



MEMORANDUM

TO: Deschutes County Planning Commission

FROM: Tanya Saltzman, AICP, Senior Planner
Will Groves, Planning Manager

DATE: May 1, 2025

FILE NO.: 247-25-000171-TA

SUBJECT: Deliberations: Clear & Objective Housing Text Amendments – Goal 5 (Title 18)

The Deschutes County Planning Commission (Commission) will conduct deliberations on May 8, 2025 at 5:30 p.m. at the Deschutes Services Center, 1300 Wall Street, Barnes and Sawyer rooms concerning text amendments establishing “clear and objective” housing development standards required under Oregon Revised Statute (ORS) 197A.400. This deliberation will address proposed changes to the chapters of Deschutes County Code (DCC) addressing Oregon's statewide planning Goal 5 for natural resources, scenic areas, and open spaces)

Staff submitted a 35-day Post-Acknowledgement Plan Amendment (PAPA) notice to the Department of Land Conservation and Development (DLCD) on March 19, 2025. Staff presented the proposed amendments to the Planning Commission on April 10, 2025.¹ An initial public hearing was held before the Commission on April 24, 2025.² At that time, the oral portion of the public hearing was closed and the written record was held open until April 30, 2025 at 4:00 p.m.

All record materials can be found on the project website:
<https://bit.ly/DeschutesClearAndObjectiveGoal5>

I. BACKGROUND

Beginning in 2017, the Oregon State Legislature passed a series of bills to encourage efforts to expand the supply of housing statewide. The passage of Senate Bill (SB) 1051 prohibited cities from denying applications for housing developments within urban growth boundaries,

¹ <https://www.deschutes.org/bc-pc/page/planning-commission-65>

² <https://www.deschutes.org/bc-pc/page/planning-commission-66>

provided those applications complied with “clear and objective standards, including but not limited to clear and objective design standards contained in the county comprehensive plan or land use regulations.”³

The provisions of SB 1051, along with subsequent bills, modified ORS 197.286–197.314. Of relevance to the current project is ORS 197.307(4)⁴ which was modified to state:

(1) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The standards, conditions and procedures:

(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.

(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

In 2023, ORS 197A.400⁵ (formerly ORS 197.307, as referenced above) was established by House Bill (HB) 3197⁶. The newly established ORS 197A.400 will become effective on July 1, 2025, and states the following [emphasis added]:

(1) Except as provided in subsection (3) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing, on land within an urban growth boundary, **unincorporated communities designated in a county's acknowledged comprehensive plan after December 5, 1994, nonresource lands and areas zoned for rural residential use as defined in ORS 215.501**. The standards, conditions and procedures:

(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.

(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay

...

(3) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (1) of this section, a local government may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria that are not clear and objective if:

³ <https://olis.oregonlegislature.gov/liz/2017R1/Downloads/MeasureDocument/SB1051/Enrolled>

⁴ https://oregon.public.law/statutes/ors_197.307

⁵ https://www.oregonlegislature.gov/bills_laws/ors/ors197a.html

⁶ <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB3197/Enrolled>

- (a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (1) of this section;
- (b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and
- (c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (1) of this section.

These provisions require local governments to apply only clear and objective standards, criteria, and procedures to applications for housing projects and may not discourage housing through unreasonable cost or delay. Application of typical discretionary standards (e.g. “adequate public facilities” or “effective mitigation”) is prohibited. The statute is intended to address the concern that use of discretionary criteria leads to uncertainty, inconsistent administration, and delays that do not serve the goal of efficiently providing an adequate supply of housing stock.

II. OVERVIEW OF AMENDMENTS

Numerous sections and language included in the Deschutes County Code (DCC) do not currently meet the identified thresholds for “clear and objective standards.” The primary focus of the Clear and Objective Code Compliance Project is to ensure the DCC complies with state statute and the objectives of the Deschutes County Comprehensive Plan.

With the assistance of consultants from MIG, planning staff have identified areas of the DCC that are not in compliance with statute and drafted packages of text amendments to address each issue. These packages have been broken into distinct segments to provide the public, the Deschutes County Planning Commission (Commission), and the Deschutes County Board of Commissioners (Board) the opportunity to review and vet the proposed changes in a structured manner.

Where possible, planning staff have drafted amendments that effectuate a policy-neutral conversion of existing discretionary language to non-discretionary language. This ensures the original intent and purpose of each amended code provision are preserved. Where that approach is not viable, alternative standards or criteria have been proposed. Additionally, certain amendments have been proposed to broadly remove ambiguity from implementing sections of the DCC, maintain conformity across all development standards, and ensure review clarity for staff and members of the public.

This amendment package encompasses areas of the DCC that address Goal 5 resources and related language, including cluster and planned developments, in Title 18, specifically:

- Definitions for the Deschutes County Zoning Code – DCC 18.04
- Basic Provisions – DCC 18.08
- Multiple Use Agricultural Zone – DCC 18.32
- Surface Mine Impact Area (SMIA) – DCC 18.56
- Rural Residential Zone – DCC 18.60

- Terrebonne Rural Community Zoning District – DCC 18.66
- Landscape Management Combining Zone – DCC 18.84
- Wildlife Area Combining Zone – DCC 18.88
- Sensitive Bird and Mammal Habitat Combining Zone – DCC 18.90
- Urban Unincorporated Community Zone; Sunriver – DCC 18.108
- Supplementary Provisions – DCC 18.116
- Exceptions – DCC 18.120
- Conditional Use – DCC 18.128

III. HEARING TESTIMONY

Three individuals provided written testimony preceding the public hearing on April 24, 2025, and one individual provided verbal testimony during the hearing. The full written comments are available in the record for the Planning Commission's reference. Brief summaries of the testimony are provided below:

1. *Robin Hayakawa, Central Oregon LandWatch*: LandWatch noted the significance of the County's Goal 5 protections and the goal of the clear and objective regulations providing more clarity to land use applicants. With that acknowledgement, LandWatch expressed several concerns:
 - a. Noted that the removal of planned and cluster developments from the list of conditional uses permitted in the MUA and RR-10 zones is confusing, since that use remains permissible as a conditional use in the discretionary path. LandWatch recommended retaining comprehensive lists of all conditional uses permitted within those zones, potentially as a user-friendly table showing the discretionary and clear and objective tracks.
 - b. Stated that the siting standards in the Wildlife Area Combining Zone are confusing, with respect to the requirement to site a dwelling within 300 feet of a road or recorded easement. The language in the existing discretionary requirements require a road/easement to exist "as of" August 5, 1992 (the original adoption date of the WA zone), but the clear and objective standards are worded differently, requiring the photo evidence to be taken "prior to" August 5, 1992. LandWatch provided language suggestions to clarify this requirement, using the phrase (or similar words) "has been in continuous existence."
 - c. Lastly, LandWatch maintains that the County may need to "apply Goal 5" in consideration of the proposed amendments, including identification of significant Goal 5 resources, ESEE (Economic, social, environmental, and energy) analyses that disclose the effects of conflicting uses on those resources, and development of a program to meet the Goal for significant resources per OAR 660-023-0250(3)(a). LandWatch states that a post-acknowledgement plan amendment (PAPA) that amends a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource triggers the requirement to apply Goal 5, even if the regulations do not result in a change to the protection for a resource.

2. *Jessica Wilkes, Oregon Department of Fish and Wildlife*: this testimony acknowledged the complexity of complying with the state law in these chapters of Deschutes County Code. The existing Goal 5 program for protecting fish and wildlife is discretionary; the clear and objective criteria removes that discretionary flexibility and with it, the ability to utilize ODFW's expertise. The testimony concludes, "ODFW recommends continued consultation with state and federal agencies to protect Goal 5 resources."
3. *Matt Cyrus, Deschutes County Planning Commissioner*: Commissioner Cyrus asked clarifying questions to be discussed during the hearing regarding the origins of the requirements in DCC 18.88.051 – Dimensional Standards – Clear and Objective Standards. He also requested additional clarification regarding cluster and planned developments.
4. *Casey Roscoe, Deschutes County resident*, provided verbal testimony in person. Roscoe's testimony addressed several issues. She questioned the specificity of the paint color palette provided in the clear and objective path in the Landscape Management Combining Zone, noting that one particular brand (Miller Paint) was provided and not enough options were provided. Roscoe also spoke to the limitations in the Wildlife Area Combining Zone as a whole, including prohibited uses and the County's ability to require conditions of approval for outdoor assemblies in the WA zone.

IV. OPEN RECORD TESTIMONY

As part of the open record period, the following comments were received:

1. *Joy Lovett, Oregon Department of Fish and Wildlife (April 25, 2025)*: This testimony followed up on discussions held at the hearing concerning ODFW's initial testimony. Staff interpreted ODFW's initial testimony as requesting changes to the amendments to allow for some degree of ODFW participation in the clear and objective path in the Sensitive Bird and Mammal Habitat Combining Zone (DCC 18.90.061). Lovett's testimony clarified that ODFW recommends maintaining the proposed language as is, which requires compliance with the existing ESEE analyses, and noted that there are capacity issues with requiring ODFW concurrence on every clear and objective application or a possible veto option that was discussed.
2. *Toni Williams, Deschutes County Planning Commissioner (April 29, 2025)*: Commissioner Williams sought clarification on the development of the muted earth tone color palette required in the clear and objective path in the Landscape Management Combining Zone.

V. STAFF ADDENDUMS AND DISCUSSION

During the work session, the Planning Commission identified one item that may have been written in error, which staff will revisit:

- DCC 18.84.081(F) states “No driveway access to a designated landscape management road for a dwelling unit shall be permitted.” Staff will consider re-examining this requirement. For reference, the discretionary path requires new driveway access to be “consolidated wherever possible.”

Staff will take the recommendations received in testimony into consideration for the next round of amendments with the Board of County Commissioners, if directed to do so by the Planning Commission. In addition, staff offers the following discussion of some items that were raised:

Paint palette: In response to inquiries concerning the paint palette in the Landscape Management Combining Zone, staff notes that the proposed code explicitly states that while the swatches provided are from Miller Paint, proposed exterior finish colors do not need to be that brand. It is necessary to provide a specific standard, however, so that applicants do not have to rely on a computer monitor or printer that is not properly calibrated.

The idea of using Pantone color switches was also raised. However, Pantone is generally a standard used for ink-based color and is a different system than exterior paint. Paint companies can try to match Pantone colors but they are often imperfect. This is why the clear and objective standard utilizes a palette specific to house paint colors. If an applicant wants to select a color that is not captured on the palette offered in the clear and objective path, the applicant can pursue approval under a discretionary path.

WA Zone uses: Concerning Casey Roscoe’s testimony concerning the limitations on uses and the County’s ability to require conditions of approval for outdoor assemblies in the WA zone, those initiatives are beyond the scope of this project, which is a direct response to House Bill 3197. The proposed amendment package is not seeking to revisit or alter the baseline protections of the WA and other Goal 5-related zones, but rather to provide a technical code patch to provide a clear and objective pathway to achieve the same level of protections that have been established through a previous legislative process. A project undertaking such as this would require specific direction from the Board and an extensive public process separate from the current Clear and Objective project.

Items raised by LandWatch: In response to the items raised by Central Oregon LandWatch and summarized above, the Planning Commission can choose to discuss any of these items, or direct staff to further consider the text changes in the first two parts of the testimony provided.

Regarding the need for significant additional ESEE analysis, staff, in consultation with County Legal Counsel, has determined that these amendments do not require a new Goal 5 analysis under OAR 660-023-0250(3) because they maintain equivalent protections for Goal 5 resources while simply providing an alternative approval path that uses quantifiable standards. The amendments neither add new uses nor reduce protections for Goal 5 resources. The findings document specifically outlines the ways in which those protections are maintained by the proposed amendments.

VI. NEXT STEPS

At the conclusion of the meeting, the Commission can:

- Continue deliberations to a date certain;
- Close deliberations and propose a recommendation during this meeting;

Ultimately, the Planning Commission will provide a recommendation to the Board of County Commissioners. Options include:

- Approve amendments as drafted;
- Approve amendments with suggested edits or suggestions to carry forward;
- Approve certain amendments / deny others;
- Deny amendments altogether;
- Other

Attachment:

- 1) Proposed Findings and Text Amendments