



## FINDINGS

### CLEAR & OBJECTIVE TEXT AMENDMENTS

#### I. **APPLICABLE CRITERIA:**

Deschutes County lacks specific criteria in DCC Titles 18, 22, or 23 for reviewing a legislative text amendment. Nonetheless, since Deschutes County is initiating one, the County bears the responsibility for justifying that the amendments are consistent with Statewide Planning Goals and its existing Comprehensive Plan.

#### II. **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.”<sup>1</sup>

The provisions of SB 1051, along with subsequent bills, modified Oregon Revised Statutes (ORS) 197.286–197.314. Of relevance to the current project is ORS 197.307(4)<sup>2</sup> 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>3</sup> (formerly ORS 197.307, as referenced above) was established by House Bill (HB) 3197<sup>4</sup>. The newly established ORS 197A.400 will become effective on July 1, 2025, and states the following [emphasis added]:

<sup>1</sup> <https://olis.oregonlegislature.gov/liz/2017R1/Downloads/MeasureDocument/SB1051/Enrolled>

<sup>2</sup> [https://oregon.public.law/statutes/ors\\_197.307](https://oregon.public.law/statutes/ors_197.307)

<sup>3</sup> [https://www.oregonlegislature.gov/bills\\_laws/ors/ors197a.html](https://www.oregonlegislature.gov/bills_laws/ors/ors197a.html)

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

(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, 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.

### **III. BASIC FINDINGS**

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 more structured and confined way.

Where possible, planning staff have endeavored to draft amendments that are a policy-neutral conversion of existing discretionary language to non-discretionary language. This ensures the original intent and desired outcome is preserved. When not possible, alternative standards or criteria have been proposed, or, in certain limited cases, the language has been removed with possible replacement language to be included as part of a future code amendment package. Additionally, while not exclusively associated with housing developments, 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.

The first amendment package proposed will broadly cover the following areas of the DCC:

- Definitions for the Deschutes County Zoning Code (Title 18) and the Bend Urban Growth Boundary Zoning Ordinance (Title 19)
- Dimensional standards (height, structural footprints, setbacks, etc.) for Titles 18 and 19
- Accessory structure standards for Titles 18 and 19

#### IV. **METHODOLOGY:**

Clear and objective standards use terms, definitions, and measurements that provide for consistent interpretation of the standard. In theory, any two people applying the same standard or criterion to a development would get the same result, and there is no need or ability for the reviewer to exercise discretion in application of the standard. The standards and criteria should provide a predictable outcome for a wide variety of contexts and scenarios.

Per state statute, the standards cannot be so strict that they have the effect, either in themselves or cumulatively, of discouraging housing through unreasonable cost or delay. After discussion with County Legal Counsel and review of other jurisdictions which have implemented similar code amendments, staff has determined there are a variety of approaches that can be used to craft clear and objective standards:

- **True/False Standards** – These can be used to evaluate whether a proposed development has satisfied a certain objective criterion. (i.e. – is the structure on a lot or parcel within a rural residential zone?)
- **Counts and Measurements** – These standards are typically based on a minimum value, a maximum value, or an acceptable range of values. (i.e. - maximum building height of 30 feet)
- **Lists/Menus** – Lists and menus provide flexibility for applicants to meet a standard by choosing among several options. Lists can specify a range of acceptable options (“Any of the following...”) or can require selection of a minimum number of elements (“At least two of the following five options...”)

- **Two-Track Systems: Discretionary Review** – While a clear and objective review path is required for residential development, it may not be practical or achievable to write clear and objective standards and criteria that work in every development situation. ORS 197 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 and future text amendment packages maintain the existing design review and land division standards as an optional, discretionary tract for housing. These discretionary standards would 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.

## V. **FINDINGS:**

### **CHAPTER 22.12, LEGISLATIVE PROCEDURES**

Section 22.12.010.

#### ***Hearing Required***

***No legislative change shall be adopted without review by the Planning Commission and a public hearing before the Board of County Commissioners. Public hearings before the Planning Commission shall be set at the discretion of the Planning Director, unless otherwise required by state law.***

**FINDING:** This criterion will be met because a public hearing was held before the Deschutes County Planning Commission (Commission) on January 9, 2025 and a public hearing was held before the Board of County Commissioners (Board) on XX 2025.

Section 22.12.020, Notice

#### ***Notice***

##### **A. *Published Notice***

- 1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.***
- 2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.***

**FINDING:** This criterion is met as notice was published in *The Bulletin* newspaper on XX 2024 for the Commission public hearing and on XX 2024 for the Board public hearing.

**B. Posted Notice.** *Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.*

**FINDING:** Posted notice was determined by the Planning Director not to be necessary.

**C. Individual notice.** *Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.*

**FINDING:** The proposed amendments are legislative and do not apply to any specific property. Therefore, individual notice is not required.

**D. Media notice.** *Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.*

**FINDING:** Notice was provided to the County public information official for wider media distribution. This criterion has been met.

Section 22.12.030 Initiation of Legislative Changes.

***A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of County Commissioners.***

**FINDING:** The application was initiated by the Deschutes County Planning Division at the direction of the Board and has received a fee waiver. This criterion has been met.

Section 22.12.040. Hearings Body

**A. The following shall serve as hearings or review body for legislative changes in this order:**

- 1. The Planning Commission.**
- 2. The Board of County Commissioners.**

**B. Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.**

**FINDING:** This criterion is met as the Commission held a public hearing on January 9, 2025. The Board held a public hearing on XX, 2025.

Section 22.12.050 Final Decision

***All legislative changes shall be adopted by ordinance***

**FINDING:** The proposed legislative changes included in file no. 247-24-000XXX-TA will be implemented by ordinances upon approval and adoption by the Board.

## **VI. Oregon Statewide Planning Goals:**

### **Statewide Planning Goal 1 – Citizen Involvement:**

This goal outlines the citizen involvement requirement for the adoption of Comprehensive Plans and changes to the Comprehensive Plan and implementing documents.

**FINDING:** The County’s citizen involvement program ensures that any amendments to the County’s development code are reviewed through a duly noticed public process. This legislative process to review the proposed amendments will require two public hearings, one before the Commission on January 9, 2025 and one before the Board on XX 2025.

Information was distributed throughout the process via the project website and through social media and email. All Commission and Board work sessions were open to the public and noticed in accordance with the County’s rules and regulations. All work session materials, including meeting recordings and summaries, were available on the County’s website. All the aforementioned venues provided the opportunity for gathering feedback and comments.

As part of the legislative process, public notice requirements for the Commission and Board public hearings were met. The notice was sent to persons who requested notice, affected government agencies, and was published in the XX 2024 issue of the Bend Bulletin. The notice invited public input and included the phone number of a contact person to answer questions. The notice also included the address of the County’s webpage where the draft of the proposal can be viewed.

### **Statewide Planning Goal 2 – Land Use Planning:**

This goal outlines the land use planning process and policy framework. The County’s Comprehensive Plan was acknowledged by DLCD as being consistent with the statewide planning goals.

**FINDING:** Deschutes County has an acknowledged Comprehensive Plan and enabling ordinances. The amendments to the DCC are being undertaken to bring residential development standards, criteria, and procedures into compliance with state statutes.

The amendments are being processed in accordance with the County’s adopted procedures, which requires any applicable statewide planning goals, federal or state statutes or regulations, comprehensive plan policies, and the County’s implementing ordinances be addressed as part of the decision-making process. The amendments are being processed as a post-acknowledgement plan amendment (PAPA) and noticing requirements have been met. All applicable review criteria have been addressed within this staff report; therefore, the requirements of Goal 2 have been met.

### **Statewide Planning Goals 3 and 4 – Agricultural Lands and Forest Lands:**

**FINDING:** The standards of ORS 197A.400 specifically require clear and objective standards for all housing development “...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 identified areas do not include resource zoned lands (i.e. - Exclusive Farm Use, Forest Use, etc.), and staff understands ORS 197A.400 to implicitly exempt resource zoned properties, as those areas are governed by separate statutory standards. Staff finds that these goals do not apply to the proposed amendments.

Staff notes that certain proposed changes have been included in portions of the DCC to maintain alignment with other modifications proposed elsewhere in the code. For example, certain definitions (i.e. – building height, setbacks, etc.) would be modified through this proposal and would have cascading effects through many areas of the DCC, including the Exclusive Farm Use and Forest Use Zoning chapters. However, staff notes that these changes do not modify any existing standards within these chapters, but rather provide conformity and clarity throughout the DCC.

### **Statewide Planning Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces:**

This goal requires the inventory and protection of natural resources, open spaces, historic sites and areas.

**FINDING:** The County is currently in compliance with the State’s Goal 5 program. The proposed amendments included in this package do not alter the County’s acknowledged Goal 5 inventories or associated land use programs as implemented through DCC Chapter 18.84 (Landscape Management Combining Zone), Chapter 18.88 (Wildlife Area Combining Zone), Chapter 18.88 (Greater Sage-Grouse Area Combining Zone), and Chapter 18.90 (Sensitive Bird and Mammal Habitat Combining Zone).

No changes will occur to current natural resource protections. As a result, the amendments are in compliance with Goal 5 process requirements.

### **Statewide Planning Goal 6 – Air, Water, and Land Resource Quality:**

To maintain and improve the quality of air, water, and land resources of the state.

**FINDING:** The County is currently in compliance with the State’s Goal 6 program. The amendments do not alter the County’s acknowledged land use programs regarding water quality. The amendments are consistent with Goal 6.

### **Statewide Planning Goal 7 – Areas Subject to Natural Hazards:**

To protect people and property from natural hazards.

**FINDING:** The County is currently in compliance with the state’s Goal 7 program through adoption and implementation of the County’s Natural Hazard Mitigation Plan<sup>5</sup>. No changes will occur to County programs related to flood management, wildfire mitigation, or other natural hazards. The amendments are consistent with Goal 7.

**Statewide Planning Goal 8 – Recreational Needs:**

This goal requires the satisfaction of the recreational needs of the citizens of the state and visitors.

**FINDING:** The proposed amendments do not address or alter any County recreational programs or land use requirements related to parks and recreation. The proposed amendments are in compliance with Goal 8.

**Statewide Planning Goal 9 – Economic Development:**

To provide adequate opportunities for a variety of economic activities vital to the health, welfare, and prosperity of Oregon’s citizens.

**FINDING:** The County is currently in compliance with the state’s Goal 9 program. The proposed amendments do not alter the County’s compliance with Goal 9.

**Statewide Planning Goal 10 – Housing:**

To provide adequate housing for the needs of the community, region, and state.

**FINDING:** The currently proposed Clear and Objective Code Amendment Package and upcoming code amendment packages will ensure Deschutes County remains in compliance with state statute and administrative rules, and Goal 10 by continuing to allow residential construction to proceed through a Clear and Objective process using clear and objective standards and criteria. Adoption of the proposed amendments will reduce the administrative burden and uncertainty, and therefore remove barriers to housing within areas of the County identified for residential development.

**Statewide Planning Goal 11 – Public Facilities and Services:**

To plan and develop a timely, orderly, and efficient arrangement of public facilities and services to serve as framework for urban and rural development.

**FINDING:** The County is currently in compliance with Goal 11 through its acknowledged Comprehensive Plan. The amendments do not alter the County’s compliance with Goal 11 and are consistent with this goal.

**Statewide Planning Goal 12 – Transportation:**

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<sup>5</sup> [https://sheriff.deschutes.org/2021\\_NHMP.pdf](https://sheriff.deschutes.org/2021_NHMP.pdf)



To provide and encourage a safe, convenient, and economic transportation system.

**FINDING:** The County is currently in compliance with Goal 12 and Metro’s Regional Transportation Plan through its acknowledged Comprehensive Plan and TSP as required by Oregon Administrative Rule 660-012 (Transportation Planning Rule - TPR). Additionally, the Deschutes County Senior Transportation Planner reviewed the proposed amendments for potential TPR effects and found that the proposed amendments appear to comply with TPR provisions. As such, the proposed amendments do not alter the County’s compliance with Goal 12.

**Statewide Planning Goal 13 – Energy Conservation:**

Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based on sound economic principles.

**FINDING:** The County is currently in compliance with Goal 13 through its acknowledged Comprehensive Plan. The amendments do not alter the County’s compliance with Goal 13 and are consistent with this goal.

**Statewide Planning Goal 14 – Urbanization:**

To provide for orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

**FINDING:** The County is currently in compliance with Goal 14 through its acknowledged Comprehensive Plan and land use regulations. The County also has signed Joint Management Agreements with the cities of Bend, Redmond, and Sisters as required by ORS 195.065. The amendments do not alter the County’s compliance with Goal 14 and are consistent with this goal.

**VII. CONCLUSION:**

Based on the information provided herein, the staff recommends the Board of County Commissioners approve the proposed text amendments that make changes necessary to conform with state statutory requirements regarding clear and objective standards for housing development.