



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

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Main Fax: (503) 378-6033

Web Address: <http://www.lcd.state.or.us>



NOTICE OF ADOPTED AMENDMENT

June 27, 2011

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Angela Houck, Plan Amendment Program Specialist

SUBJECT: Deschutes County Plan Amendment
DLCD File Number 003-11

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT OR DEADLINE TO APPEAL: Friday, July 08, 2011

This amendment was not submitted to DLCD for review prior to adoption because the jurisdiction determined that emergency circumstances required expedited review. Pursuant to OAR 660-18-060, the Director or any person is eligible to appeal this action to LUBA under ORS 197.830 to 197.845.

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE DATE SPECIFIED ABOVE.**

Cc: Nick Lelack, Deschutes County
Jon Jinings, DLCD Community Services Specialist

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NRPF 2

DLCD

Notice of Adoption

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

In person Mailed Mailed

DEPT OF

JUN 20 2011

LAND CONSERVATION AND DEVELOPMENT

DATE STAMP

For Office Use Only

Jurisdiction: Deschutes County

Local file number: TA 11-1

Date of Adoption: June 8, 2011

Date Mailed: 6-16-11

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date:

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Extend land use approvals of phase of approval by 2 years.

Does the Adoption differ from proposal? Please select one

NO

Plan Map Changed from:

to:

Zone Map Changed from:

to:

N/A

Location:

Acres Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

None.

Local Contact: Nick Lelack Phone: (541)385-1708 Extension:
Address: 117 NW Lafayette Ave Fax Number: 541-385-1764
City: Bend Zip: 97701 E-mail Address: nick1@co.deschutes.or.us

ADOPTION SUBMITTAL REQUIREMENTS

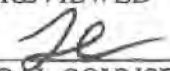
This Form 2 must be received by DLCD no later than 5 days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)
per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting, please print this Form 2 on light green paper if available.
3. Send this Form 2 and One (1) Complete Paper Copy and One (1) Electronic Digital CD (documents and maps) of the Adopted Amendment to the address in number 6:
4. **Electronic Submittals: Form 2 – Notice of Adoption will not be accepted via email or any electronic or digital format at this time.**
5. The Adopted Materials must include the final decision signed by the official designated by the jurisdiction. The Final Decision must include approved signed ordinance(s), finding(s), exhibit(s), and any map(s).
6. **DLCD Notice of Adoption must be submitted in One (1) Complete Paper Copy and One (1) Electronic Digital CD via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.** (for submittal instructions, also see # 5) **MAIL the PAPER COPY and CD of the Adopted Amendment to:**

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

7. Submittal of this Notice of Adoption must include the signed ordinance(s), finding(s), exhibit(s) and any other supplementary information (see ORS 197.615).
8. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) of adoption (see ORS 197.830 to 197.845).
9. In addition to sending the Form 2 - Notice of Adoption to DLCD, please notify persons who participated in the local hearing and requested notice of the final decision at the same time the adoption packet is mailed to DLCD (see ORS 197.615).
10. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518.

Updated December 22, 2009

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code *
22.36.010, to Extend the Expiration of Land Use * ORDINANCE NO. 2011-016
Permit Approvals, and Declaring an Emergency. *

WHEREAS, Deschutes County Planning Division staff requested and the Board of County Commissioners ("Board") directed staff to initiate a text amendment to Deschutes County Code ("DCC") 22.36.010, Expiration of Approval, to allow one additional two-year extension for land use approvals or phases of a land use approval; and

WHEREAS, after notice was given in accordance with applicable law, a public meeting was held on May 12, 2011 by the Deschutes County Planning Commission and, on May 12, 2011, the Planning Commission reviewed and forwarded to the Board a recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on June 8, 2011 and concluded that the proposed changes are consistent with the County's Comprehensive Plan and that the public will benefit from changes to the land use regulations; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC 22.36.010, Expiration of Approval, is amended to read as described in Exhibit "A", attached and incorporated by reference herein, with new language underlined and deleted language set forth in ~~strikethrough~~.

Section 2. FINDINGS. The Board adopts as its findings in support of this decision, Exhibit "B", attached and incorporated by reference herein.

///

Section 3. EMERGENCY. This Ordinance being necessary for the public peace, health and safety, an emergency is declared to exist and this Ordinance takes effect on its passage.

Dated this 8th of June, 2011

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

- absent -
TAMMY BANEY, Chair

[Signature]
ANTHONY DEBONE, Vice Chair

ATTEST:

[Signature]
Recording Secretary

[Signature]
ALAN UNGER, Commissioner

Date of 1st Reading: 8th day of June, 2011.

Date of 2nd Reading: 8th day of June, 2011.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Anthony DeBone	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Alan Unger	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tammy Baney	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Effective date: 8th day of June, 2011.

22.36.010. Expiration of Approval.

A. Scope.

1. Except as otherwise provided herein, DCC 22.36.010 shall apply to and describe the duration of all approvals of land use permits provided for under the Deschutes County Land Use Procedures Ordinance, the various zoning ordinances administered by Deschutes County and the subdivision/partition ordinance.
2. DCC 22.36.010 does not apply to:
 - a. Those determinations made by declaratory ruling, such as verifications of nonconforming uses, lot of record determinations and expiration determinations, that involve a determination of the legal status of a property, land use or land use permit rather than whether a particular application for a specific land use meets the applicable standards of the zoning ordinance. Such determinations, whether favorable or not to the applicant or landowner, shall be final, unless appealed, and shall not be subject to any time limits.
 - b. Temporary use permits of all kinds, which shall be governed by applicable ordinance provisions specifying the duration of such permits.
 - c. Quasi-judicial map changes.

B. Duration of Approvals.

1. Except as otherwise provided under DCC 22.36.010 or under applicable zoning ordinance provisions, a land use permit is void two years after the date the discretionary decision becomes final if the use approved in the permit is not initiated within that time period.
2. Except as otherwise provided under applicable ordinance provisions, preliminary approval of plats or master plans shall be void after two years from the date of preliminary approval, unless the final plat has been submitted to the Planning Division for final approval within that time period, an extension is sought under DCC 22.36.010 or the preliminary plat or master plan approval has been initiated as defined herein.
3. In cases of a land use approval authorized under applicable approval criteria to be completed in phases, each phase must be initiated within the time specified in the approval, or initiated within two years of completion of the prior phase if no timetable is specified.
4. The approval period for the following dwellings in the Exclusive Farm Use and Forest Use Zones is for 4 years:
 - a. Replacement dwelling
 - b. Nonfarm dwelling
 - c. Lot of record dwelling
 - d. Large tract dwelling
 - e. Template dwelling.

C. Extensions.

1. The Planning Director may grant one extension of up to one year for a land use approval or a phase of a land use approval, and two years for those dwellings listed in DCC 22.36.010(B)(4) above, regardless of whether the applicable criteria have changed, if:
 - a. An applicant makes a written request for an extension of the development approval period;
 - b. The request, along with the appropriate fee, is submitted to the County prior to the expiration of the approval period;
 - c. The applicant states reasons that prevented the applicant from beginning or continuing development or meeting conditions of approval within the approval period; and
 - d. The County determines that the applicant was unable to begin or continue development or meet conditions of approval during the approval period for reasons for which the applicant was not responsible, including, but not limited to, delay by a state or federal agency in issuing a required permit.
2. Up to two additional one-year extensions, or two-year extensions for those dwellings listed under DCC 22.36.010(B)(4) above, may be granted under the above criteria by the Planning Director or ~~his~~ the Planning Director's designees where applicable criteria for the decision have not changed.
3. In addition to the extensions granted in DCC 22.36.010(C)(1), one additional two-year extension for a land use approval or a phase of a land use approval may be granted by the Planning Director or the Planning Director's designee under the criteria listed under DCC 22.36.010(C)(1) for approvals issued prior to June 8, 2011. This subsection does not apply for those dwellings listed under DCC 22.36.010(B)(4) above.

D. Procedures.

1. A determination of whether a land use has been initiated shall be processed as a declaratory ruling.
2. Approval of an extension granted under DCC 22.36.010 is an administrative decision, is not a land use decision described in ORS 197.015 or Title 22 and is not subject to appeal as a land use decision and shall be processed under DCC Title 22 as a development action, except to the extent it is necessary to determine whether the use has been initiated.

E. Effect of Appeals. The time period set forth in DCC 22.36.010(B) shall be tolled upon filing of an appeal to LUBA until all appeals are resolved.

(Ord. 2011-016, 2011; Ord. 2004-001 §4, 2004; Ord. 95-045 §43A, 1995; Ord. 95-018 §1, 1995; Ord. 90-007 §1, 1990)

FINDINGS

The Deschutes County Planning Director presented to Board of Commissioners ("Board") a request to initiate a text amendment to the Deschutes County Code ("DCC") to extend the expiration of land use permits for and additional who years. The Board held one work session on April 13, 2011 and directed the Planning Director to initiate that text amendment. The Planning Commission reviewed the amendments on May 12, 2011, and recommended approval of the text amendment. The Board then conducted a public hearing on June 8, 2011 on Ordinance 2011-016, amending DCC Section 22.36.010, Expiration of Approvals.

BACKGROUND

DCC Section 22.36.040 (B) and (C) establish the duration of land use permit approvals for two years, and authorize the Planning Director to grant up to three 1-year extensions for approvals where a development has not been initiated. Land use permit approvals subject to this time frame include site plan reviews, conditional use permits, subdivisions, partitions, lot line adjustments, etc. Resource dwellings in the Exclusive Farm Use and Forest Use Zones have separate duration of approvals and extensions established by state law.

The historic economic downturn, which has hit Deschutes County particularly hard and for an extended period of time, has caused a significant increase in the number of development approval extensions as shown in Table 1 below since 2008. Specifically, it shows that 252, or 42%, of the 600 development approvals issued since 2000 have been extended since the start of 2008. Moreover, 2011 is on pace for nearly 100 extension requests with 24 already submitted in the first quarter (January – March 2011). Consequently, an increasing number of property owners and developers are unable to initiate their development or phase of development in the current economy, and some have requested Deschutes County extend the period of time allowed to exercise such approvals.

Table 1. Development Approval Extension Requests

Year	Number of Extension Requests
2000	35
2001	51
2002	65
2003	39
2004	33
2005	24
2006	51
2007	49
2008	73
2009	70
2010	85

2011 (1 st Quarter)	24
TOTAL	600

On April 13, Board directed the Community Development Department to initiate a text amendment to DCC Chapter 22.36, Limitation on Approvals to allow one additional two-year extension for land use approvals and phases of land use approvals, except for those dwellings in resource zones. Similar two-year extension requests have been made and approved throughout Central Oregon, including in the cities of Bend, Redmond and Sisters, and in Crook County.

PROPOSED TEXT AMENDMENT

Amendments to DCC Section 22.36.010 are underlined. No text is proposed to be deleted. The text amendment is self-explanatory below.

- C. Extensions.
1. The Planning Director may grant one extension of up to one year for a land use approval or a phase of a land use approval, and two years for those dwellings listed in DCC 22.36.010(B)(4) above, regardless of whether the applicable criteria have changed, if:
 - a. An applicant makes a written request for an extension of the development approval period;
 - b. The request, along with the appropriate fee, is submitted to the County prior to the expiration of the approval period;
 - c. The applicant states reasons that prevented the applicant from beginning or continuing development or meeting conditions of approval within the approval period; and
 - d. The County determines that the applicant was unable to begin or continue development or meet conditions of approval during the approval period for reasons for which the applicant was not responsible, including, but not limited to, delay by a state or federal agency in issuing a required permit.
 2. Up to two additional one-year extensions, or two-year extensions for those dwellings listed under DCC 22.36.010(B)(4) above, may be granted under the above criteria by the Planning Director or ~~his~~ the Planning Director's designees where applicable criteria for the decision have not changed.
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FINDINGS

1. State Notification Requirements

- ORS 197.610(2),¹ *Post-acknowledgment procedures*, was not initiated because the statewide planning goals do not apply to these legislative amendments. The amendments to DCC Chapter 22.36 just allow an additional two years to initiate a land use approval or phase of a land use approval.
- ORS 215.503,² *Notice to property owners*, was not initiated because the amendments to DCC Chapter 2.28 do not tighten restrictions beyond what exists today; the amendment only allows a longer expiration period for land use approvals.

2. Consistency with Deschutes County Comprehensive Plan

The Deschutes County Comprehensive Plan does not address limitations on land use approvals or phases of land use approvals.

3. Consistency with Deschutes County Code (DCC)

Not applicable.

4. Oregon Revised Statutes and Statewide Planning Goals

1. *Statewide Planning Goals*

No statewide planning goals are directly applicable. This amendment is purely administrative and procedural in nature and does not require prior notice to DLCD.

2. *ORS 197.175(2) & ORS 215.050*

Not applicable.

3. *ORS 92.040(3)*

A local government may establish a time period during which decisions on land use applications under subsection (2) of this section apply. However, in no event

¹ <http://www.leg.state.or.us/ors/197.html>

² <http://www.leg.state.or.us/ors/215.html>

shall the time period exceed 10 years, whether or not a time period is established by the local government.

The text amendments do not authorize a time period to exceed the 10 years maximum imposed by state statute.

4. *ORS 215.417*

ORS 215.417 Time to act under certain approved permits; extension. (1) If a permit is approved under ORS 215.416 for a proposed residential development on agricultural or forest land outside of an urban growth boundary under ORS 215.010 to 215.293 or 215.317 to 215.438 or under county legislation or regulation, the permit shall be valid for four years.

(2) An extension of a permit described in subsection (1) of this section shall be valid for two years.

(3) For the purposes of this section, "residential development" only includes the dwellings provided for under ORS 215.213 (1)(t), (3) and (4), 215.283 (1)(s), 215.284, 215.317, 215.705 (1) to (3), 215.720, 215.740, 215.750 and 215.755 (1) and (3)

ORS 215.417 states that a conditional use permit for a residential dwelling in an agricultural or forest zone is valid for four years with one two year extension permissible.

The proposed text amendment does not impact the time period for residential dwellings in agricultural or forest zones.



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06/17/2011

Mailbox Permit 97701

US POSTAGE

DEPT OF

JUN 20 2011

LAND CONSERVATION
AND DEVELOPMENT

Deschutes County Community Development Department

117 NW LAFAYETTE AVENUE
BEND, OREGON 97701-1925
(541) 388-6575

Plan Amendment Specialist
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