

## **150-Day Time Limit on Land Use Application Review**

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In Oregon, the standard statutory time limit for a local government to reach a final decision on a land use application is specified by ORS 215.427<sup>1</sup> [restated in Benton County Development Code BCC 51.535]. That time limit is 150 days<sup>2</sup> from the time that an application is deemed complete, which must occur within the first 30 days after the application was filed. Pursuant to the Benton County Development Code, the determination of completeness is made by the Planning Official.

An application for land use action may be submitted at any time, following submittal procedures put in place by the County. Once an application is submitted, the Planning Official shall determine whether the application is complete and shall, within 30 days of the application's filing, notify the applicant of exactly what information if any is missing from the application. If the application was deemed incomplete and the applicant subsequently makes the application complete, then the clock starts on the date the additional information was submitted. If the applicant submits in writing that they will provide no additional information, then the clock starts on the date of that submittal.

What constitutes a complete application is in some ways a factual determination but can also involve subjective determinations. Clearly, if the applicant fails to address one of the directly applicable criteria, the application is incomplete. However, if, for example, the applicant submits several studies in support of their arguments but does not include a noise study, is the application necessarily incomplete? The Planning Official may determine that application is incomplete. If the applicant disagrees, there is no appeal process; the applicant may simply state that no additional information will be submitted. At that point, whether the application is "complete" or not is moot; the County must take action.

If the County does not take final action on an application within 150 days of the date the application is deemed complete, the applicant may elect to proceed with the application according to the applicable provisions of the county comprehensive plan and land use regulations or to file a petition for a writ of mandamus. Upon filing a petition for writ, jurisdiction for all decisions regarding the application, including settlement, shall be with the circuit court.<sup>3</sup>

Of course, whether the application is "complete" or not, the absence of certain information from an application may lead to a determination by the decision maker (Planning Official, Hearings Officer, Planning Commission or Board of Commissioners) that one or more specific

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<sup>1</sup> The governing body of a county or its designee shall take final action on all other applications for a permit . . . including resolution of all appeals under ORS 215.422 . . . within 150 days after the application is deemed complete.

<sup>2</sup> The time limit is 120 days if the application regards mineral aggregate extraction or if the property is located within an urban growth boundary.

<sup>3</sup> ORS 215.429

criteria are not met. The purpose of the 30-day completeness review is to attempt to provide the decision maker with the necessary information to make an informed decision; it does not *ensure* that the information provided is adequate.

The applicant may choose to pause the 150-day clock by stating in writing the time period for which they want the clock paused. The maximum allowable duration of any or all such pauses (or extensions of the 150-day time limit) is 215 days, for a total time of 365 calendar days from the time an application is deemed complete.

The determination of whether an application is complete must happen fairly quickly. With a complex application, such as a landfill expansion, reviewing the submitted materials and the applicable criteria in sufficient detail to determine whether the application is complete often takes substantial time. Because of this, having guidelines identified prior to receiving an application is preferable to having to review an application once it has been submitted. Benton County would greatly value the BCTT Workgroup's insights identifying elements that should be considered in deeming that a land use application concerning the landfill is "complete."

The process at Benton County is an internal review process conducted by professional planning staff, augmented by input from other agencies relevant to a given land use application. The Development Code does not preclude the Planning Official from obtaining input from the public during this process. The 30-day window for the determination presents challenges to obtaining and meaningfully reviewing public input and incorporating it into the determination, but the public could be given opportunity to comment during this time. Hypothetically, if the County was prepared for and expecting a particular land use application, it could, upon receipt of the application, post the submitted materials, send email notification to members of the public, and set a time certain in which members of the public would be welcome to submit comments on the completeness of the materials.

The window for public comments would necessarily be fairly narrow. There would be no obligation on the part of the Planning Official to utilize or respond to such comments, but the comments could provide a useful, broader vetting of the application. Staff has concerns that the 30-day time frame may be too short for meaningful public review and comment and that public comments could range well beyond the question of completeness which would complicate making use of such comments in the completeness determination. For these reasons, staff encourages the BCTT workgroup to provide as much input as possible regarding what is needed for a complete application prior to County receipt of an application.