



MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Nicole Mardell, AICP, Senior Planner
Will Groves, Planning Manager
Peter Gutowsky, AICP, Director

DATE: August 6, 2025

SUBJECT: Deliberations: Deschutes County 2040 Comprehensive Plan Reconsideration

I. SUMMARY

The Board of County Commissioners (Board) will deliberate and consider whether to make substantive revisions to Ordinance 2025-007 on August 11, 2025. This action reconsiders Ordinance 2024-007 and readopts the Deschutes County 2040 Comprehensive Plan (2040 Plan).¹ First reading of Ordinance 2025-007 took place on June 25, 2025. Second reading is scheduled for August 27.

II. BACKGROUND

On October 2, 2024, the Board voted 2-1 to adopt Ordinance 2024-007, repealing and replacing the 2011 Deschutes County Comprehensive Plan (2011 Plan) with the 2040 Plan (file no. 247-23-000644-PA). The decision was subsequently appealed by Central Oregon Landwatch (COLW) to the Land Use Board of Appeals (LUBA). The 2040 Plan is not in effect until the appeal process is resolved.

On February 20, 2025, the County received the Petitioner's Brief from COLW. Staff determined that new issues were raised in the Petitioner's Brief that were not previously discussed at the local level. Oregon Revised Statute and Oregon Administrative Rule (OAR) allow local governments to reconsider a legislative decision in response to new issues raised by LUBA appellants by conducting a new hearing. The Board on March 5, adopted Order No. 2025-004 initiating reconsideration of the 2040 Plan. LUBA confirmed this approach through LUBA Order No. 2024-080, on March 12 enabling the Board to initiate a limited de novo hearing process to gather additional testimony relating to COLW's Petitioner's Brief. The County is required to complete the hearing process and file a reconsideration decision by September 8, 2025.

The Board held public hearings on April 23 and May 21, 2025. After the hearing on May 21, the Board closed the oral portion of the record and kept the written record open until Wednesday, May 28. On June

¹ The associated file number is 247-25-000145-PA. The entire record is available on the project website: <https://bit.ly/Deschutes2040Reconsideration>.

25, the Board conducted a first reading of Ordinance 2025-007, voting 2-1 to approve amendments to the 2040 Plan with the following revisions:

- Delete Policies 9.2 and 9.3
- Revert policies in 9.2.1 – 9.3.15 to the original language from the 2011 Comprehensive Plan.
- Update narrative in Chapter 3 to include the number of acres of Exclusive Farm Use zoned land in Deschutes County.
- Update narrative in Chapter 3 to include the number of acres rezoned from Exclusive Farm Use to other zones in the last twelve years.

A second reading has not taken place.

III. LUBA DECISION NO. 2025-015 (*DESTINY COURT*)

On June 26, 2025, LUBA issued Decision No. 2025-015, *Central Oregon Landwatch vs. Deschutes County and Destiny Court Properties LLC (Destiny Court)*.² The *Destiny Court* decision contains interpretations pertaining to cluster development and planned unit development (PUD) that warranted review during the Deschutes County 2040 Plan reconsideration process. On July 21, 2025, the Board adopted Order 2025-030 per Deschutes County Code 22.24.160(A), which grants the Board discretion and authority to reopen the record upon request or its own initiative.

IV. REOPENED WRITTEN RECORD

The Board considered substantive revisions to Ordinance 2025-007 between its first and second reading by adopting Order 2025-030 and reopening the written record on July 21. The Board directed staff to reopen the written record to accept new testimony and evidence specific to *Destiny Court*, minimum lot size for rural residential areas, and cluster and PUDs.

Staff proposed a new policy 10.1.1 and renumbered Policies 10.1.2 to 10.1.9.

- *Policy 10.1.1. Except for parcels in the Westside Transect Zone, the minimum lot or parcel size for new residential parcels shall be 10 acres. Notwithstanding, for cluster or planned unit development, the minimum lot or parcel size for new residential parcels shall be no less than 2 acres and must demonstrate compliance with applicable provisions of OAR 660-004.*

Staff also entered several new documents into the record:

- Miller Tree Farm Phases 1- 5 Cluster/Planned Unit Development Decisions
- Updated Draft – Deschutes County 2040 Comprehensive Plan
- Updated Redline Draft – Deschutes County 2040 Comprehensive Plan
- LUBA Decision No. 2025-015, *Central Oregon Landwatch vs. Deschutes County and Destiny Court Properties LLC (Destiny Court)*

Pursuant to Order No. 2025-030, written testimony was accepted until August 1, 2025, at 4:00 p.m.

² <https://www.oregon.gov/luba/Docs/Opinions/2025/06-25/25015.pdf>

Comments were received by:

- Angie Brewer, Central Oregon Regional Representative, Department of Land Conservation and Development
- Ken Katzaroff, Tia Lewis, and Adam Smith – Schwabe, Williamson, and Wyatt.
- Rory Isbell, Central Oregon Landwatch
- Eva Eagle, resident
- Sandra Fox, resident
- Sam Lowry, resident

Comments are available for review on the project website: bit.ly/Deschutes2040Reconsideration .

V. DELIBERATION

Several commenters expressed concern regarding the ambiguity of the new policy 10.1.1 and the application of OAR 660-004. To respond to these comments, staff is proposing amended policy language and updated findings to clarify the application of OAR 660-004 to cluster and planned developments in Deschutes County.

- Policy 10.1.1. *Except for parcels in the Westside Transect Zone, the minimum lot or parcel size for new residential parcels shall be 10 acres.*
- Policy 10.1.2. *Notwithstanding Policy 10.1.1, for cluster or planned unit development on property in a rural residential area as of October 4, 2000, the minimum lot or parcel size for new residential parcels shall be no less than 2 acres, with the option of having average densities of less than 10 acres when factoring the open space tract, subject to OAR 660-004-0040(4)(b), (6)(a), and (8).*
- Policy 10.1.3. *Notwithstanding Policy 10.1.1, for cluster or planned unit development on property not in a rural residential area in effect as of October 4, 2000, and limited to properties that have received a Goal 3 exception, Goal 4 exception, or a nonresource land designation per OAR 660-004-005(3), the minimum lot or parcel size for new residential parcels shall be no less than 2 acres with average densities of no less than 10 acres when factoring the open space tract, subject to OAR 660-004-0040(8) and OAR 660-004-0040(3)(c)(F).*

Staff is asking the Board to add Policies 10.1.1-10.1.3 and renumber Policies 10.1.4 to 10.1.11, as set forth in Exhibit B to the attached revised Ordinance 2025-007. The revised findings document is included as Exhibit D to revised Ordinance 2025-007.

VI. CONSIDERATION OF SECOND READING

Second reading of Ordinance 2025-007 is scheduled for August 27, 2025.

Attachments:

1. Ordinance 2025-007

- A. 23.01 Legislative History
- B. Amended Deschutes 2040 Comprehensive Plan – August 4, 2025 Version
- C. 5.12 Legislative History
- D. Findings – August 6, 2025 Version

2. Redlined Version – Deschutes 2040 Comprehensive Plan - August 4, 2025 Version