



MEMORANDUM

TO: Deschutes County Planning Commission

FROM: Tarik Rawlings, Senior Transportation Planner
Will Groves, Planning Manager

DATE: April 3, 2025

SUBJECT: Continued Public Hearing: Clear and Objective Housing Text Amendments – Title 17 (Subdivisions)

The Deschutes County Planning Commission (Commission) will conduct a continued public hearing on April 10, 2025 at 5:30 p.m. at the Deschutes Services Center, 1300 Wall Street, Barnes and Sawyer rooms to consider text amendments establishing “clear and objective” housing development standards (file no. 247-25-000110-TA). Attached to this memorandum are the proposed text amendments and a staff report summarizing the changes. Within the proposed amendments, added language is shown underlined and deleted shown as ~~struckthrough~~. The continued public hearing will be conducted in-person, electronically, and by phone.¹

All record materials can be found on the project website:
<https://bit.ly/DeschutesClearAndObjectiveTitle17>

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, 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.”²

The provisions of SB 1051, along with subsequent bills, modified Oregon Revised Statutes (ORS) 197.286–197.314. Relevant to this project is ORS 197.307(4), which was modified to

¹ See Deschutes County Planning Commission March 27, 2025 Agenda for more information:
<https://www.deschutes.org/meetings>

² <https://olis.oregonlegislature.gov/liz/2017R1/Downloads/MeasureDocument/SB1051/Enrolled>

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.400³ (formerly ORS 197.307, as referenced above) was established by House Bill (HB) 3197⁴. 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:*

(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.

³ https://www.oregonlegislature.gov/bills_laws/ors/ors197a.html

⁴ <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB3197/Enrolled>

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 delay. Application of typical discretionary standards (e.g. “adequate public facilities,” “effective mitigation,” etc.) 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 in the Deschutes County Code (DCC) affecting the development of housing do not currently meet the identified thresholds for “clear and objective” standards outlined in HB 3197. 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 input from MIG consultants, planning staff identified noncompliant areas of the DCC and drafted text amendments to address them. These packages have been broken into distinct segments to provide the public, the Commission, and the Deschutes County Board of Commissioners (Board) the opportunity to review and vet the proposed changes in a more structured and confined way.

Where possible, planning staff aimed to convert discretionary language into policy-neutral, clear, and objective language. This ensures the original intent and desired outcome is preserved. When not possible, in certain limited circumstances alternative standards or criteria have been proposed. Additionally, while not exclusively associated with housing development, as part of this process 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.

Following the first amendment module (Definitions, Dimensional Standards, Accessory Uses), the second amendment package proposed through this process will broadly cover the following areas of the DCC:

- Provisions of Title 17 (Subdivisions) specific to housing and housing development.
- Provisions of Title 17 related to certain lot configuration standards

III. METHODOLOGY AND APPROACH

The proposed amendments incorporate feedback from key stakeholders, including the Oregon Department of Land Conservation and Development (DLCD), County Road Department engineers, the County Surveyor’s Office, Community Development Department (CDD) planning staff, County Legal Counsel, and private consultants. The goal is to provide clear, legally sound direction for housing development while minimizing legal risks and uncertainties for future property owners in the County.

As noted above, this proposed package of amendments addresses DCC Title 17 land division standards related to housing. Staff's methodology and approach to create clear and objective code is summarized below.

General Approach

Staff's general approach is to retain the existing regulations where possible. For existing discretionary code language related to housing, staff has developed a "two-track system." As proposed, each requirement offers new clear and objective language and the original discretionary language is preserved as an alternative option, consistent with ORS 197A.400.

It is important to note that not all potentially discretionary language in the existing code has been matched with new clear and objective language. Generally, code provisions that rely on the engineering and design expertise of the County Road Department remain largely unmodified.

For example, the provisions of DCC 17.36.040 evaluate the adequacy of Existing Streets to be included in new land use proposals and determine if historic road designs must be brought up to current standards. The review of such adequacy is an inherently discretionary review that relies on engineering and design expertise of the County Road Department. While the retention of limited levels of Road Department discretion may produce a higher likelihood of future interpretive challenges, staff will continue to track the legal implications surrounding clear and objective standards and ensure compliance with ORS through continued text refinement processes (see Interpretive Challenges, below).

ORS Reference Incorporation

Several provisions of Title 17 are dictated by the processes and requirements outlined in ORS. Aligning Title 17 language with applicable ORS provisions provides clarity to applicants, whether through adoption of verbatim ORS language or through reference to ORS. For DCC provisions outlining the County's requirements for tentative platting, final platting, and certain duties and responsibilities afforded to the County Surveyor and Planning Director, staff has included clear reference to the ORS and incorporated ORS language where necessary.

Definitions

Using the same methodology as in the Title 18 Definition Module 1 of the Clear and Objective Project, staff modified Title 17 definitions as follows:

- 1) If an existing term has a definition through statute, that existing terminology has been adopted verbatim or by reference.
- 2) If an existing, non-statutory definition has subjective language (e.g. "adequate," "designed for," etc.) that language has been replaced with measurable, quantitative standards wherever possible.

- 3) If an existing definition could reasonably be interpreted in multiple ways (e.g. “Lot area” and subsequent differentiation between “Lot area, gross” and “Lot area, net”), then explicit directions on how to interpret the definition have been included within the definition itself or new terms have been added to further clarify inter-definition relationships.
- 4) If two or more existing terms provided conflicting interpretations (e.g. “abutting” versus “adjacent” versus “adjoining,” etc.), then these terms were simplified into consolidated terms to remove unintentional conflicts.
- 5) If an existing term is not explicitly used in Title 17, as revised, those terms have been removed.

Interpretive Challenges

Certain provisions within the existing code have been subject to recurring interpretive challenges over the years. In several sections, additional text has been incorporated to clarify interpretations derived from Hearings Officer and Board decisions, as well as input from County Legal Counsel.

In addition, staff has identified standards, set by external entities, including:

- National publications such as AASHTO (American Association of State Highway and Transportation Officials) standards and the ODOT Geotechnical Design Manual, which provide state-specific design specifications.
- Standardized research sources like the Institute of Transportation Engineers (ITE) Trip Generation studies.
- Professional certifications, including expertise required from licensed Professional Engineers (PEs).

To preserve the authority of these external standards, the proposed amendments maintain these references, typically without modification.

Some design specifications previously included in Title 17 have been relocated to Title 12 (Roads, Sidewalks, and Public Places) to clarify that Title 17 primarily governs land divisions.

While these amendments align with best practices and comply with House Bill (HB) 3197, the legal interpretations of Oregon Revised Statutes (ORS) are continually evolving. Staff actively monitors legal developments, particularly cases that may impact Deschutes County's regulations. Though the proposed amendments reflect a sound interpretation of current legal conditions, future changes to ORS 197A.400 will be incorporated through additional amendment processes as needed.

One ongoing case of particular interest is *Roberts v. City of Cannon Beach* (2024). In September 2024, the Oregon Court of Appeals (COA) reversed a prior decision by the Land Use Board of Appeals (LUBA), ruling that public right-of-way development regulations are not required to

be "clear and objective." The COA determined that because the development of public rights-of-way does not constitute "housing" or the "development of housing," it is not subject to the requirements of ORS 197.307(4) or ORS 227.175(4). As of January 2025, this case is pending review by the Oregon Supreme Court, and staff continues to monitor its potential legal implications.

IV. AGENCY AND PUBLIC COMMENT

Two written public comments were received prior to the initial public hearing and one oral comment was received during the public comment portion of the initial public hearing. The written and oral public comments outlined various concerns with the proposed amendments, including the amendments related to DCC 17.22.020, 17.22.025, 17.22.030, 17.36.040, 17.36.180, 17.48.160, and 17.48.165. The written comments also included minor clerical suggestions. All three public comments included requests for a continued public hearing on a future date before the Planning Commission. No agency comments have been received to date.

V. FUTURE AMENDMENTS

As noted above, the proposed amendments presented herein are the second of several code modifications which will be proposed over the coming months. Upcoming text amendment proposals will address the following areas, subject to modifications as the process unfolds:

- Deschutes County Goal 5 Resources – Natural Resources (Landscape Management Combining Zones, Wildlife Area Combining Zones, Wetlands and Riparian Resources, Scenic Resources, etc.)
- Cluster and Planned Development Standards
- Additional Sections Most Pertinent to the Development of Housing

VI. NEXT STEPS

At the conclusion of the continued public hearing, the Planning Commission may:

- Continue the hearing to a date certain;
- Close the hearing and leave the written record open to a date certain;
- Close the hearing and set a date for deliberations; or
- Close the hearing and commence deliberations.

Attachments:

- 1) Staff Report & Proposed Text Amendments