

## CHAPTER 2

### DEVELOPMENT APPROVAL PROCEDURES

#### SECTION 2.010 Purpose

The purpose of this Chapter is to establish procedures for approval of development required by this Ordinance, appeals from aggrieved persons and parties, and review of any decision by a higher authority.

#### SECTION 2.020 Review Process

An application for development approval required by Douglas County shall be processed by quasi-judicial public hearing or Administrative Action, pursuant to applicable Sections of this Ordinance. Quasi-judicial hearings shall be held on all applications for a permit or approval required by these regulations, provided that hearings shall not be held in those matters the Director has authority to act upon, unless appealed or referred pursuant to the provisions of this Chapter.

#### SECTION 2.030 Coordination of Development Approval

1. The Director shall be responsible for the coordination of a development application and decision-making procedures and shall approve developments when proper application is made and the proposed development is in compliance with the provisions of this Ordinance. Before approving any development the Director shall be provided with information by the applicant sufficient to establish full compliance with the requirements of this Ordinance. Where multiple applications are necessary to permit a proposed development, the Director may undertake a consolidated review of the applications.
2. After an application has been submitted, no building permit for the proposed use shall be issued until final action has been taken. Following final action on the application, the issuance of a building permit shall be in conformance with the zoning regulations of this Ordinance, and any conditions of development approval.

#### SECTION 2.040 Who May Apply

1. Applications for development approval may be initiated by one or more of the following:
  - a. One or more owners of the property which is the subject of the application; or
  - b. One or more purchasers of such property who submits a duly executed written land sales contract or copy thereof which has been recorded with the Douglas County Clerk; or

- c. One or more lessees in possession of such property who submits written consent of one or more owners to make such application; or
- d. Person or entity authorized by resolution of the Board or Commission; or
- e. A Department of Douglas County when dealing with land involving public works or economic development projects; or
- f. A public utility or transportation agency, when dealing with land involving the location of facilities necessary for public service.

Any of the above may be represented by an agent who submits written authorization by his/her principal to make such application.

2. When an application is initiated and signed by less than all of the owners, purchasers and lessees of record, the Director shall give all other owners, purchasers and lessees of record at least fifteen days written notice of the initiation of the application. Such notice shall be mailed to such owners, purchasers and lessees at their most recent address of record. Such notice shall provide that all owners, purchasers and lessees of record shall be deemed to concur with the requests of the application, unless a timely written objection is received by the Director. Such notice shall also provide that if a timely objection is received by the Director, the application will be deemed by the Director to be withdrawn by the applicant, without any right to a refund of any application filing fee. This paragraph shall not apply to applications filed under Subsections d., e., or f., above.
3. Where application is made to approve a lot or parcel that was previously created in violation of County ordinances, the County may accept such application notwithstanding that less than all of the owners of the existing legal lot or parcel (i.e., the parent parcel) have applied for the approval. The notice provisions of §2.040.2 shall still apply except that if an objection is received, the application is not deemed withdrawn.
4. If an applicant submits a letter of withdrawal of an application, the application shall be terminated, the application withdrawn and the file closed with no opportunity for refund of the application fee. If a decision has been issued, withdrawal of the application shall render that decision null and void. If the withdrawn application is under appeal, the voiding of the decision shall render the appeal moot.

### **SECTION 2.050 Pre-Application Conference**

An applicant shall meet with a Planning Department staff person in a pre-application conference prior to submitting a request for development approval. The purpose of the conference shall be 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.

## **SECTION 2.060 Application**

Application for development approval shall be made pursuant to applicable Sections of this Ordinance on forms provided by the Director. An application shall be complete, contain the information required by this Ordinance and address the appropriate criteria for review and approval of the request. If a railroad crossing will provide the only access to the subject property, the applicant shall indicate that fact in the submitted application. All applications shall be accompanied by the required fee, except that no fee shall be charged for applications initiated by a County Department.

1. The Director shall have the authority to review, and approve or deny the following applications which shall be Administrative Actions:
  - a. Variance (§3.40.100)
  - b. Temporary Use Permit (Article 41)
  - c. Subdivision (Chapter 4)
  - d. Approval of nonresource dwellings in FG, FC or FF zones (Article 43)
  - e. Division of land and issuance of building permit for nonresource dwellings in FG, FC or FF zones (Article 44)
  - f. Conditional Use Permit (Article 39)
  - g. Administrative Variance for:
    - (1) Setback requirements, when adjacent owner consent cannot be obtained (Article 40)
    - (2) Height requirements, when adjacent owner consent cannot be obtained (Article 40)
    - (3) Rural road standards, when adjacent owner consent cannot be obtained (Chapter 4)
    - (4) Pre-existing dwellings (Article 47)
    - (5) Dividing feature (Article 47)
  - h. Limited Maintenance and Repair in specified zones (Article 48)

- i. Restricted Maintenance and Repair in specified zones (Article 49)
- j. Alteration, verification, repair or increase of a Non-Conforming Use (Article 37)
- k. Land divisions in resource zones excepting ministerial partitions authorized in §2.060.2 (Chapter 4)
- l. Approval of Major Amendments (Chapters 2, 4 and 5)
- m. Recommendation to the Board on street dedications (Chapter 4)
- n. Technical Review - Use Permitted With Standards in coastal zones and coastal overlay districts (Article 36)
- o. Review of development proposals on property subject to overlay regulations including:
  - (1) Cultural, Historic and Archaeological Resources (Article 35)
  - (2) Geologic Hazards (Article 35)
  - (3) Potential Water Impoundments (Article 35)
  - (4) Dredge Material Disposal and Mitigation Site (§3.35.700.1.)
  - (5) Mineral Resources (Article 32)
  - (6) Natural Areas (Article 32)
- p. Conditional Use Permit and applicable overlay districts - Coastal Zones (Articles 33, 34 and 39)
- q. Alteration or exterior remodeling of a Significant Historic Resource (Chapter 9)
- r. Demolition of a Significant Historic Resource (Chapter 9)
- s. Mobile Home Parks (Article 51)
- t. Planned Development Preliminary Site Plan approval (Chapter 5)
- u. Destination Resort Preliminary Site Plan approval (Article 50)
- v. Minimum parcel size change within the FC Zone (Article 4)
- w. Resource related dwellings, subject to the provisions of Article 45

- x. Partitions in residential, commercial, public reserve and industrial areas excepting ministerial partitions authorized in 2.060.2 (Chap 4)
2. The Director shall have the authority to review and approve or deny the following matters which shall be ministerial actions:
- a. Temporary Use - Family Hardship Dwelling (Article 46)
  - b. Final subdivision plat approval (Chapter 4)
  - c. Final partition plat approval (Chapter 4)
  - d. Minor amendments to land use actions, land divisions, and Planned Developments (Chapters 2, 4 and 5)
  - e. Final Planned Development Site Plan approval (Chapter 5)
  - f. Development on property subject to overlay districts including:
    - (1) Riparian Vegetation Corridor (Article 32)
    - (2) Peripheral Big Game Habitat (Article 32)
    - (3) Special Bird Habitat (Article 32)
    - (4) Significant Wetlands (Article 32)
    - (5) Geologic Hazards (Article 35)
    - (6) Airport Impact (Article 35)
    - (7) North Umpqua Park or Public Recreation Area (Article 35)
    - (8) Right-of-Way Protection (Article 35)
    - (9) Design Review Overlay Districts (Article 35)
  - g. Adjustment of Common Boundary Lines (Article 37 and Chapter 4)
  - h. Uses permitted with standards
  - i. Destination Resort Final Site Plan approval (Article 50)
  - j. Road name changes (Chapter 7)
  - k. Partitions in non-resource zones where: 1) the new parcel(s) will utilize a public road for access; 2) the new parcel(s) can meet the sanitation and water requirements of Chapter 4 of this Ordinance; and, 3) an engineer's statement is received certifying that there will be no adverse drainage impact on adjacent properties (Chapter 4)

- i. Partitions in the FG, FC and FF zones where: 1) all parcels created conform to the minimum parcel size, and; 2) notice is provided to DLCDC and those agencies qualified under LUDO §3.35.060 at least 10 days prior to an action.
3. The Hearings Officer shall have the authority to review and approve or deny the following matters provided, however, that the Planning Commission shall assume such responsibility when no Hearings Officer is appointed by the Board:
  - a. Zone change (Article 38)
  - b. Comprehensive Plan map amendment (Chapter 6)
  - c. Appeal of Director's decision made pursuant to §2.060.1
  - d. Owner of Record Dwelling on High Value Farmland (Articles 3, 4 & 5)
  - e. Matters which the Commission elects not to hear
4. The Planning Commission shall have the authority to review and approve or deny the following matters:
  - a. Review of a decision of the Hearings Officer, Committee, or Director upon its own motion (Chapter 2)
  - b. Appeal of Director's decision pursuant to §3.52.450, and §7.140
  - c. Matters which the Hearings Officer elects not to hear (Chapter 2)
  - d. Interpretations of this Ordinance requested by the Director (Chap. 1)
  - e. Matters referred to the Commission by the Director (Chapter 2)
  - f. Exceptions Process Limited Use Overlay (Article 35)
5. The Historic Resources Review Committee shall have the authority to review and approve or deny the following matters:
  - a. Additions, deletions or changes to the Historic Register (Chapter 9)
  - b. Director's decision related to the alteration, exterior remodeling or demolition of a significant historic resource, and a decision pursuant to Chapter 9.
6. Completeness Review: When an application is submitted, and received by the Planning Department, staff shall review the application for completeness. The completeness review shall be concluded within a reasonable period of time, not to exceed 30 days from the date the application was received.

- a. Complete application: If the application is deemed complete, the Department shall sign and date the application, specifying the date it was determined to be complete. The land use action process shall begin, and be subject to statutory time limits, on the date the application was determined to be complete.
- b. Incomplete application: If an application is determined to be incomplete, the County shall notify the applicant in writing, within 30 days of the date the application was received, to specify exactly what information is missing, and to allow the applicant up to 180 days from the date the application was initially received to submit a written response. The application shall be deemed complete for the purpose of initiating the land use action process when the County receives, in writing, one of the following:
  - (1) All of the missing information;
  - (2) Some of the missing information and written notice from the applicant that no other information will be provided; or
  - (3) Written notice from the applicant that none of the missing information will be provided.
- c. On the 181st day after first being received by the County, an incomplete application shall be void, if the applicant was notified of the missing information and failed to respond in writing as provided in 6.b. above with no opportunity for a refund of the application fee.
- d. Once the land use action process is initiated, and notwithstanding the time frame for a Director's decision at §2.090 and §2.100, the County shall make its final local decision within the time frame specified in ORS 215.427.
- e. The statutory time limit for making a final local decision (150/120 days) may be extended, upon written request from the applicant, as long as the total of all such extensions does not exceed 215 days.
- f. The time frame of ORS 215.427 and ORS 197.311 do not apply to a decision of the County involving an application for the development of residential structures within an UGB, where the County has tentatively approved the application and extends these periods by no more than seven days in order to assure the sufficiency of its final order.

## **SECTION 2.065 Notice**

- 1. At least twenty (20) days prior to the date of a quasi-judicial public hearing under §2.060.3.a., b., c. and e., and §2.060.4.a., b., c., e. and f., notice shall be sent by mail to:

- a. The applicant and all owners or contract purchasers of record of the property which is the subject of the application;
  - b. All owners of property within:
    - i. 100 feet of the property which is the subject of the notice if such property is wholly or partially within an urban unincorporated area or an urban growth boundary;
    - ii. 250 feet of the property which is the subject of the notice if such property is outside an urban growth boundary and not within a farm or forest zone;
    - iii. 500 feet of the property which is the subject of the notice if such property is within a farm or forest zone and outside of an urban unincorporated area or an urban growth boundary.
  - c. The appropriate Planning Advisory Committee; and
  - d. Any public school district, and any other affected governmental agency which has entered into an agreement with Douglas County to coordinate planning efforts and to receive notices of such hearings.
2. Notice for Administrative Action shall be given at least fifteen (15) days prior to a decision, and shall be sent as prescribed by Subsection 1 of this Section except that notice shall be sent to owners of property within 750 feet of the subject property if the property is within a farm or forest zone and outside of an urban unincorporated area or an urban growth boundary.
  3. Notice for interpretations heard by the Planning Commission pursuant to §2.060.4.d shall be given at least 20 days prior to the date of the hearing by publication in a newspaper of general circulation and notice sent by mail to the appropriate Planning Advisory Committee.
  4. Notice for a Historic Resource Review Committee hearing shall be sent no less than ten days prior to the hearing to affected tenants and titleholders of the subject historic resource or Historic District, and other citizen groups and individuals who request such notice.
  5. The same notice required in Subsection 4 above shall also be given to participating cities when a historic resource within its Urban Growth Boundary is the subject of the hearing.
  6. The records of the Douglas County Assessor's Office shall be used for notice required by this Ordinance. Persons whose names and addresses are not on file at the time of the filing of the application need not be notified of the action. The failure of a property owner to receive notice shall not invalidate the action if a good-faith attempt was made to notify all persons entitled to notice. The Director shall cause to be filed certification of compliance with the personal notice provisions of this Section.



7. The Historic Resource Review Committee shall be sent notice for quasi-judicial hearings and administrative actions pursuant to Subsections 1 and 2 of this Section when a historic resource subject to the Historic Resources Overlay is located on the subject property.
8. Notice for hearings involving Zone Changes and Comprehensive Plan Amendments shall also be given by publication in a newspaper of general circulation in the area affected at least 20 days prior to the date of the hearing.
9. Any notice described in Subsections 1 and 2 of this Section shall be provided to the owner of an airport defined by the State of Oregon Department of Transportation as a "public use airport" if:
  - a. The name and address of the airport owner has been provided by the Aeronautics Division of the Department of Transportation to the County Planning Department; and
  - b. The property subject to the land use hearing is:
    - i. Within 5,000 feet of the side or end of a runway of an airport determined by the Department of Transportation to be a "visual airport."
    - ii. Within 10,000 feet of the side or end of a runway of an airport determined by the Department of Transportation to be an "instrument airport".

Notwithstanding the above provisions of this Subsection, notice need not be provided if the zone change, permit or approval which is the subject of the hearing or Administrative Action for which notice is given would only allow a structure less than 35 feet in height and the property is located outside the runway "approach surface" as defined by the State of Oregon Department of Transportation.

10. The giving of notice of an application shall not apply to those actions listed in §2.060.1 unless the Director, in the Director's discretion, determines that the giving of notice of application is appropriate. This Subsection applies only to the notice of an application for Administrative Action otherwise required by §2.065. This Subsection does not relieve the Director from giving notice of Administrative Decision under §2.130.
11. Notice of all land use requests (except as exempted in §3.35.900) affecting lands subject to the North Umpqua Park or Public Recreation Area Overlay (PO) shall be sent to the State Parks and Recreation Department in Salem for their review of compatibility of the request with the "State Scenic Waterways Program" and the "Management Program For The North Umpqua River Scenic Waterway."
12. Notice of requests for approval of an Owner of Record Dwelling on High Value Farmland, pursuant to §2.060.3, shall be sent to the Oregon State Department of Agriculture at least 20 days prior to the public hearing.

13. For requests where a railroad crossing will provide the only access to the subject property, notice shall be sent to the Oregon Department of Transportation and to the affected railroad company as prescribed in this Section.
14. Closure of a manufactured dwelling park, portion of a manufactured dwelling park, or closure of a residential marina is subject to the notice and tenant payment provisions in ORS Chapter 90. Such notice, and the subsequent tenant payment provisions, is to be provided by the landlord or owner of the manufactured dwelling park or residential marina. The notice of closure shall be provided to tenants of the manufactured dwelling park or residential marina at least 365 days prior to termination of the tenants space rental agreement.

### **SECTION 2.090 Ministerial Actions of the Director**

1. Within 45 days after accepting an application for a ministerial action the Director shall deny or approve (or cause a hearing to be held on) the application unless such time limitation is extended with the consent of the applicant.

The Director shall not accept applications which he/she deems cannot be acted upon initially in a rational manner within 45 days of receipt unless the applicant consents to a longer period for action.

2. Within such 45 day period the Director shall issue the permit or approval or advise the applicant that the application has been denied.
3. Ministerial actions are effective on the date of the decision of the Planning Director.

### **SECTION 2.100 Administrative Action Procedure of the Director**

1. Within sixty (60) days after accepting an application for Administrative Action pursuant to §2.060 of this Ordinance, the Director shall act on, or cause a hearing to be held on, the application unless such time limitation is extended with the consent of the applicant.
2. Within such 60 day period, the Director shall:
  - a. Publish or otherwise give notice per §2.065.
  - b. Prepare findings of fact and conclusions of law.
  - c. Decide to approve or deny the request. Approvals may include conditions considered necessary to assure conformance with the Comprehensive Plan.

3. If the application does not meet the criteria or if written objections are received, or if the applicant or the Director so desires for any reason, the Director may schedule any application made under §2.060.1 for public hearing before the Hearings Officer or Commission. The Hearings Officer or Commission shall hear and decide the matter as if it were listed in §2.060.3 or .4. Notice for such hearing shall be provided pursuant to §2.065.1.
4. The Director, and if referred or appealed, the Planning Commission or Board of Commissioners, may deny an application for residential development based on a lack of school capacity if:
  - a. The school capacity issue was raised by the affected school district;
  - b. The lack of school capacity is based on a School Facility Plan that has been jointly adopted by the school district and the County governing body; and
  - c. The County has considered options to address school capacity.

#### **SECTION 2.110 Contents of Notice**

1. Notice of an application for an Administrative Action Decision of the Director shall include the following information:
  - a. The location, file number and title of the file containing the request and the date such notice was sent.
  - b. A description of the subject property, reasonably calculated to give notice as to its actual location, and for the purpose of this Section, shall include but not be limited to metes and bounds descriptions or the tax map designations of the Douglas County Assessor's Office.
  - c. The nature of the application.
  - d. The deadline for filing comments on the request.
2. Notice of a hearing for an Administrative Action shall include the following information:
  - a. Explain the nature of the application and the proposed use or uses which could be authorized.
  - b. List the applicable criteria from the Ordinance and the Plan that apply to the application at issue.
  - c. Set forth the street address or other easily understood geographical reference to the subject property.
  - d. State the date, time and location of the hearing.

- e. State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.
  - f. Include the local government representative to contact and the telephone number where additional information may be obtained.
  - g. State 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.
  - h. State 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.
  - i. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.
3. The Director shall provide for a register of all applications for Administrative Action which have been filed, all such applications which have been acted upon initially and are awaiting final decision, and all such applications which are the subject of administrative review or appeal.

NOTE: ORS 197.763(4)(a) requires that all documents or evidence relied upon by the applicant shall be submitted to the Planning Department and be made available to the public.

## **SECTION 2.120 Administrative Action Decisions of the Director**

In making an Administrative Action decision, the Director:

- 1. Shall consider the following:
  - a. The burden of proof is placed upon the applicant. Such burden shall be to prove:
    - (1) The proposed action fully complies with the applicable goals, policies and map elements of the relevant Comprehensive Plan; and
    - (2) The proposed action is in accord with the applicable criteria of this Ordinance.
  - b. Proof of change in a neighborhood or community or mistake in the planning or zoning for the property under consideration are additional relevant factors.

- c. Written comments from parties or other persons.
2. Shall enter findings and conclusions to justify his/her decision.
3. May impose conditions in making a decision to approve an Administrative Action. However, the following limitations shall be applicable to conditional approvals:
  - a. Conditions shall be fulfilled within the time limitations set forth in the approval thereof, or, if no time be set forth, within a reasonable time.
  - b. Such conditions shall be reasonably conceived to fulfill public needs emanating from the proposed land use as set forth in the application in the following respects:
    - (1) Protection of the public from the potentially deleterious effects of the proposed use; or
    - (2) Fulfillment of the need for public service demands created by the proposed use.
  - c. Changes or alterations of conditions shall be processed as a new Administrative Action.
  - d. The conditional approval may require the owner of the property to sign a contract with the County for enforcement of the conditions. Such contract shall be executed within thirty (30) days after conditional approval is granted, provided, however, that the Director may grant time extensions for practical difficulty. The Director shall have the authority to execute such contracts on behalf of the County. If a contract is required by a conditional approval, no building permit shall be issued for the use covered by the applications until the executed contract is recorded in the real property records of Douglas County and filed in the County Journal. Such contract shall not restrict the power of subsequent Administrative Action with or without conditions. Such contracts shall be enforceable against the signing parties, their heirs, successors, and assigns by Douglas County by appropriate action in law or suit in equity for the benefit of public health, safety and welfare.
  - e. Failure to fulfill any conditions of approval within the time limitations provided may be grounds for initiation of Article 52 enforcement action or revocation of approval by the Director.
  - f. A bond, in a form acceptable to the Director or, upon appeal or review, by the Commission or Board, or a cash deposit from the property owners or contract purchasers in such an amount as will assure compliance with the conditions imposed pursuant to this Section may be required. Such bond or deposit shall be posted at the same time the contract containing the conditions of approval is filed with the Douglas County Clerk.

4. If an application is denied by the Director, 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 twelve (12) months from the date of the final order on the action denying the application.

### **SECTION 2.130 Notice of Administrative Decisions by the Director**

1. Notice of an Administrative Decision shall be filed in the records of the Director and also mailed to the applicant, to those persons who are entitled to notice pursuant to §2.065, and to others who participated in the process.
2. Notice of an Administrative Decision shall contain:
  - a. Identification of the application and description of the nature of the decision;
  - b. The findings of fact and conclusions of law of the Director;
  - c. The date of the filing of the decision of the Director;
  - d. A statement explaining the nature of the application and the proposed use or uses which could be authorized;
  - e. An easily understood geographical reference to the subject property;
  - f. The name of a local government representative to contact and the telephone number where additional information may be obtained;
  - g. A statement that a copy of the application, all documents and evidence submitted by or on behalf of the applicant, and the applicable criteria are available for inspection at no cost and will be provided at reasonable cost;
  - h. A statement that the decision will not become final until the period for filing an appeal has expired;
  - i. A statement that any person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830; and
  - j. Notice that any persons who are entitled to written notice (pursuant to §2.065) or who are adversely affected or aggrieved by the decision may appeal the decision within twelve (12) days from the date the written notice of decision was mailed by filing a timely written statement with the Director.
3. The Administrative Decision of the Director shall be final upon the expiration of twelve (12) days from the date the approval or denial was mailed unless an appeal from either a person who would have been entitled to notice, or from a person who is adversely affected or aggrieved by the decision, is received by

the Director within such twelve (12) day period or unless the Commission or Board, on its own motion, orders review within such twelve (12) day period after the date of approval or denial.

## **SECTION 2.200 Establishment of Party Status**

1. In order to have standing under this Chapter, a person shall be recognized as a party by the presiding officer.
  - a. Party Status, when recognized by the presiding officer, establishes the right of the person to be heard, either orally or in writing and to pursue a review or appeal under this Chapter.
  - b. Of those who appear and are heard at the time of hearing, the presiding officer shall determine who are parties and who are witnesses only, and shall give them an opportunity, if they choose, to be heard with regard to the ruling. Persons who appear by written communication only shall be accorded the status of witnesses unless they are included among those persons entitled to notice of hearing under this Ordinance, or the written statement both asserts a position on the merits of an application and establishes the person's status as a party to the satisfaction of the presiding officer.
  - c. For any determination made by the presiding officer under this Section, the Approving Authority may overrule the presiding officer upon motion timely made and passed.
2. A request for establishment of Party Status may be made at least eight (8) days before the date set for a quasi-judicial public hearing by any person filing a written statement regarding the application being considered. Such statement shall include:
  - a. The name, address and telephone number of the person filing the statement;
  - b. How the person qualifies as a party, as defined in Chapter 1 of this Ordinance;
  - c. Comments which the party wishes to make with respect to the application under consideration; and
  - d. Whether the person desires to appear and be heard at the hearing.
3. Seven or more days before the date set for the first evidentiary hearing on a matter, the Director shall mail the applicant any statements that have been filed and the report of the Director.

Any person or entity who is entitled to notice may appeal a decision of the Director relative to an Administrative Action. In the conduct of a consequent hearing, the Approving Authority shall establish the appellant as a party or the appeal shall not be heard and the contested decision shall become final.

4. With respect to applications under §2.060.3 and .4 of this Chapter, the Approving Authority may authorize a person to have party status, at any time prior to the close of the hearing, if that person is otherwise a party, as defined by Chapter 1 of this Ordinance.
5. In cases where a matter has been referred back to the Planning Commission from the Board, only those individuals or agencies who were given party status at the first evidentiary hearing on the matter shall be allowed as parties in the matter when reheard by the Commission.

### **SECTION 2.300 Hearing Procedure**

1. In the conduct of a public hearing, the Approving Authority shall have the authority to:
  - a. Determine who qualifies as a party.
  - b. Regulate the course, sequence and decorum of the hearing.
  - c. Dispose of procedural requirements or similar matters.
  - d. Rule on offers of proof and relevancy of evidence and testimony.
  - e. Impose reasonable limitations on the number of witnesses heard and set reasonable time limits for oral presentation, cross examination of witnesses and rebuttal testimony.
  - f. Take such other action appropriate for conduct commensurate with the nature of the hearing.
  - g. Grant, deny or, in appropriate cases, attach such conditions to the matter being heard or may be necessary to carry out the Comprehensive Plan, subject to §2.120.3 of this Chapter.
2. The applicant or any party wishing to subpoena witnesses to a hearing may do so by application to the Director not less than seven days prior to the hearing and a showing that the witness resides in Oregon, is unable or unwilling to appear and his/her testimony is material and relevant. Such subpoenas shall be enforceable upon proper completion and inclusion of those fees applicable to civil cases in the Douglas County Circuit Court, upon application by any party and approval of the Director.
3. Order of Procedure:

Unless otherwise specified, the Approving Authority, in the conduct of a hearing, shall:



- a. Announce the nature and purpose of the hearing and summarize the rules for conducting the hearing. A statement shall be made to those in attendance that lists and describes the applicable substantive criteria, that the evidence, testimony and arguments to be heard must be directed towards these criteria, or other criteria in the Plan or Ordinance which a party believes apply to the decision to be made; and that the failure to raise an issue accompanied by statements or evidence sufficient to afford the Approving Authority and the parties an opportunity to respond to the issue precludes appeal based on that issue.
- b. Permit members of the Approving Authority to announce:
  - (i) A potential conflict of interest (any proceeding where the decision made would be to the private pecuniary benefit or detriment of the member or the member's household except for those benefits or detriments described in ORS 244.020(6)).
  - (ii) A direct or substantial financial interest in the proceeding of the member or those persons or businesses described in ORS 244.135.
  - (iii) The inability of the member to render a fair judgment because of prejudice or prejudgment.

No member shall serve on any proceeding in which such member:

- (1) is unable to render a fair judgment because of prejudice or prejudgment; or,
- (2) the member (including those persons or businesses described in ORS 244.135) has a direct or substantial financial interest.

If a member refuses to disqualify him or herself based on (1) or (2) above, the Approving Authority shall have the power to remove such member for that proceeding.

- c. Recognize parties.
- d. Request the Director to present his/her introductory report, explain any graphic or pictorial displays which are a part of the report, read findings and recommendations, if any, and provide such other information as may be requested by the Approving Authority.
- e. Allow the applicant to be heard first, on his/her own behalf or by representative.
- f. Allow parties or witnesses in favor of the applicant's proposal to be heard.

- g. Allow other parties or witnesses to be heard next in the same manner as in the case of the applicant.
- h. Upon failure of any party to appear, the Approving Authority may take into consideration written material submitted by such party.
- i. Allow the parties to offer rebuttal evidence and testimony, and to respond to any additional evidence. The scope and extent of rebuttal shall be determined by the Approving Authority.
- j. Conclude the hearing.

Questions may be asked at any time by the Approving Authority. Questions by the parties or Director may be allowed by the Approving Authority, questions may be submitted directly to the witnesses or parties. The witnesses or parties shall be given a reasonable amount of time to respond solely to the questions.

At the conclusion of the hearing, the Approving Authority shall either make a decision and state findings (which may incorporate findings proposed by any party, or by the Director), or may take the matter under advisement. If a majority of the quorum fail to agree, and there is no lower decision, the matter shall be deemed denied, unless the members present at the hearing vote to reschedule the deliberation. The Approving Authority may request proposed findings and conclusions from any party to the hearing. The Approving Authority, before finally adopting findings and conclusions, may circulate the same in proposed form to the parties for written comment. All actions taken by the Approving Authority pursuant to adopting findings and conclusions shall be made a part of the record. The decision and findings and conclusions which support the decision of the Approving Authority shall not be final until reduced to writing and signed by the Approving Authority. Within forty-five (45) days of the date of public hearing the Approving Authority shall grant, deny or, in appropriate cases, pursuant to §2.120.3, attach such conditions as may be necessary to carry out the Comprehensive Plan in approving the proposal being heard. The Director shall notify parties of the decision by mail.

#### 4. General Conduct of Hearing:

The following rules apply to the general conduct of the hearing:

- a. No person shall be disorderly, abusive, or disruptive of the orderly conduct of the hearing.
- b. No person shall testify without first receiving recognition from the Approving Authority and stating his/her full name and address.
- c. No person shall present irrelevant, immaterial, or unduly repetitious testimony or evidence. Formal rules of evidence as used in courts of law shall not apply. Evidence received at any hearing shall be of the quality that reasonable persons rely upon in their everyday affairs.

- d. Audience demonstrations such as applause, cheering and display of signs, or other conduct disruptive of the hearing shall not be permitted. Any such conduct may be cause for immediate suspension of the hearing.
5. If the Hearings Officer declines a case for any reason, such case shall be reset for review by the Commission. Upon withdrawal of the Hearings Officer from such case, the Commission shall have the authority and shall function as the Approving Authority in that case.

### **SECTION 2.310 Official Notice**

1. The Approving Authority may take official notice of the following:
  - a. All facts which are judicially noticeable. Judicially noticed facts shall be stated and made part of the record.
  - b. The Comprehensive Plan and other officially adopted plans, ordinances, rules and regulations of Douglas County and comprehensive plans and implementing regulations of cities within Douglas County.
2. Matters officially noticed need not be established by evidence and may be considered by the Approving Authority in the determination of the application.

### **SECTION 2.320 Record of Proceeding**

1. A verbatim record of the proceeding shall be made by stenographic or mechanical means. It shall not be necessary to transcribe testimony except as provided for in §2.500. In all cases the tape, transcript of testimony or other evidence of the proceedings shall be part of the record.
2. All exhibits received shall be marked so as to provide identification upon review.

### **SECTION 2.330 Decision**

The Approving Authority shall render a decision and may affirm, reverse or modify the action of a lesser authority and may reasonably attach conditions necessary to carry out the Comprehensive Plan to an approval, subject to the limitations of §2.120.3.

1. For all cases the Approving Authority shall make a decision based on the record before it as justification for its action.
2. The Director shall send a copy of the Approving Authority's decision to all parties to the matter and shall, at the same time, file a copy of the Approving Authority's final order in the records of the Director.
3. If a request is denied by the Approving Authority, and no higher local authority reverses such denial upon appeal, no new application for the same or substantially similar action shall be filed for at least twelve (12) months from the date of the final order on the action denying the application.

**SECTION 2.400 Appeal from Decision of the Director**

1. Administrative Actions taken by the Director shall be subject to review by the Hearings Officer or Commission, pursuant to §2.060.3 and 4, respectively.
2. Any person or entity who files a timely written statement may appeal a decision of the Director relative to an Administrative Action. In the conduct of a hearing, the Approving Authority shall establish the appellant as a party or the appeal shall not be heard and the contested decision shall become final.
3. The Planning Commission or Hearings Officer shall review the Administrative Action of the Director upon receipt of a Notice of Appeal. For the purpose of this Section, an Appeal shall be filed with the Director no later than twelve (12) days following the date the decision was sent. Any decision of the Director may also be reviewed by the Commission upon its own motion passed within twelve (12) days of the written decision sought to be reviewed if no appeal is filed.
4. Every Notice of Appeal shall contain:
  - a. A reference to the application sought to be appealed;
  - b. A statement as to how the petitioner qualifies as a party;
  - c. The specific grounds relied upon in the petition request for review; and
  - d. The date of the final decision on the action.

The appeal shall be accompanied by the required fee.

5. At least 20 days prior to the date of the Approving Authority hearing, the Director shall give notice as provided in §2.065 of the date, time and place of the hearing to all parties to the case.
6. Members of the Approving Authority shall neither:
  - a. Communicate, directly or indirectly, with any party or his/her representatives in connection with any issue involved except upon notice and opportunity for all parties to participate; nor
  - b. Take notice of any communication, reports, staff memoranda, or other materials prepared in connection with the particular case unless the parties are afforded an opportunity to contest the material so noticed.
7. During the course of the review, the Director shall present to the Approving Authority any materials submitted by the applicant as part of his/her application, staff exhibits used in making the administrative decision, an explanation of the request and the findings of fact articulated in making the decision which is the subject of appeal.

8. The hearing on an appeal of an administrative decision shall be de novo.
9. The review shall be accomplished in accordance with the Rules of Procedure contained in §2.300. The Approving Authority may continue its hearing from time to time to gather additional evidence, to consider the application fully, or to allow a party to respond. Unless otherwise provided by the Hearings Officer or Commission, no additional notice need be given of continued hearings if the matter is continued to a date certain.
10. Action upon the appeal shall be taken within 60 days of filing thereof unless such time limitation be extended with the consent of the applicant; provided that, unless otherwise ordered by the Commission or Board, the Director shall take such appeals in the order in which they are filed.
11. All evidence offered and not objected to may be received unless excluded by the Approving Authority on its own motion. Evidence received at any hearing shall be of the quality that reasonable persons rely upon in the conducting of their everyday affairs. Evidence shall be received and notice may be taken of those facts in a manner similar to that provided for in contested cases before state administrative agencies pursuant to ORS 183.450 except as otherwise provided for herein.
12. The Approving Authority shall render a decision to either affirm, reverse or modify the action of a lesser authority, and may reasonably attach conditions necessary to carry out the Comprehensive Plan to an approval, subject to the limitations of §2.120.3.
  - a. For all cases the Approving Authority shall make a decision based on findings and conclusions from the record before it as justification for its action. Upon failure of a majority of a quorum to agree, the decision of the lesser authority shall stand, unless the members present at the hearing vote to reschedule the deliberation.
  - b. The Director shall send a copy of the Approving Authority's decision to all parties to the appeal and shall, at the same time, file a copy of the Approving Authority's final order in the records of the Planning Department.
  - c. If a request is denied by the Approving Authority, and no higher local authority reverses such denial upon appeal, no new application for the same or substantially similar action shall be filed for at least twelve (12) months from the date of the final order on the action denying the application.

## **SECTION 2.500 Review of the Decision of the Hearings Officer, Historic Resource Review Committee or Commission**

Ten (10) days from the date of the written decision of the Historic Resource Review Committee (hereafter referred to as "Committee"), the Hearings Officer or Commission, the decision shall become effective unless review is sought pursuant to this Section.

1. Review of the decision:
  - a. Shall be made by the Board, pursuant to §2.700, upon any party filing a Notice of Review with the Director within ten (10) days of the filing of the written decision sought to be reviewed. Failure to file a Notice of Review within ten (10) days shall be a jurisdictional defect.
  - b. May be made by the Board, pursuant to §2.700, on its own motion passed within ten (10) days of the filing of the written decision sought to be reviewed.

Any party not filing a notice of review, may file a notice of cross-review within five days after the notice of review is mailed as provided in §2.500.3. The notice of cross-review shall contain those matters required in a notice of review. The Director shall mail a copy of such notice to all other parties.

2. The decision of the Hearings Officer or Committee may be reviewed by the Commission upon a motion passed ten (10) days of the written decision sought to be reviewed if no appeal is filed or if the Board does not review upon its own motion. Argument by the parties may be heard at the time of Commission review upon a motion passed by at least five of its members. Advance notice of five (5) days shall be given if argument is desired.
3. The notice of review, together with the notice of the date, time and place of the review shall be mailed to parties at least ten (10) days prior to the date of review.

When the review involves an application for development of property entirely within an urban growth boundary, the notice shall also:

- a. Describe in general terms the applicable criteria from the Ordinance and the Plan known to apply to the application at issue;
  - b. Set forth the street address or other easily understood geographical reference to the subject property; and
  - c. State that failure to raise an issue in person or by letter precludes appeal and that failure to specify to which criterion the comment is directed precludes appeal based on that criterion.
4. A record of the review shall be the same as that required in §2.320.

5. Every Notice of Review shall contain:
  - a. A reference to the decision sought to be reviewed;
  - b. A statement as to how the petitioner qualifies as a party;
  - c. The specific grounds relied upon in the petition request for review, and;
  - d. The date of the decision sought to be reviewed.
6. A Notice of Review shall be accompanied by a fee established by the Board.
  - a. If the Board does not desire a transcript, the applicant or any party may request a transcript. Any such transcript request shall be paid for by the person requesting it in the manner provided in this Section. The fee shall be no more than the actual cost of the transcript up to \$500 plus one-half the actual costs over \$500. The estimated cost of the transcript shall be specified by the Director. Within five (5) days of such estimate, the person filing the Notice of Review shall deposit the estimated cost with the Director. Any deposit excess shall be returned to the depositing person. Failure to comply with this Subsection shall be a jurisdictional defect.
  - b. If a transcript is desired by the Commission or the Board, the costs shall be borne by Douglas County.

#### **SECTION 2.600 Review by the Commission**

1. The review of a decision of the Committee or the Hearings Officer by the Commission shall be confined to the record of the proceeding, which will include the following:
  - a. All materials, pleadings, memoranda, stipulations and motions submitted by any party to the proceeding and recorded or considered as evidence;
  - b. All materials submitted by the Director with respect to the application;
  - c. The transcript of the hearing, if desired by the Commission, or the tape recording of the hearing, or other evidence of the proceedings; and
  - d. The written findings, conclusions and decision.

At the commencement of the review of any application for development of property entirely within an urban growth boundary, a statement shall be made to those in attendance that describes the applicable substantive criteria; that the arguments to be heard on the testimony and evidence in the record must be directed towards these criteria; and that the failure to address a criterion precludes appeal based on that criterion.

2. The Commission may amend, remand, reverse, affirm, or request the Board to review the decision below. The Commission shall review the entire record and make written findings and conclusions supporting its action if it amends, reverses or requests review by the Board. Such findings and conclusion may incorporate findings of the lesser authority. The Commission, before finally adopting findings and conclusions, may circulate them in proposed form to the parties for written comment.

All actions taken by the Commission pursuant to adopting findings and conclusions shall be made part of the record. If the Commission remands the matter to the lesser authority for additional information, the applicant shall be notified. The Commission shall amend, reverse, affirm, remand, or request review by the Board of the decision of the lesser authority within forty-five (45) days of its review.

3. Only those members of the Commission reviewing the entire record may act on a decision of the Committee or the Hearings Officer. Upon failure of a majority of a quorum to agree, the decision of the lesser authority shall stand.
4. If the Commission sustains, amends or reverses the decision of the lesser authority, any party may request review by the Board by following the procedure prescribed in §2.500.
5. If review is requested, notice of the time and place of the review shall be mailed to all parties at least ten (10) days prior to the date of review.

#### **SECTION 2.700 Review by the Board**

1. Review by the Board shall be confined to arguments of the parties and the record of the proceeding below, which will include the following:
  - a. All materials, pleadings, memoranda, stipulations and motions submitted by any party to the proceeding and received or considered as evidence;
  - b. All materials in the record submitted by the Director with respect to the application;
  - c. The transcript of the hearing if required by the Board or otherwise provided, or the tape recording or other evidence of the proceeding of the hearing below;
  - d. The findings and conclusions; and
  - e. Additional evidence, upon the election of the Board, to cure ex parte contacts.



At the commencement of the review of any application for development of property entirely within an urban growth boundary, a statement shall be made to those in attendance that describes the applicable substantive criteria; that the arguments to be heard on the testimony and evidence in the record must be directed towards these criteria; and that the failure to address a criterion precludes appeal based on that criterion.

2. Review by the Board shall be a de novo review of the record limited to the grounds relied upon in the notice of review, or cross review, if the review is initiated by such notice.
3. Order of procedure:

In the conduct of a hearing, the Board shall:

- a. Announce the nature and purpose of the hearing.
- b. Permit members of the Board to announce a potential conflict of interest, direct or substantial financial interest or any prejudice of bias as specified in §2.300.3.b. No member shall serve in any proceeding in which such member has bias or the member (including those persons or businesses described in ORS 215.035) has a direct or substantial financial interest. If a member refuses to disqualify him or herself for bias or direct or substantial financial interest the Board shall have the power to remove such member for that proceeding.
- c. Advise all parties that they have the right to rebut the substance of the communication.
- d. Request the Director or the Director's representative for an introductory and summary report of the matter before the Board and provide such other information as may be requested by the Board.
- e. Allow the appellant to be heard first.
- f. Allow other parties in support of the appellant to be heard next.
- g. Allow parties opposed to the appeal to be heard next.
- h. Allow the appellant and parties in support of the appeal to make any rebuttal arguments they may have. The scope and extent of rebuttal shall be determined by the Board.
- i. Allow parties opposed to the appeal to make any rebuttal arguments they may have. The scope and extent of rebuttal shall be determined by the Board.
- j. Conclude the hearing.

4. The Board may affirm, reverse or modify the decision and may approve or deny the request, or grant approval with conditions necessary to carry out the Comprehensive Plan, subject to the limitations of §2.120.3.
  - a. For all cases, the Board shall make findings and conclusions, and make a decision based on the record before it as justification for its action.
  - b. The Board shall cause copies of a final order to be sent to all parties participating in the review before it.
  - c. If a request is denied by the Board or by a Hearings Officer appointed by the Board, no new application for the same or substantially similar action shall be filed for at least twelve (12) months from the date of the final order on the action denying the application.
5. The Board may remand the matter if it is satisfied that testimony or other evidence could not have been presented at the hearing below. In deciding such remand, the Board shall consider and make findings and conclusions respecting:
  - a. Prejudice to parties;
  - b. Convenience or availability of evidence at the time of the initial hearing;
  - c. Surprise to opposing parties;
  - d. Date notice was given to other parties as to an attempt to admit; and
  - e. The competency, relevancy and materiality of the proposed testimony or other evidence.
6. Only those members of the Board reviewing the entire record may act on the matter reviewed. The agreement of at least two members is necessary to amend, reverse, or remand the decision. Upon failure of at least two members to agree, the decision below shall stand.
7. When a majority of the Board is unable to participate in an appeal, the Board may appoint a Hearings Officer to review land use appeals (under §2.500.1.b and 2.700) in its place. The decision of the Hearings Officer shall be final.
8. Review by the Board is discretionary. After a Notice of Review is filed, the Board may choose to either 1) allow review, in which case, the Board shall decide to either hear the matter itself and set a date for holding the review hearing, or the Board may, for any reason, appoint a Hearings Officer to review the matter and make a final local decision in the Board's place, or 2) decline to review the matter, so long as the appealed decision does not involve a Plan Amendment of land designated agricultural or forest land or a goal exception. If Board review of a matter is declined, the lower decision shall stand. The Board shall adopt an order so stating, but the order need not state any reason for the Boards' decision to decline review.

9. In cases of appeal of a final local decision to LUBA in which LUBA remands the decision, the County shall take final action on the application within 120 days<sup>1</sup> of the effective date of the final remand order. The 120-day period shall not begin until the applicant requests in writing that the County proceed with the application on remand, but if the County does not receive the request within 180 days of the effective date of the final order (or the final resolution of a judicial review), the County shall deem the application terminated pursuant to ORS 215.435. The 120-day remand period does not apply to a remand proceeding concerning a County decision involving an amendment to an acknowledged Comprehensive Plan.

<sup>1</sup> The 120-day period may be extended for up to an additional 365 days if the parties enter into mediation as provided by ORS 197.860 prior to the expiration of the initial 120-day period. Pursuant to ORS 215.435, the County shall deem the application terminated if the matter is not resolved through mediation prior to the expiration of the 365 day extension.

10. In cases of appeal of a final local decision to LUBA in which the County is not an active participant and LUBA remands the decision and orders the County and applicant to pay the cost of the filing fee to the petitioner at LUBA, the applicant must provide to the County proof of payment before the remanded application will be reconsidered. If the applicant doesn't pay the fee within 60 days from the date of the LUBA Order for Payment, the applicant's permit application shall be deemed to be withdrawn by the applicant. The applicant will be subject to new local fees and a one year waiting period as provided in Section 3.52.075 before the application may be reconsidered.

## **SECTION 2.800 Permit Expiration Dates on Farm and Forest Lands**

1. A discretionary decision, except for land divisions and those residential developments listed in §2.800.5, approving a proposed development on agricultural or forest land outside an urban growth boundary is void two years from the date of the final decision if the development action is not initiated in that period.
2. An extension of 12 months may be granted if:
  - a. The applicant makes a written request for an extension of the development approval period;
  - b. The request is submitted to the county prior to the expiration of the approval period;
  - c. The applicant states the reasons that prevented the applicant from beginning or continuing development within the approval period; and
  - d. The Approving Authority determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

3. Approval of an extension granted under this provision is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.
4. Additional one year extensions may be authorized where applicable criteria for the decision have not changed.
5. Permits approved for a proposed residential development on resource land outside of an urban growth boundary shall be valid for four (4) years. An extension of two (2) years may be granted subject to the provisions of §2.800.2.a-d; up to five (5) additional one year extensions may be granted if:
  - a. The applicant makes a written request for the additional extension prior to the expiration of an extension;
  - b. The applicable residential development statute has not been amended following the approval of the permit; and
  - c. An applicable rule or land use regulation has not been amended following the issuance of the permit, unless allowed by the County, which may require that the applicant comply with the amended rule or land use regulation.

For the purpose of this paragraph, “residential development” means:

- a. Alteration, restoration or replacement of a dwelling,
- b. Non-farm dwellings,
- c. Owner of Record dwellings,
- d. 160 acre and 200 acre non-contiguous forest dwellings,
- e. Template dwellings, or
- f. Caretaker residence in forest zones.

## **SECTION 2.850 Expiration Dates and Extensions on Land Use Decisions**

1. Unless otherwise specified in this Ordinance, a land use decision, other than those governed by Section 2.800 on Farm and Forest Lands, will become invalid two years from the date the decision is issued if any required conditions of the decision are not completed within that period.
2. An extension of 12 months shall be granted if:
  - a. The applicant makes a written request for an extension of the development approval period;
  - b. The request is submitted to the county prior to the expiration of the approval period; and
  - c. The applicant states the reasons that prevented the applicant from beginning or continuing development within the approval period.

- d. Subsection b. is hereby clarified to explicitly provide that the County is not required to approve the extension by the expiration of the approval period; only that the applicant has filed his or her extension request with the County by the expiration of the approval period.
- 3. Approval of an extension granted under this provision is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.
- 4. Additional one year extensions shall be authorized where applicable criteria for the decision have not changed.

**SECTION 2.900 Amendments to Land Use Actions, except those actions approved under Chapter 4 of this Ordinance.**

- 1. Definitions
  - a. "Minor Amendment" means a change which:
    - (1) Does not increase the intensity of the approved land use;
    - (2) Does not change the general location or amount of land devoted to an approved land use; or
    - (3) Includes only minor shifting of established lines, location of buildings, proposed public or private streets, pedestrian ways, utility easements, parks or other public open spaces.
  - b. "Major Amendment" means any change which is not a minor amendment.
- 2. Approval of Minor Amendments
 

A Minor Amendment to an approved land use action may be approved by the Director.
- 3. Approval of Major Amendments
 

Approval of a Major Amendment to an approved land use action shall be an Administrative Action subject to the provisions of §2.060.1 of this Ordinance, except where the land use action proposed for amendment was approved pursuant to §2.060.2.