



## MEMORANDUM

**TO:** Deschutes County Board of County Commissioners

**FROM:** Nicole Mardell, AICP, Senior Planner  
Will Groves, Planning Manager  
Stephanie Marshall, Senior Assistant Legal Counsel

**DATE:** June 4, 2025

**SUBJECT:** Deliberations: Reconsideration of Deschutes County 2040 Comprehensive Plan Update

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The Deschutes County Board of Commissioners (Board) will deliberate on June 11, 2025, to reconsider Ordinance 2024-007 – adopting the Deschutes County 2040 Comprehensive Plan (2040 Plan). The associated file number is 247-25-000145-PA. The entire record is available on the project website: <https://bit.ly/Deschutes2040Reconsideration>.

### I. 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.<sup>1</sup> ORS and Oregon Administrative Rule allow local governments to reconsider a legislative decision in response to new issues raised by LUBA appellants by conducting a new hearing. The Board voted on March 5, 2025, to adopt Order No. 2025-004 initiating reconsideration of the 2040 Plan. LUBA confirmed this approach through LUBA Order No. 2024-080, on March 12, 2025, enabling the Board to initiate a *limited de novo* hearing process

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<sup>1</sup> Oregon Revised Statute (ORS) 197.835(3) and 197.797, also known as the "raise it or waive it" doctrine, does not apply to legislative proceedings, therefore, applicants are not required to raise all arguments during the local hearings process to preserve those issues for appeal.

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.

## II. TESTIMONY RECAP

The Board held public hearings on April 23, 2025<sup>2</sup> and May 21, 2025<sup>3</sup>. At the conclusion of the hearing on May 21, the Board closed the oral portion of the record and kept the written record open until Wednesday, May 28 at 4:00 p.m. Deschutes County received 95 public comments emphasizing:<sup>4</sup>

- New residential and industrial development on rural lands.
- Rezoning of farm and forest land.
- Acknowledged policies from the 2011 Plan.

## III. KEY ISSUES FOR DELIBERATION

The following summarizes the key issues for Board deliberation as raised in COLW's *Petitioner's Brief*. The information below was initially presented in an April 23, 2025, staff memorandum and has been updated to reflect the recent public hearing process.

### A. Repeal and Replacement of the 2011 Plan

Ordinance 2024-007 stated that the effect of the 2040 Plan was to "repeal and replace" the 2011 Plan. COLW characterizes the 2040 Plan as "newly adopted," rather than "amended," because the ordinance recitals state that it repealed and replaced the 2011 Plan. Based on this language, COLW challenges proposed goals and revised and acknowledged policies. COLW believes they must all comply with Oregon Statewide Land Use Goals, including Goal 14, related to urbanization of rural lands.

**Staff Response:** The County did not intend to renounce acknowledged policies through the adoption of the 2040 Plan. Instead, the use of the phrase "repeal and replace" was employed to simplify the adoption of the plan. Staff recommends the Board adopt and updated ordinance without "repeal and replace" language. Staff has provided a draft ordinance for the Board's consideration to address this item - Ordinance 2025-007 as shown in Attachment 1. This ordinance clarifies that this Post Acknowledgement Plan Amendment (PAPA) represents a conventional amendment to Deschutes County's Comprehensive Plan. A "redlined" and clean copy of the 2040 Plan is included as Exhibit B to Ordinance 2025-007 (Attachment 1B). The redline version of the document identifies introductory statements, and acknowledged goals and policies from Plan 2011, and those that were removed,

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<sup>2</sup> <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-227>

<sup>3</sup> <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-231>

<sup>4</sup> No agency comments were received.

amended, or newly added. It also incorporates scrivener and formatting errors, along with staff recommendations presented below.

## **B. Goal 14 Compliance - Urbanization of Rural Land**

COLW alleges that certain provisions of the 2040 Plan violate Goal 14 because they allow “unlimited conversion” of resource-zoned properties to residential, industrial, and commercial uses. COLW challenges the following goals and policies:

1. *Policy 3.3.6.a. Allow comprehensive plan and zoning map amendments, including for those that qualify as non-resource land, for individual EFU parcels as allowed by State Statute, Oregon Administrative Rule, and this Comprehensive Plan.*
2. *New Goals 9.2 and 9.3 and revised Policies 9.2.1 to 9.3.15 pertaining to Rural Commercial and Rural Industrial Lands (see full language in Attachments 1B2).*

COLW believes Goals 9.2 and 9.3, Policy 3.3.6.a, and Policies 9.2.1 to 9.3.15 should specify that plan amendments require a Goal 14 analysis, including site-specific application of the *Curry County* factors.<sup>5</sup> COLW asserts that, because the 2040 Plan repealed and replaced the 2011 Plan, the County is obligated to require Goal 14 analysis for nonresource land plan amendment and zone change applications, regardless of whether the land remains rural. Additionally, COLW argues that the effect of Policy 3.3.6.a. expands the County's rural residential exception areas (Multiple Use Agricultural – MUA 10 and Rural Residential – RR10), and Rural Industrial, and Rural Commercial zones without requiring a new Goal 14 exception.

**Staff Response:** Policy 3.3.6.a is an existing policy from the 2011 Plan and is acknowledged. Deschutes County is not subject to periodic review.<sup>6</sup> Consistent with state law, the Board, after considering testimony and evidence in the record, has discretion to choose which acknowledged policies they want to maintain from the 2011 Plan and which ones they want to revise.

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<sup>5</sup> *1000 Friends of Oregon v. Land Conservation & Development Commission and Curry County*, 301 Or 447, 456, 724 P2d 268 (1986). The Supreme Court held that the county and the Land Conservation and Development Commission had to determine whether the plan allowed no “urban uses” outside of urban growth boundaries unless those “urban uses” were supported by exceptions to land use planning Goal 14 prior to acknowledgement that the plan complied with the goals.

<sup>6</sup> Deschutes County completed periodic review on January 23, 2003. Periodic Review is a term used in Oregon law to describe the periodic evaluation and revision of a local comprehensive plan. Prior to 2003, state law (ORS 197.628 – 636) called for counties to review their comprehensive plans according to a periodic schedule established by the Land Conservation and Development Commission (LCDC). The Oregon Legislature eliminated periodic review requirements for counties in 2003 (SB 920).

During the May 21 hearing, Commissioner Chang requested the Board amend Policy 3.3.6.a or add a new policy to address the cumulative impacts on rural lands from nonresource land amendments.

Staff defers to the Board to discuss this option.

Goals 9.2 and 9.3 were added to the 2040 Plan because acknowledged Rural Industrial and policies, Policies 9.2.1 to 9.3.15, did not follow a statement of overarching goals. The County determined that this would be a best practice for the organization of the Comprehensive Plan. Staff now recommends removing these new goals from the document. This change is reflected in draft Ordinance 2025-007 for Board consideration to address COLW arguments.

Similarly, revisions to Policies 9.2.1 to 9.3.15 were adopted for simplification. Staff now recommends the Board revert these policies back to their original acknowledged language from the 2011 Plan (as noted in Attachment 2). This change is also reflected in draft Ordinance 2025-007 for Board consideration to address COLW arguments.

### **C. Comprehensive Plan and Deschutes County Code and Comprehensive Plan**

COLW argues that the MUA-10 and RR-10 zones allow for urban levels of density through cluster and planned developments (PUD)<sup>7</sup> and that such allowances should be removed. Each zone, respectively, allows for cluster or PUDs as conditional uses. The standards for these types of developments either do not include a required minimum lot size (PUDs) or allow smaller than 10-acre minimum lot sizes (cluster developments), which COLW argues violate Goal 14 and could lead to urban levels of density if resource-zoned land is rezoned to MUA-10 or RR-10.

**Staff Response:** Deschutes County Code (DCC) 18.32.040 and 18.60.060(C) are acknowledged zoning regulations that have been in effect since 1992.<sup>8</sup> As noted above, Deschutes County is not subject to periodic review. The Board, consistent with state law, after considering testimony and evidence in the record, has discretion to choose whether these code provisions should be revised.<sup>9</sup>

### **III. NEXT STEPS**

Following deliberations, staff will return with Ordinance 2025-007 for consideration of first reading.

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<sup>7</sup> Deschutes County Code (DCC) 18.32.040(A) and 18.60.060(C).

<sup>8</sup> Ordinance 92-055.

<sup>9</sup> See Footnote #6.

Attachments:

1. Ordinance 2025-007
  - A. 23.01 Legislative History
  - B. Updated Deschutes 2040 Document (redline version and clean versions)
  - C. 5.12 Legislative History
  - D. Findings
2. Comparison Table of Contested Policies - 2011 and 2040 Comprehensive Plan Language