

ARTICLE VI

CONDITIONAL USE PROCEDURES AND CRITERIA

SECTION 6.010: PURPOSE

The purpose of a CONDITIONAL USE is to provide for uses that are not allowed by right in a certain zone because of potentially adverse impacts on uses permitted by right in that zone. Such uses may be made or deemed compatible through the review process contained in this Article, which subjects the proposed CONDITIONAL USE activity to specific requirements, criteria, and conditions. The location and operation of any CONDITIONAL USE listed in this Ordinance shall only be permitted according to the provisions of this Article.

SECTION 6.020: PROCEDURE

The following procedure shall be observed in submitting and acting on a CONDITIONAL USE request:

- (1) A request may be initiated for a CONDITIONAL USE, or the modification of an approved CONDITIONAL USE, by filing an application with the Department. The Department may require any information necessary for a complete understanding of the proposed use and its relationship to surrounding properties.
- (2) The Director shall act administratively according to the procedure set forth in Article 10, or shall refer the application to the Commission for a public hearing and decision. The application shall be referred to the Commission if the director determines that the proposed use would have significant impacts that extend beyond the abutting properties, and that those impacts are not likely to be adequately addressed by response to public notice required by Section 10.070. If the Director elects to refer the application to the Commission, it shall be heard at the next available Commission hearing, unless the applicant requests otherwise.
- (3) No CONDITIONAL USE permit shall be invalidated because of failure to receive the notice provided for in Section 10.070.

SECTION 6.030: GENERAL REQUIREMENTS

A CONDITIONAL USE shall be authorized, pursuant to the procedures set forth in Section 6.020, if the applicant adequately demonstrates that the proposed use satisfies all relevant requirements of this Ordinance, including the review criteria contained in Section 6.040 or the Health Hardship provisions contained in Section 6.050, and the following general requirements:

- (1) A CONDITIONAL USE shall be subject to the standards of the zone in which it is located, except as those standards have been modified in authorizing the CONDITIONAL USE. The size of a lot to be used for a public utility facility may be reduced below the minimum required, provided that it will have no adverse effect upon adjacent uses.
- (2) A CONDITIONAL USE may be enlarged or altered pursuant to the following:
 - (a) Major alterations of a CONDITIONAL USE, including changes to or deletion of any imposed conditions, shall be processed as a new CONDITIONAL USE application.
 - (b) Minor alterations of a CONDITIONAL USE may be approved by the Director according to the procedures used for authorizing a building permit, if such alterations are requested prior to the

issuance of a building permit for the CONDITIONAL USE. Minor alterations are those which may affect the siting and dimensions of structural and other improvements relating to the CONDITIONAL USE, and may include small changes in the use itself. Any change which would affect the basic type, character, arrangement, or intent of the approved CONDITIONAL USE shall be considered a major alteration.

- (c) The enlargement or alteration of a one-or two-family dwelling, mobile home, manufactured home, or recreational vehicle that is authorized as a CONDITIONAL USE under the provisions of this Ordinance shall not require further authorization, if all applicable standards and criteria are met.
- (3) Where the approval of a CONDITIONAL USE request is contingent upon an amendment to this Ordinance, and an application for such amendment has been recommended for approval by the Commission, the CONDITIONAL USE request may be approved upon the condition that the Board approves the Ordinance Amendment.

SECTION 6.040: REVIEW CRITERIA

Any CONDITIONAL USE authorized according to this Article shall be subject to the following criteria, where applicable:

- (1) The use is listed as a CONDITIONAL USE in the underlying zone, or in an applicable overlying zone.
- (2) The use is consistent with the applicable goals and policies of the Comprehensive Plan.
- (3) The parcel is suitable for the proposed use considering its size, shape, location, topography, existence of improvements and natural features.
- (4) The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zone.
- (5) The proposed use will not have detrimental effect on existing solar energy systems, wind energy conversion systems or wind mills.
- (6) The proposed use is timely, considering the adequacy of public facilities and services existing or planned for the area affected by the use.

SECTION 6.050: HEALTH HARDSHIP PROVISIONS

A CONDITIONAL USE for a HEALTH HARDSHIP may be authorized according to the procedure set forth in Section 6.020, provided that the use is of a temporary nature. Approval of the HEALTH HARDSHIP permits the placement of a mobile home, manufactured home or recreational vehicle, subject to the following conditions in addition to the requirements of Section 5.010:

- (1) The applicant can demonstrate that approval of the request would allow for the care of a seriously ill person in a manner that could not be achieved by any reasonable existing alternative.
- (2) The applicant has a medical doctor's written confirmation of a HEALTH HARDSHIP.

- (3) The approval is for a length of time not to exceed 24 months, or the duration of the HEALTH HARDSHIP, whichever is less. The Director may extend an approval for additional 24 month periods if a written request for renewal is submitted by the applicant before expiration, and written reconfirmation of the HEALTH HARDSHIP is provided by a medical doctor.

SECTION 6.060: WETLANDS RESTORATION, ENHANCEMENT OR CREATION ON LAND SUBJECT TO EXCLUSIVE FARM USE ZONING DESIGNATION

- (1) Notwithstanding 6.040 or ORS 215.296(10), a CONDITIONAL USE for a WETLAND RESTORATION, ENHANCEMENT OR CREATION located on land zoned Farm (F-1) and authorized according to this Article shall only be subject to the following criteria:
- a. The use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
 - b. The use will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.
- (2) Notwithstanding 10.070, 10.080 or ORS 215.416, prior to the approval or denial of a permit the Applicant may voluntarily waive his or her right to a final decision within the 150-day timeframe and enter into a Project-Specific Collaborative Process by providing written notice to the County.
- a. The following parties may enter into a Project-Specific Collaborative Process for settling disputes concerning the application:
 - i. The applicant;
 - ii. Any person whose use of the person's property may be adversely affected by the proposed use
 - iii. Any person who is entitled to notice under ORS 215.416 (11)(c);
 - iv. Representatives of any state or federal agency that is involved in the project for which the application for the use was submitted or that has expertise related to issues raised by the application or by comments received by the governing body; and
 - v. For the purpose of assisting in the project-specific collaborative process, any person with technical expertise in:
 - a. Creating, restoring or enhancing wetlands in Tillamook County;
 - b. Creating, restoring or enhancing wetlands in areas with site characteristics similar to those identified in the application for the use; or
 - c. The impacts of wetlands on agricultural operations.
 - b. If Applicant has given notice of election of the Project-Specific Process, the timeline for the governing body to take final action on the application shall be extended up to 90 additional days.

- c. At any time during the Project-Specific Collaborative Process the applicant may request that the Project-Specific Collaborative Process be discontinued and the governing body resume processing the permit application under the procedures required by TCLUO Article 10.
 - d. On receiving a request by the Applicant to enter into a Project-Specific Collaborative Process:
 - i. Applicant shall mail notice conforming to the requirements of Article 10 Section 10.070 to all persons entitled to notice under ORS 215.416 (11)(c) within 3 days of requesting to enter into a Project-Specific Process. Applicant will provide the County with an Affidavit of Mailing.
 - ii. Persons or entities wishing to become a party to the Project-Specific Collaborative Process must notify the County in writing within 10 days of the notice of request to enter into the Project-Specific Collaborative Process.
 1. The Director will assign a Mediator with the following minimum qualifications to the case:
 - Qualifications and Minimum Training (30 hour Basic Mediation Training) as prescribed in Oregon Administrative Rules 137-005-0040. 100 hours during most recent 24 months performing case development or mediation activities.
 - Attended at least one continuing education workshop in each of the past two years. Assisting with Basic Mediation Training or other advanced mediation trainings can be substituted for the continuing education requirements.
 - 16 hours of advanced training in Land Use issues and facilitation skill building.
 2. A meeting with all parties, County Community Development Planning Staff and a mediator will take place within 21 business days of the notice of request to enter into the Project Specific Collaborative Process.
 3. The mediator will record comments, questions, concerns and areas of agreement. Mediated settlements will be recorded and signed by the parties. The mediator will generate a meeting summary, including written agreements that were reached between the parties. Copies of the meeting summary and written agreement will be distributed to all of the parties to the mediation.
- (3) In addition to the Conditions of Approval authorized by Section 6.070, if the parties to a Project-Specific Collaborative Process requested pursuant to Section 6.060(2) of this ordinance agree to conditions that, if imposed on the proposed use, would satisfy the standards for approval set forth in 6.060(1)(a) and/or 6.060(1)(b) in a manner that is acceptable to all parties, an approval of the application for the permit shall include the conditions agreed to by the parties as Conditions of Approval.

SECTION 6.070: CONDITIONS OF APPROVAL

In approving a CONDITIONAL USE or a modification of a CONDITIONAL USE, any conditions which are considered necessary to protect the area surrounding the proposed use, and to preserve the basic purpose and intent of the underlying zone, may be imposed. These may include, but are not limited to, the following:

- (1) Increasing the required parcel area or yard dimensions.
- (2) Limiting the height, size, or location of buildings and structures.
- (3) Modifying the location and number of required off-street parking and loading spaces.

- (4) Controlling the location and number of vehicle access points.
- (5) Limiting the number, size and location of signs.
- (6) Requiring diking, fencing, screening, landscaping, or other measures to protect adjacent or nearby properties from the effects of the use.
- (7) Prescribing a time limit within which to fulfill any established conditions.

SECTION 6.080: COMPLIANCE WITH CONDITIONS

Adherence to the approved plot plan and compliance with the conditions imposed in approving a CONDITIONAL USE request shall be required. Any departure from the conditions of approval or approved plans constitutes a violation of this Ordinance.

SECTION 6.090: TIME LIMIT

All CONDITIONAL USES except those approved for a Health Hardship may be approved for a 24-month period. If construction has not begun on the approved development, such approvals may be extended beyond 24 months only if the Director determines that a review would be unlikely to reveal new information which could lead to different conclusions than those reflected in the original staff report. For the purposes of such a determination, the Director may rely on such things as:

- (1) Changes in Ordinance requirements or the requirements of State law;
- (2) The extent and character of new development in the vicinity of the request;
- (3) The adequacy of the review upon which the original was based;
- (4) Any other circumstances which could change the substance of the original staff report.

If the Director determines that a new review is warranted, then the applicant shall provide all information and fees required by this Article.