

Appendix BC. Josephine County Regulations “For The Record”

The following regulations “For The Record” are from the Josephine County Rural Land Development Code (RLDC).

RLDC 1 - GENERAL PROVISIONS

RLDC 12 - ADMINISTRATION

RLDC 12.090 - Duties of the Planning Director

“In order to implement the Oregon Revised Statutes and carry out those mandates, the Planning Director shall have the authority and duty to administer and interpret the provisions of this code. Duties of the Planning Director shall include, but not be limited to:”

“C. The Planning Director shall perform the following duties pertaining where applicable, to **site review, administrative reviews, and public hearings:**”

- “1. Refer and schedule applications to the appropriate Review or hearing body;
2. **Conduct the correspondence of the Review** or hearing body;
3. Give notice in accordance with Article 32;
4. **Maintain a record** and enter into the record relevant dates such as those of giving notice, hearings, postponement, and continuances, and a summary of action taken by the Review or hearing body;
5. Prepare and maintain findings of fact and/or minutes of public meetings conducted under this code;
6. Mail a copy of the final order to the applicant and any representative;
7. Mail a notice of decision to all parties participating in the review or hearing processes and have a copy of the decision available for public inspection.”

RLDC 2 - REVIEW PROCEDURES

RLDC 22 - PERMIT REVIEW PROCEDURES

RLDC 22.040.B.2 - Quasi-Judicial Review Procedures [ORS 215.427(2)].

“B. All Quasi-Judicial application shall comply with the following procedures.”

“2. “. . . If the information is not complete ... , the applicant shall be notified in writing of exactly what information ... [is] missing. The application shall be deemed complete upon receipt of the missing information ...; or, if the applicant refuses to submit the missing information, the

application shall be deemed complete the 31st day after the application and fees are received and accepted.”

RLDC 22.040.B.5 - Quasi-Judicial Review Procedures

“B. All Quasi-Judicial application shall comply with the following procedures.”

“5. The Director shall mail notice of an application to all persons within the notice area as required by Article 32. **All comments or objections relating to the application shall be submitted in writing within 15 days from the mailing of the notice in order to be included in the review, or to establish party status for appeal purposes.**”

RLDC 22.040.D - Quasi-Judicial Review Procedures

“D. In those cases where the Hearings Officer, **Planning Commission** or Board of Commissioners is the review body, permit application requiring Quasi-Judicial Review shall be processed in accordance with the procedures outlined in subsection **B.1 through B.5 of this Section**, as well as the applicable provisions of Articles 23 (Hearings Officer, **24 (Planning Commission)**) and 25 (Board Review), and Chapter 3 on Public Hearings, Notices and Appeals.”

RLDC 24 - PLANNING COMMISSION REVIEW PROCEDURES

RLDC 24.010 - Purpose

“The purpose of this Article is to provide for the conduct of an impartial public hearing by the Rural Planning Commission for applications which involve significant policy issues having county-wide impact, **or which call for review and recommendation to the Board of Commissioners.**”

RLDC 24.020.C - Appointment & Duties [of Planning Commission]

“C. The members of the Planning Commission **shall act on behalf of the Board of County Commissioners** in hearings deciding and making recommendations regarding land use applications as authorized by this code.”

RLDC 24.030 - Rules of Procedure [of Planning Commission]

“Public hearings conducted by the Planning Commission shall follow the procedures for Quasi-Judicial land use hearings as set forth in Article 22, and as further governed by Chapter 3, *Public Hearings, Notice & Appeal.*”

RLCD 24.050.A - Review & Decision [of Planning Commission]

“A. Public hearings conducted by the Planning Commission shall be called to order by the presiding officer at the date and time specified in the public notice. The hearing shall conform to the requirements of Article 31.”

RLCD 24.050.C - Review & Decision [of Planning Commission]

“C. The Planning Commission may continue a hearing to a place, date and time certain to conduct a site visit. The site visit shall be considered a part of the hearing and shall be open to all participants. The commissioners may make factual inquiries regarding the physical location, layout and other physical features or circumstances of the site from staff, but no substantive testimony shall be received from the parties or witnesses. The presiding officer shall **summarize the site visit on the record** when the hearing reconvenes.

RLCD 24.050.D - Review & Decision [of Planning Commission]

“D. The Planning Commission may grant a continuance or hold the **record** open as provided in Section 31.120.J of this code.”

RLCD 24.050.E - Review & Decision [of Planning Commission]

“E. At the conclusion of the hearing, the Planning Commission may take any one of the following actions: [1] make a decision to outright approve; [2] make a decision to conditionally approve; [3] make a decision to deny the request; or [4] continue the hearing to a date and time certain for further evidence or decision only.”

RLCD 24.050.F - Review & Decision [of Planning Commission]

“F. A final decision of the Planning Commission shall be in the form of findings of fact meeting the requirements of state law and Section 31.130.C of this code. **Decisions which constitute a recommendation to the Board shall be in the form of minutes detailing the testimony, arguments and deliberations leading up to the recommendation.**”

ARTICLE 25 - BOARD OF COMMISSIONER REVIEW PROCEDURES

RLDC 25.010 - Purpose

“The purpose of Board of Commissioner review procedures is to hear and resolve appeals from decisions by the Planning Director, the Hearings Officer, **the Planning Commission (final decisions and recommended decisions)**, to hear matters of original or assumed jurisdiction, and to hear matters remanded to it from a higher board or court.”

RLDC 25.040 - Review & Decision

“C. The Board may continue a hearing to a place, date and time certain to conduct a site visit. The site visit shall be considered a part of the hearing and shall be open to all participants. The Board may make factual inquiries regarding the physical location, layout and other physical features or circumstances of the site from staff, but no substantive testimony shall be received from the parties or witnesses. The presiding officer of the Board shall **summarize the site visit on the record** when the hearing reconvenes.

“D. The Board may grant a continuance or **hold the record open** as provided in Section 31.120.J of this code.”

RLDC 3 - PUBLIC HEARINGS, NOTICES & APPEALS

RLDC 30 - Basic Provisions

RLDC 30.020 - Applications

“C. If additional documents, evidence, exhibits and other information are submitted in support of an application between the 21st day before the first scheduled date of public hearing and the public hearing, any participant in the hearing shall be entitled to request and receive a continuance of the hearing or have the **record left open**, subject to the specific rules governing such requests as set forth in Section 31.120.J.”

“D. Unless a continuance has otherwise been provided, any participant may request any time before the conclusion of the initial evidentiary hearing that the **record** be left open for at least 7 days after the hearing.”

RLDC 31 - PUBLIC HEARINGS

RLDC 31.010 - Purpose

“This Article shall govern the **conduct of all quasi-judicial and legislative land use hearings** within Josephine County, as well as the Urban Growth Boundary of Cave Junction, which are held or made by the Board or its designates. **Such hearings include all proceedings before the Hearings Officer, Planning Commission, or the Board**, and may involve comprehensive plan changes, zone changes, subdivision or partition platting, Conditional Use Permit, changes in non-conforming uses, appeals, and the interpretation and administration of ordinances, codes, laws, and items referred by the Planning Director, as well as all other official actions upon application or request.”

RLDC 31.040 - Nature of Hearing

“A. Land use hearings conducted pursuant to this Article **which are quasi-judicial administrative determinations** shall be conducted according to the rules and procedures governing those actions. All applicants are entitled to a notice of the hearing, to an opportunity to be heard, to present and rebut evidence before an impartial hearing body, **to have the proceedings recorded**, and to have a decision rendered in accordance with the facts on record and the law.”

“B. Land use hearings conducted pursuant to this Article which are legislative determinations shall be conducted according to the rules and procedures governing those actions. Notice of the hearing shall be published and the public shall be invited to testify, to present and rebut evidence before an impartial hearing body, to have the proceedings recorded, and to have a decision rendered.”

“C. **Hearings** held pursuant to this Article are **proceedings** and the applicant(s) shall appear in person or through an attorney or authorized representative.”

RLDC 31.060 - Conduct of Participants

“Proceedings shall, at all times, be orderly and respectful. No person shall be heard until they state their name and address **for the record**. . . .”

RLDC 31.070 - Burden And Nature Of Proof

“B. The decision of the hearing body shall be supported by **substantial evidence in the record**. . . .”

RLDC 31.080 - Disclosure Rule

“B. Conflict of Interest:”

“1. In addition to the ex parte and pre-hearing contacts, no member of the governing body shall participate in any vote on a proposal when:”

“e. No other official or employee of the county who has a financial interest or other private interest in the proposal shall participate in discussion with or give an official opinion on the proposal without first **declaring for the record** the nature and extent of the conflict of interest.”

RLDC 31.090 - Challenge For Bias, Prejudice, Or Conflict Of Interest

“F. The challenge and any response shall be incorporated into the **record of the hearing**.”

RLDC 31.110 - Rules of Evidence

“A. All evidence offered and not properly objected to may be received unless otherwise excluded by the hearing body. Evidence received at the hearing shall be of the same quality as the evidence used by reasonable persons in the conduct of their everyday affairs.”

“B. All documents or evidence relied upon by the applicant shall be submitted to the Planning Director as specified in Section 30.020.B and shall be made available to the public for inspection.”

“C. All evidence received by the hearing body shall be made a part of the record of the case, except for matters stipulated to and matters judicially noticeable. No other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference (if the document so incorporated is a public record not exempt from inspection).”

“D. Cross-examination shall be at the discretion of the hearing body. Any cross-examination question shall be directed to the presiding officer who will determine if the cross examination will benefit the hearing body. If the presiding officer determines the question will help in the decision, the presiding officer will ask the question to the party or witness appropriate to answer. In all cases, cross-examination shall be conducted in a noninflammatory manner. The presiding officer may terminate cross-examination if it becomes disruptive to the hearing.”

“E. Judicial notice may be taken of any applicable federal, state or local statute/ordinance, rule, regulation, general fact, and/or scientific fact within the experience, technical competence, or specialized knowledge of a member of the hearing body, staff, or technical witness called by either side. Opportunity will be given for rebuttal of these facts.”

“F. No decision shall be rendered except upon consideration of the whole record, or portions as may be cited by the hearing body, and as supported by, and in accordance with, reliable, probative, and substantial evidence.”

“G. The hearing body at its discretion may be represented by the Legal Counsel.”

RLDC 31.120 - Order Of Procedure

“C. Abstentions. The presiding officer shall inquire of the hearing body whether any member wishes to abstain from participation in the hearing on a specific proposal:

1. Any member so abstaining shall identify the reasons for the record and shall not participate in the discussion of, or vote on the proposal;
2. Any member whose participation has been challenged by an allegation of bias, prejudice, conflict of interest, or pre-judgment, or who has been subject to significant ex parte or pre-hearing contacts with proponents or opponents, may make a statement explaining the nature of

the conflict or bias for the record, and shall announce whether the member will participate in the hearing as set forth in Section 31.080.”

“D. Objection to Jurisdiction. The presiding officer shall inquire of the audience if there are any objections to the jurisdiction of the hearing body to hear the matter. **Objections, if any, shall be noted in the record**, and the matter shall proceed or terminate at the discretion of the hearing body.”

“J. Additional Evidence or Testimony. Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The following Rules shall govern requests to submit additional evidence or testimony:”

“1. The hearing body shall grant the request by taking one of the following actions:”

“a. **CONTINUE THE HEARING** – For at least 7 days to a date, time and place certain. The hearing body shall allow persons to present and rebut new evidence and testimony at the continued hearing. If new written evidence is submitted at the continued hearing, any person may **request the record be left open** 7 days to submit additional written evidence or testimony in response to the new written evidence. The request must be made prior to the close of the continued hearing; or”

“b. **LEAVE THE RECORD OPEN** – For additional written evidence or testimony for at least 7 days.”

“2. **Whenever the record is left open** under subsection 1 above, and new evidence is submitted during the opened period, any participant in the hearing may file a written request for an opportunity to respond to the new evidence. The written request must be filed with the Planning Director on behalf of the hearing body within 7 days **after the record closes**. The **record** shall thereupon reopen for at least 7 additional days, during which time any person may submit new written evidence and testimony and raise new issues which relate to the new evidence, testimony or criteria that was submitted during the previous open period. If the Planning Director determines the written request is timely, the Director shall provide appropriate notice to the participants stating the **record has been reopened** and specify the new date the record will close. **All new written evidence and testimony, or statements regarding new issues, shall be delivered to the Planning Director within the reopened period for placement in the record**. It shall not be necessary for the hearing body to reconvene or to take formal action on a request to submit additional evidence or testimony **when action to leave the record open** is required pursuant to these rules. Under these circumstances, authority of the hearing body **to reopen the record** and to specify the length of time it shall remain open is delegated to the Planning Director.”

“3. Beyond the mandatory requirements of subsections 1 and 2 immediately above, the hearing body is authorized to grant any other continuance, **or leave the record open**, subject to whatever

reasonable guidelines and time limits it deems necessary or helpful to accomplish its fact finding and deliberating duties.

4. Unless waived, the applicant shall be entitled at least 7 days **after the record finally closes** to submit final written arguments in support of the application. The **final arguments shall be considered part of the record**, but shall not include any new evidence.”

RLDC 31.130 - Final Action

“B. The decision of the hearing body shall be made after the hearing is closed and deliberations are completed, and shall be in the form of a motion, duly seconded, and approved by a majority of the members. The presiding officer shall poll each member regarding their vote and the reasons for it. All members shall state their **vote for the record.**”

RLDC 31.140 - Record of Proceedings and Decisions

“A. The presiding officer of the hearing body shall designate a person to record the proceedings electronically or stenographically. The proceedings shall not be transcribed unless for appeal, review, or otherwise ordered by the Board, Planning Commission or Hearings Officer.”

“B. **All exhibits received in evidence shall be marked or otherwise made readily available and identified for purposes of review.** Evidence or exhibits of unusual size or bulk, which cannot be conveniently held, shall not be received. All exhibits received into the record shall be retained by the Planning Director on behalf of the hearing body, and shall be made accessible for inspection or copying by interested persons, subject to a reasonable copying fee. When all appeal periods have expired, the Planning Director is authorized to dispose of the exhibits.”

“C. The Planning Director shall hold all sound recordings made of hearings items for the following time periods after the date of the last meeting on that item. The tapes shall be made available for inspection or copying by interested persons, subject to a reasonable charge for copying:”

- “1. If a meeting is fully transcribed, hold the tapes for 90 days;
2. If the meeting is summarized in minutes, hold the tapes for 1 year;
3. If the meeting is summarized in formal findings, hold the tapes for 5 years;
4. If minutes or findings are not done, the tape cannot be erased and must be kept forever.”

“D. Findings of the decision are to be compiled for each decision made at a public hearing. The responsibility for preparation of this document shall be determined by the presiding officer of the hearing body at the close of the hearing.”

“E. Notice of the decision shall be mailed to the participants who are determined in the hearing to have party status, and by courtesy to anyone otherwise requesting notice of the decision.

Copies of the findings of decision may be reviewed and copied at the Planning Office (Hearings Officer and Planning Commission decisions) or the Commissioner's Office (Board of Commissioner decisions)."

RLDC 32 - PUBLIC NOTICE

RLDC 32.010. Purpose within Public Notice

RLDC 32.010. - Purpose "The purpose of public notice is to provide an opportunity for affected or interested persons to participate in Josephine county's land use review and decision-making process."

RLDC 32.030.A.2.f. Content of Notice Prior To Decision

RLDC 32.030.A.2.f. "f. Name of local government representative to contact and the telephone number where additional information may be obtained."

RLDC 32.030.B.1.d. Notice After Decision

RLDC 32.030.B.1.d. "f. The name, telephone number and address of the planner or other person who can be contacted for information about the decision.."

RLDC 32.040 - Published Notice

"Notice by publication shall be given for any quasi-judicial land use application that proposes to change the zone or plan maps for specific properties. Published notice shall also be given for any legislative land use action that proposes to amend any element of the county's comprehensive plan (maps, data bases, goals and policies, land use regulations, etc.). In all such cases, 10 days' advance notice of the hearing shall be published in a newspaper of general circulation in the county or, in the case the plan as it is to be heard concerns only part of the county, it is published in the territory so concerned."

RLDC 33 - APPEAL OF DECISIONS

RLDC 33.030 - Time Limits, Notice Requirements & Standing For Appeals

"D. Notice for appeal hearings shall be given only to those individuals or organizations that were deemed to have party status in the record for the hearing under appeal, unless the appeal results in an initial evidentiary hearing, in which case notice of the appeal hearing shall comply fully with the requirements of Article 32.030.B.1."

RLDC 33.00 - Statement of Appeal

“A. A statement of appeal shall be on a form supplied by the Planning Director and shall contain the following information:”

“2. What **information in the record of decision** was pertinent to the decision, but was not considered by the review body. This may include the comprehensive plan, this code, applicable state law, or other evidence;”

RLDC 33.060 - Standing to Appeal

“In order to have standing to appeal any decision rendered under the procedures of this code, one of the following requirements must be met:”

“A. **Decisions Made Without A Hearing.** The person or organization seeking to appeal a decision made without a public hearing must demonstrate one of the following circumstances:”

“1. The person or organization was entitled to notice for the original hearing and **submitted written comments or objections into the record**; or”

RLDC 33.080 - Appeal Of Hearing Officer Or Planning Commission Decision

“A. Appeals from decisions made by a Hearings Officer or the Planning Commission shall be to the Board, and shall be **confined to the record made at the hearing under appeal**. The record shall include:”

- “1. **All materials, pleadings, memoranda, stipulations, motions, exhibits, and documents submitted by any party to the action as evidence in the hearing**;
2. All materials submitted by the Planning staff in the hearing;
3. The tape recording, if one exists, of the hearing;
4. A typewritten summary of the testimony given at the hearing. The typewritten summary shall be prepared by the Planning Director or a designate;
5. The findings of fact entered by the hearing body.”

“B. Within 21 days of filing of the statement of appeal, the Planning Director **shall cause the record to be compiled, including the written summary of testimony, and mail notice** to the parties indicating the record is available for inspection and/or copying. The Planning Director is authorized to charge a reasonable fee for paper or tape copying.”

“C. Any party wishing to **challenge the composition or completeness of the record**, or the accuracy of the typewritten summary of the testimony, shall file written objections within 14 days from the date of the mailing of the notice of completion of record. In addition;”

“E. A party to an appeal from any action by the Hearings Officer or Planning Commission may request permission to submit **evidence not contained in the record** for an appeal when all of the following criteria are met:”

RLDC 33.090 - Action Of The Board Of County Commissioners

“A. In addition to appeals authorized by other provisions in this Chapter, the Board may order its own review of final decisions made by the Planning Director or a hearing body. Review under these circumstances shall be governed by the provisions of this **Article including the creation of the record**. A summary of testimony as required by Section 33.040.C shall be prepared at the county's expense.”

“D. The Board may cause supplemental or replacement findings and conclusions, **based on the record for the decision**, to be prepared and signed after the original findings and conclusions have been executed. When supplemental or replacement findings and conclusions are prepared and signed, this document shall constitute the final action of the Board for appeal and other purposes in lieu of the original findings and conclusions.”

“E. The Board may **open the record** for clarification on a **part of the record**.

RLDC 33.130 - Remand Hearings

“Hearings to consider remanded land use decisions shall be governed by the applicable rules for applications, hearings and appeals as set forth in this code, except as follows:”

C. The applicant in a remand proceeding shall specify in the application whether the remand hearing will be **confined to the record** of the earlier proceeding or whether the remand hearing will involve the introduction of new evidence. In the event the remand hearing is **confined to the earlier record**, the applicant shall submit amended findings with the remand application. The remand hearing shall be confined to the **earlier record** unless the review body opens the record for new evidence pursuant to Sections 33.080.E or 33.090.F.”

“D. Participation in the remand hearing shall be strictly limited to those persons or organizations who were legal parties in the higher appeal. Procedures shall therefore be limited in the following respects:”

“2. Only parties to the higher appeal may present arguments (**in the case of a hearing on the record**), or present evidence, witnesses, testimony and arguments (in the event new evidence is allowed) in the remand hearing.”

RLDC 4 - APPLICATION PROCEDURES

RLDC 46 - AMENDING & UPDATING THE COMPREHENSIVE PLAN

46.010 - Purpose

“The purpose of this Article is to implement the procedures and criteria for amending any element of the comprehensive plan pursuant to the requirements of Goal 11 of the county’s Goals and Policies.”

46.020 - Review Procedure

“A. Applications to amend any element of the comprehensive plan shall be processed using Planning Commission Review Procedures (Article 24) **and/or** Board of Commissioners Review Procedures (Article 25).”

“B. Applications to amend any element of the comprehensive plan shall be reviewed and decided as follows:”

“1. Review Authority of the Planning Commission. The Planning Commission shall review all applications to amend any element of the comprehensive plan. Planning Commission reviews shall be subject to the following rules:”

“a. The Planning Commission shall make the final decision on applications to amend any element of the comprehensive plan unless the applications involve an exception to statewide planning goals or involve lands designated as agricultural or forest lands under a statewide planning goal.”

“b. The final decision shall be in the form of written findings that explain the standards and criteria considered relevant to the decision, state the facts relied upon in rendering the decision and explain the justification for the decision based on the applicable standards and criteria, and shall be accompanied by a recommended ordinance.”

“c. Final decisions of the Planning Commission may be appealed on the record to the Board as provided in Article 33 of this code.”

“d. Applications involving exceptions or agricultural or forest lands shall be reviewed by the Planning Commission in a public hearing. At the conclusion of the hearing the Planning Commission shall deliberate and make a recommended decision to the Board.”

“e. All Planning Commission hearings shall conform to the notice and hearing rules as set forth in Chapter 3 of this code.”

“f. Final authority of the Planning Commission to act upon plan amendments is for appeal purposes only, and does not include the authority to implement changes by ordinance.”

“2. Review Authority of the Board. The Board’s authority to review actions by the Planning Commission to adopt, amend or repeal any part of the comprehensive plan shall be subject to the following rules:”

“a. **Where the Planning Commission makes a recommended decision** to the Board pursuant to subsection B[1][d] above, the Board shall conduct a full *de novo* hearing regarding the application. The Board’s hearing shall conform to the notice and hearing rules as set forth in Chapter 3 of this code, and any other applicable state law or rule.”

“b. This policy shall not prevent or limit the Board’s authority to initiate a hearing to review any Planning Commission action regarding the comprehensive plan pursuant to provisions of this code.”

“c. The Board shall have sole authority to implement changes to the county’s comprehensive plan by ordinance.”

RLDC 46.030 - Plan Amendment Application Requirements

“C. At a minimum the application shall:”

“5. In the event the proposed change relates to an inventory, data base, plan or ordinance, the application shall include the scientific and technical data, reports or other evidence prepared by an expert in that field necessary to support the change. It shall be the function of the review body to determine, **based upon substantial evidence in the record**, whether the particular training and experience of a witness qualifies the witness to testify as an expert. Specifically:”

RLDC 46.050 - Non-Resource Land Criteria

“C. Land is necessary to permit farm practices or forest operations on adjacent or nearby lands when the land within the lot or parcel provides a special land use benefit, the continuance of which is necessary for the adjacent or nearby practice or operation to continue or occur. The following rules shall apply when evaluating this criterion:”

“4. In the event a farm or forest operator within the review area **contends in the record** that the map changes could significantly impede or increase the cost of specific practices or operations, and this contention is based upon records, data and other information in the operator’s possession, but unavailable to participants in the hearing from public sources, the review body is authorized to require the operator to **submit the supporting records, data and other information into the record** for examination by the review body and other participants.”