1. 10:00 A.M. Agenda

   Documents:

   2024-02-13 Planning Commission Work Session Agenda.pdf

2. Meeting Material

   Documents:

   YachatsPC_Feb2024.Pdf

CITY OF YACHATS
PLANNING COMMISSION WORK SESSION
Tuesday, February 13, at 10:00 am
To Be Held Via Zoom & In Person Located at:
Commons Bldg., Civic Meeting Room 1
441 Hwy 101 N., Yachats OR 97498

Join Zoom Meeting
https://us02web.zoom.us/j/87461950197

Meeting ID: 874 6195 0197

Work Session

I. New Commissioner Training – Hui Rodomsky, DLCD

This meeting is open to the public and all interested persons are invited to attend the ZOOM Meetings. This meeting will be audio taped. All items to be considered by the Commission must be submitted to City Hall no later than one week prior to the meeting. The minutes of this meeting are the Audio Tape which will added to the packet after the meeting within 24 hours. In accordance with ORS 192.630, City of Yachats will make a good faith effort to provide accommodations for any person desiring to attend a public meeting, if the request is made at least 48 hours in advance of the meeting time; a sign language or foreign language interpreter may be available, with advance notice. Call City Hall at 541- 547-3565 or Oregon Relay 1- 800-735-2900 (TDD) two days in advance. POSTED 02/12/24 By: Kimmie Jackson, Deputy City Recorder

DLCD

Oregon Land Use

Yachats

February 13, 2024

Hui Rodomsky
South Coast Regional Representative

hui.rodomsky@dlcd.oregon.gov
541-270-3279

Outline for Today

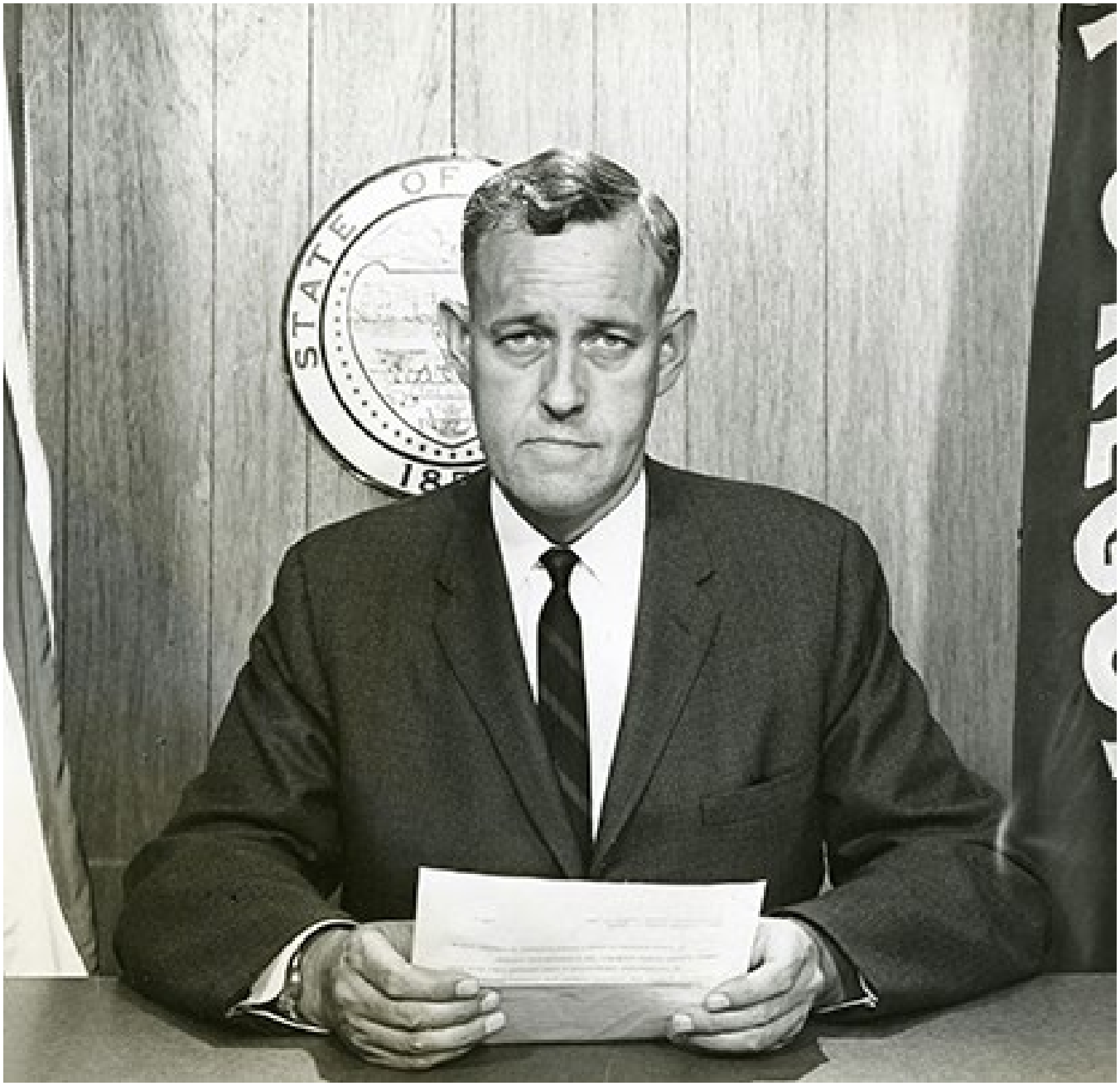
1. Brief History
2. How the land use system is set up
3. Types of Land Use Decisions
4. How to hold a fair and impartial tribunal

   Ex parte/bias/conflict of interest

What is Land Use Planning?

Why Land Use Planning?

- Environmental protection
- Avoidance of urban sprawl
- Promotion of compatible uses
- Increase certainty for developers/buyers
- Public health and safety


STATE OF

Pre-Modern History

- 1919 – Oregon legislature permits cities to zone private land
- 1947 – Oregon legislature permits counties to zone private land
- 1963 – Oregon legislature establishes the Exclusive Farm Use (EFU) zone and the uses it allows

Senate Bill 100

"We're talking about more than preserving the beauty of Oregon...

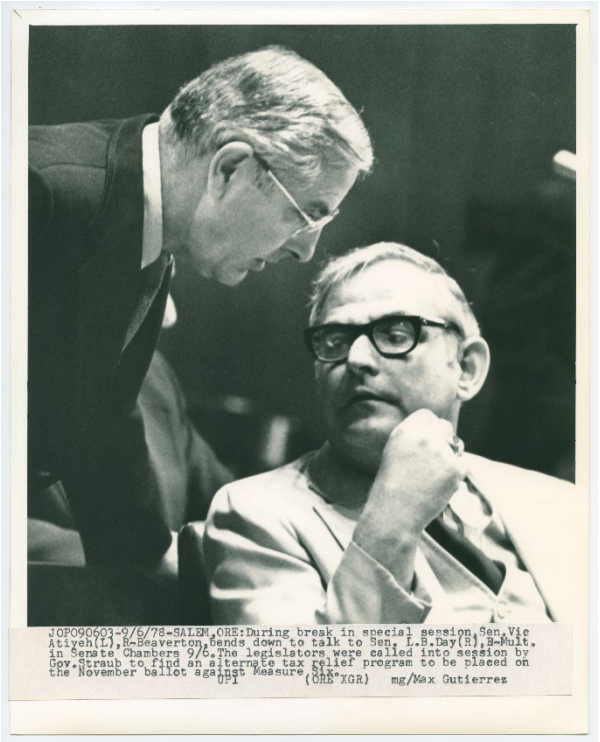
We're talking about the economy and the environment.

We're talking about balance.

In short, we're talking about people and the land."

— Tom McCall, 1973

Tom McCall & Hector Macpherson
1973



Vic Atiyeh & LB Day
1978

Bob Straub

Senate Bill 100 :

1. **Created**

✓Land Conservation and Development Commission (LCDC)

Seven volunteer-members

- representative of regions of the State
- provides policy direction

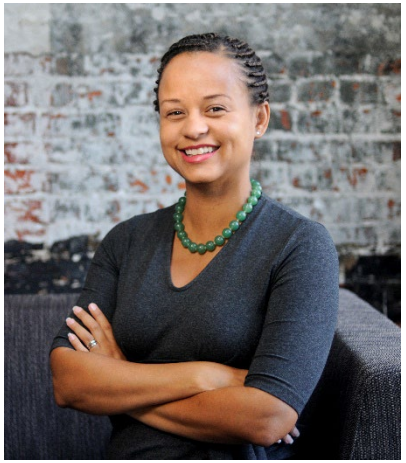
✓Department of Land Conservation and Development (DLCD)

Staff to LCDC

2. **Charged**

LCDC with adopting **Statewide Planning Goals**

Land Conservation and Development Commission



Chair Anyeley Hallova:
Metro Area

Vice Chair Nick Lelack:
Eastern Oregon

Lianne Thompson: Coast

Barbara Boyer:
Willamette Valley

Allan Lazo: Metro Area

Stuart Warren:
Willamette Valley

Vacant:
Southern Oregon

Statewide Planning Goals

- Goal 1 – Citizen Involvement
- Goal 2 – Land Use Planning

- Goal 3 – Agricultural Lands
- Goal 4 – Forest Lands
- Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces
- Goal 6 – Air, Water, and Land Resources Quality
- Goal 7 - Areas Subject to Natural Hazards
- Goal 8 - Recreation Needs
- Goal 13 – Energy Conservation
- Goal 15 - Willamette River Greenway

- Goal 9 – Economic Development
- Goal 10 - Housing
- Goal 11 - Public Facilities and Services
- Goal 12 - Transportation
- Goal 14 – Urbanization

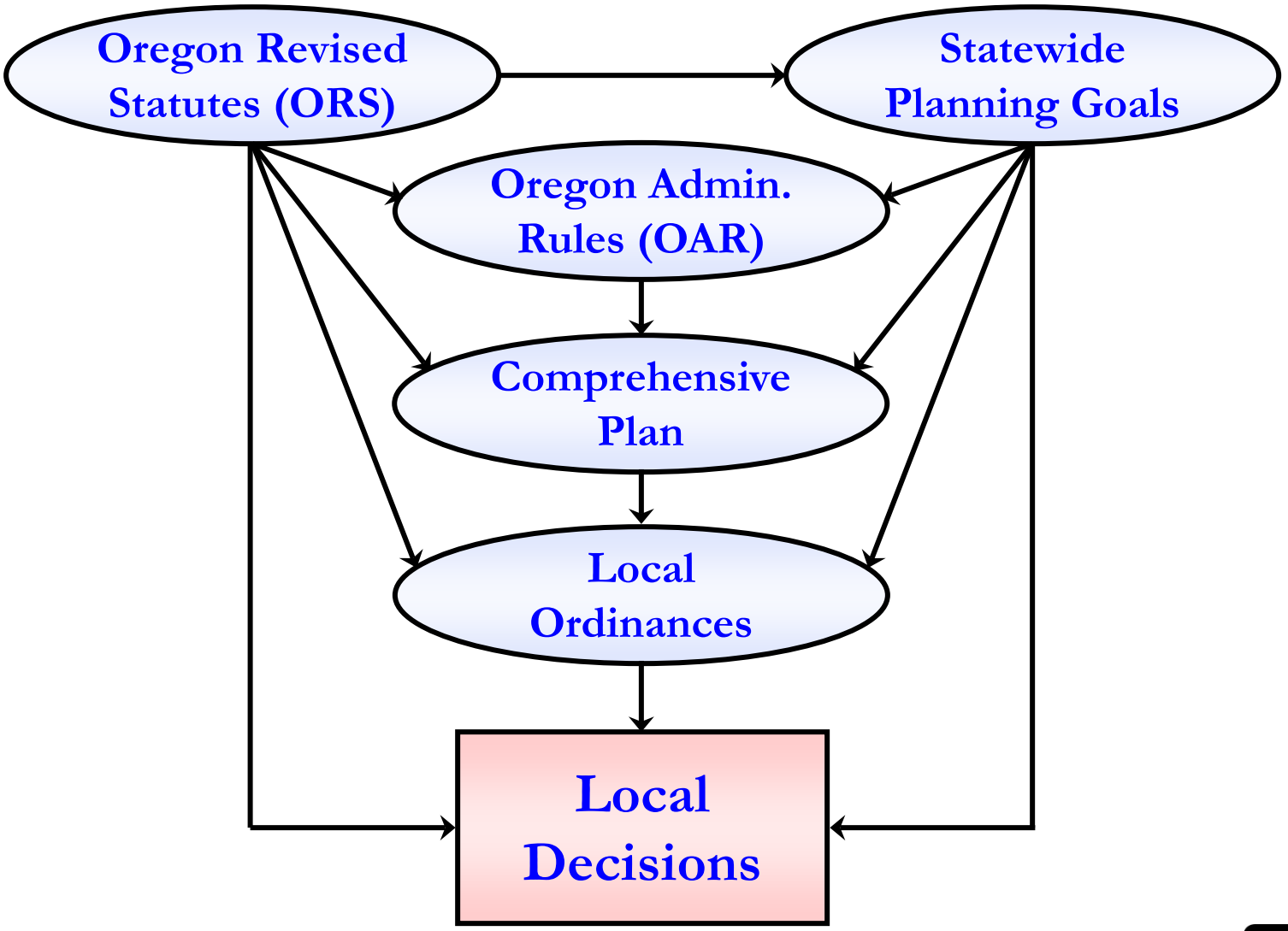
- Goal 16 – Estuarine Resources
- Goal 17 – Coastal Shorelands
- Goal 18 – Beaches and Dunes
- Goal 19 – Ocean Resources

State Responsibilities

- **Set land use policy (goals and rules)**
- Acknowledge city and county plans
- Enforce goals
- **Review plan amendments**
- Administer periodic review requirements
  - No longer a requirement for Cities <10,000 in population (including the UGB)
- **Provide technical assistance to cities and counties**
  - South Coast Regional Representative
  - Grants
  - Technical support

Local Responsibilities

- Cities and Counties
  - Adopt plans and codes in compliance with statewide goals
  - Address local vision and needs
  - Make land use decisions
  - Enforce codes and ordinances
  - Provide assistance to the public


Oregon Revised Statutes (ORS)
Statewide Planning Goals
Oregon Admin. Rules (OAR)
Comprehensive Plan
Local Ordinances
Local Decisions

What are your responsibilities as a Planning Commissioner?

Planning Commission Responsibilities

• **Understand land use planning:** Know that planning is evolving and ongoing. Know about the statewide land use program and local land use history. Be aware of interrelationships of planning to community goals, priorities and budget constraints.

• **Reflect the values of the community:** As a volunteer who obviously is committed to your community, you can see or sense what is needed. Use your unique position (separate from the elected "political" process and from the government payroll) to articulate local values.

• **Educate the public on land use:** Planning commission meetings often are citizens' first contact with local government and with land use. Act in ways that increase understanding and respect for the responsiveness of government.

• **Understand opportunities and limits of PC authority:** Recognize that you can be proactive – the initiator of new or changed policies -- and that there are limits to what you can do. Be clear about when your role is advisory and when it is that of the final decision maker.

• **Understand the legislative and quasi-judicial processes:** See the "Land Use Decisions" chapter.

• **Interpret and apply zoning ordinance provisions. Apply facts to criteria:** Your planning staff and legal counsel and the information in this manual will assist you.

• **Make decisions/recommendations**: Be courageous. Don't avoid hard decisions.

(Page 15, Oregon Planning Commissioner Handbook, April 2015
https://www.oregon.gov/lcd/Publications/OR_Planning_Comm_Handbook_April_2015.pdf)

Not Exhaustive

Planning Commission Do's & Don'ts

- A conviction that planning is important
- The ability to make decisions
- Time and energy to devote to the commission
- Ability to accept the will of the majority
- Courage
- Professional respect for the staff
- Ability to communicate well

- Become involved in office administration
- Allow personal feelings towards peers or staff to affect their judgment
- Allow personal interest to control public policy interests
- Neglect their duties
- Are afraid to make decisions or take firm stands
- Adopt an arrogant or paternalistic attitude toward the public or staff

(Page 16, Oregon Planning Commissioner Handbook, April 2015
https://www.oregon.gov/lcd/Publications/OR_Planning_Comm_Handbook_April_2015.pdf)

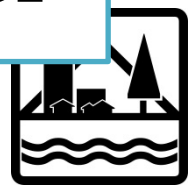
What is "The Record"?

Not Exhaustive

"The Record"

- ✓ Application Materials
- ✓ Written Testimony
- ✓ Oral Testimony

- ✓ Staff Report
- ✓ Public Hearing Proceedings
- ✓ Findings, Conclusions, and Final Order



What is the purpose of "The Record"?

- Documentation of the decision process.

Kinds of Decisions

Ministerial	Quasi-Judicial	Quasi-Judicial	Legislative
Type 1	Type 2	Type 3	Type 4
Staff	Administrative	Planning Commission (Zone Change- BOC/Council)	PC Recommends
			BOC/Council

Quasi-Judicial Decision

Procedural requirements to which the parties are entitled :

1. An opportunity to be heard

2. An opportunity to present and rebut evidence

3. A right to an impartial tribunal having had no prehearing or ex-parte contact concerning the land use action at issue

4. A right to findings of fact, and

5. A right to a record of the proceedings

(Page 19, Oregon Planning Commissioner Handbook, April 2015
https://www.oregon.gov/lcd/Publications/OR_Planning_Comm_Handbook_April_2015.pdf)

Quasi-Judicial Decision

- 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.
- 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.
- The job of the reviewing body is to ascertain the facts and to apply the approval criteria to the facts.

(Page 21, Oregon Planning Commissioner Handbook, April 2015
https://www.oregon.gov/lcd/Publications/OR_Planning_Comm_Handbook_April_2015.pdf)

Applicable Standards & 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.

(Page 20, Oregon Planning Commissioner Handbook, April 2015
https://www.oregon.gov/lcd/Publications/OR_Planning_Comm_Handbook_April_2015.pdf)

The decision-maker must apply the adopted criteria for approval that are contained in the zoning code.

It's ALL about the LAND USE CODE.

ONLY applicable criteria are considered in approval.

Fair and Impartial Tribunal

- Quasi-judicial
  - Ex Parte Contact
  - Conflict of Interest
  - Bias
- Legislative
  - Conflict of Interest

Ex Parte Contact

OAR 137-003-0055 Ex Parte Communications

(1) An ex parte communication is an oral or written communication to an agency decision maker or the presiding officer not made in the presence of all parties to the hearing, concerning a fact in issue in the proceeding, but does not include communication from agency staff or counsel about facts in the record.

Ex Parte Contact

- Applies only to quasi-judicial decisions
- Must be declared and described at the outset of a hearing
- Doesn't necessarily lead to disqualification (but has appearance of bias)

Actual Conflict of Interest

- ORS 244.020 Government Ethics

(1) "Actual conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (13) of this section.

Potential Conflict of Interest

- ORS 244.020 Government Ethics

(13) "Potential conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:

(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged.

(c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

Bias

Bias occurs when decision-makers have a prior judgment of the case that prevents them from making an objective decision based on the facts. Such decision-makers should excuse themselves from the proceedings. Even though bias is often subjective, not all personal views or positions are actual bias in the eyes of the law.

While it is not unusual for decision-makers to have a perspective or background, the threshold test is if this will influence their decision. Decision-makers should carefully consider any issues related to their personal bias and be prepared to step aside if necessary.

The decision-maker must apply the adopted criteria for approval that are contained in the zoning code.

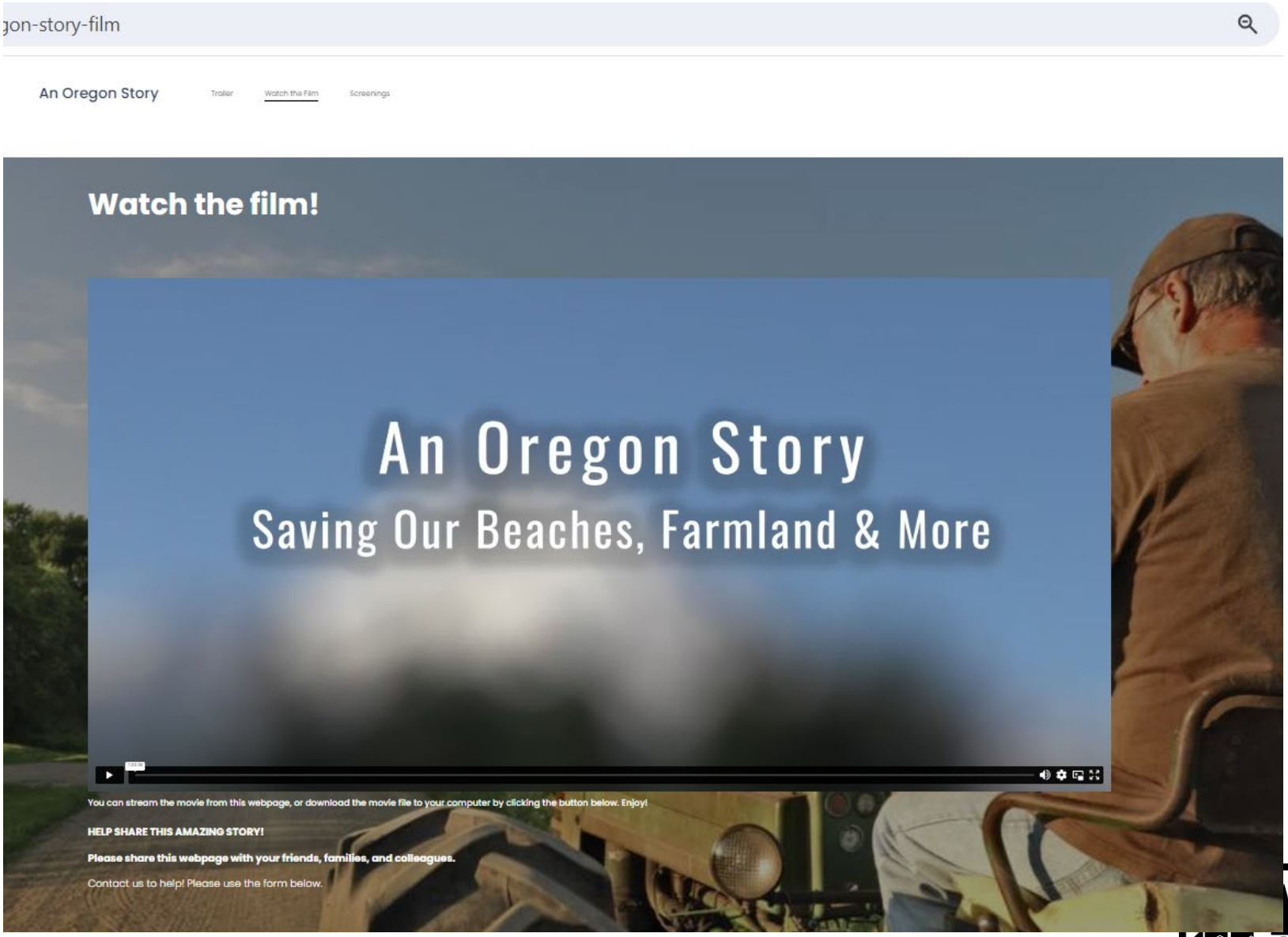
It's ALL about the CODE.

ONLY applicable criteria are considered in approval.

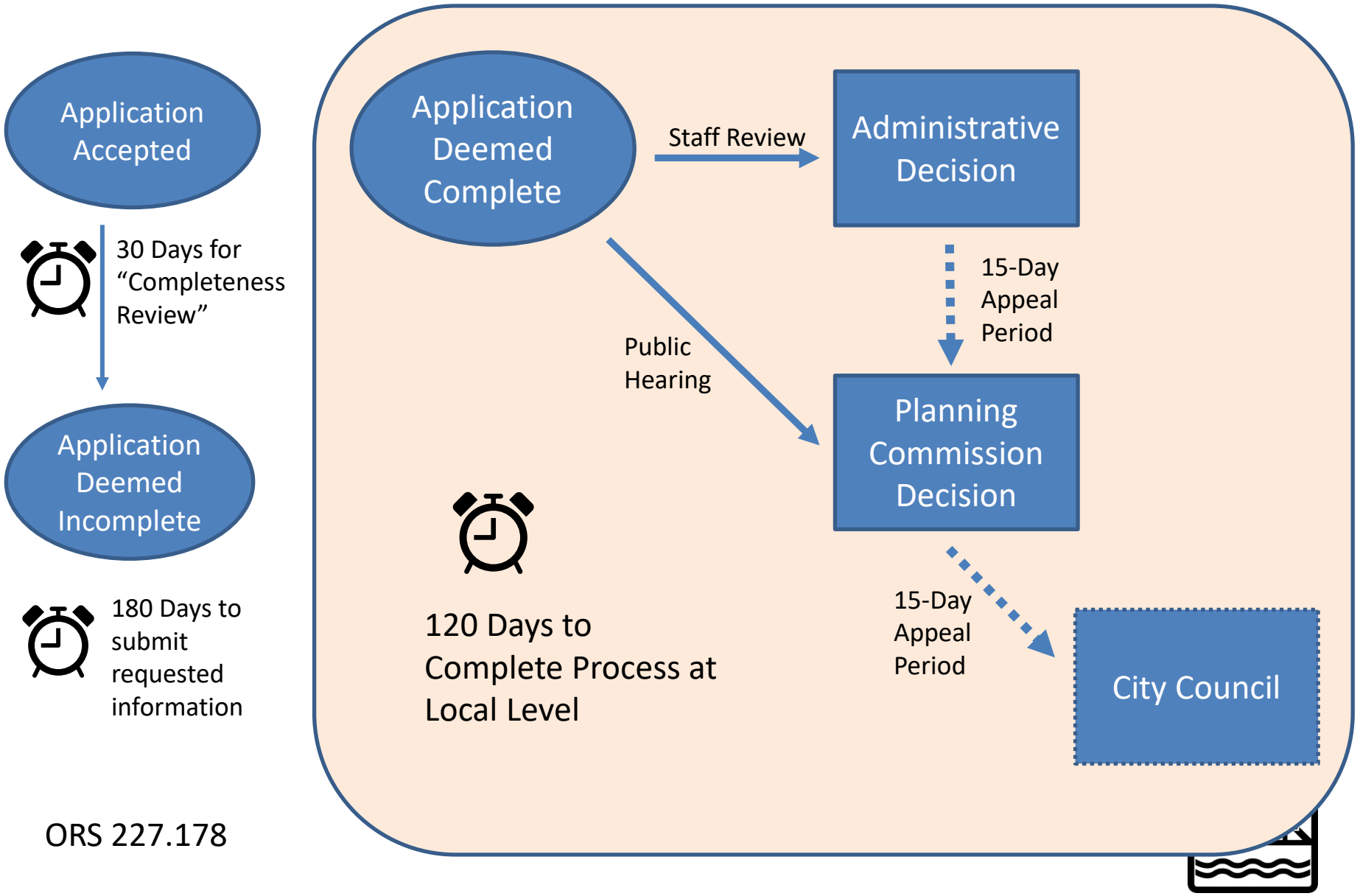
DLCD

Questions? :)

https://www.anoregonstory.com/oregon-story-film



Life Cycle of a Quasi-Judicial Decision



ORS 227.178