



## MEMORANDUM

**TO:** Deschutes County Planning Commission

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

**DATE:** April 17, 2025

**SUBJECT:** Deliberations: Clear and Objective Housing Text Amendments – Title 17 (Subdivisions)

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### I. OVERVIEW

The Deschutes County Planning Commission (Commission) will conduct deliberations on April 24, 2025 concerning text amendments establishing “clear and objective” housing development standards (file no. 247-25-000110-TA). 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.<sup>1</sup> An initial public hearing was held before the Commission on March 27, 2025<sup>2</sup>. At that time, both the oral and written records were continued to a subsequent hearing on April 10, 2025<sup>3</sup>, at which point the oral record was closed, while the written record remained open until April 16, 2025, at 5:00 pm.

### II. RECORD

The full record is available for inspection at the Planning Division and at the following project website: <https://bit.ly/DeschutesClearAndObjectiveTitle17>

### III. 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

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<sup>1</sup> <https://www.deschutes.org/bc-pc/page/planning-commission-63>

<sup>2</sup> <https://www.deschutes.org/bc-pc/page/planning-commission-64>

<sup>3</sup> <https://www.deschutes.org/bc-pc/page/planning-commission-65>

limited to clear and objective design standards contained in the county comprehensive plan or land use regulations.”<sup>4</sup>

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) *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.400<sup>5</sup> (formerly ORS 197.307, as referenced above) was established by House Bill (HB) 3197<sup>6</sup>. 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*

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<sup>4</sup> <https://olis.oregonlegislature.gov/liz/2017R1/Downloads/MeasureDocument/SB1051/Enrolled>

<sup>5</sup> [https://www.oregonlegislature.gov/bills\\_laws/ors/ors197a.html](https://www.oregonlegislature.gov/bills_laws/ors/ors197a.html)

<sup>6</sup> <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB3197/Enrolled>

*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, 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.

#### **IV. 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

#### **V. HEARING TESTIMONY AND DISCUSSION**

Two individuals provided written testimony immediately preceding the initial public hearing on March 27, 2025, with one of those individuals also providing oral testimony during the

public hearing. 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.

No additional oral or written comments were provided during the continued public hearing on April 10, 2025. Comments received prior to the April 10, 2025 continued public hearing are summarized below.

## **VI. OPEN RECORD TESTIMONY AND DISCUSSION**

As part of the open record period, the following comments were received from members of the public immediately preceding the continued public hearing on April 10, 2025. During the open record period, staff also held a coordination meeting on April 7, 2025 with Daniel Robinson, Rand Campbell, and Adam Smith to discuss the proposed text 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. *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.”

2. *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.

As part of the open record period following the continued public hearing, the following comments were received from members of the public. The full written comments are available in record for the Planning Commission's reference. For the purpose of this memorandum, brief summaries and/or excerpts of the testimony are provided below:

1. *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."
2. *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.

## **VII. STAFF ADDENDUMS AND DISCUSSION**

Based on feedback received through public comment, staff has incorporated several changes to the proposed amendments to ensure efficient implementation should the package ultimately be adopted by the Deschutes County Board of County Commissioners (Board). These changes relate to the following areas:

1. A scrivener's error identified in DCC 17.48.180(A) and (B) has been corrected to *"planned unit development (PUD)"*.
2. A scrivener's error identified in DCC 17.22.025(C)(3) has been corrected to *"...will be served by adequate transportation systems"*.
3. Use of the term *"constitutional requirements"* and its variations have been removed from DCC 17.36.040(B)(1-3).

Additionally, staff has prepared draft revisions to the proposed text amendments related to DCC 17.22.030, 17.22.025(D), 17.36.040(B)(2), 17.36.080, 17.36.180, and 17.48.165(C) including the incorporation of discretionary review options in highlighted instances where none are currently proposed. Depending on the Planning Commission's recommendation, these revisions may ultimately be incorporated into an updated version of the proposed amendments to be presented to the Board.

## **VIII. NEXT STEPS**

At the conclusion of the meeting, the Commission can:

- Continue deliberations to a date certain;
- Close deliberations and propose a recommendation during this meeting;

Ultimately, the Planning Commission will provide a recommendation to the Board of County Commissioners. Options include:

- Approve amendments as drafted;
- Approve amendments with suggested edits;
- Approve certain amendments / deny others;
- Deny amendments altogether;
- Other

Attachments:

- 1) Staff Report & Proposed Text Amendments