



MEMORANDUM

TO: Deschutes County Board of Commissioners

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

DATE: May 14, 2025

SUBJECT: Work Session: Clear and Objective Housing Text Amendments – Goal 5 (Title 18)

The Deschutes Board of County Commissioners (Board) will conduct a work session on May 21, 2025 to consider text amendments establishing “clear and objective” housing development standards (file no. 247-25-000171-TA). This work session is in preparation for a public hearing scheduled for May 28, 2025. 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 language is shown as ~~struckthrough~~. The 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 Board of County Commissioners May 21, 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 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. METHODOLOGY

The proposed amendments incorporate feedback from key stakeholders, including the Oregon Department of Land Conservation and Development (DLCD), Oregon Department of Fish and Wildlife (ODFW), 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 Goal 5-related provisions in DCC Title 18 related to housing. Staff's methodology and approach to create clear and objective code is summarized below.

General Approach

While a clear and objective review path is required for residential development, the flexibility provided by discretionary review may continue to be attractive for some projects and it may not be practical or achievable to write clear and objective standards that work in every development situation. ORS 197A recognizes this and allows local governments to also provide an optional discretionary review path or parallel track. To that end, the amendments proposed as part of this package in some cases maintain the existing standards as an optional, discretionary track for housing. These discretionary standards will also remain in place for all non-residential development. The advantage of a two-track system is that it offers both certainty and flexibility. Applicants willing to work within the clear and objective standards have the option of a simplified review process that saves time and increases the certainty of approval. Clear and objective standards also offer certainty to reviewers, who can review applications more efficiently with less time devoted to interpreting discretionary/unclear requirements, and to the public, who will benefit from knowing whether a project will or will not be approved. For applicants with creative ideas or unique circumstances that don't meet the objective standards, discretionary review is available, which can provide more flexibility.

The proposed amendments included in this package do not alter the County's acknowledged Goal 5 inventories or impact areas. The proposed amendments ensure Deschutes County remains in compliance with state statute and administrative rules by continuing to allow residential construction in areas with Goal 5 resources, providing applicants with a clear and objective process using standards and criteria that maintain the same level of protection as the discretionary process that was previously adopted and, in most cases, remains an option for applicants.

Certain sections of code provide a standard applicants must meet and provides a path for exceptions, which usually entails discretion. The new clear and objective path removes the exception.

For example, in the current Wildlife Area Combining Zone (WA) zone regulations, new dwellings are required to be entirely within 300 feet of an existing road, which is intended to minimize the extent of impacts to protected resources. Exceptions are permitted if the discretionary criteria in DCC 18.88.060(B) are met. One of those discretionary exceptions is to demonstrate that habitat values and migration corridors are afforded equal or greater protection through a different development pattern. In the proposed clear and objective path, exceptions are not permitted at all; an applicant would need to follow the discretionary review path if deviating from the standard. Therefore, the proposed amendments retain the existing regulations, explicitly separating the clear and objective and discretionary options. This is consistent with the existing program to protect.

A second example illustrates the creation of a clear and objective option as an alternative to discretionary design elements. The existing LM combining zone design standards (DCC 18.84.080) address building and roof color and reflectivity, setbacks, height, lighting, screening, and access. The intent of these standards is to minimize the visual appearance of structures from specified view corridors in order to maintain scenic views and the natural appearance to the greatest extent possible. The proposed amendments provide a parallel clear and objective approval path. These amendments codify the types of designs that County staff would approve under the current regulations. Standards for building color, screening, trees, and setbacks have been updated with the intent to achieve equivalent outcomes to the existing program to protect. This includes:

- The discretionary requirement for “muted earth tones” is replaced by an approved palette of specific earth tone colors (DCC 18.18A) or with natural wood or stone.
- The requirement for non-reflective materials is replaced by an objective light reflectance value (LRV) standard.
- The discretionary requirement for use of existing features to reduce visual impacts is replaced by a standard that states equivalent requirements using clear and objective language.
- The vague and discretionary screening requirements are replaced by specific tree planting standards.

These objective standards are intended to provide a narrow approval pathway. The site designs that would meet these standards could also be approved by County staff under the discretionary review path, thereby achieving equivalent outcomes.

Definitions

Using the same methodology as in the Title 18 Definition Module 1 of the Clear and Objective Project, staff modified Goal 5-related 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 term is not explicitly used in Goal 5 language in Title 18, as revised, those terms have been removed.

IV. AGENCY AND PUBLIC COMMENTS

The following public comments have been received regarding the proposed amendments. The full written comments are available in record for reference. For the purpose of this memorandum, 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.
5. *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.
6. *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. PLANNING COMMISSION REVIEW AND DISCUSSION

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 at a work session on April 10, 2025.⁵ An initial public hearing was held before the Commission on April 24, 2025.⁶ At that time, the oral portion of the public hearing was closed and the written record was held

⁵ <https://www.deschutes.org/bc-pc/page/planning-commission-65>

⁶ <https://www.deschutes.org/bc-pc/page/planning-commission-66>

open until April 30, 2025 at 4:00 p.m. The Commission held deliberations on May 8, 2025⁷, issuing a recommendation for approval to the Board and requesting staff to relay the main topics of the Planning Commission discussion to the Board.

Based on feedback and discussion from the Planning Commission, no immediate changes were made to the proposed text amendments. Staff and the Planning Commission discussed several items related to the testimony received and related items.

Driveway access: During the work session, the Planning Commission identified one item that may need additional review, 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.”

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 recommended staff 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

⁷ <https://www.deschutes.org/bc-pc/page/planning-commission-61>

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

A public hearing with the Board is scheduled for May 28, 2025.

Attachments:

- 1) Staff Report & Proposed Text Amendments