaries of an exception area. This criterion is met.

*(d) An alteration to allow creation of smaller lots or parcels than was allowed on the land under the exception complies with the requirements of OAR chapter 660, division 29.*

ZDO-285 would not allow the creation of smaller lots or parcels than is currently allowed; rather it would allow for parcels in certain exception areas to add another dwelling to the property. This criterion is met.

Therefore the new uses included in ZDO-285 may be allowed in rural reserves, and the proposed amendments are consistent with Chapter 4.

#### **This proposal is consistent with Chapter 4.**

#### **Chapter 6 – Housing**

Chapter 6 of the Comprehensive Plan generally includes goals and policies related housing choice, variety and affordability in Clackamas County. By increasing the types of housing that can be built or places on both urban and rural land, ZDO-285 proposes amendments that directly support a number of the policies within this chapter, including:

*6.B.1 - Enable a range of housing types throughout the county in a range of zoning districts.*

*6.B.6 - Provide for increased capacity for multifamily development in the urban area.*



6.C.1 – Encourage more affordable housing by allowing for a variety of housing densities and price ranges throughout the county.

6.C.2 – Allow for rental units with a variety of size, location, and accessibility.

**This proposal is consistent with Chapter 6.**

**Chapter 11 – The Planning Process:**

Chapter 11 of the Comprehensive Plan includes policies requiring inter-governmental and inter-agency coordination, public involvement, and noticing. As explained previously in this report, all required entities have been notified in accordance with law and have been invited to participate in duly-advertised public hearings.

Chapter 11 of the Comprehensive Plan also contains the specific requirement that the Comprehensive Plan and ZDO be consistent with Statewide Planning Goals and with Metro’s Urban Growth Management Functional Plan; Chapter 11 is what requires the ZDO itself to be consistent with the Comprehensive Plan. This report’s *Analysis & Findings* outline how ZDO-285 is consistent with all of these requirements.

**This proposal is consistent with Chapter 11.**

**4. Zoning and Development Ordinance (ZDO):**

The proposed text amendments are legislative. Section 1307 of the ZDO establishes procedural requirements for legislative amendments, which have been or are being followed in the proposal and review of ZDO-285. Notice of this proposal was provided at least 35 days before the first scheduled public hearing to DLCD, all cities in the County, and active CPOs and Hamlets, as well as other interested agencies, to allow them an opportunity to review and comment on the proposed amendments. Advertised public hearings are being held before the Planning Commission and the BCC to consider the proposed amendments. The ZDO contains no further specific review criteria that must be applied when considering an amendment to the text of the Comprehensive Plan or ZDO.

**RECOMMENDATION**

**Staff recommends approval of ZDO-285, as proposed in Attachment A.** Staff finds the proposed ZDO text amendments are consistent with all applicable criteria.

## **LIST OF ATTACHMENTS**

### **A. Proposed Comprehensive Plan and ZDO amendments**

- (1) **ZDO Section 202**, *Definitions*
- (2) **ZDO Section 315**, *Urban Low Density Residential (R-2.5, R-5, R-7, R-8.5, R-10, R-15, R-20, and R-30), Village Standard Lot Residential (VR-5/7), Village Small Lot Residential (VR-4/5), Village Townhouse (VTH), Planned Medium Density Residential (PMD), Medium Density Residential (MR-1), Medium High Density Residential (MR-2), High Density Residential (HDR), Village Apartment (VA), Special High Density Residential (SHD), and Regional Center High Density Residential (RCHDR) Districts*
- (3) **ZDO Section 316**, *Rural Area Residential 1-Acre (RA-1), Rural Area Residential 2-Acre (RA-2), Recreational Residential (RR), Rural Residential Farm Forest 5-Acre (RRFF-5), Farm Forest 10-Acre (FF-10), and Future Urban 10-Acre (FU-10) Districts*
- (4) **ZDO Section 317**, *Mountain Recreational Resort (MRR) and Hoodland Residential (HR) Districts*
- (5) **ZDO Section 401**, *Exclusive Farm Use District (EFU)*
- (6) **ZDO Section 406**, *Timber District (TBR)*
- (7) **ZDO Section 510**, *Neighborhood Commercial (NC), Community Commercial (C-2), Regional Center Commercial (RCC), Retail Commercial (RTL), Corridor Commercial (CC), General Commercial (C-3), Planned Mixed Use (PMU), Station Community Mixed Use (SCMU), Office Apartment (OA), Office Commercial (OC), and Regional Center Office (RCO) Districts*
- (8) **ZDO Section 511**, *Village Community Service (VCS)*
- (9) **ZDO Section 512**, *Village Office (VO)*
- (10) **ZDO Section 602**, *Business Park, Light Industrial, and General Industrial Districts (BP, LI and GI)*
- (11) **ZDO Section 833**, *Guest Houses*
- (12) **ZDO Section 839**, *Accessory Dwelling Units*
- (13) **(New) ZDO Section 846**, *Affordable Housing*
- (14) **(New) ZDO Section 847**, *Recreational Vehicles as Second Dwellings*
- (15) **ZDO Section 903**, *Setback Exceptions*
- (16) **ZDO Section 1001**, *General Provisions*
- (17) **ZDO Section 1006**, *Utilities, Street Lights, Water Supply, Sewage Disposal, Surface Water Management, and Erosion Control*
- (18) **ZDO Section 1012**, *Lot Size and Density*
- (19) **ZDO Section 1102**, *Design Review*
- (20) **ZDO Section 1105**, *Subdivisions, Partitions, Replats, Middle Housing Land Divisions, Condominium Plats, and Vacations of Recorded Plats*
- (21) **ZDO Section 1307**, *Procedures*
- (22) **Comprehensive Plan Chapter 4**, *Land Use*

### **B. Exhibit List and Exhibits**