

Planning Commission

Policies and Procedures Manual



Photo: Broken Top (Peter Gutowsky)



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Deschutes County, consistent with Oregon’s Statewide Planning Goal 1, Citizen Involvement, recognizes the Planning Commission as its citizen involvement committee. The Planning Commission, with assistance from the Community Development Department, insures there are ample opportunities for citizens to be involved in the land use planning process. The Planning Commission advises the Board of County Commissioners on a wide variety of rural land use subjects by making recommendations on important planning policy and code matters.

This manual was developed by the Community Development Department, with significant input from the Planning Commission to provide guidance and helpful references, especially for newly appointed commissioners. It is intended to be an active document that is regularly revisited and updated.

# Table of Contents

|                                                            |           |
|------------------------------------------------------------|-----------|
| <b>INTRODUCTION .....</b>                                  | <b>4</b>  |
| <b>STANDARD OPERATING PROCEDURES .....</b>                 | <b>5</b>  |
| Jurisdiction .....                                         | 5         |
| Membership .....                                           | 5         |
| Removal from Office .....                                  | 6         |
| Vacancy Filling .....                                      | 6         |
| Chair and Vice Chair Responsibilities .....                | 7         |
| Meeting Schedule and Logistics .....                       | 7         |
| Annual Statement of Economic Interest .....                | 8         |
| Quorum, Rules, and Procedures .....                        | 9         |
| Conflict of Interest .....                                 | 9         |
| Powers and Duties .....                                    | 9         |
| Advisory Duties .....                                      | 9         |
| Staff Services .....                                       | 10        |
| <b>MAKING LAND USE DECISIONS .....</b>                     | <b>10</b> |
| Types of Land Use Decisions .....                          | 10        |
| Quasi-judicial Versus Legislative Land Use Decisions ..... | 11        |
| Legislative Land Use Decisions .....                       | 11        |
| Notice of Legislative Decisions .....                      | 11        |
| Legislative Hearings .....                                 | 12        |
| Applicable Standards and Criteria .....                    | 14        |
| Findings .....                                             | 15        |
| Evidence .....                                             | 16        |
| Decision .....                                             | 17        |
| Appeals and Timing .....                                   | 18        |
| <b>ROOTS OF LAND USE PLANNING IN OREGON .....</b>          | <b>18</b> |
| The Oregon Land Use Act of 1973 .....                      | 20        |
| Developing the Statewide Planning Goals .....              | 20        |
| LCDC’s Responsibilities .....                              | 20        |
| Purpose of the Goals: Development and Preservation .....   | 21        |
| Deschutes County Comprehensive Plan .....                  | 21        |
| Types of Regulations .....                                 | 23        |
| Post-Acknowledgment Review .....                           | 24        |
| Land Use Board of Appeals .....                            | 25        |
| <b>RELATIONSHIP TO STAFF .....</b>                         | <b>25</b> |
| <b>ETHICS .....</b>                                        | <b>26</b> |
| <b>OREGON’S OPEN MEETING LAW .....</b>                     | <b>26</b> |
| Meeting Requirements .....                                 | 27        |
| Site Visits .....                                          | 27        |
| Resolving Land Use Conflicts .....                         | 28        |

|                                                      |           |
|------------------------------------------------------|-----------|
| Potential Conflicts in Legislative Decisions .....   | 28        |
| <b>PUBLIC INVOLVEMENT .....</b>                      | <b>28</b> |
| Encouraging Effective Citizen Involvement .....      | 28        |
| How to Get Feedback .....                            | 29        |
| Help Citizens Help You .....                         | 29        |
| Explain the System .....                             | 30        |
| Stress Criteria for Decisions .....                  | 30        |
| <b>RESOURCES .....</b>                               | <b>31</b> |
| <b>INDEX .....</b>                                   | <b>32</b> |
| <b>APPENDICES</b>                                    |           |
| <b>Appendix A – Frequently Asked Questions .....</b> | <b>33</b> |
| <b>Appendix B – Quick Reference Guide .....</b>      | <b>35</b> |

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# INTRODUCTION

The purpose of this policy and procedures manual is to put into one document a list of the current activities, procedures and basic policies of the Deschutes County Planning Commission. Below are excerpts from Deschutes County Code and the Comprehensive Plan that expressly describe the Planning Commission's priorities. The Deschutes County Comprehensive Plan Section 1.2 Community Involvement establishes the legal basis for the Planning Commission. The Planning Commission, along with other advisory committees, provide a vital link between County government and its citizenry. The Planning Commission operates as the County's Goal 1 committee for community involvement, and is established pursuant to ORS 215.020 and 215.030 and governed by Deschutes County Code 2.52 (DCC Chapter 2.52).

## *Deschutes County Code*

The Planning Commission represents the unincorporated area of the county outside of the Bend, La Pine, Redmond and Sisters Urban Growth Boundaries, but within Urban Reserve Areas. Per DCC Chapter 2.52, the Planning Commission has the following duties:

1. To carry out a comprehensive planning program, using citizen input and public hearings when appropriate, within its area of jurisdiction and to coordinate its activities with other jurisdictions, planning bodies and districts.
2. To review at its discretion land use decisions of the Hearings Officer within its jurisdiction under Deschutes County ordinances.
3. To act as the citizen involvement committee under the Deschutes County Comprehensive Plan and advise the Board of County Commissioners ("Board") on citizen involvement programs; to study and propose such measures as are advisable for promotion of the public interest, health, safety, comfort, convenience and welfare within the geographic area of the Commission's jurisdiction.

The three duties mentioned above enable the Planning Commission to concentrate on land use policy. A summary of recent Planning Commission accomplishments can be found in the annual Community Development Department (CDD) Citizen Involvement Report.

Hearings Officer decisions can be made available at the Planning Commission's request. These updates describe how Deschutes County Code is being applied and contested. They also provide context for future Comprehensive Plan and/or zoning code amendments.

## *Comprehensive Plan*

Deschutes County Comprehensive Plan Section 1.2 Community Involvement recognizes the Planning Commission:

## Goal and Policies

**Goal 1**        **Maintain an active and open community involvement program that is accessible to all members of the community and engages the community during development and implementation of land use policies and codes.**

Policy 1.2.1    This section serves as the Community Involvement Program.

Policy 1.2.2    The Planning Commission will be the Committee for Community Involvement, with County support.

- a. Maintain funding and staffing.
- b. Provide regular updates, speakers, panel discussions and handouts on land use law and policy.
- c. Appoint members through an open and public process to reflect the geographic areas and diverse values of Deschutes County residents.
- d. Meet with the Board of County Commissioners at least once a year to coordinate planning policies and activities.
- e. Complete an annual report on community involvement implementation for the State Citizen Involvement Advisory Committee, the Board of County Commissioners and the public.

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# STANDARD OPERATING PROCEDURES

The following Standard Operating Procedures both reference Deschutes County Code (DCC) Chapter 2.52, Deschutes County Planning Commission and supplemental best practices adopted by the Planning Commission to guide its meeting management and decision making processes. Frequently Asked Questions and a Reference Guide are provided in Appendices A and B respectively.

## Jurisdiction

The Deschutes County Planning Commission is the Planning Commission for the unincorporated area of the County outside of the Urban Growth Boundaries of Bend, La Pine, Redmond, and Sisters, but within Urban Reserve Areas.

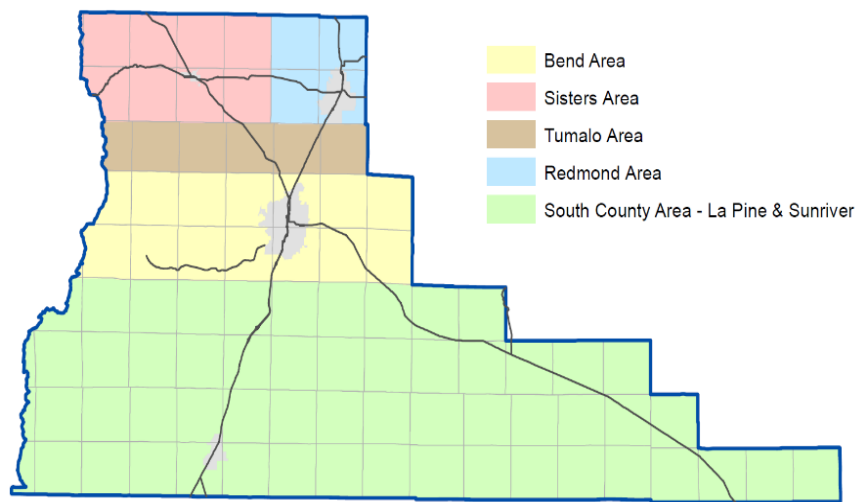
## Membership

The Planning Commission is composed of seven members, appointed by the Board. No more than two members may be engaged in the same kind of occupation, business, trade or profession or be members, officers or employees of any partnership or corporation that engages principally in the buying, selling or developing of real estate for profit. No Planning Commission member can serve more than two full terms or 10 years, whichever is greater, except that the Board may extend the term of a Planning Commission member to complete a project which commenced prior to expiration of the term. In no case can such extension exceed

six months. Membership shall, to the extent possible, be representative of the various geographic areas of the County and generally consist of the following:

- One member from the South County area of La Pine and Sunriver;
- Two members from the Bend area;
- One member from the Tumalo area;
- One member from the Sisters area;
- One member from the Redmond area; and
- One member at large.

**Figure 1** shows these areas spatially in Deschutes County.



It is important to acknowledge that failure to achieve such geographic representation does not affect the validity of any action taken by the Planning Commission. The County strives to stagger Planning Commissioner terms with not more than three commissioner terms expiring in any one year.

### Removal from Office

A member of the Planning Commission may be removed by the Board for findings of misconduct, nonperformance of duty, or three consecutive unexcused absences from regular meetings.

### Vacancy Filing

Vacancies on the Planning Commission are filled by the Board for the unexpired term of the predecessor in office. Vacancies created by the expiration of a member's term are filled by the Board for a term of four years. The terms of office start on July 1.

## Chair and Vice-chair Responsibilities

At its first meeting in January of each year, the Planning Commission elects from among its membership a chair and a vice-chair. No Planning Commissioner can be chair for more than two consecutive years. The Code does not address vice-chair term limits. Most recently, the 2020 Planning Commission, in consultation with the Planning Director and County Legal Counsel, elected a two-term vice-chair to a third term. The chair or vice-chair when the chair is absent, is responsible for facilitating public meetings and discussions among Planning Commissioners and staff. If the chair and vice-chair are both absent, the attending members shall select a chair for the meeting. Chair responsibilities include:

- Conducts meetings per the current edition of Roberts Rules of Order.
- Encourages relevant testimony by making the criteria for decisions clear.
- Ensures that time limits are met.
- Keeps Commission discussion on track and germane to the subject.
- Summarizes as needed.
- Diffuses hostility.
- Asks for ideas and opinions from each Planning Commissioner.
- Check-in with staff to ensure minutes are being properly recorded, speakers have identified themselves and can be heard.

## Meeting Schedule and Logistics

The Planning Commission can hold between one to three regular meetings each month. Two are typical. Most meetings are held the second and fourth Thursdays at 5:30 p.m. at the Deschutes Services Center, 1300 Wall Street, Barnes and Sawyer rooms, Bend. The Planning Commission also conducts additional meetings across the county throughout the year to:

- Engage citizens in their communities;
- Increase the Planning Commission's knowledge and understanding of issues in different communities and regions; and
- Provide convenient locations for public hearings and work sessions on matters specific to geographic areas or populations.

The Planning Commission may also conduct joint meetings with the Board to expedite legislative processes, such as an urban growth boundary amendment. Both may also consider a liaison to better connect the two bodies. Examples of other purposes to conduct a joint meeting include, but are not limited to:

1. Facilitate an understanding of the responsibilities and authority of the Planning Commission and Board.
2. Clarify the Board's policies, actions, or legislative proposals.
3. Information sharing and/or educational opportunities.



4. Coordinate on future or pending legislative proposals to establish a mutual understanding.
5. Discussing the scope of a strategic project (i.e. water panel discussion).
6. Identify and discuss what is working and what needs improvement in the relationship, processes and procedures, resources, staffing, etc.

Planning Commission subcommittees may be established for special projects.

Noteworthy CDD documents of interest to the Planning Commission are available at: <https://www.deschutes.org/cd>. They include but are not limited to: panel discussions, legislative amendments, Citizen Involvement Report, and annual work plan.

Planning Commission meeting packets are made available at least six (6) days prior to each meeting on the County's website (<https://www.deschutes.org/bcc/page/meetings-and-hearings-information>). Commissioners may request a hard copy of the meeting packet, which will be available for pick-up at the Community Development Department in Bend. Occasionally supplemental materials are submitted after the meeting packet is published. Commissioners generally will not be expected to make decisions at the meeting when new materials submitted after the meeting packet are published or new materials are submitted at the meeting.

Meeting preparation requires approximately to 1-3 hours, depending on the agenda, meeting materials, and the complexity of issues. Commissioners are encouraged to contact staff with questions or concerns about the meeting agenda, meeting materials, or request additional information prior to the meeting to maximize productivity. Staff fulfills additional information requests based on available resources, direct relevance to the meeting agenda item, and applicability to the entire Planning Commission, at the discretion of the Planning Director.

The County provides mileage reimbursements to Planning Commissioners traveling from outside of the Bend area to the Deschutes Services Building subject to Deschutes County Policies and Procedures (Deschutes County Finance Policy No. F-1). Planning Commissioners are required to provide current automobile insurance to be eligible to receive mileage reimbursements. Commissioners driving to meetings beyond the Bend area are reimbursed from their home address to the meeting location(s).

### **Annual Statement of Economic Interest**

State law, ORS 244.050 requires each Planning Commissioner as a public official to submit an annual Statement of Economic Interest in order to serve on the commission by April 15. More information is available at the Oregon Government Ethics Commission [website](#).

## **Quorum, Rules and Procedures**

A majority of the members of the Planning Commission constitutes a quorum. The Planning Commission may establish rules, regulations and procedures for its operation consistent with applicable laws of the State and the County. While not specified in County Code, the current edition of Roberts Rules of Order govern parliamentary procedure in Planning Commission meetings.

## **Conflicts of Interest**

A member of the Planning Commission is a public official pursuant to ORS 244.020(15), and thereby must be mindful of actual and potential conflicts of interest. Generally, a member of the Planning Commission should not participate in any proceeding or action in which any of the following have a pecuniary benefit or detriment: the member, the member's spouse, parent, stepparent, child, sibling, stepsibling, son-in-law, or daughter-in-law; the member's spouse's parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law; any individual for whom the member has a legal support obligation or otherwise receives benefits arising from the member's employment; any business which the member or the aforementioned-listed relatives is associated. Any potential conflict of interest must be disclosed at the meeting of the Planning Commission where the matter is being considered. The rules governing conflicts of interest are at times complicated, and any questions should be raised prior to any proceeding with staff or directly with County Legal.

## **Powers and Duties**

The Planning Commission primarily handles legislative land use matters (discussed on Page 11). According to County Code, the Planning Commission has the following duties:

1. To carry out a comprehensive planning program, using citizen input and public hearings when appropriate, within its area of jurisdiction and to coordinate its activities with other jurisdictions, planning bodies and districts.
2. To review at its discretion land use decisions of the Hearings Officer within its jurisdiction under Deschutes County ordinances.
3. To act as the citizen involvement committee under the Deschutes County Comprehensive Plan and advise the Board on citizen involvement programs; to study and propose such measures as are advisable for promotion of the public interest, health, safety, comfort, convenience and welfare within the geographic area of the commissions' jurisdiction.

## **Advisory Duties**

The Planning Commission has other advisory responsibilities, allowing the body to recommend and make suggestions to the Board and other public authorities concerning:

- Laying out, widening, extending and locating of public thoroughfares, parking of vehicles, relief of traffic congestion, betterment of housing and sanitation conditions, and establishment of districts for limiting the use, height, area, bulk and other characteristics of buildings and structures related to land development within the County.
- Plans for regulating the future growth, development and beautification of the County, and development within the County of proper sanitation, public utilities, transportation facilities and appropriate incentives for overall energy conservation.
- Plans for the promotion, development and regulation of the economic needs of the community.
- Regulation, conservation and use of natural resources.

Recently, the Planning Commission participated in discussions involving wildfire hazards, water resources, transportation improvements on Highways 20 and 97, grading, agricultural lands, and child care. More information is available at: <https://www.deschutes.org/cd>.

## Staff Services

County planning staff is responsible for setting agendas, preparing reports and submitting them to the Planning Commission. Other duties include preparing public notices and agendas and maintaining minutes, findings and reports as public records. The County Planning Director and Legal Counsel or their respective designees may serve as *ex officio*, nonvoting members of the Planning Commission. Staff has not served in this capacity since at least the 1990s. This provision will only be employed if directed by the Board.

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# MAKING LAND USE RECOMMENDATIONS

This section outlines the classification of land use decisions, how to make a decision correctly, and the essential steps in conducting a public hearing.

## Types of Land Use Decisions

The first step in making a decision is determining what type of decision the request involves. The statutory definition of a “land use decision” is long, detailed, and legalistic (see ORS 197.015(10)). To summarize, a land use decision is a final decision that concerns the adoption, amendment or application of Oregon’s Statewide Planning Goals, a Comprehensive Plan provision, a land use regulation, or a new land use regulation that requires the use of discretion. Land use decisions are either “legislative” or “quasi-judicial.” Approval of a use based on clear and objective standards (i.e., one that does not require discretion) is “ministerial” and is not a land use decision.

## Quasi-judicial Versus Legislative Land Use Decisions

The Deschutes County Planning Commission focuses on legislative land use matters. It has not made quasi-judicial land use decisions since the early 1990s, with only few exceptions in the Bend Urban Area Reserve as required by County Code. What are the differences between a quasi-judicial and a legislative decision? The Oregon Supreme Court in *Strawberry Hill 4 Wheelers v. Board of Comm'rs*, 287 Or 591, 601 P2d 769 (1979) established three factors generally distinguishing a quasi-judicial decision:

1. Is the process bound to result in a decision?
2. Is the decision bound to apply pre-existing criteria to concrete facts?
3. Is the action directed at a closely circumscribed factual situation involving a relatively small number of persons?

Following *Strawberry Hill 4 Wheelers*, the Land Use Board of Appeals (“LUBA”) further opined that the more definitively the above factors are answered in the negative, the more likely the decision is legislative. *Valerio v. Union County*, 33 Or LUBA 604 (1997). Otherwise, the decision is more likely to be quasi-judicial. No single answer controls. The second factor – whether the decision is bound to apply pre-existing criteria – is present to some extent in most land use decisions and is thereby often given less weight. *Andrews v. City of Brookings*, 27 Or LUBA 39 (1994). Generally, if the first and third factors are answered negatively, it is a legislative decision.

## Legislative Land Use Decisions

Legislative proceedings relate to policy issues or matters that affect a broad area, or both. An amendment to the text of the Comprehensive Plan or Zoning code is nearly always a legislative matter. A Plan or Zoning map amendment may be legislative depending on its scope and whether it is initiated by an applicant or the local government. The procedures for hearing a legislative matter are different from those for a quasi-judicial proceeding; the laws are less detailed and the hearings less structured.

## Notice of Legislative Decisions

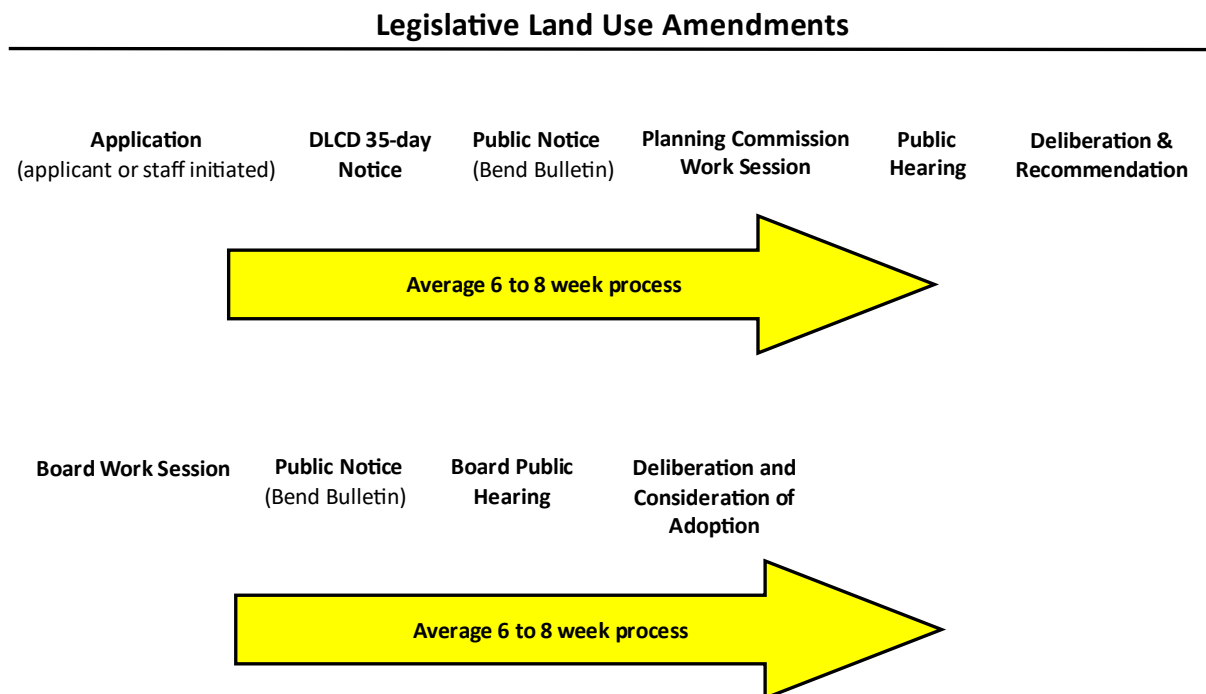
Individual mailed notices must be sent to all property owners whose property would be rezoned by a legislative action. This includes a change to the base zoning designation and a change to text “in a manner that limits or prohibits land uses previously allowed in the affected zone.” This is commonly referred to as “Measure 56 notice.” According to State law, the individual notice specifically must inform the owner that a rezoning, “may reduce the value of your property.” If no property is to be rezoned, local legislative hearing notice requirements need to be followed. Counties may exceed state notice requirements. Deschutes County is increasingly exceeding state notice requirements in land use processes to maximize public involvement in their local government’s decisions.

## Legislative Hearings

In a quasi-judicial setting, there are always proponents and often opponents to the proposal. In a policy matter, an individual may support part of the proposal and object to others. Parties may support the objective but disagree with some of the wording. Therefore, testimony at a legislative hearing is more open. Segmenting testimony into “proponents” and “opponents” is inappropriate.

Since legislative matters affect policy or a broad area, an individual’s rights are handled differently from a quasi-judicial process. There are no limits on ex parte contact so there is no time set aside for ex parte declarations at the commencement of the hearing. While the Statewide Planning Goals and perhaps statutes apply to many legislative matters, criteria are not as central to these hearings as they are in quasi-judicial matters. The correct policy is what matters, not whether a criterion is satisfied. Decision-maker opinions in this arena are acceptable – even expected. Formal statutes governing conflicts of interest as well as general principles discouraging members of the Planning Commission to be influenced by biases, still matter, however.

A Planning Commission does not decide a legislative matter, but rather makes a recommendation to the Board. However, as a dedicated planning body for Deschutes County, the elected County Commissioners depend on the Planning Commission to fully consider land use matters, listen to and evaluate public testimony on the topic under consideration and forward thoroughly evaluated, reasoned recommendations. Planning Commissioners actively listen and read all public testimony related to the topic being discussed. **Figure 2** illustrates the legislative land use amendment process.



## **Outline for Conducting a Legislative Public Hearing**

The following is an outline for conducting a public hearing. It is important to acknowledge that the Planning Commission ensures a civil proceeding by directing all public questions to the chair. The chair (or vice-chair when the chair is absent) facilitates the public meeting and interactions among Planning Commissioners and staff. Even in contested land use proceedings, the Planning Commission's recommendation reflects the advisory body as a whole. Members of the Planning Commission, in their individual capacity and not as a representative of the Planning Commission, maintain their ability to testify at subsequent Board proceedings.

1. Chair opens hearing.
2. Chair describes procedures for testimony and outcome of the hearing.
3. Staff report is summarized.
4. Planning Commission asks technical or clarifying questions to staff of the proposal.
5. Testimony from citizens, interest groups, state agencies, and other units of government are entered into the record.

Requests to continue the hearing do not need to be observed, but the Planning Commission may continue a legislative hearing as needed. If the continuance is to a date, time, and place certain, no new notice is required.

6. Close the hearing.
7. Discussion. Note: Questions to staff may be asked during discussion (or all through the process) even after the close of the hearing.
8. Motion and second.
9. Deliberation, amendments to motion (if any).
10. Vote on a recommendation.

## **Work Sessions: Purpose and Conduct**

The Planning Director may schedule a work session to prepare the Planning Commission for an upcoming public hearing or following a hearing and prior to deliberations, for informational or educational purposes, or to address other relevant topics applicable to rural land use planning.

Work session conduct is generally informal:

1. Chair opens the work session.
2. Staff presents or introduces an issue, topic, invited speakers (if any), etc.
3. Chair facilitates the discussion among the work session participants.
4. Staff presents next steps pertaining the topic (if any).

Public comments are generally not be permitted at any work session which pertains to a pending application before the Planning Commission to avoid due process issues since the public hearing either usually has not have been opened or has been closed as the Planning

Commission prepares for deliberations, or has not otherwise been noticed as a public hearing on a pending application.

Public comments on other matters is at the discretion of the chair. However, work sessions are generally understood to be discussions between the Planning Commission and staff and/or other specifically invited persons. Please note, if the chair permits public comments on non-public hearing agenda items, then other people who do not attend may legitimately raise concerns regarding the adequacy of the notice.

## **Applicable Standards and Criteria**

Statutes require a land use decision to be based on approval criteria. The decision must apply the approval criteria to the facts. The decision-maker must apply the adopted criteria for approval that are contained in the zoning code. If the applicant demonstrates compliance with these criteria, the application must be approved even if the decision-maker disagrees with the criteria, or believes that additional, un-adopted criteria should be applied. Conversely, if the applicant fails to demonstrate compliance with the applicable criteria, the decision-maker must deny the application even if it believes that the applicable criteria are unreasonable.

Regarding interpretation of criteria, if the wording is clear and unambiguous, it must be followed. A hearing body may not insert what has been omitted or omit what has been inserted. If two provisions conflict, the more specific provision usually controls. For example, if a property is located in a zone that allows certain uses, but is subject to an overlay zone that restricts several of those uses, the overlay zone restrictions will control.

## **Planning Commission Review without Public Hearings**

The Planning Commission will occasionally review legislative changes to the Comprehensive Plan or zoning code without conducting a public hearing. Unless otherwise required by state law, DCC 22.12.010 establishes the minimum procedural requirements for legislative changes as “review by the Planning Commission followed by a public hearing before the Board. Public hearings before the Planning Commission are set at the discretion of the Planning Director.

Examples of reasons the Planning Director may not schedule a public hearing on legislative proposals include:

1. Adopt changes incorporating new State law into County Code on which Deschutes County does not have discretion.
2. Expedite a Board of County Commission project or proposal.
3. Expedite an emergency ordinance to address changed circumstances, such as a State agency repealing a State law the County wishes to continue to require. The 2020 changes to the Oregon Building Code is a specific example.
4. Expedite an emergency ordinance to address a natural or man-made hazard.

The Planning Director generally consults with the Board and/or County Administrator on such decisions. Items scheduled for review without a public hearing will be scheduled as work sessions, and the procedure will follow the same aforementioned procedure.

1. Chair opens the work session.
2. Chair describes procedures for the review and potential outcome(s) of the review:
  - a. Recommendation for approval, approval with modifications, or denial of the proposal; or
  - b. No recommendation.
3. Staff report.
4. Planning Commission technical or clarifying questions to staff of the proposal.
5. Discussion.
6. Decision on whether to forward the proposal with or without a recommendation. If a recommendation, then motion and second:
  - a. Deliberation, amendments to motion (if any).
  - b. Vote on a recommendation.
  - c. Defer a decision by first checking-in with the Board for further guidance.

## Findings

Findings are statements of the relevant facts as understood by the decision-maker and a statement of how each approval criterion is satisfied by the facts. A brief statement that explains the criteria accompanies approval or denial and standards considered relevant to the decision, states the facts relied upon and explains the justification for the decision.

The purposes of findings are to:

- Ensure that the hearings body applied the criteria prescribed by statute, administrative rule, and its own regulations and did not act arbitrarily or on an ad hoc basis.
- Establish what evidence the reviewing body relied on in making the decision to inform the parties why the hearings body acted as it did and explain how the conclusions are supported by substantial evidence.
- Demonstrate that the reviewing body followed proper procedures.
- Aid careful consideration of criteria by the reviewing body.
- Keep agencies within their jurisdictions.

Statutes require:

- An explanation of the standards considered relevant to the decision.
- A statement of the facts supporting the decision.



- An explanation of how the standards and the facts dictate the decision.

Findings need not be exhaustive, but rather should contain a summary of the relevant facts. No particular form is required, and no magic words need to be employed.

Generally, the best way to prepare findings is to:

1. Identify all of the applicable criteria.
2. Start with the first criterion and deal with each element separately; for example, "The criterion is that the property is not subject to landslides, floods, or erosion."
3. State the criterion as a conclusion; e.g., "The property is not subject to landslides because..."
4. State the fact that leads to the conclusion the property is not subject to landslides; e.g., "...because the topography on the property has a 0% grade and the property is located on a lava bed."
5. Repeat the process for each element of every applicable criterion.
6. Where there is a criterion or element of a criterion that is not applicable, state why it is not applicable.
7. Where there is conflicting evidence, the safest course is to state there was conflicting evidence, but the hearings body believed certain evidence for certain reasons. This however, is not required.

Common problems with findings include:

- Failure to identify all applicable standards and criteria.
- Failure to address each standard and criterion.
- Deferring a necessary finding to a condition of approval.
- Generalizing or making a conclusion without sufficient facts.
- A mere statement that the criteria have been met.
- Simple restatement of the criterion.
- Failure to establish a causal relationship (direct observation, reports from other people), between facts and ultimate conclusions.

## Evidence

The applicant has the burden of proof to introduce evidence that shows that all of the approval criteria are satisfied. Opponents, on the other hand, have the duty to show that the applicant's facts are incorrect or that the applicant has not introduced all of the facts necessary to satisfy the burden of proof. The questions that arise are:

- What is relevant evidence in the record?
- How much evidence is required to support a finding; that is, what does substantial evidence mean?
- How does the reviewing body address conflicting evidence in the findings?

The decision must be based on relevant evidence in the record. Evidence in the record is evidence submitted to the reviewing body. The reason for limiting the basis for the decision to evidence in the record is to assure that all interested persons have an opportunity to review the evidence and to rebut it.

A reviewing body may support an application in concept or members may have personal knowledge of facts that would satisfy the approval criteria, but it cannot approve the application on that alone. There must be substantial evidence in the record. Personal knowledge is not evidence in the record. In reality, such applications are approved but they will be remanded if appealed to LUBA. It is also important to note that an application cannot be denied on the basis of facts not in the record.

Relevant evidence is evidence in the record that shows an approval criterion is or is not satisfied. Testimony about effects on real estate values is not relevant unless the approval criteria require a finding on the effect on real estate values.

A statute provides that LUBA may reverse or remand a local government decision when the local government has “made a decision not supported by **substantial evidence** in the records as whole.” The term “substantial evidence” does not go to the volume of evidence. Substantial evidence consists of evidence that a reasonable person could accept as adequate to support the conclusion.

Where the evidence is such that reasonable persons may fairly differ as to whether it establishes a fact, there is substantial evidence to support the decision. In other words, what is required is enough evidence to show that an approval criterion is satisfied. If two people agree that there is not substantial evidence, there is not enough evidence.

When the applicant’s evidence is countered by the opponents, there is **conflicting evidence**. Where there is conflicting testimony based on different data, but any of the data is such that a reasonable person might accept it, a conclusion based on any of the data is supported by reasonable evidence. That is, the hearings body may select any of the information for its decision provided it is reasonable that a person would accept the data as correct. The best course of action is for the hearings body to state what evidence it believes and why when it prepares its findings of fact.

## Decision

The job of the reviewing body is to ascertain the facts and apply the approval criteria to the facts. A quasi-judicial decision will take one of three forms:

1. **Approval.** The reviewing body found that the facts in evidence indicate the criteria are satisfied.
2. **Approval with conditions.** The reviewing body has found that the facts in evidence do not demonstrate the criteria are fully satisfied, but, through the application of conditions, the criteria can be satisfied. This assumes the ordinance authorizes the application of conditions for approval.
3. **Denial.** The reviewing body has found that the facts in evidence have not demonstrated that the criteria are satisfied and the application cannot be made to comply with conditions attached to it.

While a legislative amendment does not have a State mandated timeline for issuing a decision, the Planning Commission nonetheless needs to be cognizant of making timely recommendations.

## Appeals and Timing

### *The “150-Day Rule”*

A county’s final quasi-judicial land use decision must be made within 150 days from acceptance of a complete application including time needed for appeal. Legislative proposals are not subject to this requirement. Deschutes County procedures allow staff 30 days to determine if the submittal is complete and then to send written notice to the applicant. Date of that notice starts the 150-day clock. If a decision cannot be made within the time limits, the local government can ask the applicant if they will extend the rule. Often that is agreeable since the alternative may be denial of the application. If the clock runs out and the deadline has not been extended, the applicant may ask the court to grant a writ of mandamus. If granted, the writ allows the application to proceed without local government approval.

### *Appeals*

The final consideration in a legislative or quasi-judicial decision is the potential of an appeal – from a staff decision to the Planning Commission or hearings officer, from the Planning Commission to the Board or from the Board to LUBA. Timeframes for these actions are set out in State law and local ordinances.

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## ROOTS OF LAND USE PLANNING IN OREGON

Land use planning in Oregon began in the cities. Urban settings created urban needs for coordinated approaches to particular uses of the land. Recognizing this, the 1919 Oregon Legislature passed enabling legislation allowing cities in Oregon to plan in an orderly way for the challenges that resulted from steady growth. This legislation enabled cities to establish Planning Commissions and required Planning Commission approval for subdivision plats. After

World War II, Oregon counties were similarly authorized to establish Planning Commissions, at a time when rapid growth created increasing urban problems in many unincorporated areas.

Through most of the 20th century, Oregon state government's role in planning was limited. The state legislature authorized local planning to occur and provided for coordination with the federal government when the need arose (during depression-era dam building projects, for example), but did not preempt or control local guidance of development and growth. However, as Oregon grew dramatically in population and income during and after World War II, it became increasingly evident that the system of permissive, local-option planning was not adequate to accommodate complex regional and statewide pressures and trends that crossed many jurisdictional boundaries.

State government during this period began slowly, but with growing speed spurred by popular concern, to respond to the challenges resulting from rapid growth and development. A Department of Environmental Quality was established, backed by clean air and water laws as well as pollution bonds; landmark Oregon legislation created significant laws on beaches, bottle deposits, bike paths, and billboard removal. It was apparent that land use difficulties were at the root of many of the problems resulting from growth. Oregon's most productive farmland, the 100-mile-long Willamette Valley, was also home to 80 percent of the state's population.

Oregon's population increased by nearly 40 percent between 1950 and 1970, and 80 percent of that occurred in the Willamette Valley. The result was significant growth in cities of the Valley, with the subsequent loss of prime farmland. Spurred by the losses of farmland and prodded by first-term Governor Tom McCall, the 1969 Oregon Legislature passed Senate Bill (SB) 10, which required all cities and counties to adopt comprehensive land use plans and zoning regulations. SB 10 ended the view that selective local option planning alone would suffice to meet regional and area-wide land use challenges, which could significantly affect the economic and environmental bases of this state. Not only were zoning and subdivision regulations required of every jurisdiction in the state, but statewide goals were set out which addressed conservation of prime farm and forest lands and other vital state concerns, including air and water quality, open space, natural scenic resources, timely development of public facilities, well-considered transportation systems and orderly transition from rural to urban uses with a careful view to protecting the basic character of Oregon.

Unfortunately, the 1969 legislation contained no assistance to meet the cost of compliance, and its enforcement provisions proved inappropriate. This led to a strong effort on the part of Governor McCall and key state legislators to work together to develop an acceptable proposal that would make statewide land use planning a reality, rather than a platitude, in every jurisdiction in the state.

## The Oregon Land Use Act of 1973

The 1973 Legislature convened with bipartisan support for strengthening state oversight of local planning. The result of its effort, the Oregon Land Use Act of 1973 (Senate Bill 100), established the framework that in major part governs and guides land use planning in Oregon today. The Act was passed by substantial margins in both chambers of the legislature. It remains a controversial piece of legislation but has withstood numerous challenges in the legislature, in courts, and at the polls. It also represents the concerns, and has received the support of various groups representing agriculture, business, homebuilders, local governments, and environmental organizations.

### Developing the Statewide Planning Goals

Once the Land Use Act was on the books, the work of implementation began. The first task for the Land Conservation and Development Commission (LCDC) was creation of the Statewide Planning Goals against which each local comprehensive plan would be measured. After more than a year of public workshops and hearings in 20 locations around the state involving over 3,000 Oregonians, LCDC adopted 14 statewide land use-planning goals in 1974. Later, coastal goals and a Willamette River Greenway goal were added to bring the total to 19 goals.

### LCDC'S Responsibilities

LCDC itself acts mainly through the acknowledgement (initial approval), periodic review, and post-acknowledgement review processes. It may issue enforcement orders, which specify areas of noncompliance in local planning decisions, and specific corrective actions required. LCDC conducts studies through its staff (the Department of Land Conservation and Development, or DLCD) and writes administrative rules refining the provisions of the goals. Often it is in this forum where discussion and consensus building can take place that best works to define Oregon's planning program.

All city and county comprehensive plans and implementing regulations were "acknowledged" by LCDC as complying with the Statewide Planning Goals. Acknowledgment was needed before the local government could rely on its plan for making land use decisions without showing goal compliance for every land use decision. Once a comprehensive plan (including the implementing ordinances and regulations) gains acknowledgment, the plan – not the statewide goals – controls land use decision-making for the local government. Any amendment to an acknowledged plan must be shown to comply with the goals so that the whole plan maintains acknowledgment. It is important to note that LCDC's enforcement powers relate primarily to city and county compliance with the land use statutes and the goals. Cities and counties themselves remain responsible for assuring that individual land use actions comply with their local comprehensive plan. Local government is the primary enforcement entity, and appeals of final local decisions go to LUBA, not LCDC.

## Purpose of the Goals: Development and Preservation

Taken as a whole, the goals are best understood as devoted to creating and maintaining sustainable, livable, and equitable communities. First, they seek to protect the natural resources on which much of Oregon's economy depends (in particular, farm and forest land) and our environmental quality. Second, the goals promote efficient urban development and an orderly transition from rural to urban use. Implicit in both purposes of the goals is the encouragement of economic development through orderly growth. That change must occur in a manner that does not threaten the long-term economic foundations of Oregon. The twin concerns – development and preservation – meet in Goal 14. This urbanization goal requires that a city, in consultation with the county, local special districts, and neighboring jurisdictions, draw a boundary around itself to establish the projected limits of urban growth for 20 years. Data to support the boundary is required, including 20-year growth forecasts. All land within the boundary – called an urban growth boundary (or UGB) – will be considered either urban or potentially urban, while land outside the UGB must remain predominantly rural in character. The 19 Statewide Planning Goals can be generally grouped into three categories:

1. **Process Goals**, which ensure citizen participation and set forth basic requirements and procedures for local planning and development regulations (Goals 1 and 2).
2. **Development Goals**, which address the interrelated factors of economy, housing, public facilities, transportation, energy, and urbanization (Goals 9-14).
3. **Conservation Goals**, which address the preservation of natural resources of various types:
  - Land resources – agricultural and forest (Goals 2 and 4).
  - Coastal resources – estuaries, shorelines and dunes, and the ocean (Goals 16-19).
  - Managing resources – environmental quality; recreational and resort areas; scenic, historic, and natural resource areas; and natural hazards (Goals 5-8).
  - Willamette River – special regulations relating to particular concerns and values of this major waterway (Goal 15).

## Deschutes County Comprehensive Plan

The Deschutes County Comprehensive Plan provides a blueprint for land use conservation and development. This is accomplished through goals and policies that tell a cohesive story of where and how development should occur and what places should remain undeveloped. The Plan provides a legal framework for establishing more specific land use actions and regulations such as zoning. The goals and policies are based on existing conditions and trends, community values and the statewide planning system.

The Plan covers a 20-year period from 2010-2030. To remain useful over that time, the Plan must provide clear policy direction yet remain flexible. As Deschutes County conditions change, legislative amendments will ensure the Plan remains relevant and timely. The unincorporated areas of the County are covered by this Plan. The cities of Bend, La Pine, Redmond and Sisters each maintain their own comprehensive plans within their respective UGBs. The cities and County use intergovernmental agreements to coordinate land use within UGBs. The Plan complies with the statewide planning system, which was adopted in 1973 to ensure consistent land use policies across the state. While compliance with the statewide system is required, it is also important for a comprehensive plan to reflect local needs and interests. This Plan balances statewide requirements and local land use values.

Deschutes County encompasses a total of 3,054 square miles. The County was created in 1916 from a portion of Crook County and was named after the Deschutes River. Approximately 80 percent of the land in the County is publicly owned by the federal, state or local governments. Deschutes County's first Comprehensive Plan, *Comprehensive Plan to 1990*, was adopted in 1970. To comply with newly adopted statewide planning regulations a new plan was adopted in 1979, *Deschutes County Year 2000 Comprehensive Plan (1979 Plan)*. In 1981, the 1979 Plan was acknowledged as being in compliance with the Statewide Goals. Along with the 1979 Plan, the County adopted a background document and map. The *Deschutes County Comprehensive Plan Resource Element (Resource Element)* contained valuable information pertaining to resources and demographics. The map depicted the long-term general land use categories for all lands in the County. Over time, the County amended the 1979 Plan to comply with changes initiated by the State, the Board or property owners. Periodic Review, a plan update process once required by the state, started in 1988 and was completed in 2003. Periodic Review included major additions and amendments to the 1979 Plan to keep the Plan and its policies consistent with evolving State planning regulations and local conditions. The 1979 Plan was codified as Title 23 in the Deschutes County Code.

Deschutes County Comprehensive Plan 2030 is organized into five chapters:

- Chapter 1      Comprehensive Planning
- Chapter 2      Resource Management
- Chapter 3      Rural Growth Management
- Chapter 4      Urban Growth Management
- Chapter 5      Supplemental Sections

Chapters 1-4 contain the following:

- Background: Information providing context for the reason and process for including the goals and policies.
- Goals: A general description of what Deschutes County wants to achieve. The County will direct resources and/or support partner agencies and organizations to implement the goals over the 20-year Plan timeframe.

- **Policies:** Statements of principles and guidelines to aid decision making by clarifying and providing direction on meeting the Goals.
- **References:** A list of resources used in the preparation of each chapter is included at the end of each chapter.

The Plan’s land use goals and policies are anticipated to be completed over a 20 year period.

## Types of Regulations

As noted above, the Deschutes County Comprehensive Plan contains a map and general policy statements. Implementing ordinances establish particular criteria, standards, and procedures through which the Plan will be carried out. These ordinances prescribe laws governing the way in which rural land may be used and divided. The most common types of regulation are subdivision and zoning regulations. Subdivision regulations control the particular ways in which parcels of land are divided. Provisions address design and layout of sites, roads, utility easements, public areas, etc.

Zoning is the placement of various land use “labels” (such as residential, commercial, or exclusive farm use) on a particular geographic. Zoning describes the uses permitted and generally establishes criteria and standards for each use (such as lot size, setbacks, and parking). In designating these areas and establishing the conditions, the zoning ordinance will usually allow for flexibility and accommodation of special concerns. Provisions for variances, nonconforming uses, conditional uses, and other special provisions are incorporated into the zoning ordinances. Table 1 lists existing Comprehensive Plan designations and related Zoning districts. Some Plan designations apply County-wide and while others apply to designated areas of existing development. The Destination Resort designation recognizes a combining zone that supplements the underlying zoning. Most of the area-specific designations fall under the State rules for Unincorporated Communities.

**Table 1 - Comprehensive Plan and Zoning Code Designations**

| <b><i>Comprehensive Plan Designation</i></b> | <b><i>Associated Deschutes County Zoning Code</i></b>                                         |
|----------------------------------------------|-----------------------------------------------------------------------------------------------|
| <b><i>County-wide designations</i></b>       |                                                                                               |
| Agriculture                                  | Title 18 - All EFU subzones                                                                   |
| Airport Development                          | Title 18 - AD, AS                                                                             |
| Destination Resort Combining Zone            | Title 18 - DR                                                                                 |
| Forest                                       | Title 18 - F-1, F-2                                                                           |
| Open Space and Conservation                  | Title 18 - OS&C                                                                               |
| Rural Residential Exception Area             | Title 18 - RR-10 and MUA-10                                                                   |
| Surface Mining                               | Title 18 - SM                                                                                 |
| <b><i>Area specific designations</i></b>     |                                                                                               |
| Resort Community                             | Title 18 - All Black Butte Ranch and Inn of the 7 <sup>th</sup> Mountain/Widgi Creek subzones |



|                                |                                                |
|--------------------------------|------------------------------------------------|
| Rural Community                | Title 18 - All Tumalo and Terrebonne subzones  |
| Rural Service Center           | Title 18 - All RSC zones                       |
| Urban Unincorporated Community | Title 18 - All Sunriver subzones               |
| Rural Commercial               | Title 18 - Rural Commercial                    |
| Rural Industrial               | Title 18 - Rural Industrial                    |
| Bend Urban Growth Area         | Title 19 - UAR-10, SM, SR 2 ½, RS, IL, FP, WTZ |
| Redmond Urban Growth Area      | Title 20 - UH-10                               |
| Sisters Urban Growth Area      | Title 21 - UAR-10, OA, FP                      |
| Redmond Urban Reserve Area     | Title 18 - RURA                                |

Source: County Geographical Information System and Deschutes County Code

Deschutes County also recognizes the importance of working closely and cooperatively with the cities of Bend, La Pine, Redmond and Sisters, as well as special districts and state and federal agencies, to ensure a coordinated approach to future growth and conservation. Deschutes County has the responsibility for negotiating urban service agreements with representatives of all cities and special districts that provide, or declare an interest in providing, urban services inside a UGB. Urban service means:

- Sanitary sewers
- Water
- Fire protection
- Parks
- Open space
- Recreation
- Streets, roads and mass transit
- Special Districts

Deschutes County is responsible for coordinating other planning activities affecting land uses within the County. This includes:

- Coordinating with special districts, including irrigation districts, park districts, school districts, sewer districts, and water districts.
- Establishing Cooperation Agreements with special districts that provide an urban service in a UGB.
- Coordinating with the U.S. Forest Service and Bureau of Land Management.
- Joint Management Agreements with municipalities for managing urban growth areas (areas outside city limits, but inside a UGB).
- Establishing Urban Reserve Areas.

## Post-Acknowledgement Review

Post-acknowledgement review allows Deschutes County (and other cities and counties) to prepare amendments to comprehensive plans and associated inventories, studies, and implementing codes (i.e., zoning, subdivision, etc.) and then consider the amendment in a public process. Adoption of a post-acknowledgment plan amendment can be completed only by the Board at a public hearing. Deschutes County is required to submit changes to plans and codes to DLCDC 35-days prior to the first evidentiary hearing. DLCDC provides notice of all plan amendments throughout the state and publishes them on its web site. DLCDC may review and

evaluate the amendment for compliance with the goals. Changes not involving the topics within the Statewide Planning Goals do not have to be submitted to DLCD.

If a party (such as a citizen, an advocacy group, or DLCD) believes the plan amendment does not comply with applicable goals, administrative rules, or land use statutes, the recourse is to appeal the amendment to LUBA.

### **Land Use Board of Appeals**

LUBA, is a panel of administrative hearings officers appointed by the governor charged with deciding appeals of local government land use decisions, including plan amendments and zone changes. LUBA was created to simplify the appeal process, speed resolution of land use disputes, and provide consistent interpretation of state and local land use laws.

Prior to LUBA's creation, land use appeals were heard by LCDC and the circuit courts. The tribunal is the first of its kind in the United States. The governor appoints the three-member board to serve four-year terms. The appointments are confirmed by the Oregon Senate. The board members must be members of the Oregon State Bar.

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## **RELATIONSHIP TO STAFF**

The Community Development Department consists of Administrative Services and five divisions which provide coordinated planning and development. The five divisions are:

- Building and Safety – provides construction plan reviews, consultation and inspections to assure compliance with federal and state building codes in the rural County and cities of La Pine and Sisters.
- Code Enforcement – investigates investigating code violation complaints to ensure compliance with each of the codes and statutes administered by CDD, and provides direct service on contract to the City of La Pine for solid waste violations.
- Coordinated Services – provides coordination of permitting and “front line” direct services to customers at the main office in Bend and at the La Pine and Sisters city halls.
- Environmental Soils – regulates on-site wastewater treatments systems (septic) and monitors environmental factors for public health and resource protection.
- Planning – consists of two operational areas, Current and Long Range Planning.

Current Planning is responsible for reviewing land use applications for compliance with Deschutes County Code and State law, including zoning, subdivision and development regulations, and facilitating public hearings with Hearings Officers and the Board. Staff is also responsible for verifying compliance with land use rules for building permit applications and

septic permits; coordinating with Code Enforcement to respond to complaints and monitor conditions of approval for land use permits; and providing assistance at the public information counter, over the telephone and via email.

Long Range Planning is responsible for planning for the future of Deschutes County, including developing and implementing land use policy with the Board, Planning Commission, community and partner organizations. It is in charge of updating the Comprehensive Plan and zoning regulations, and coordinating with cities and agencies on various planning projects taking place in the region. Staff also monitors and participates in annual legislative sessions, and serves on numerous local, regional and statewide committees primarily focusing on transportation, natural resources, growth management and economic development.

To understand the roles and responsibilities of staff, the Planning Commission, and Board of County Commissioners, please see the Resources section of this document with a web link to the *Oregon Planning Commission Handbook*, April 2015, Chapter 3.

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## ETHICS

According to the Oregon Ethics Guide for Public Officials, “a public office is a public trust.” Planning issues commonly involve a conflict of values, and often there are significant private interests at stake. These accentuate the necessity for the highest standards of fairness and honesty among all participants. See [Oregon Government Ethics Law: A Guide for Public Officials](#). Planning Commission members are required to attend an in-person training conducted by Deschutes County Legal Counsel. As questions arise, Commissioners can contact County Legal Counsel. Additionally, as mentioned earlier, Planning Commissioners must complete an Annual Statement of Economic Interest.

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## OREGON’S OPEN MEETING LAW

Oregon’s open meeting law (ORS 192.610–192.690) requires that decisions of any “governing body” be arrived at openly so that the public can be aware and informed of the body’s deliberations and decisions. A governing body is one with two or more members that decides for or recommends to a public body. The law applies to the state, cities and counties, and advisory bodies to those jurisdictions. Not only must meetings of city councils and boards of county commissioners be “open” – the meetings of Planning Commissions, design review boards and other appointed boards or commissions with the authority to make decisions or recommendations are also subject to the requirements.

With a few exceptions, a meeting exists any time a quorum of the body’s membership is present. “Closed meetings” (or executive sessions) are allowed to discuss, for example employment, discipline or labor relations but decisions on these issues must be made at a public (open) meeting. Planning Commissions will rarely conduct business in an executive

session. Notice of public meetings is required, and the notice must include the time and place and principle subject to be discussed. Notice should be timed to give “reasonable” advance notice to the public. For “emergency” or special meetings, the law calls for 24 hours advance notice.

### *Emails*

Planning Commissioners need to be cognizant that sending emails to fellow Commissioners constitutes a public meeting when it is sent to a majority of members. When staff coordinates with the Planning Commission electronically, the email often reminds Planning Commissioners to respond to staff individually to ensure an accidental public meeting does not take place.

## **Meeting Requirements**

Any public body must provide for the sound, video or digital recording or the taking of written minutes of all its meetings. Neither a full transcript nor a full recording of the meeting is required, but the written minutes or recording must give a true reflection of the matters discussed at the meeting and the views of the participants. All minutes or recordings must be available to the public within a reasonable time after the meeting, and shall include at least the following information:

- All members of the body present;
- All motions, proposals, resolutions, orders, ordinances, and measures proposed and their disposition;
- The results of all votes and the vote of each member by name;
- The substance of any discussion on any matter; and
- A reference to any document discussed at the meeting.

Because a meeting is open to the public, it means that anyone can attend. But “open” does not mean that anyone has the right to speak. Planning Commissions and governing bodies may hold work sessions and other meetings without allowing public comment.

## **Site Visits**

Oregon’s open meeting law exempts “site inspections” from the meeting requirements. That means that technically the Planning Commission or governing body could go as a group, as a quorum, to visit a site. However, site visits often introduce numerous other considerations. Notably, site visits are considered *ex parte* contact and should be disclosed at the first public hearing. A second consideration is the assumptions, which may be made by the public when they realize that a majority of the decision-making body visited the site without everyone else who might be interested in having an opportunity to be there. What did they see? What was discussed? What did they decide? As such, site visits rarely occur. When needed, it is usually best for the members of the Planning Commission to refrain from discussing the proposal with one another or, for example, a property owner conducting the tour. Those conversations are best held during the public hearing with the public being able to fully participate.

## Resolving Land Use Conflicts

Land use issues can generate conflicts. It is important to recognize issues that may produce conflicts, anticipate opportunities to deal with the problems and use techniques that encourage “win-win” solutions.

### *Elements in Every Conflict*

- Issues. The “what” of a dispute (e.g. the wetland impact of proposed development).
- Positions. The “how” – a specific proposal about how to solve the dispute (“This wetland permit cannot be issued”).
- Interests. The “why” – the expression of needs that drive a person’s behavior (Why do you want...? Why is that important?).

Interests may be:

- Procedural. Do people feel they are being treated fairly?
- Psychological. Do people feel they are listened to and their ideas respected?
- Substantive. Do people feel they will benefit from the result?

Only by identifying the interest(s) underlying the issues and positions and recognizing the different levels of importance each party gives to these interests can the disputing parties create mutually satisfying, durable solutions to conflicts.

## Potential Conflicts in Legislative Decisions

Local jurisdictions generally set the schedule for legislative land use decisions. There is no 150-day rule. By identifying stakeholders, clearly presenting facts and alternatives, and really listening and responding to the ideas and suggestions from all of the interested parties, decisions will be made that people see as fair. Even when people disagree with the results, it is difficult to generate a conflict over a “fair” decision.

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# PUBLIC INVOLVEMENT

## Encouraging Effective Citizen Involvement

How, and if, citizens become involved in your land use decisions can significantly affect results. The best road to success is to provide opportunities for meaningful public involvement throughout the process. Recognition of that fact may be the reason that the people of Oregon decided to make citizen involvement the first of the statewide land use planning goals.

Effective citizen involvement requires public awareness of:

- What is proposed?
- Who will be affected and how?
- Criteria for decisions.
- Who makes decisions, when and where, and with what time line?

## How to Get Feedback

The type of land use decision influences the approach to public participation. For legislative decisions, be creative! Get outside the box. Choices are available when considering an amendment to the comprehensive plan or zoning code, adoption of a sign ordinance, and the like. The local elected and appointed officials need a broad range of ideas. There are no questions of ex parte contacts and there is no requirement that a decision be reached. (For example, if people don't like the idea of a new or revised ordinance, the idea can be dropped). Questionnaires, surveys, or focus groups can help identify the level of interest in an issue of proposal. Town hall meetings, forums, and open houses (with staff available to answer questions), as well as printed material, can attract interest prior to a public hearing. Feedback will let citizens know that their opinions were heard and considered. Provide a summary or "feedback report" that lists major comments and impact, if any, on decisions.

People need to know what is proposed, why, and what alternatives exist. Describe how a decision may be reached and list timeframes. Provide this information several times in several ways. Notice of legislative hearings should be provided to those who have an interest, including residents, businesses, interest groups, neighborhood associations, state and federal agencies, and other local governments. Since passage of Ballot Measure 56, property owners who may be affected receive direct, mailed notice.

For quasi-judicial decisions, follow the rules! Procedures for making these decisions are proscribed by law and local ordinances and limit involvement choices. For example, when an applicant requests approval for a permit or a zone change for a specific area, criteria dictate the basis for a decision and a decision – approve, deny, or approve with condition – must be made. Minimum hearing opportunities must be offered, but these are minimums, not maximums! A local government can encourage or even require an applicant to provide public-involvement opportunities in the form of neighborhood meetings or open pre-application conferences, or through social media or direct mail. Public involvement in quasi-judicial decisions is ultimately at the public hearing(s).

## Help Citizens Help You

Goal 1 requires opportunities for public involvement in land use planning. There are benefits beyond complying with that legal requirement:

- Citizens know their neighborhoods and community best.
- Residents and property owners can offer ideas on what is needed, what works and what doesn't.

- Members of the public who participate in development of a plan or ordinance take pride in their work and support the results
- Public involvement increases understanding of, and potentially support for, local government.

### **Explain the System**

Citizens can make their greatest contributions to the planning process when they understand the system. How staff handles questions at the planning department and how Planning Commissioners conduct meetings can contribute to public understanding. Several local jurisdictions go beyond that and make special efforts to educate people on planning.

### **Stress Criteria for Decisions**

A citizen whose testimony does not connect to the applicable criteria then sees the testimony dismissed and becomes frustrated, angry and distrustful of both local officials and local land use planning. The public needs to know that decisions are based on criteria in local ordinances. Make criteria stand out in the staff written report, the oral presentation and in comments by the chair. Additionally, it is important to note that staff are trained “experts.” The Planning Commission can engage staff for additional feedback recognizing for example, that they can provide context on procedural issues, criteria, floodplains, transportation, etc.

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# RESOURCES

The following resources can assist the Planning Commission:

- Deschutes County Code  
<https://www.deschutes.org/administration/page/deschutes-county-code>
- Deschutes County Community Development Department  
<https://www.deschutes.org/cd>
- Deschutes County Meetings and Hearings Information  
<https://www.deschutes.org/bcc/page/meetings-and-hearings-information>
- Deschutes County Planning Commission  
<https://www.deschutes.org/cd/page/planning-commission>
- Deschutes County Property Information  
<https://dial.deschutes.org/>
- Oregon Administrative Rules  
[https://sos.oregon.gov/archives/Pages/oregon\\_administrative\\_rules.aspx](https://sos.oregon.gov/archives/Pages/oregon_administrative_rules.aspx)
- Oregon Department of Land Conservation and Development  
<https://www.oregon.gov/lcd/Pages/index.aspx>
- Oregon Ethics Guide for Public Officials  
[https://www.oregon.gov/OGEC/docs/Public\\_Official\\_Guide/2010%20Guide%20for%20Public%20Officials.pdf](https://www.oregon.gov/OGEC/docs/Public_Official_Guide/2010%20Guide%20for%20Public%20Officials.pdf)
- Oregon Government Ethics Commission  
<https://www.oregon.gov/ogec/Pages/index.aspx>
- Oregon Planning Commission Handbook  
[https://www.oregon.gov/lcd/Publications/OR\\_Planning\\_Comm\\_Handbook\\_April\\_2015.pdf](https://www.oregon.gov/lcd/Publications/OR_Planning_Comm_Handbook_April_2015.pdf)
- Oregon Revised Statutes  
[https://www.oregonlegislature.gov/bills\\_laws/pages/ors.aspx](https://www.oregonlegislature.gov/bills_laws/pages/ors.aspx)



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# INDEX

## A

Advisory Duties, 9  
Agenda, 8  
Annual Statement of Economic Interest, 8  
Appeals and Timing, 19

## B

Board of County Commissioners, 5

## C

Chair and Vice Chair Responsibilities, 7  
Commission Packets, 8  
Community Development Department, 26  
Conflict of Interest, 9

## D

Deschutes County Comprehensive Plan, 22

## E

Ethics, 27

## F

Frequently Asked Questions, Appendix A  
Financial Reimbursements, 8

## J

Joint Meetings of Planning Commission/Board, 7  
Jurisdiction, 5

## L

LCDC, 21  
Legislative Hearings, 12  
Legislative Land Use Decisions, 11

## M

Meeting Location, 7  
Meeting Schedule and Logistics, 7  
Membership, 5

## N

Notice of Legislative Decisions, 12

## P

Public Hearing, 13

## Q

Quasi-judicial Versus Legislative Land Use Decisions, 11  
Quorum, Rules and Procedures, 9

## R

Roberts Rules of Order, 7

## T

Types of Land Use Decisions, 11

## W

Work Sessions, Purpose and Conduct, 14

## APPENDIX A

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# FREQUENTLY ASKED QUESTIONS

### **1. How much time will I need to spend doing Planning Commission business?**

The Planning Commission can hold between one to three regular meetings each month. Two are typical. Most meetings are held the second and fourth Thursdays at 5:30 p.m. at the Deschutes Services Center, 1300 Wall Street, Barnes and Sawyer rooms, Bend.

Meeting preparation requires upwards to 1-3 hours, depending on the agenda, meeting materials, and the complexity of issues. Commissioners are encouraged to contact staff with questions or concerns about the meeting agenda or meeting materials, or request additional information prior to the meeting to maximize productivity. Staff fulfills additional information requests based on available resources, direct relevance to the meeting agenda item, and applicability to the entire Planning Commission, at the discretion of the Planning Director.

### **2. How do the Planning Commission and the Board of County Commissioners interface?**

A Planning Commission does not decide a legislative matter, but rather makes a recommendation to the Board of County Commissioners. However, as a dedicated planning body for Deschutes County, the elected County Commissioners depend on the Planning Commission to fully consider land use matters and forward thoroughly evaluated, reasoned recommendations. Occasionally, the Planning Commission conducts joint meetings with the Board to expedite legislative processes, such as an urban growth boundary amendment.

### **3. Who runs Planning Commission meetings?**

The chair (or vice-chair when the chair is absent) is responsible for facilitating public meetings and discussions among Planning Commissioners and staff. Chair responsibilities include:

- Conducts meetings and maintains order.
- Encourages relevant testimony by making the criteria for decisions clear.
- Ensures that time limits are met.
- Keeps Commission discussion on track and germane to the subject.
- Summarizes as needed.
- Diffuses hostility.
- Asks for ideas and opinions from each Planning Commissioner.

## APPENDIX A

### 4. Who establishes the Commission's agenda?

County planning staff is responsible for setting agendas, preparing staff reports and submitting them to the Planning Commission. Other duties include preparing public notices and agendas and maintaining minutes, findings and reports as public records.

### 5. Can you provide an example of conflict of interest?

In Oregon, conflict of interest involve pecuniary matters. Nonetheless, the American Planning Association offers the following circumstances that may involve a conflict of Interest (Source: PAC QuickNotes4. January 1, 2006):

*A conflict of interest is a contradiction between an individual's personal interest and his or her public duty. Such conflicts can exist whether or not money is involved, and whether the conflict is actual or only perceived. Questions about conflicts of interest are part of larger due process considerations concerning the impartiality of the planning board or commission. Such conflicts threaten the right of applicants to receive a fair hearing and decision. To avoid conflicts, a planning commissioner must maintain independence, neutrality, and objectivity in an environment of often competing interests.*

*Scenarios. Circumstances that may involve a conflict of interest include:*

- *A personal bias or prejudice concerning any interested party or representative of a party in a matter before the commission;*
- *A personal or financial relationship with any party or party representative; or*
- *An action on a matter that may substantially affect the personal or financial interests (either directly or indirectly) of the Planning Commissioner or the Commissioner's family, such as owning nearby property.*

*Familial Contacts. What is reasonable in terms of familial contacts may vary from community to community; for example, in some small jurisdictions, extended families have been around for generations and interrelationships between applicants and commission members are common. Such contacts may be so pervasive that a commission member could not regularly be excused from participation; if that were the case, the commission might not ever achieve a quorum. However, a commission member can publicly declare the relationship and make an affirmative statement that the relationship, although it exists, will not impair his or her judgment. Again, if the conflict of interest is financial, even if it might be common practice to vote on matters of direct financial gain, the ethical planning commissioner should not do so.*

## APPENDIX B

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# QUICK REFERENCE GUIDE: MEETINGS

### 1. Prior to each Planning Commission Meeting:

- a. Contact staff if you are not able to access the information online at least six (6) days prior to the meeting date.
- b. Prepare for the meeting by reading the meeting agenda and packet. Good preparation results in a good meeting. Based on the agenda and topics:
  - i. Determine whether you have a conflict of interest or need to disclose any information pertaining to the proposal.
  - ii. Identify the different types of agenda items (i.e., public hearing, work session), the requested actions or recommendations for each agenda item, time of the actions or recommendations, and options (i.e., recommend approval, recommend approval with amendments/revisions/conditions, recommend denial, or no recommendation).
  - iii. Contact staff with questions or information requests regarding the proposed application or supporting documents, staff report, findings, and other applicable information necessary to prepare for the meeting.
- c. Refer to this Manual regarding the outline for conducting a Legislative Public Hearing, Work Session, and Planning Commission Review without Public Hearings to understand the appropriate process for each agenda item. In addition, review Roberts Rules of Order if necessary to participate effectively in the meeting.
- d. Conduct site visit(s) individually or with staff, if applicable.
- e. Inform staff if you will not attend or arrive late to the meeting.

### 2. At the Planning Commission Meeting:

- a. Keep an open mind. Always be respectful of fellow Commissioners, the public and staff. Act in a fair, ethical, and consistent manner.
- b. Be patient with public comments. Listen and do not pre-judge before testimony is taken. Avoid jargon and explain terms. Be mindful of body language.
- c. Participate and ask questions.
- d. Follow the applicable meeting procedures based on the type of agenda time (i.e., public hearing, work session), and Roberts of Rules of Order.
- e. Consider proposals to amend the Comprehensive Plan or Deschutes County Code based on:
  - i. Consistency with federal law, the Oregon Planning Program, and the Comprehensive Plan.

## APPENDIX B

- ii. The application and evidence submitted supporting the proposal.
- iii. All public, expert, applicant, and agency testimony, as well as staff comments.
- f. Ask questions to gain a thorough understanding of the proposal; the reasons, basis, legal foundation for the proposal; and all perspectives of the proposal and potential impacts.
- g. State the reasons of your recommendation so the actions are clear to the Planning Commission, the applicant, the public, and staff.
- h. The Chair's primary responsibilities are to:
  - i. Conduct and run an orderly meeting in a fair and timely manner, per the agenda, and in compliance with Roberts Rules of Order.
  - ii. Maintain order and facilitate a civil, safe, and respectful meeting, dialogue and behavior by all parties. Diffuse hostility. Intervene when:
    1. Speakers are interrupting one another.
    2. Speakers make personal attacks or ask personal questions.
    3. Speakers ramble or get away from the issue.
    4. Testimony, discussion, clapping, or cheering is out of order (intimidates people not sharing the same views and discourages public participation).
  - iii. Keep the Commission on track by managing the discussion or deliberations:
    1. Ensure participation among all Commissioners, especially newer members;
    2. Elicit relevant testimony, meaning that testimony should pertain to the matter under consideration. Refocus the discussion that has wandered off the point;
    3. Highlight or summarizes important points;
    4. Clarify misunderstanding;
    5. Enforce time limits equally, if applicable;
    6. Keep the evidence phase separate from the deliberation phase;
    7. Deliberate the proposal's facts and standards.
    8. Ensure motions are clearly stated before a vote is taken.
    9. Verify the administrative assistant has accurately recorded the vote and the reasons for the recommendation.
  - iv. Seek guidance or advice from staff when necessary.