



MEMORANDUM

TO: Deschutes County Board of Commissioners

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

DATE: May 21, 2025

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

The Deschutes Board of County Commissioners (Board) will conduct a public hearing on May 28, 2025 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 ~~strikethrough~~. 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 state:

¹ See Board of County Commissioners May 28, 2025 Agenda for more information:

<https://www.deschutes.org/meetings>

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

(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.

These provisions require local governments to apply only clear and objective standards,

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

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

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 May 2025, the Oregon Supreme Court has allowed review of this case and has set oral argument for September 2025. Staff continues to monitor the case for potential legal implications.

IV. AGENCY AND PUBLIC COMMENT

The following public comments have been received regarding the proposed amendments. The full written comments are available in record for the Planning Commission's reference. For the purpose of this memorandum, brief summaries of the testimony are provided below:

1. *Rand Campbell, Rand Campbell Law LLC (March 27, 2025)*: The commenter raised concerns that the proposed text amendments may actually impose more restrictive standards that could hinder housing development on rural and unincorporated lands arguing, part, that revisions to DCC 17.22.020(A)(3), DCC 17.22.025(E), and DCC 17.36.180(A) eliminate flexibility that currently allows case-by-case consideration of access and road frontage requirements. Additionally, the commenter notes that access provisions in DCC 17.22.020(A)(3) and DCC 17.22.025(E) only recognize federally owned lands (e.g., Forest Service or BLM roads) and overlook access through state-owned public lands. The commenter argues that the County's frontage requirements are generally unnecessary and are unreasonably restrictive in the rural environment and urges the County to amend DCC to include state land access, preserve the current frontage flexibility for discretionary review processes, and retain the existing 20-foot frontage allowance for partitions accessed via public lands. This written comment noted a minor typo in DCC 17.22.025(C)(3) and included a request to continue the March 27 public hearing to allow for further public review and input.
2. *Daniel Robinson, Schwabe Williamson & Wyatt (March 26, 2025)*: The commenter outlined a series of concerns with the proposed text amendments, stressing that ambiguous language and procedural inconsistencies throughout the drafted amendments do not meet the statutory obligation to create clear and objective standards. Generally, the comment recommended revisions to the proposal to ensure the amendments are legally sound, flexible enough for rural contexts, and aligned with the state's broader housing goals. Regarding 17.36.180, the commenter argued that the proposed language is overly restrictive in rural areas where many properties are accessed via easements, not public roads, and that such a requirement constrains housing development. The commenter recommends retaining a discretionary review track alongside the clear and objective path to preserve flexibility for properties that are landlocked or otherwise constrained.

Additional concerns outlined in the written comment addressed the proposed amendments to DCC 17.36.040(B)(1) and the inclusion of language requiring the County to demonstrate “consistency with constitutional requirements.” The commenter argues that determining constitutional compliance under the Nollan/Dolan framework is inherently case-specific and not suitable for a clear and objective standard. Additional procedural concerns were directed to proposed text amendment language that suggests the County Road Department Director will help determine certain findings (see DCC 17.36.040(B)(2) and DCC 17.48.165(C)) as staff are participants in land use proceedings, not decision-makers. The commenter also highlighted that proposed changes to DCC 17.22.030 would require the same level of infrastructure improvements for both partitions and subdivisions, potentially leading to unconstitutional exactions. Additional concerns were outlined for the proposed amendments to DCC 17.22.025 (related to what constitutes a “conflict” with an easement), and partial width road improvements per DCC 17.48.160(D). The commenter noted a minor typo in DCC 17.48.180(A) and (B) and requested to continue the March 27 public hearing to allow for further public review and input.

3. *Matt Cyrus, Deschutes County Planning Commissioner (April 10, 2025):* This written comment provided responses, suggested specific language, and raised concerns about the practicality and legality of several provisions of the proposed text amendments. For DCC 17.16.060, 17.24.020, and 17.24.030, the commenter objected to approval expirations (e.g., five years for a Master Development Plan or two years for tentative plans), arguing that due to the significant investment in obtaining such approvals, they should not lapse and should be revised to align more with the permanence of a zone change and recognize real-world challenges such as market fluctuations.

The commenter also challenged the fire safety and water-related requirements under DCC 17.16.101 and 17.22.025, particularly those mandating verification from the Oregon State Fire Marshal (OSFM) and requiring engineers to guarantee no measurable well drawdown over 50 years. They argued these standards are either infeasible or involve agencies (like OSFM) that do not provide the required documentation. The written comment proposed refining the language in DCC 17.22.025(C)(2)(a)(2) to reference “rights/permits”.

The comments expressed opposition to certain infrastructure requirements like required dedications for future streets (DCC 17.36.080), and mandated pedestrian/bicycle connections and cul-de-sac restrictions (DCC 17.36.140), citing concerns with property rights and the *Dolan v. Tigard* takings precedent. The commenter suggested these provisions overreach by imposing off-site obligations and ignoring market-preferred design standards like cul-de-sacs. The commenter suggested that the draft provisions of DCC 17.36.180 be reworded to read “A. Each lot or parcel shall have a legal access.”

4. *Daniel Robinson, Schwabe Williamson & Wyatt (April 10, 2025):* Following up on the April 7, 2025 coordination meeting with County staff, the comment requested that key revisions be made before final adoption, emphasizing the importance of aligning the proposed amendments with the County's goal to increase housing supply, particularly where any newly-proposed standards are more stringent than existing code, which could hinder housing development.

The commenter broadly urged the Planning Commission to direct County staff to revise the proposed amendments by including a discretionary review option wherever new clear and objective criteria are more restrictive than the current code, arguing that without a parallel discretionary path, the stricter standards risk reducing development flexibility and thus fail to meet the intent of state law promoting needed rural housing. The commenter opposed County staff incorporating discretionary options through repurposing existing code language, and advocated instead to engage in broader policy discussions to refine discretionary criteria to effectively facilitate housing development.

5. *Robin Hayakawa, Central Oregon LandWatch (April 16, 2025):* "Code amendments should be policy neutral: Comments submitted to the record have advocated for substantive policy changes to the provisions of Title 17, when existing language is already nondiscretionary, clear, and objective. In particular, several comments have suggested that rural Frontage/Access requirements should be changed or eliminated in county zones, and that certain approvals should not become null and void after a specified period of time. The current process is not an appropriate forum for these proposed amendments. The Clear & Objective Code Amendment process was initiated to bring DCC into compliance with ORS 197A.400, which becomes effective on July 1, 2025. We encourage the County to resist these proposed changes and only draft policy-neutral code amendments where existing language is already nondiscretionary, clear, and objective. Otherwise, LandWatch thanks the County for their continued efforts on this important initiative. We hope that the proposed updates will achieve an effective balance of state legislative priorities and responsible land use principles in Deschutes County."
6. *Lisa Andrach, Fitch & Neary P.C. (April 16, 2025):* The public comment critiqued Deschutes County's past application of subdivision road standards to minor partitions, arguing that such enforcement can be both unreasonable and lacking in public benefit, citing a specific example from Terrebonne where a 2.5-acre partition was held to the same standards as subdivisions including public right-of-way upgrades. Further arguments stated that such rigid application results in absurd and impractical outcomes, especially when neighboring roads are unimproved or encroached upon, and when access does not rely on these adjacent areas. The comment included criticism of Title 17's variance code and the perceived lack of relief offered through those existing provisions.

Additionally, the comment argued that DCC 17.48.210, which governs access requirements, is vague, ambiguous, and inappropriately applied to partitions.

Citing specific example, the commenter described a landowner with ODOT-approved driveway access onto O'Neil Highway that was required to complete County road improvements based on subdivision standards. The requirement that access be taken from the lowest classified road led to a mandate to upgrade a road segment that ultimately dead-ends at an irrigation canal. The comment asserted that County enforcement of subdivision standards in this partition context was unnecessary and punitive. The commenter requested that the subject code revisions allow administrative flexibility where subdivision standards are excessive or misapplied.

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 February 20, 2025. Staff presented the proposed amendments to the Commission at a work session on March 13, 2025.⁵ An initial public hearing was held before the Commission on March 27, 2025⁶. At that time, both the oral and written records were continued to a subsequent hearing on April 10, 2025⁷, at which point the oral record was closed, while the written record remained open until April 16, 2025, at 5:00 pm. The Commission held deliberations on April 24, 2025⁸, highlighting several drafted amendments for review before the Board prior to final approval.

Based on feedback from the Planning Commission, several updates were incorporated into the current version of the proposed text amendments, attached to this memorandum. These updates are responsive to the Commissioner's comments around Oregon State Fire Marshal (OSFM) references, domestic water source terminology, and clarification around multi-use path connectivity.

In addition to the aforementioned feedback, Commissioners highlighted the following themes and issues during the public hearing and deliberations processes:

- In response to the Planning Commission's comments around durations of approval as outlined in the 17.16.060 and 17.16.070 sections Title 17's Approval of Subdivision Tentative Plans and Master Development Plans section, staff has provided clarifying language within the proposed amendments, explaining that any duration of approval for such plans is subject to the standards and procedures outlined in DCC 22.36 (Limitations on Approvals).
- The Planning Commission expressed concern with the draft language of DCC 17.36.080 (*Future Extension of Streets*) requiring roads to reach the edge of a subject property in order to provide access for adjoining divisible properties.

⁵ <https://www.deschutes.org/bc-pc/page/planning-commission-63>

⁶ <https://www.deschutes.org/bc-pc/page/planning-commission-64>

⁷ <https://www.deschutes.org/bc-pc/page/planning-commission-65>

⁸ <https://www.deschutes.org/bc-pc/page/planning-commission-66>

In part, the Planning Commission took issue with the absence of a two-track regulatory framework, emphasizing that the proposed language relied solely on clear and objective standards that failed to preserve the original discretionary flexibility afforded under current code.

Beyond procedural concerns, the Planning Commission raised broader constitutional issues, cautioning that rigid requirements for future street extensions could run afoul of Fifth Amendment protections against uncompensated taking. Without the ability to apply discretion, The Planning Commission expressed concern that the County could risk legal exposure for imposing conditions not justified under constitutional standards. In response, staff revised the proposed amendments to include a two-track approach incorporating both discretionary language alongside the proposed clear and objective language. This revision aims to address the Planning Commission's concerns by balancing regulatory compliance and clarity with flexibility.

- In alignment with several public comments submitted into record, the Planning Commission reviewed and expressed notable concern regarding the proposed amendments to DCC 17.36.180(A), which govern road frontage requirements for land divisions.

The Commissioners echoed community input in criticizing the draft language for its exclusive reliance on clear and objective standards, which eliminated the discretionary flexibility historically provided under the existing code. In particular, the potential for case-by-case review of certain frontage configurations involving federal lands administered by the Bureau of Land Management (BLM) and US Forest Service (USFS) was seen as a valuable component of the existing discretionary language.

In response to these concerns, staff revised the draft to include a two-track approach. This revision reinstates the original discretionary review pathway alongside the proposed clear and objective standards, providing applicants and decision-makers with increased flexibility and predictability. Further discussion by the Planning Commission indicated an interest in exploring broader alternatives to standard public road frontage. Specifically, Commissioners expressed a desire to consider the incorporation of additional discretionary language that would allow access via private easements under certain conditions.

Accordingly, while the Commission has recommended that the Board review this draft section with attention to potential opportunities for expanding discretionary flexibility, staff notes that the concept of allowing property access via private easements raises a range of broader policy considerations. Should the Board choose to explore this further, it may warrant additional discussion outside of the clear and object update involving a variety of stakeholders – such as utility providers, emergency service agencies, mail carriers, road districts, and developers – to help assess potential implications and inform any future direction.

Additionally, staff addressed public comments related to scrivener's errors and the inclusion of the term "constitutional requirements" and its variations in DCC 17.36.040(B)(1-3), as illustrated in the proposed amendments package.

Based on input received throughout the Planning Commission review process, the Board may receive additional testimony including but not limited to the proposed text amendments of DCC 17.22.030, 17.22.025(D), 17.36.040(B)(2), 17.36.080, 17.36.180, and 17.48.165(C).

VI. 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 related to the development of housing

VII. NEXT STEPS

At the conclusion of the public hearing, the Board 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