

## **ARTICLE X**

### **DEVELOPMENT APPROVAL PROCEDURES**

#### SECTION 10.010: PURPOSE AND APPLICABILITY

- (1) Purpose. The purpose of this chapter is to establish standard decision-making procedures that will enable the County, the applicant, and the public to reasonably review applications and participate in the local decision-making process in a timely and effective way. Table 10.1 provides a key for determining the review procedure and the decision-making body for particular approvals.
- (2) Applicability and coordination. All land use and development permit applications and approvals included in Table 10.1 shall be reviewed and decided using the procedures contained in this chapter.
  - (a) The Director shall be responsible for the coordination of land use and development applications and decision-making procedures.
  - (b) No development shall occur without first obtaining the required permit(s) pursuant to the provisions in this chapter.
  - (c) Permit approval is contingent on receipt of required application submittal(s) and findings of compliance with the provisions of this Ordinance and, where applicable, the Tillamook County Comprehensive Plan.
- (3) Consistency with Oregon Revised Statutes. The processing of applications and permits authorized under this Ordinance shall be consistent with the Oregon Revised Statutes (ORS). The County shall follow the provisions of the ORS in instances where following the provisions of this chapter alone would fail to meet State requirements for the processing or review of land use applications or permits.
- (4) Review Types. All land use and development permit applications shall be reviewed under one review type as established in this chapter. There are four types of permit/approval procedures. Detailed information about each review type is provided in Section 10.040. A complete list of applications and their associated review type and review authority is provided in Table 10.1.
  - (a) Type I Ministerial Review
  - (b) Type II Administrative Review
  - (c) Type III Quasi-judicial Review

- (d) Type IV Legislative Review

SECTION 10.020: APPLICATIONS

(1) Applications for Type I, Type II and Type III planning actions may be initiated by the following:

- (a) The owner of the property that is the subject of the application;
- (b) The purchaser of such property who submits a duly executed written contract, or copy thereof, which has been recorded with the Tillamook County Clerk;
- (c) The purchaser of such property who submits a duly executed earnest money agreement stating the land use action proposed;
- (d) A lessee in possession of such property who submits written consent of the owner to make such application;
- (e) The County Board through an adopted Resolution;
- (f) The County Road Department [or Public Works], (when dealing with land involving public works projects); or
- (g) By the representative or agent of any of the above upon submittal of written authorization to make such application.

(2) Type IV Legislative planning actions may be initiated only by the County Board of Commissioners, County Planning Commission, Community Advisory Committees or the Department through an adopted Resolution.

(3) Consolidated Review. When an applicant applies for more than one type of land use or development permit for the same one or more contiguous parcels of land, the proceedings may be consolidated if requested by the applicant for review and decision.

- (a) Under a consolidated review, required notices also may be consolidated, provided the notice shall identify each application to be decided.
- (b) The applications shall be processed according to the highest numbered review type required for any part of the application. For example, a concurrent review of a Type II review and a Type III review would be processed through a Type III review.
- (c) When more than one application is reviewed in a hearing, separate findings and decisions shall be made on each application.
- (d) The applicant shall submit an application form and application fee for each application being reviewed.

(4) Decision deadlines and time limits.

- (a) The County shall take final action on Administrative and Quasi-Judicial land use applications, including resolution of all appeals, within the following time limits:
  - i. For land inside a UGB and applications for mineral aggregate extraction: 120 days from the date the application is deemed complete
  - ii. For all other applications: 150 days from the date the application is deemed complete
  - iii. Upon written request by the applicant, the decision period may be extended for a specified period of time. The total of all extensions shall not exceed 215 days (unless a dispute concerning the application will be mediated per ORS 215.427(10)).
- (b) Time limits and extensions for residential development on agricultural or forest land outside the UGB. If a permit is approved for single-family dwelling on agricultural or forest land outside an urban growth boundary, consistent with ORS 215.417 the permit shall be valid for four years and can be extended for an additional two years.
- (c) In computing time periods prescribed or allowed by this Chapter, the day of the act or event from which the designated period of time begins shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which case the period runs until the end of the next day that is not on a weekend or legal holiday.

(5) Filing fees.

- (a) For the purpose of defraying the cost of processing applications, fees shall be paid to the Department upon the filing of an application.
- (b) Any and all fees shall be established by County Board separate from this Ordinance and may be revised whenever necessary.
- (c) A filing fee may be waived by the County Board for Governmental agencies or nonprofit groups. Said waiver shall be approved by the County Board prior to submitting an application or appeal to the Department.
- (d) Upon written request by the applicant, filing fees may be refundable prior to a decision being issued through a Type I decision. The Director shall prorate the refund based on the original application fee minus expenses incurred by the Department, including noticing expenses and staff time dedicated to the application.

(6) Application forms and checklists. Application forms provided by the County must be used for all applications. The County shall supply application forms pursuant to the standards contained in applicable State laws, Comprehensive Plan policies, and Ordinance provisions. The County shall also supply checklists or information sheets that specify the information that must be contained in the application, including format and number of copies.

(a) Application types. Table 10.1 below provides a list of all application types and their associated review procedure, review authority and appeal authority.

Type I= Ministerial Review      Type II= Administrative Review

Type III= Quasi-judicial Review      Type IV= Legislative Review

<b>TABLE 10.1: REVIEW PROCEDURES SUMMARY</b>			
<b>Permit/Application</b>	<b>Procedure Type</b>	<b>Review Authority</b>	
		<b>Decision</b>	<b>Appeal</b>
Appeal of Director's Decision	Type III	Planning Commission	Board of County Commissioners
Appeal of Planning Commission Decision	Type IV	Board of County Commissioners	Land Use Board of Appeals
Beach and Dune Hazard Report Review	Type I	Director	Planning Commission
Conditional Use Review	Type II	Director	Planning Commission
Conditional Use (as deemed by Director)	Type III	Planning Commission	Board of County Commissioners
Comprehensive Plan Amendment	Type III	Board of County Commissioners (with recommendation by Planning Commission)	LUBA
Development Permit Review for Development in Estuary or Floodway	Type II	Director	Planning Commission

**TABLE 10.1: REVIEW PROCEDURES SUMMARY**

Permit/Application	Procedure Type	Review Authority	
		Decision	Appeal
Extension of Time Review	Type I	Director	Planning Commission
Extension of Time (as deemed by the Director)	Type III	Planning Commission	Board of County Commissioners
Final Plat Approval	Type I	Director	Planning Commission
Floodplain Development Permit Review (excluding development in Floodway or Estuary)	Type I	Director	Planning Commission
Farm and Forest Dwellings, New	Type II	Director	Planning Commission
Foredune Grading Permit Review	Type II	Director	Planning Commission
Geologic Hazard Report Review	Type I	Director	Planning Commission
Goal Exception	Type III	Planning Commission	Board of County Commissioners
Land Use Compatibility Statement	Type I	Director	Planning Commission

**TABLE 10.1: REVIEW PROCEDURES SUMMARY**

Permit/Application	Procedure Type	Review Authority	
		Decision	Appeal
Neskowin Coastal Hazard Area Permit	Type II	Director	Planning Commission
Nonconforming Review (Minor or Major)	Type II	Director	Planning Commission
Ordinance Amendment	Type IV	Board of County Commissioners (with recommendation by Planning Commission)	LUBA
Zoning Permit	Type I	Director	Planning Commission
Preliminary Plats - Partitions	Type II	Director	Planning Commission
Preliminary Plat - Subdivision	Type III	Planning Commission	Board of County Commissioners
Preliminary Plat Time Extension	Type I	Director	Planning Commission
Property Line Adjustment	Type I	Director	Planning Commission
Resource or Riparian Setback Exemption	Type II	Director	Planning Commission
Remedial Grading Permit Review	Type I	Director	Planning Commission

**TABLE 10.1: REVIEW PROCEDURES SUMMARY**

Permit/Application	Procedure Type	Review Authority	
		Decision	Appeal
Replacement Dwelling (Resource Zone)	Type I	Director	Planning Commission
Sanitation Review LUC	Type I	Director	Planning Commission
Temporary Use	Type I	Director	Board of County Commissioners
Variance	Type II	Director	Planning Commission
Variance (as deemed by Director)	Type III	Planning Commission	Board of County Commissioners
Zone Map Amendment, Legislative	Type IV	Board of County Commissioners (with recommendation by Planning Commission)	LUBA
Zone Map Amendment, Quasi-judicial	Type III	Board of County Commissioners (with recommendation by Planning Commission)	LUBA

- (b) Application submittal requirements. An application shall be considered complete when it is submitted in accordance with the format and upon such forms as may be established by the Director. In addition to required hard copies, all materials must be submitted electronically or in a format that does not exceed 11 inches by 17 inches in size. A complete application is one which contains the information required to address the relevant standards of this ordinance and the applicable standards and requirements of the Comprehensive Plan as specified by this ordinance. At a minimum, a complete application must contain the following items:

- i. Application form with applicable signatures.
  - ii. Payment of applicable review fees.
  - iii. Deed, title or other proof of ownership.
  - iv. Detailed description of all existing and proposed uses and structures, including a summary of all information contained in any site plans. The description may need to include both a written and graphic component such as elevation drawings or 3-D models.
  - v. Detailed statement that demonstrates how the proposal meets all applicable approval criteria, zoning and land use regulations, and development standards.
  - vi. Site plan(s), preliminary plat, or final plat as applicable.
  - vii. Information demonstrating compliance with prior decisions(s) and conditions of approval for the subject site, as applicable.
  - viii. Any other items identified on the specific application form or submittal checklist.
  - ix. Copy of the pre-application summary, if applicable.
- (c) Completeness review. Upon receipt of an application, the County shall conduct a completeness review to determine if an application contains all information necessary to continue with the review. If an application is determined to be incomplete, the Director shall notify the applicant in writing of exactly what information is missing within thirty (30) days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete upon receipt by the Director of:
- i. All of the missing information;
  - ii. Some of the missing information and written notice from the applicant that no other information will be provided; or
  - iii. Written notice from the applicant that none of the missing information will be provided.
- On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information and has not responded in accordance with (1.-iii.) above.
- (d) Re-submittal of a denied application. If an application is denied by the County, and no higher authority reverses such denial upon appeal, no new application for the same or substantially similar action shall be filed for at least six (6) months from the date of the final order of the action denying the application.
  - (e) Supplemental application. An applicant whose application for a permit was denied by the County may submit a supplemental application for any or all other uses allowed by this Ordinance in the zone that was the subject of the denied application.

1. The supplemental application shall be processed by the County in conformance with the provisions of ORS 215.433.
  2. The County shall take final action on a supplemental application submitted under this section, including resolution of all appeals, within 240 days after the supplemental application is deemed complete.
- (f) Modification of applications under review. The procedures of this subsection shall apply if an applicant modifies an application after the County has deemed it complete but prior to a public hearing or issuance of a decision.
- i. Upon receipt of materials that modify an application, the Director shall evaluate the modifications, determine which of the two categories listed below describes the modification, and follow the related procedures. This decision is not a land use decision and is not appealable.
  - ii. Significant Modification. A significantly modified application greatly differs from the application that was deemed complete. Such differences may include the land use; size, height, and/or design of proposed structures; location of uses and structures on the site; or other such characteristics of the proposal. Substantial modifications may alter which approval criteria and development standards apply to the development proposal. The Director shall notify the applicant of this determination and take one of the following actions, at the direction of the applicant:
    1. Allow the applicant to withdraw the original application and submit the modified proposal as a new application.
    2. Reject the modifications and continue processing the original application. Rejecting a significant modification does not preclude the applicant from submitting other, different modifications.
  - iii. Minor Modification. Minor modifications involve a limited number of changes from the original application and typically should not alter any approval criteria and development standards which apply to the development proposal. The Director shall notify the applicant of this determination and take one of the following actions, at the direction of the applicant:
    1. Accept the modifications and proceed with the review of the modified application. The Director may repeat, at his or her discretion, any part of the public notice or referral process to provide appropriate opportunity for public review of the modifications. The applicant shall also extend the 120-day or 150-day decision requirement in writing to a date that is sufficient to allow for additional review, public notice, or evaluation by the County.
    2. Reject the modifications and continue processing the original application. Rejecting a minor modification does not preclude the applicant from submitting other, different modifications.

## SECTION 10.030 PRE-APPLICATION CONFERENCE

- (1) Purpose. The purpose of a pre-application conference is to acquaint the applicant with the substantive and procedural requirements of the Ordinance; provide for an exchange of information regarding applicable elements of the Comprehensive Plan and development requirements; arrange such technical and design assistance as will aid the applicant; and to identify policies and regulations that create opportunities or pose significant constraints for the proposed development.

The Department shall make available such background information as may be on file relating to the general area of the subject parcel or parcels, and any plans the County may have or information related to past activity or development in the area upon the request of the developer. The Department shall advise the applicant of the design standards, improvement requirements, and procedures established by the County for the review and approval of the proposed land use action.

- (2) Applicability.

- (a) For a Type I application, a pre-application conference is not required. An applicant may request a pre-application conference and will be subject to applicable fees.
- (b) Applicants shall complete a pre-application form obtained from the Department and pay the required fee for proposals that require Type II and Type III decisions.
- (c) For a Type II application, a pre-application conference is required unless the applicant provides a signed acknowledgment that they have waived the pre-application conference. The pre-application fee must still be paid and is not refundable.
- (d) Type III decisions require a pre-application meeting with the Department for the purpose of informing the Department of the proposal. A pre-application conference may not be waived.

- (3) Procedure. The pre-application conference procedure will include the following steps:

- (a) An applicant must submit a pre-application request form, the required pre-application information and materials and the pre-application conference fee.
- (b) The County will schedule a pre-application conference. When feasible based on staff availability and other scheduling factors, the pre-application conference will be held within two weeks of the applicant's request.
- (c) The County will review the pre-application materials and notify other relevant agencies prior to the conference. Notified agencies will provide written comments prior to the conference or attend the conference.
- (d) After the conference is held, the County will provide the applicant with a written summary including applicable policies and regulations that must be addressed in the application. The County will also provide a submittal checklist for a complete application package, including applicable fees.

- (e) An applicant may request an additional pre-application conference at any time prior to submittal of an application, subject to applicable fees.

#### SECTION 10.040 REVIEW TYPES

All land use applications will be reviewed by the County using one of the following review types. Specific applications and their associated review types are listed in Table 10.1.

- (1) Type I Ministerial Review. Type I decisions are made by the Director, or his/her designee, without public notice and without a public hearing. Type I applications involve permitted uses or development governed by clear and objective approval criteria and/or development standards that may require the exercise of professional judgment about technical issues.
- (2) Type II Administrative Review. Type II decisions are made by the Director, or his/her designee, and include notice and an opportunity to appeal to the Planning Commission. Alternately, the Director may refer a Type II application to the Planning Commission for its review and decision in a public hearing. Applications involve permits for which the application of review criteria requires the exercise of limited discretion.
- (3) Type III Quasi-judicial. Type III decisions (with the exception of a quasi-judicial zone change) are made by the Planning Commission after a public hearing, with an opportunity to appeal to the Board of Commissioners. A decision on a quasi-judicial zone change (e.g., a change in zoning on one property to comply with the Comprehensive Plan) is a Type III decision made by the Board of Commissioners on recommendation of the Planning Commission. Quasi-judicial decisions involve the exercise of discretion and judgment when applying applicable land use and development criteria but implement established policy.
- (4) Type IV Legislative. Type IV reviews are considered by the Planning Commission, who makes a recommendation to the Board of Commissioners. The Board of Commissioners makes the final decision on a legislative proposal through the enactment of an ordinance. Legislative decisions involve the creation, broad-scale implementation, or revision of public policy. Changes to the comprehensive plan land use map are characterized as legislative; applications involving amendments to the County's zoning map will require a legislative review where a large number or entire class of property owners are directly affected.

#### SECTION 10.050 GENERAL NOTICING REQUIREMENTS

The County shall provide opportunities for public and agency input in the planning process. To ensure that there is a coordinated effort to permit land use projects, notice of applications for development approval shall be sent to interested entities, local, state and federal agencies, County departments, and County designated Citizen Advisory Committees. A list of applicable local, state and federal agencies and entities shall be maintained by the Director.

The following general noticing requirements are in addition to the noticing requirements found under the Procedures section for each decision type in Article 10.

- (1) General noticing requirements.
  - (a) The County shall provide review notice to the Department of State Lands for applications that are wholly or partially within an area identified as a wetland on the Statewide Wetlands Inventory. Notice shall be provided within 5 working days of receipt of the complete application.
  - (b) If the subject property is being considered for a comprehensive plan or zone change, notice of receipt of the application shall be provided to the Oregon Department of Transportation.
  - (c) The County shall provide review notice to ODOT and the appropriate railroad owner for applications in which a railroad or highway crossing provides or will provide the only access to a property.
  - (d) The County shall provide review notice of all comprehensive plan and zoning ordinance amendments to the Department of Land Conservation and Development (DLCD). Notice shall be provided at least 35 days prior to the first evidentiary hearing and will be consistent with ORS 197.610.
  - (e) The County shall provide notice of decision on comprehensive plan and zoning ordinance amendments to DLCD. Notice shall be provided within 20 days of the date of the decision and will be consistent with ORS 197.615.
  - (f) An affidavit or other formal certification of all mailing notices shall be made part of the record.
  - (g) Failure of a notified party to receive notification will not invalidate the procedure.

#### SECTION 10.060 TYPE I PROCEDURES

- (1) Notice of Review. No notice of review of a Type I application is required.
- (2) Criteria and Decision. The Director's review of a Type I application will determine whether minimum code requirements are met and whether any other land use permit or approval is required prior to issuance of a building permit.
- (3) Notice of Decision. Type I development actions shall be decided by the Director without public notice or hearing. Notice of a decision shall be provided to the applicant or the applicant's representative and owners of the subject property.
- (4) Effective Date. A Type I decision is final on the date it is signed by the Director. It is not a land use decision as defined by ORS 197.015, and therefore is not subject to appeal to the State Land Use Board of Appeals.
- (5) Appeals. A Type I decision can be appealed in accordance with Section 10.100.

SECTION 10.070 TYPE II PROCEDURES

(1) Notice for Type II Decisions.

- (a) Notice of review. The purpose of the Administrative Decision notice is to give nearby property owners and other interested people and agencies the opportunity to submit written comments on the application before the Director issues the decision.
  - i. A notice of review of the Type II application shall be provided to the following parties within 10 business days of receipt of a complete application:
    - 1. All owners of record of real property within 100 feet of the subject site if the subject site is inside UGB.
    - 2. All owners of record of real property within 250 feet of the subject site if the subject site is outside UGB and not in farm or forest zone.
    - 3. All owners of record of real property within 750 feet of subject site if the subject site is outside UGB and in a farm or forest zone.
    - 4. Any citizen's advisory committee or community organization whose boundaries include, or are adjacent to, the subject site.
    - 5. Any affected government agency or public district, including affected city if the subject site is inside a UGB.
    - 6. Owners of a public use airport, if the subject site is within 5,000 feet of the side or end of a "visual airport" runway, or within 10,000 feet of an "instrument airport" runway, unless the proposal involves structures less than thirty-five (35) feet tall outside the runway approach surface.
    - 7. Other persons as may be affected by the proposal.
  - ii. The notice of review shall contain the following information:
    - 1. A summary of the proposal and the relevant approval criteria.
    - 2. The general location of the subject property and, when available, street address, legal description, or other easily understandable reference to the location of the proposed use or development.
    - 3. The deadline established for rendering a final decision.
    - 4. The address and County contact person for submitting written comments.
    - 5. The deadline for submitting written comments on the request, which shall be at least 14 days prior to the scheduled decision date.

6. Disclosure statement indicating that if any person fails to address the relevant approval criteria with enough detail, they may not be able to appeal to the Land Use Board of Appeals or Circuit Court on that issue. Only comments on the relevant approval criteria are considered relevant evidence.
7. Statement that all evidence relied upon by the County Planning Director or Planning Commission, as applicable, to make its decision is in the public record and is available for public review. Copies of this evidence can be obtained at a reasonable cost from the County.
8. Statement that after the comment period closes the County will issue its decision and the decision shall be mailed to the applicant and to anyone else who submitted written comments or who is otherwise legally entitled to notice.
9. The following statement in bold letters: **NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER.**

(2) Criteria and Decision.

- (a) At the conclusion of the comment period, the Director shall review the comments received and prepare a decision notice approving, approving with conditions, or denying the application based on the applicable Ordinance criteria. Alternatively, the Director may transmit all written comments received, if any, along with a copy of the application to the Planning Commission for review and decision at its next regularly scheduled meeting.
- (b) Where the Director refers an application subject to Administrative Review to the Planning Commission, the Planning Commission shall approve, approve with conditions, or deny the application through the Type II procedure based on the applicable Ordinance criteria. The Planning Commission may continue its review to the next meeting to allow the applicant time to respond to questions, provided the Commission must make a final decision within the 150-day period (or 120-day period, as applicable) prescribed under State law (ORS 215.427) and as described in Section 10.020(4) of this Ordinance. Alternatively, the applicant may voluntarily waive his or her right to a final decision within the 150-day timeframe and the Commission may decide to accept oral and written testimony in a public hearing review of the application, pursuant with Section 10.080; in which case a new public notice must be mailed to those who received the original notice indicating the change to a quasi-judicial (public hearing) review procedure.

(3) Notice of Decision.

- (a) Notice of decision shall be provided within 10 days of the date of the decision to all parties who received review notice under subsection 1(a) above.
- (b) The Director shall cause an affidavit of mailing the notice to be prepared and made a part of the file. The affidavit shall show the date the notice was mailed and shall demonstrate

that the notice was mailed to the parties above and was mailed within the time required by law.

- (c) The decision notice shall include the following information:
- i. A description of the applicant's proposal and the County's decision, including conditions of approval if applicable.
  - ii. The street address or other easily understood geographical description of the subject site, including a map of the property in relation to the surrounding area.
  - iii. Name of the County contact with phone number.
  - iv. Statement that a copy of the decision is available for inspection at no cost, or copies will be provided at a reasonable cost.
  - v. The date the decision shall become final, unless appealed.
  - vi. Statement that any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal within 12 days of the date the notice was mailed, pursuant to the requirements in Section 10.100.
  - vii. Statement that the decision will not become final until the 12-day appeal period is over.
  - viii. Statement that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals (LUBA) under ORS 197.830, unless the notice does not reasonably describe the nature of the decision.
  - ix. Effective Date of Decision. Unless the conditions of approval specify otherwise, an Administrative Decision becomes effective twelve (12) days after the County mails the decision notice unless the decision is appealed pursuant with Section 10.100.

#### SECTION 10.080 TYPE III PROCEDURES

(1) Notice for Type III Decisions.

- (a) Notice of Review. The County shall provide notice of a public hearing on a Quasi-Judicial application at least 28 days prior to the first hearing date. If two or more hearings are allowed, then notice shall be provided at least 10 days prior to first hearing. The County Planning Director shall prepare an affidavit of notice, which shall be made part of the file. This affidavit shall state the date that the notice was mailed. Notice of a public hearing shall be provided to the following parties:
- i. All owners of real property within 100 feet of the subject property if the subject property is inside UGB
  - ii. Property owners within 250 feet of subject property if the subject property is outside UGB and not in farm or forest zone.

- iii. Property owners within 250 feet of subject property if the action is a zone change requested by the property owner (required by ORS 215.223.3).
  - iv. Property owners within 750 feet of subject property if the subject property is outside UGB and in a farm or forest zone.
  - v. Any affected government agency or public district, including affected city if subject site is inside a UGB.
  - vi. Any citizen's advisory committee or community organization whose boundaries include, or are adjacent to, the subject site.
  - vii. Owners of a public use airport, if the subject site is within 5,000 feet of the side or end of a "visual airport" runway, or within 10,000 feet of an "instrument airport" runway, unless the proposal involves structures less than thirty-five (35) feet tall outside the runway approach surface.
  - viii. Other persons as may be affected by the proposal.
- (b) Notice of a public hearing shall include the following information:
- i. A summary of the proposal and the relevant approval criteria.
  - ii. The general location of the subject property and, when available, street address, legal description, or other easily understandable reference to the location of the proposed use or development.
  - iii. The date, time and location of scheduled hearing and the name of the hearing body.
  - iv. The name of a local government representative to contact and the telephone number where additional information may be obtained.
  - v. A disclosure statement indicating that if any person fails to address the relevant approval criteria in sufficient detail, in person at a hearing or by written statement letter, they may not be able to appeal to the Board of Commissioners, Land Use Board of Appeals, or Circuit Court, as applicable, on that issue. Only comments on the relevant approval criteria are considered relevant evidence.
  - vi. A statement that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost.
  - vii. A statement that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost.
  - viii. A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

- (c) Newspaper notice. Notice of the public hearing shall be published in a newspaper of general circulation in the County at least ten (10) calendar days prior to the date of a quasi-judicial public hearing. An affidavit or other formal certification of publication shall be made part of the record.
- (d) Notice of decision.
  - i. Notice of the decision shall be provided within 10 days of the date of the decision to the applicant, the owners of the subject property and all persons who made an appearance of record.
  - ii. The notice of decision shall include the following information:
    1. A description of the applicant's proposal and the County's decision, including conditions of approval if applicable.
    2. The street address or other easily understood geographical description of the subject site, including a map of the property in relation to the surrounding area.
    3. The date the decision shall become final, unless appealed, and the due date for an appeal (12 days from the date the decision notice was mailed).
    4. A statement that the County's decision, including findings and conclusions, and conditions of approval, if any, is available for review at the County.
    5. A statement that persons entitled to appeal pursuant to Section 10.110 may appeal the Planning Commission's decision to the County Board of Commissioners, or may appeal the Board's decision to the Land Use Board of Appeals, as applicable.

(2) Conduct of the Public Hearing

- (a) Staff report. At least seven (7) days prior to the hearing, the Department shall provide to the hearings body and make available to the public for inspection or purchase a report detailing the nature of the request and findings based on the applicable criteria of this chapter.
- (b) Application materials. All application materials, documents or other evidence submitted by or on behalf of the applicant for any land use approval shall be provided and made available for public review
- (c) Hearings Procedure. At the commencement of the hearing, the Chairperson of the Commission, or his or her designee, shall state to those in attendance all of the following information and instructions:
  - i. The applicable approval criteria by Code chapter that apply to the application.
  - ii. Testimony and evidence shall concern the approval criteria described in the staff report, or other criteria in the comprehensive plan or land use regulations that the person testifying believes to apply to the decision.

- iii. Failure to raise an issue with sufficient detail to give the hearing body and the parties an opportunity to respond to the issue may preclude appeal to the State Land Use Board of Appeals on that issue.
  - iv. At the conclusion of the initial evidentiary hearing, the hearing body shall deliberate and make a decision based on the facts and arguments in the public record. See Subsection (6) Record of the Public Hearing.
  - v. Any participant may ask the hearing body for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing; if the hearing body grants the request, it will schedule a date to continue the hearing, or leave the record open for additional written evidence or testimony as provided in Subsection (5).
- (3) Procedural Rights. An impartial review authority as free from potential conflicts of interest and pre-hearing ex-parte (outside the hearing) contacts as reasonably possible shall be a procedural entitlement provided at the public hearing.
- (a) Where questions related to ex parte contact are concerned, members of the hearing body shall follow the guidance for disclosure of ex parte contacts contained in ORS 227.180.
  - (b) Where a real conflict of interest arises, that member or members or the hearing body shall not participate in the hearing, except where State law provides otherwise.
  - (c) Where the appearance of a conflict of interest is likely, that member or members of the hearing body shall individually disclose their relationship to the applicant in the public hearing and state whether they are capable of rendering a fair and impartial decision. If they are unable to render a fair and impartial decision, they shall be excused from the proceedings.
- (4) Presenting and receiving evidence.
- (a) The hearing body may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant or personally derogatory testimony or evidence.
  - (b) No oral testimony shall be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing only as provided by this Section.
  - (c) Members of the hearing body may visit the property and the surrounding area, and may use information obtained during the site visit to support their decision, if the information relied upon is disclosed at the beginning of the hearing and an opportunity is provided to dispute the evidence.
  - (d) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The Review Authority shall grant such request by continuing the public hearing or leaving the record open for additional written evidence or testimony pursuant to Subsection (5) below.

- (5) Continuance. All documents or evidence relied upon by the applicant shall be submitted to the local government and be made available to the public. If additional documents or evidence are provided by any party, the Review Authority may allow a continuance or leave the record open for at least seven (7) days to allow the parties a reasonable opportunity to respond. Any continuance or extension of the record requested by the applicant shall result in a corresponding extension of the time limitations of ORS 215.428.
- (a) If the Review Authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven (7) days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence and testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven (7) days to submit additional written evidence or testimony for the purpose of responding to the new written evidence.
  - (b) If the Review Authority leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven (7) days. Any participant may file a written request with the Review Authority for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the Review Authority shall reopen the record and any person may raise new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.
  - (c) A continuance or extension granted pursuant to Subsection 6 shall be subject to the limitations of ORS 215.428 unless the continuance or extension is requested or agreed to by the applicant.
  - (d) Unless waived by the applicant, the Review Authority shall allow the applicant at least seven (7) days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence.
- (6) Record of the Public Hearing.
- (a) The official public hearing record shall include all of the following information:
    - i. All materials considered by the hearings body;
    - ii. All materials submitted by the County Planning Official to the hearings body regarding the application;
    - iii. The minutes of the hearing;
    - iv. The final written decision; and
    - v. Copies of all notices given as required by this Article, and correspondence regarding the application that the County mailed or received.

- (b) The meeting minutes shall be filed in hardcopy form with the County Planning Official. The minutes and other evidence presented as a part of the hearing shall be part of the record.
- (c) All exhibits received and displayed shall be marked to provide identification and shall be part of the record.

(7) Effective Date of Decision.

Quasi-Judicial Decision. Unless the conditions of approval specify otherwise, a Quasi-Judicial decision becomes effective ten (10) business days after the County mails the decision notice unless the decision is appealed pursuant with Section 10.110.

SECTION 10.090 TYPE IV PROCEDURES

(1) Notice for Type IV Legislative Decisions. Notice of review and decision for Type IV actions shall be done in accordance with the provisions of ORS 215.503. In addition, the following shall be require for Type IV decisions:

- (a) Newspaper notice. Notice of the public hearing shall be published in a newspaper of general circulation in the County at least ten (10) calendar days prior to the date of a quasi-judicial public hearing. An affidavit or other formal certification of publication shall be made part of the record.
- (b) Notice of decision. Notice of decision shall be provided to persons who testified orally or in writing while the public record was open regarding the proposal. The notice should include the following information:
  - i. A brief summary of the decision
  - ii. If adopted: The date and number of the adopting ordinance; and where and when the adopting ordinance and related findings may be reviewed.
  - iii. A summary of the requirements for appealing the decision to the Land Use Board of Appeals (ORS 197.830-845)

(2) Effective Date of Decision.

A Legislative Land Use decision, if approved, shall take effect and shall become final as specified in the enacting ordinance, or if not approved, upon mailing of the notice of decision to the applicant. Notice of a Legislative Land Use decision shall be mailed to the applicant, all participants of record, and the Department of Land Conservation and Development within twenty (20) business days after the Board of Commission decision is filed with the Director. The County shall also provide notice to all persons as required by other applicable laws.

SECTION 10.100 APPEAL OF TYPE I OR TYPE II DECISION

(1) Who may appeal. Any party to the decision may appeal a Type I or Type II decision to the Planning Commission.

- (2) Notice of appeal. Any person with standing to appeal, as provided in subsection (1) may appeal a Type I or Type II decision by filling a Notice of Appeal according to the following procedures.
- (3) Appeal deadline. Notice of intent to appeal must be filed by the aggrieved party within 12 days of the date the decision notice was mailed.
- (4) Content of notice of appeal. A notice of intent to appeal shall be accompanied by the required filing fee, unless waived pursuant to Section 10.020(5), and shall contain the following information:
  - (a) An identification of the decision being appealed, including the date of the decision.
  - (b) The name and signature of each petitioner and statement of the interest of each petitioner to determine party status. Multiple parties may join in filing a single petition for review, but each petitioner shall designate a single Contact Representative for all contact with the Department. All Department communications regarding the petition, including correspondence, shall be with this Contact Representative.
  - (c) A statement explaining the specific grounds for appeal. Unless otherwise directed by the Review Authority, the appeal of Type I decisions shall be limited to the issue(s) raised in the petition.
- (5) Appeal authority. Appeal of a Type I or Type II decision will be reviewed by the Planning Commission. The Planning Commission shall be the final decision-maker for the County on appeals of the final decision of the Director for Type I or II actions.
- (6) Appeal process. All hearings on appeal shall be conducted as public hearings in accordance with Section 10.080. Public notice for appeal hearings shall be the same as public notice for Type III review hearings in Section 10.050(D).
- (7) Review of the final decision. Review of the final decision of Type I shall be limited to the issue(s) raised in the petition. Review of the final decision of Type II actions shall be a de novo hearing before the Planning Commission and shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the review leading up to the decision, but may include other relevant evidence and arguments. For an appeal of a Type II decision, the Planning Commission may allow additional evidence, testimony or argument concerning any relevant standard, criterion, or issue.
- (8) Notice of decision. Notice of decision on the appeal shall be provided in accordance with Section 10.050(D).

#### SECTION 10.110 APPEAL OF TYPE III DECISION

- (1) Who may appeal. The following people have legal standing to appeal:
  - (a) The applicant or owner of the subject property.

- (b) Any other person who testified orally or in writing during the subject public hearing before the close of the public record.
- (2) Notice of appeal. Any person with standing to appeal, as provided in subsection (1) may appeal a Type III decision by filling a Notice of Appeal according to the following procedures.
- (3) Appeal deadline. Notice of intent to appeal must be filed by the aggrieved party within 12 days of the date the decision notice was mailed.
- (4) Content of notice of appeal. A notice of intent to appeal shall be accompanied by the required filing fee, unless waived pursuant to Section 10.020(5), and shall contain the following information:
  - (a) An identification of the decision being appealed, including the date of the decision.
  - (b) A statement demonstrating the person filing the notice of appeal has standing to appeal.
  - (c) A statement explaining the specific issues being raised on appeal.
- (5) Appeal authority. The appeal of a Type III Decision shall be a hearing de novo before the Board of Commissioners. The appeal shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the review leading up to the Quasi-Judicial Decision, but may include other relevant evidence and arguments. The hearing appeal body may allow additional evidence, testimony or argument concerning any applicable standard, criterion, condition, or issue.
- (6) Appeal process. All hearings on appeal shall be conducted as public hearings in accordance with Section 10.080. Public notice for appeal hearings shall be the same as public notice for Type III Quasi-judicial hearings in Section 10.050(D).
- (7) Effective date. A Type III Decision or Appeal Decision, as applicable, is effective the date the County mails the decision notice. Appeals of Board of Commission decisions under this Section shall be filed with the State Land Use Board of Appeals pursuant with ORS 197.805-197.860.

**SECTION 10.120 APPEAL OF TYPE IV DECISION**

- (1) Appeal of a Type IV legislative decision may be made to the State Land Use Board of Appeals in accordance with ORS 197.830 - 845.
- (2) Appeal exceptions. Pursuant to ORS 197.620, a decision to not adopt a legislative amendment or a new land use regulation is not appealable unless the amendment is necessary to address the requirements of a new or amended goal, rule or statute.

**SECTION 10.130 REMANDS**

- (1) When an application may be remanded from an appellate body, such as the Land Use Board of Appeals, to the County for further proceedings, the Review Authority may decide whether the matter shall proceed before the Review Authority or a subordinate review authority, such as the Director.

For applications where the decision of the Board was appealed, the Board shall decide at a regular meeting as a nonpublic hearing item whether the matter shall proceed before the Board or a subordinate review authority.

- (2) Final action must be taken on the application within 90 days of the effective date of the remand order issued by the State Land Use Board of Appeals.
  - (a) The effective date of the final order is the last day for filing a petition for judicial review of a final order of the State Land Use Board of Appeals under ORS 197.850(3).
  - (b) If judicial review of a final order is sought under ORS 197.830, the 90-day period shall not begin until final resolution of the judicial review.
  - (c) The 90-day period shall not begin until the applicant requests in writing that the County proceed with the application on remand.
  - (d) The 90-day period can be extended for a reasonable period of time at request of applicant.
  - (e) The 90-day period does not apply to a remand concerning a decision of the county making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to DLCD under ORS 197.610.