

PASSED

BEFORE THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

ORDINANCE NO. 3-09

IN THE MATTER OF AMENDING CHAPTER 14 OF LANE CODE TO REVISE LAND USE PERMIT AND ZONE CHANGE APPLICATION REVIEW AND APPEAL PROCEDURES (LC 14.015, 14.050, 14.100, 14.110, 14.300, 14.500, 14.510, 14.515, 14.520, 14.525, 14.530, 14.535 and 14.600)

The Board of County Commissioners of Lane County ordains as follows:

Chapter 14 of Lane Code is hereby amended by removing, substituting and adding new sections as follows:

**REMOVE THESE SECTIONS**

14.015 through 14.050  
located on pages 14-1 through 14-4  
(a total of 4 pages)

14.100 through 14.110  
located on pages 14-6 through 14-7  
(a total of 2 pages)

14.300  
located on pages 14-11 through 14-15  
(a total of 5 pages)

14.500 through 14.600  
located on page 14-17 through 14-21  
(a total of 5 pages)

**INSERT THESE SECTIONS**

14.015 through 14.050  
located on pages 14-1 through 14-4  
(a total of 4 pages)

14.100 through 14.110  
located on pages 14-6 through 14-7  
(a total of 2 pages)

14.300  
located on pages 14-11 through 14-15  
(a total of 5 pages)

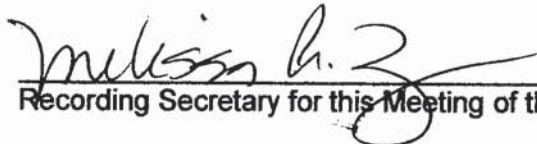
14.500 through 14.600  
located on pages 14-17 through 14-21  
(a total of 5 pages)

Said sections are attached hereto and incorporated herein by reference. The purpose of this substitution and addition is to revise land use permit and zone change application review and appeal procedures (LC 14.015, 14.050, 14.100, 14.110, 14.300, 14.500, 14.510, 14.515, 14.520, 14.525, 14.530, 14.535 and 14.600).

ENACTED this 4<sup>th</sup> day of November 2009.



Chair, Lane County Board of Commissioners



Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

Date 10-14-2009 Lane County

  
OFFICE OF LEGAL COUNSEL

## **APPLICATION REVIEW AND APPEAL PROCEDURES**

### **14.010 Purpose.**

This chapter is intended to establish procedures for the submittal, acceptance, investigation and review of applications and appeals, and to establish limitations upon approved or denied applications. *(Revised by Ordinance No. 16-83; Effective 9.14.83)*

### **14.015 Definitions.**

For the purpose of this Code, certain abbreviations, terms, phrases, words and their derivatives shall be construed as specified in this chapter. Words used in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine, and the feminine the masculine.

Where terms are not defined, they shall have their ordinary accepted meanings within the context in which they are used. Webster's Third New International Dictionary of the English Language, Unabridged, copyright 1981, principal copyright 1961, shall be considered as providing accepted meanings.

Acceptance. Received by and considered by the Director as sufficiently complete to begin processing according to the application or appeal review procedures of this chapter.

Appearance. Submission of testimony or evidence in the proceeding, either oral or written. Appearance does not include a name or address on a petition.

Approval Authority. A person, or a group of persons, given authority by Lane Code to review and/or make decisions upon certain applications according to the review procedures of this chapter.

Argument. The assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. Argument does not include facts.

Board. The Lane County Board of Commissioners.

County Official. The Director of a Lane County Department or Division, or any Lane County advisory committee or commission acting in its official capacity.

Day. A calendar day, computed consistent with ORS 174.120.

Department. The Lane County Department of Public Works.

Director. The Director of the Land Management Division of the Lane County Public Works Department, or the Director's delegated representative within the Department. The Director shall approve or deny land use applications ~~with or without hearings~~ as authorized by this chapter.

Evidence. The facts, documents, data or other information offered to demonstrate compliance or non-compliance with the standards believed by the proponent to be relevant to the decision.

Hearings Official. A person who has been appointed by the Board to serve at their pleasure and at a salary fixed by them. The Hearings Official shall conduct hearings on applications as authorized by this Code.

Land Use Decision.

(1) A final decision or determination made by Lane County that concerns the adoption, amendment or application of

- (a) The Goals;
- (b) A comprehensive plan provision;
- (c) A land use regulation; or
- (d) A new land use regulation.

- (2) A land use decision does not include a decision made by Lane County:
- (a) Which is made under land use standards which do not require interpretation or the exercise of policy or legal judgement;
  - (b) Which approves or denies a building permit issued under clear and objective land use standards;
  - (c) Which is a limited land use decision;
  - (d) Which determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility which is otherwise authorized by and consistent with the comprehensive plan and land use regulations;
  - (e) Which is an expedited land division as described in ORS 197.360; or
  - (f) A land use approval in response to a writ of mandamus.

Land Use Regulation. Any zoning ordinance, land division ordinance adopted under ORS 92.044 to 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan.

Legal Interest. An interest in property not confined solely to ownership or possessory interest, but including all interests in property which, in the discretion of the Director, are not inconsistent with the intent and purposes of this chapter. Such interests may include, but are not limited to, the following: owner, contract purchaser, lessee, renter, easement, resolution or ordinance of necessity to acquire or condemn adopted by a public or private condemnor.

Limited Land Use Decision. A final decision or determination made by a Lane County Approval Authority, as defined in LC 14.015, pertaining to a site within an urban growth boundary and which concerns:

- (1) The approval or denial of a subdivision or partition.
- (2) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review pursuant to the Site Review Procedures of LC 10.335.

New Land Use Regulation. A land use regulation other than an amendment to an acknowledged land use regulation adopted by Lane County.

Party. With respect to actions pursuant to LC 14.100 and 14.200 below, the following persons or entities are defined as parties:

- (1) The applicant and all owners or contract purchasers of record, as shown in the files of the Lane County Department of Assessment and Taxation, of the property which is the subject of the application.
- (2) Any person who makes an appearance before the Approval Authority.

Permit.

(1) A discretionary approval of a proposed development of land under ORS 215.010 to 215.293, 215.317 to 215.438 and 215.700 to 215.780 or county legislation or regulation adopted pursuant thereto.

- (2) "Permit" does not include:
  - (a) A limited land use decision;
  - (b) A decision which determines the appropriate zoning classification for a particular use by applying criteria or performance standards defining the uses permitted within the zone, and the determination applies only to land within an urban growth boundary;

(c) A decision which determines final engineering, design, construction, operation, maintenance, repair or preservation of a transportation facility which is otherwise authorized by and consistent with the comprehensive plan and land use regulations; or

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FORMAT**

14.050

Lane Code

14.050

(d) An action under ORS 197.360(1).

Person. Any individual, his or her heirs, executors, administrators or assigns, or a firm, partnership or corporation, its heirs or successors or assigns, or the agent of any of the aforesaid, any political subdivision, agency, board or bureau of the State or public or private organization of any kind.

Planning Commission. The Planning Commission of Lane County, Oregon.

Planning Director. See Director.

Received. Acquired by or taken into possession by the Director. (*Revised by Ordinance No. 16-83; Effective 9.14.83; 10-89, 10.4.89; 4-96; 11.29.96; 12-97, 11.20.97*)

**14.050 Application Requirements, Acceptance and Investigation.**

(1) Contents. Applications subject to any of the review procedures of this chapter shall:

(a) Be submitted by any person with a legal interest in the property.

(b) Be completed on the form prescribed by the Department and submitted to the Department.

(c) Address the appropriate criteria for review and approval of the application and shall contain the necessary supporting information.

(d) Be accompanied by the filing fee to help defray the costs of the application.

(2) Combinable Applications. Applications for the same property may be combined and concurrently reviewed as a master application, subject to the following permissible combination schemes and required review procedures:

(a) Applications subject to the review procedures of LC 14.100 below may be combined with other applications subject to the review procedures of LC 14.100 below, and the required review shall be by the Director according to LC 14.100 below.

(b) Applications subject to Hearings Official approval, according to the review procedures of LC 14.300 below, may be combined with other applications subject to Hearings Official approval according to LC 14.300 below and the required review procedure shall be by the Hearings Official according to LC 14.300 below.

(c) Applications subject to the review procedures of LC 14.100 below may be combined with applications subject to Hearings Official approval according LC 14.300 below, and the required review procedure shall be by the Hearings Official according to LC 14.300 below.

(d) A zone change application may be combined with an application for an amendment to the Comprehensive Plan, and the combined application shall be concurrently reviewed by the Planning Commissions and Board according to the review procedures of LC Chapters 12 and 14 for a plan amendment.

(3) Acceptance. Applications subject to any of the review criteria of this chapter:

(a) May be received by the Director at any time and shall not be considered as accepted solely because of having been received;

(b) Shall be, within 30 days of receipt, reviewed by the Director to determine if they meet the requirements of LC 14.050(1) and (2) above and are complete. Applications shall be determined to be complete and shall be accepted by the Director when they include the required information, forms and fees. When the Director determines that an application is not complete, the Director shall mail written notice to the applicant and disclose exactly what information, forms or fees are lacking.

~~The application shall be deemed complete by the Director upon receipt of the missing information, forms or fees. If the applicant has submitted the required processing fee into the possession of the Director, but refuses to submit the missing information or forms, the application shall be deemed complete for review and action on the 31st day after the Director first received the application.~~

**(c) On the 181<sup>st</sup> day after first being submitted, the application is void if the applicant has been notified of the missing information and has not submitted:**

- (i) All of the missing information;**
- (ii) Some of the missing information and written notice that no other information will be provided; or**
- (iii) Written notice that none of the missing information will be provided.**

The Director shall mail written notice to the applicant when the application is deemed complete or accepted.

**(de)** Within 10 days of acceptance of an application, the Director shall mail information explaining the proposed development to the persons identified in LC 14.100(4) and, if applicable, notice required by LC 14.160. Persons receiving notice pursuant to LC 14.160 shall have 15 days following the date of postmark of the notice to file written objections as required by LC 14.160(1)(c). All other persons shall have 10 days from the date information is mailed to provide the Director with any comments or concerns regarding the proposed development. After the end of the applicable comment period, the Director shall complete the investigation report and mail notice of a decision or **elect to schedule the application for a Hearings Official evidentiary a**-hearing.

(4) Investigation and Reports. The Director shall make, or cause to be made, an investigation to provide necessary information to ensure that the action on each application subject to any review procedure of this chapter is consistent with the criteria established by this chapter and other chapters of Lane Code requiring the review. The report of such investigation shall be included within the application file and, in the event of a hearing, presented to the Approval Authority before or during the hearing.

(5) Timelines for Final Action. For development sites located within an urban growth boundary, except as provided in LC 14.050(5)(a) through (d) below, the Approval Authority shall take final action on an application for a permit, limited land use decision or zone change within 120 days after the application is deemed complete. For development sites located outside an urban growth boundary, except as provided in LC 14.050(5)(a) through (d) below, the Approval Authority shall take final action on an application for a permit, limited land use decision or zone change within 150 days after the application is deemed complete. Except when an applicant requests an extension under LC 14.050(5)(a) below, if Lane County does not take final action on such an application within the required 120 or 150 days after the application is deemed completed, Lane County shall refund to the applicant either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional Lane County land use fees or deposits for the same application incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application. Exceptions to the requirement to take final action on an application within 120 or 150 days are:

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Lane Code

14.070

(a) When an applicant waives or requests an extension of the required 120-day or 150-day period for final action. **The total of all extensions may not exceed 215 days.**

(b) When an application is for an amendment to an acknowledged comprehensive plan or land use regulation or adoption of a new land use regulation that was forwarded to the Director of the Department of Land Conservation and Development under ORS 197.610(1).

(c) When a decision is not wholly within the authority and control of Lane County.

(d) When parties have agreed to mediation as described in ORS 197.318(2)(b). *(Revised by Ordinance No. 16-83; Effective 9.14.83; 10-84, 9.8.84; 10-89, 10.4.89; 4-96; 11.29.96; 3-98, 7.8.98)*

**14.070 Notice Contents.**

(1) Notice of a decision by the Director pursuant to LC 14.100 below shall contain:

(a) Identification of the application by Department file number.  
(b) Identification of the contiguous property ownership involved by reference to the property address, if there is one, and to the Lane County Assessment map and tax lot numbers.

(c) Identification of the property owner and applicant.  
(d) An explanation of the nature of the application and the proposed use or uses that could be authorized by the decision.

(e) A list of the criteria from Lane Code and the comprehensive plan that apply to the application and decision.

(f) The name of the Department representative to contact and the telephone number where additional information may be obtained.

(g) A statement that the application, all documents and evidence relied upon by the applicant, and the applicable criteria are available for inspection at the Department at no cost and copies will be provided at reasonable cost.

(h) A statement that a copy of the staff report is available for inspection at no cost and copies will be provided at reasonable cost.

(i) Identification of whether the decision is to approve or deny the application, a disclosure of any conditions of approval and the time and date on which the decision shall become final unless appealed.

(j) The deadline for and manner in which an appeal of the decision may be made.

(k) A statement that failure of an issue to be raised in a hearing, in person or by writing, or failure to provide statements or evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals.

(l) The following statement, "NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST BE FORWARDED TO THE PURCHASER."

(2) Notice of a hearing pursuant to the procedure of LC 14.300 below shall contain:

(a) The information required by LC 14.070(1)(a) through (g) and (l) above.

(b) The time, date and location of the public hearing.  
(c) Identification of which Approval Authority will conduct the hearing.  
(d) Disclosure of the requirements of this chapter for the submittal of written materials prior to the hearing and a general statement of the requirements of this chapter for submission of testimony and the procedure for conduct of hearings.

(e) If the hearing is an appeal, identification of the appellant's name, if different than the property owner's name or applicant's name.

(f) A statement that failure of an issue to be raised in a hearing, in person or by writing, or failure to provide statements or evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals on that issue.

(g) A statement that at least seven days prior to the hearing a copy of the staff report for the hearing will be available for a free inspection at the Department and copies will be provided at a reasonable cost.

(3) Notice of a hearing pursuant to the procedures of LC 14.400 below shall contain:

(a) The information required by LC 14.070(2) above.  
(b) A statement regarding the purpose of the hearing and whether or not testimony will be limited to the record.

(c) The names of parties who may participate in the Board hearing.  
(d) Where to receive more information.

(4) The records of the Lane County Department of Assessment and Taxation shall be used for notice as required by this chapter to nearby property owners. Persons whose names and addresses are not on file at the time of the filing of the application need not be notified of the action. The failure of a property owner to receive notice shall not invalidate the action if the Director can demonstrate by affidavit of compliance that such notice was given. The Director shall cause to be filed certification of compliance with the notice provisions of this section.

(5) Notice of a hearing to be posted on the property shall meet the following requirements:

(a) The design and size of the signs shall be determined by the Director, but shall be at least 22 inches x 28 inches in size and have a brightly colored background.

(b) The sign shall identify the time, date and place of the public hearing.  
(c) The sign shall identify the Department file number.  
(d) The sign shall identify the general nature of the proposal.  
(e) The sign shall identify where more information may be received.

*(Revised by Ordinance No. 16-83; Effective 9.14.83; 10-89, 10.4.89; 4-96; 11.29.96)*

#### **14.100 Director Review Procedure.**

All applications subject to this subsection shall be reviewed as follows:

(1) Decision Deadline. Unless ~~the Director elects to conduct a hearing to review the application pursuant to LC 14.110 below, or unless~~ the Director elects to schedule the application for a hearing with the Hearings Official pursuant to LC 14.110 below, an application which has been accepted by the Director shall be acted upon within 21 days of the date the application was accepted. An application which has not been so acted upon may be appealed by the Applicant to the Hearings Official in the same manner as provided for in this chapter for appeals of Director decisions, except that there will be no fee charged for the appeal. The application processing timeline may be extended for a reasonable period of time at the request of the applicant.

(2) Director Review. The Director shall review the application and prepare a written investigation report. The Director may elect to schedule the application for a hearing with the Hearings Official ~~or to conduct an evidentiary hearing and to review the application~~ pursuant to LC 14.110 below.

(3) Director Decision. The Director shall determine if the evidence supports a finding that the required criteria have been met and shall approve, approve with conditions or deny the application. The Director's approval or denial shall be in writing, shall be based on factual information, and shall include express written findings on each of the applicable and substantive criteria.

(4) Notice. Within two days of the decision, the Director shall mail notice meeting the requirements of LC 14.070(1) above to the applicant, to all parties, to all neighborhood or community organizations recognized by the Board and whose boundaries include the site and to the owners of record of property on the most recent property tax assessment roll where such property is located:

(a) Within 100 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is wholly or in part within an urban growth boundary;

(b) Within 250 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is outside an urban growth boundary and not within a farm or forest zone;

(c) Within ~~750-500~~ feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is within a farm or forest zone. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 10-89, 10.4.89; 4-96; 11.29.96; 3-98, 7.8.98)*

#### **14.110 Director Elective Hearing Procedure.**

(1) Purpose. This section establishes the procedure and criteria which the Director shall follow in electing to have an evidentiary hearing for the application with the Hearings Official ~~or in electing for the Director to conduct an evidentiary hearing~~ for a land use application otherwise subject to review pursuant to LC 14.100 above without a hearing. The purpose of the evidentiary hearing by the ~~Director or~~ Hearings Official is to ~~help the Director or Hearings Official resolve unique land use issues by providing~~ **provide** interested persons with a hearing and an opportunity to contribute statements or evidence to the land use decision.

(2) Procedure.

(a) Where an application is subject to review by the Director without a hearing under LC 14.100 above, the Director may instead elect to ~~conduct an evidentiary hearing, or to~~ have an evidentiary hearing for the application with the Hearings Official, to review the application pursuant to LC 14.300 below.

(b) The evidentiary hearing by the ~~Director or~~ Hearings Official shall be scheduled for a date no later than 35 days from the date of application acceptance.

(c) At least 20 days in advance of the evidentiary hearing and before the end of the 21-day action period provided in LC 14.100(1) above, the Director shall provide the applicant with a copy of his or her written report that addresses compliance with LC 14.110(3) or (4) below and that identifies the hearing date.

(3) Director Hearing Criteria. An election by the Director to ~~conduct a Director~~ **have an** evidentiary hearing **for the application with the Hearings Official** must comply with one or more of the following criteria:

(a) An application raises an issue which is of countywide significance.

(b) An application raises an issue which will reoccur with frequency and is in need of policy guidance.

(c) An application involves a unique environmental resource based upon evidence provided by a state or federal agency, or by a private professional with expertise in the field of the resource of concern.

(d) An application involves an existing use with a compliance action pending against it and with neighborhood opposition against it.

(e) An application involves persons with opposing legal arguments regarding unresolved interpretations of applicable state laws or regulations.

(f) An application involves a contemplated use which would be a different kind of use than the uses of nearby properties and the owners of three or more nearby properties object to the use or request a hearing.

(g) An application involves a contemplated use which would result in any of the following offsite impacts based upon information provided to the Director: the introduction of new commercial or industrial traffic, or ongoing truck traffic, on local roads in a residential neighborhood; or the introduction of noise, odors or dust into a residential neighborhood.

(h) An applicant requests a hearing.

~~(4) Hearings Official Hearing Criteria. An election by the Director to have an evidentiary hearing for the application with the Hearings Official shall demonstrate that the application involves persons with opposing legal arguments regarding unresolved interpretations of applicable state laws or regulations.~~ *(Revised by Ordinance No. 4-96; Effective 11.29.96; 3-98, 7.8.98)*

#### **14.150 Limited Land Use Decision Procedure.**

Notwithstanding LC 14.100 above, all applications for Limited Land Use Decisions shall be reviewed as follows:

(1) Decision Deadline. An application which has been accepted by the Director shall be acted upon within 21 days of the date the application was accepted. An application which has not been so acted upon may be appealed by the applicant to the Hearings Official in the same manner as provided for in this chapter for appeals of Director decisions, except that there will be no fee charged for the appeal.

(2) Director Review. The Director shall review the application and related materials.

(3) Director Decision. The Director shall determine if the evidence supports a finding that the required criteria have been met and shall approve, approve with conditions or deny the application. The Director's approval or denial shall be in writing and shall include express written findings on each of the applicable and substantive criteria. A staff report shall not be required prior to the decision.

(4) Notice. Written notice shall be provided to owners of property within 100 feet of the entire contiguous site for which the application is made and to all neighborhood or community organizations recognized by the Board and whose boundaries include the site. The property owner's list shall be compiled from the most recent property tax assessment roll. At the time that notice is provided, the Director shall place in the record an affidavit or other certification that such notice was given. The notice and related procedures shall:

(a) Provide a 14-day period for submission of written comments prior to the decision.

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Lane Code

14.200

(b) State that issues which may provide the basis for an appeal to the Oregon State Land Use Board of Appeals shall be raised in writing prior to the expiration of the comment period. The notice shall state that issues must be raised with sufficient specificity to enable the Director to respond to each issue.

(c) List, by commonly used citation, the applicable criteria for the decision.

(d) Set forth the street address or other easily understood geographical reference to the subject property.

(e) State the place, date and time that comments are due.

(f) State that copies of all evidence relied upon by the applicant are available for review, and that copies can be obtained at cost.

(g) Include the name and phone number of a Lane County contact person.

(h) Provide notice of the decision to the applicant and any person who submits comments under LC 14.150(4)(a) above. The notice of decision must include an explanation of appeal rights.

(i) Briefly summarize the decision-making process for the limited land use decision being made. *(Revised by Ordinance No. 4-96, Effective 11.29.96)*

**14.160 Special Notice and Review Requirements for a Dwelling or Mobile Home Subject to Director Approval in the Exclusive Farm Use Zone, LC 16.212(3)(c).**

(1) When reviewing an application for a dwelling or mobile home conditionally permitted by LC 16.212(3)(c), the Director shall:

(a) In addition to the requirements of LC 14.050(3)(c), specify in the notice that "persons have 15 days following the date of postmark of the notice to file a written objection on the grounds only that the dwelling or mobile home, or activities associated with either residence, would force a significant change in or significantly increase the costs of accepted farming practices on nearby lands devoted to farm use."

(b) In addition to the persons identified in LC 14.100(4) above, notice shall be mailed to persons who have requested notice of such applications and who have paid a reasonable fee imposed by the County to cover the cost of such notice.

(c) If an objection received within 15 days of the notice specifies that the residence or activities associated with it would force a significant change in or a significant increase in the costs of accepted farming practices in nearby lands devoted to farm uses, the application shall then be set for hearing pursuant to LC 14.300. *(Revised by Ordinance No. 4-96, Effective 11.29.96)*

**14.200 General Hearing Rules.**

Review of applications or appeals subject to any of the public hearing procedures of this chapter shall also be subject to the following, general hearing rules:

(1) Procedures Directory. The procedures and the limits set forth in this chapter to be followed by the Approval Authority are directory and not mandatory, and failure to follow or complete the action in the manner provided shall not invalidate the decision.

(2) Burden of Proof. The burden of proof in a hearing shall be as allocated by law. In general, the burden shall be upon the proponent of the application, except that for an appeal on the record, the burden of proof shall be upon the appellant.

(3) Standards of Evidence.

(a) The Approval Authority may receive all evidence offered at a hearing, unless excluded by motion of the Approval Authority with a finding that such evidence is inconsistent with any of the provisions of this chapter.

(b) Evidence received at any hearing shall be of the quality that reasonable persons rely upon in the conduct of their everyday affairs.

(c) Evidence received at any hearing shall be made a part of the record for the application.

(d) No factual information or evidence not part of the record shall be considered in the determination or decision for the application.

(e) Documentary evidence may be received in the form of copies or excerpts.

(f) The Department's file for the application shall be considered part of the record before the Approval Authority.

(g) All Federal, State and local laws and regulations shall be considered part of the record before the Approval Authority.

(h) The Approval Authority may take notice of judicially cognizable facts, and he or she, or any member of the Approval Authority, may utilize his or her experience, technical competence and special knowledge in evaluation of the evidence presented at the hearing.

(i) Erroneous admission of evidence by the Hearings Official shall not preclude action by the Hearings Official or cause reversal upon appeal to the Board, unless shown to have substantially prejudiced the rights of a party.

(j) All documents or evidence relied upon by the Applicant shall be submitted to the Approval Authority.

(k) Upon request, the application file and all of its contents shall be made available to the public by the Department for inspection at no cost and copies will be provided at reasonable cost.

(4) Personal Conduct.

(a) No person shall be disorderly, abusive, or disruptive of the orderly conduct of the hearing.

(b) No person shall testify without first receiving recognition from the Approval Authority and stating his or her full name and address.

(c) No person shall present irrelevant, immaterial or unduly repetitious testimony or evidence. The rules of evidence of this chapter shall apply.

(d) Audience demonstrations such as applause, cheering and display of signs, or other conduct disruptive of the hearing shall not be permitted. Any such conduct may be cause for immediate suspension of the hearing.

(5) Ex Parte Contacts. The Approval Authority shall reasonably attempt to avoid:

(a) Communication, directly or indirectly, with any person or their representatives in connection with any issue involved, except upon notice and opportunity for all interested persons to participate. This disclosure rule applies to contacts with staff members as well as members of the public and is to be interpreted to provide full disclosure of prehearing considerations and posthearing predetermination discussion when arriving at a decision. A communication between County staff and the Planning Commission or Board shall not be considered an ex parte contact.

(b) Taking notice of any communications, reports, staff memoranda or other materials prepared in connection with the particular case, unless the interested persons are afforded an opportunity to contest the material so noted.

(c) Inspecting the site with any interested person, or his or her representatives, unless all interested persons are given an opportunity to be present. The circumstances of the inspection must be put into the record.

(6) Conflicts of Interest. No member of the Approval Authority shall participate in a hearing or a decision upon an application when he or she:

(a) Is a party to or has a direct personal or pecuniary interest in the proposal.

(b) Is in the business with the proponent, or

(c) For any other reason, has determined that he or she cannot participate in the hearing and decision in an impartial manner.

(7) Challenges for Bias. Any proponent or opponent may challenge the qualification of any member of the Approval Authority based upon the allegations that such a member has conflicts of interest or has had ex parte contacts which bias his or her judgment. The challenge must be in the form of a sworn affidavit and in writing and state the facts relied upon to support the allegation and shall be incorporated into the record of the hearing.

(8) Qualification of a Member of the Approval Authority Absent At a Prior Hearing. If a member of the Approval Authority has been absent from a prior public hearing on the same matter which is under consideration, that member shall be qualified to vote on the matter if he or she has reviewed the record of the matter in its entirety and announces, prior to participation that this has been done. If the member does not review the record in its entirety, that member shall not be qualified to vote and must abstain.

(9) Hearing Conduct Authority. In the conduct of a public hearing, the Approval Authority shall have the authority to:

(a) Regulate the course, sequence and decorum of the hearing.

(b) Dispose of procedural requirements or similar matters.

(c) Rule on offers of proof and relevancy of evidence and testimony. Irrelevant, unduly repetitious or immaterial or cumulative evidence may be excluded.

(d) Impose reasonable limitations on the number of witnesses heard and set reasonable time limits for oral presentation, cross-examination of witnesses and rebuttal testimony.

(e) Take such other action appropriate for conduct commensurate with the nature of the hearing.

(f) Grant, deny or, in appropriate cases, attach such conditions to the matter being heard or that may be necessary to comply with the applicable approval criteria or, in appropriate cases, formulate a recommendation for the Board.

(g) Continue the hearing to a date certain and for a period of time not to exceed 31 days from the date of the hearing being continued. No further notice need be given for continuance of a hearing to a date certain. In the event that the continuance is requested by the applicant, the applicant shall first agree to a waiver of any statutory timelines in which Lane County must expedite processing of the application, and such waiver shall be in addition to any other waivers of the statutory application processing timelines requested by the applicant.

(h) Allow the applicant to withdraw the application. Subsequent to the application withdrawal, any new application for the same property must be submitted and reprocessed in compliance with the provisions of this chapter.

(10) Record of Proceeding.

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14.300

Lane Code

14.300

(a) A verbatim record of the hearing shall be made by mechanical means. In all cases, the tape, transcript of testimony or other evidence of the hearing shall be part of the record.

(b) All exhibits received shall be marked so as to provide identification upon review.

(c) All actions taken by the Approval Authority pursuant to adopting findings and conclusions shall be made a part of the record. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 10-89, 10.4.89; 4-96; 11.29.96)*

**14.300 De Novo Hearing Procedure.**

All applications or appeals, unless otherwise specified, subject to this section shall be reviewed as follows:

(1) Hearing Deadlines.

(a) An appeal of a decision made without a hearing and pursuant to LC 14.100 above, and which has been accepted by the Director pursuant to LC 14.520 below, shall be scheduled for the next regularly scheduled hearing before the Hearings Official for appeals no sooner than 21 days from the date of acceptance of the appeal and no later than 35 days from the date that the appeal was accepted.

~~(b) An appeal of a decision made by the Director with a hearing pursuant to LC 14.300, and which has been accepted by the Director pursuant to LC 14.520 below, shall be scheduled for the next regularly scheduled hearing before the Hearings Official for appeals no sooner than 10 days from the date of acceptance of the appeal and no later than 28 days from the date that the appeal was accepted.~~

(be) An application for review by the Hearings Official, and which has been accepted by the Director, shall be scheduled for the next regularly scheduled hearing for such review no sooner than 20 days from the date of application acceptance and no later than 35 days from the date of application acceptance.

(cd) An application for review by the Planning Commission and a subsequent action by the Board, if accepted by the Director, shall be scheduled as follows:

(i) The Planning Commission hearing shall be no sooner than 45 days from the date of application acceptance and no later than 60 days from the date of application acceptance.

(ii) The Board hearing shall be no sooner than 60 days from the date of application acceptance and no later than 75 days from the date of application acceptance.

(2) Publication of Notice. For a zone change application and/or plan amendment application, the Department shall cause to be published in a newspaper of general circulation, at least 210 days in advance of the hearing-, a notice of the hearing which contains the information required by LC 14.070(2) above.

(3) Mailing of Notice. ~~If the Approval Authority is the Director, then at least 20 days in advance of the hearing, the Director shall mail notice of the hearing which meets the requirements of LC 14.070(2) to the persons identified in LC 14.300(3)(a) through (f) below. If the Approval Authority for the hearing is the Hearings Official, and the hearing is to consider an appeal from a decision by the Director for which the Director held a hearing, then at least ten days in advance of the hearing the Director shall mail notice of the hearing which meets the requirements of LC 14.070(3) to the persons identified in LC 14.400(6) below. For any other hearing, Aat least 20 days in advance of~~

the hearing, the Director shall mail notice of the hearing which meets the requirements of LC 14.070(2) above to the persons identified in 14.300(3)(a) through (f) below.

- (a) The applicant;
- (b) The property owner, if different than the applicant;
- (c) The appellant, if there is one, and if the appellant is different than the applicant or property owner; and

(d) The owners of record of all property on the most recent property tax assessment roll where such property is located:

(i) Within 100 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is wholly or in part within an urban growth boundary;

(ii) Within 250 feet of the exterior boundaries of the contiguous property ownership which is the subject of the application, is outside an urban growth boundary and not within a farm or forest zone; or

(iii) Within ~~750~~ feet of the exterior boundaries of the contiguous property ownership which is the subject of the application if the subject property is within a farm or forest zone.

(e) All neighborhood or community organizations recognized by the Board and whose boundaries include the site.

(f) Any person who has made an appearance.

(4) Posting Notice. At least 14 days in advance of the hearing, for initial application reviews and not appeals of Director decisions, the Director shall cause notice to be conspicuously posted on one or more locations on the subject property, and such notice shall comply with LC 14.070(5) above.

(5) Challenges for Bias. Challenges for bias must meet the standards of LC 14.200(7) above and must be delivered to and received by the Director at least five days in advance of the hearing. The Director shall then, prior to the hearing, forward a copy of the challenge to the Approval Authority or member of the Approval Authority who is being challenged.

(6) Request for Interpretation of County Policy. When, prior to or in the course of a hearing, the Hearings Official finds that the case raises substantial question involving either the application or interpretation of a policy that has not been clarified in sufficient detail, the Hearings Official may submit that question of application or interpretation in written form to the Board for its determination. In the event the application or interpretation of policy is requested by the applicant, the applicant shall first agree to a waiver of any statutory timelines in which Lane County must expedite processing of the application, and such waiver shall be in addition to any other waiver of the statutory application processing timelines requested by the applicant.

The Board, at its discretion, may elect to accept or reject the Hearings Official's request. When such a question is accepted by the Board, those persons receiving notice of the Hearings Official hearing, the applicant and parties of record shall be notified that they may submit in writing their view as to what the policy application or interpretation should be. Such written views must be submitted to the Board and Department at least five days in advance of the Board's review of the request. Such persons shall restrict their statements to the issue of interpretation or application as stated by the Hearings Official and shall not present the Board with arguments or evidence immaterial to the determination sought, even though such evidence or argument may be relevant to the Hearings Official's final decision.

The Board shall render its written determination within 14 days after receipt of the question from the Hearings Official. Said decision shall be transmitted to the Hearings Official, who will then apply the interpretation to the application.

(7) Order of Procedure. In the conduct of a public hearing, and unless otherwise specified by the Approval Authority, the Approval Authority shall:

(a) Announce the nature and purpose of the hearing and summarize the rules for conducting the hearing, including a statement made to those in attendance that:

(i) Lists the applicable substantive criteria;  
(ii) States that evidence and testimony must be directed toward the criteria described in LC 14.300(7)(a)(i) above or other criteria in the comprehensive plan or land use regulations which the person believes apply to the decision; and

(iii) States that failure to raise an issue accompanied by statements or evidence sufficient to afford the Approval Authority and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based upon that issue.

(b) Announce to all persons present whether or not the hearing about to commence is their only opportunity to enter information into the record and whether or not only those persons who qualify as a party may appeal the Approval Authority's decision.

(c) Disclose any ex parte contacts. A communication between County staff and the Planning Commission or Board shall not be considered an ex parte contact.

(d) Call for abstentions based upon any conflicts of interest or biases due to ex parte contacts, and any member of the Approval Authority may respond to any challenges for bias meeting the standards of this chapter. No decision or action of the Planning Commission or Board shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the Planning Commission or Board, if the Planning Commission or Board member receiving the contact:

(i) Places on the record the substance of any written or oral ex parte communications concerning the decisions or action; and

(ii) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication is related.

(e) Request the Director to present his or her introductory report, explain any graphic or pictorial displays which are a part of the report, read findings and recommendations, if any, and provide such other information as may be requested by the Approval Authority.

(f) Allow the applicant to be heard first, on his or her own behalf, or by representative.

(g) Allow persons in favor of the applicant's proposal to be heard next.

(h) Allow other persons to be heard next in the same manner as in the case of the applicant.

(i) Upon failure of any person to appear, the Approval Authority may take into consideration written material submitted by such person.

(j) Allow the Director to present any further comments or information in response to testimony and evidence offered by any interested persons.

(k) Allow the applicant to rebut, on his or her own behalf or by representative, any of the testimony or evidence previously submitted.

(l) Conclude the hearing.

(m) Questions may be asked at any time by the Approval Authority. Questions by interested persons, or the Director, may be allowed by the Approval Authority upon request. Upon recognition by the Approval Authority, questions may be submitted directly to the persons being questioned. The persons questioned shall be given a reasonable amount of time to respond solely to the questions.

(n) An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the Approval Authority. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the Approval Authority and the parties an adequate opportunity to respond to each issue.

(o) If the hearing is an initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The Approval Authority shall grant such request by continuing the public hearing pursuant to LC 14.300(7)(o)(i) below or leaving the record open for additional written evidence or testimony pursuant to LC 14.300(7)(o)(ii) below.

(i) If the Approval Authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence and testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence or testimony for the purpose of responding to the new written evidence.

(ii) If the Approval Authority leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven days. Within 5 days from the close of the record, any participant may file a written request with the Approval Authority for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is timely filed, the Approval Authority shall reopen the record pursuant to LC 14.700(7)(o)(v) below.

(iii) A continuance or extension granted pursuant to LC 14.300(7)(o) shall be subject to the limitations of ORS 215.428 unless the continuance or extension is requested or agreed to by the applicant.

(iv) Unless waived by the applicant, the Approval Authority shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence.

(v) When the Approval Authority reopens the record to admit new evidence or testimony, including a response to new evidence allowed pursuant to LC 14.300(7)(o)(ii) above, any person may raise new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.

(p) At the conclusion of the hearing, the Approval Authority shall either make a tentative decision and state findings which may incorporate findings proposed by any person or the Director, or take the matter under advisement for a decision to be made at a later date. If additional documents or evidence are provided by any party, the Approval Authority may allow a continuance or leave the record open to allow a reasonable opportunity to respond. Any continuance or extension of the record requested by an applicant shall result in a corresponding extension of the time limitations of ORS 215.428. The Approval Authority may request proposed findings and conclusions from any person at the hearing. The Approval Authority, before finally adopting findings and conclusions, may circulate the same in proposed form to parties for written comment.

The written decision and findings shall be based on factual information, shall identify who has party status and shall be completed in writing and signed by the Approval Authority within 10 days of the closing of the record for the last hearing. A longer period of time may be taken to complete the findings and decision if the applicant submits a written request to the Approval Authority consenting and agreeing to a waiver of the 120-day or 150-day statutory time period for final action on the application equal to the amount of additional time it takes to prepare the findings.

(8) Decision and Findings Mailing. Within two days of the date that the written decision adopting findings is signed by the Approval Authority, the Director shall mail to the applicant, and all parties of record, a copy of the decision and findings; or if the decision and findings exceed five pages, the Director shall mail notice of the decision. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 10-89, 10.4.89; 4-96; 11.29.96; 3-98, 7.8.98)*

#### **14.400 On The Record Hearings Procedure.**

All appeals subject to this section shall be reviewed as follows:

(1) Review on the Record. The review of the decision by the Approval Authority shall be confined to the record of the proceeding before the previous Approval Authority except as provided in LC 14.400(2) and 14.400(3) below.

(2) Limited Additional Testimony. The Approval Authority may admit additional testimony and other evidence without holding a de novo hearing, if it is satisfied that the testimony or other evidence could not have been presented at the initial hearing. In deciding such admission, the Approval Authority shall consider:

- (a) Prejudice to parties.
- (b) Convenience or availability of evidence at the time of the initial hearing.
- (c) Surprise to opposing parties.
- (d) When notice was given to other parties of the intended attempt to admit the new evidence.
- (e) The competency, relevancy and materiality of the proposed testimony or other evidence.
- (f) Whether the matter should be remanded for a de novo hearing under LC 14.400(3) below.

(3) De Novo Hearing/Remand. The Approval Authority may elect to hold a de novo hearing or remand the appeal for a supplemental de novo hearing before the previous Approval Authority if it decides that the volume of new information offered by a party proceeding under LC 14.400(2) above would:

- (a) Interfere with the Approval Authority's agenda; or
- (b) Prejudice parties; or
- (c) If the Approval Authority determines that the wrong legal criteria were applied by the previous Approval Authority. On remand, the previous Approval Authority shall apply the procedures of LC 14.300 above. If an appeal is desired from the previous Approval Authority's decision on remand, the appropriate procedures of LC 14.500 below, for an appeal of a decision shall be followed.

(d) In the event that the remand is requested by the applicant, the applicant shall first agree to a waiver of any statutory timelines in which Lane County must expedite processing of the application, and such waiver shall be in addition to any other waivers of the statutory application processing timelines requested by the applicant.

(4) Hearing Deadlines. An appeal of a Hearings Official decision which has been reviewed by the Board pursuant to LC 14.600 below and for which an on the record

hearing has been approved, shall be heard by the Board within 14 days of the date of the decision by the Board to conduct the on the record hearing.

(5) Publication of Notice. For a zone change application, the Department shall cause to be published, at least 10 days in advance of the hearing and in a newspaper of general circulation, a notice of the hearing which contains the information required by LC 14.070(3) above.

(6) Mailing of Notice. At least 10 days in advance of the hearing, the Director shall mail notice of the hearing which meets the requirements of LC 14.070(3) above to:

- (a) The applicant;
- (b) The property owner, if different than the applicant;
- (c) The appellant, if the appellant is different than the applicant or property owner; and
- (d) All persons who qualified as parties at the hearing before the Hearings Official.

(7) Written Material. Unless otherwise specified by the Approval Authority, all written materials exceeding two pages in length and for submission into the record of the hearing or for consideration at the hearing must be submitted to and received by the Department at least five days in advance of the hearing. Upon request, the application file containing these materials shall be made available to the public by the Department. The Approval Authority may allow written materials to be submitted and received after this five-day deadline if:

- (a) The written materials are solely responsive to the written materials submitted at least five days in advance of the elective review for on- the-record appeal hearing and,
- (b) The responsive, written materials could not have been reasonably prepared and submitted at least five days in advance of the Board's elective review hearing and,
- (c) Copies of the written materials have been provided to all parties to the on-the-record appeal.

(8) Challenges of Bias. Challenges for bias must meet the standards of LC 14.200(7) above and must be delivered to and received by the Director at least five days in advance of the hearing. The Director shall then, prior to the hearing, forward a copy of the challenge to the Approval Authority or member of the Approval Authority who is being challenged.

(9) Order of Procedure. In the conduct of a hearing on the record, and unless otherwise specified by the Approval Authority, the Approval Authority shall:

- (a) Announce the nature and purpose of the hearing and summarize the rules for conducting the hearing.
- (b) Announce to all persons present that the hearing is on the record from the hearing of the previous Approval Authority, that only the persons identified in LC 14.600(4) will be allowed to participate in the on-the-record hearing, and that the issues discussed will be limited to those raised in the notice of appeal.
- (c) Disclose any ex parte contacts. A communication between County staff and the Board shall not be considered an ex parte contact.
- (d) Call for abstentions based upon any conflicts of interest or biases due to ex parte contacts, and any member of the Approval Authority may respond to any challenges for bias meeting the standards of this chapter. No decision or action of the Board shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the Board, if the Board member receiving the contact:

(i) Places on the record the substance of any written or oral ex parte communications concerning the decisions or action; and

(ii) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication is related.

(e) Request the Director to present his or her introductory report, explain any graphic or pictorial displays which are a part of the report, read findings and recommendations, if any, and provide such other information as may be requested by the Board.

(f) Allow the appellant to be heard first, on his or her own behalf or by representative.

(g) Allow the applicant, if different from the appellant to be heard next in the same manner as in the case of the appellant.

(h) Upon failure of any party to appear, the Approval Authority may take into consideration written material submitted by such party.

(i) Allow the appellant to rebut, on his or her own behalf or by representative, any of the arguments previously presented to the Approval Authority.

(j) Conclude the hearing.

(k) Questions may be asked at any time by the Approval Authority. Questions by the parties or Director may be allowed by the Approval Authority upon request. Upon recognition by the Approval Authority, questions may be submitted directly to the persons being questioned. The persons questioned shall be given a reasonable amount of time to respond solely to the questions.

(l) At the conclusion of the hearing, the Approval Authority shall either make a tentative decision and state findings which may incorporate findings proposed by any person or the Director, or may continue the hearing to a date certain. The Approval Authority may request proposed findings and conclusions from any party to the hearing. The Approval Authority, before finally adopting findings and conclusions, may circulate the same in proposed form to parties for written comment.

(10) Written Decision or Final Order. Upon the adoption of findings, the Approval Authority shall enter a written decision or final order affirming, reversing or modifying the decision of the previous Approval Authority. The decision or final order shall be based on factual information. The Director shall, within two working days of the date of the written decision or final order, mail a copy of the written decision or final order to all parties of record. (*Revised by Ordinance No. 16-83; Effective 9.14.83; 10-89, 10.4.89; 4-96; 11.29.96; 3-98, 7.8.98*)

#### **14.500 Appealable Decisions and Manner of Review.**

(1) Decisions made by the Director without an evidentiary hearing pursuant to LC 14.100 above may be appealed, and upon Director acceptance of an appeal, shall be reviewed by the Hearings Official with an evidentiary hearing pursuant to LC 14.300 above. ~~Decisions made by the Director with an evidentiary hearing pursuant to LC 14.100 above may be appealed, and upon Director acceptance of an appeal, shall be reviewed on the record by the Hearings Official pursuant to LC 14.400 above.~~

(2) Decisions by the Hearings Official pursuant to LC 14.300 or 14.400 above may be appealed to the Board. Upon Director acceptance of such an appeal, the Board may elect to hear or not hear the appeal, and shall follow LC 14.600 below in deciding whether or not to hear the appeal. Appeals heard by the Board shall be reviewed

according to LC 14.400 above. A decision on any application appealed to the Board shall become final upon signing of an order by the Board to not hear the appeal or specifying the final decision in an appeal the Board elected to hear. A decision not to hear an appeal shall affirm the appealed decision pursuant to LC 14.600(2)(d) below.

(3) Unless appealed, a decision on any application shall be final upon expiration of the period provided by this chapter for filing an appeal. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 4-96; 11.29.96; 3-98, 7.8.98)*

#### **14.510 Appeal Period.**

A decision by the Director or Hearings Official, once reduced to writing and signed, shall be appealed as provided in LC 14.500 above, within ~~120~~ days of the date of signing of the decision provided notice of the decision occurs as required by law. When the last day of the appeal period so computed is a Saturday, Sunday, a Federal or County holiday, or a day during which the Department is closed because of a temporary work furlough, the appeal period shall run until 5:00 o'clock p.m. on the next business day. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 4-96; 11.29.96)*

#### **14.515 Appeal Content Requirements.**

All appeals shall:

(1) Be submitted in writing to, and received, by the Department within the ~~120~~ day appeal period;

(2) Be accompanied by the necessary fee to help defray the costs of processing the appeal; and

(3) Be completed on the form provided by the Department, or one substantially similar thereto, and shall contain the following information:

(a) The name, address and telephone number of the person filing the appeal;

(b) How the person filing the appeal qualifies as a party;

(c) A reference to the Department file number for the application being considered with the appeal;

(d) An explanation with detailed support specifying one or more of the following as assignments of error or reasons for reconsideration;

(i) The Approval Authority exceeded his or her jurisdiction;

(ii) The Approval Authority failed to follow the procedure applicable to the matter;

(iii) The Approval Authority rendered a decision that is unconstitutional;

(iv) The Approval Authority misinterpreted the Lane Code or Manual, State Law (statutory or case law) or other applicable criteria;

(v) The Approval Authority rendered a decision that violates a Statewide Planning Goal (until acknowledgment of the Lane County Comprehensive Plan, or any applicable portion thereof has been acknowledged to be in compliance with the Statewide Planning Goals by the Land Conservation and Development Commission); or

(vi) Reconsideration of the decision by the Approval Authority in order to submit additional evidence not available at the hearing and addressing compliance with relevant standards and criteria.

(e) The position of the appellant indicating the issue raised in an ~~on-the-record appeal to the Hearings Official or~~ appeal to the Board was raised before the close

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FORMAT**

14.520

Lane Code

14.530

of the record at or following the final evidentiary hearing and whether the appellant wishes the application to be approved, denied or conditionally approved; ~~and~~

**(f) An election between the following two options:**

**(i) Request that the Board conduct a hearing on the appeal, or**

**(ii) Request that the Board not conduct a hearing on the appeal and deem the Hearings Official decision the final decision of the County. An appellant's election under this section shall constitute exhaustion of administrative remedies for purposes of further appeal of the County's final decision. The fee under this option shall not exceed the amount specified in ORS 215.416(11)(b); and**

**(g~~f~~)** The signature of the appellant. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 4-96; 11.29.96; 3-98, 7.8.98)*

**14.520 Director Review.**

Within two working days of the date that the appeal is received by the Department, the Director shall review the written appeal to determine if it was received within the ~~120~~ day appeal period and if it contains the contents required by LC 14.515 above. If it was not received within the appeal period or does not contain the required contents, within this same two day period, the Director shall reject the appeal and mail to the appellant the appellant's appeal submittal contents and a disclosure in writing identifying the deficiencies of content. The appellant may correct the deficiencies and resubmit the appeal if still within the ~~120~~ day appeal period. Appeals which are not so rejected by the Director shall be assumed to have been accepted. *(Revised by Ordinance No. 16-83; Effective 9.14.83)*

**14.525 Notice of Appeals ~~and~~ Review.**

Within two days of the date of acceptance of an appeal pursuant to LC 14.520 above, the Director shall mail notice of the appeal acceptance in compliance with the following:

(1) For an appeal of a decision by the Director ~~made without an evidentiary hearing pursuant to LC 14.300 above~~, notice of the appeal acceptance shall be mailed to the applicant, the applicant's representative, and to the appellant, if the appellant is different than the applicant. The notice shall disclose the tentative hearing date for the appeal and the requirements of this chapter for the submission of written materials prior to the hearing; **and**

~~(2) For an appeal of a decision by the Director that was made with an evidentiary hearing pursuant to LC 14.300 above, notice of the appeal acceptance shall be mailed to all persons who qualified as parties at the hearing with the Director. The notice shall disclose the tentative date on which the Hearings Official will hear the appeal and the requirements of this chapter for the submission of written materials prior to the hearing; and~~

**(2~~3~~)** For an appeal of a decision by the Hearings Official, notice of the appeal acceptance shall be mailed to all persons who qualified as parties at the hearing with the Hearings Official. The notice shall disclose the tentative date on which the Board will elect whether or not to consider the appeal. *(Revised by Ordinance No. 10-89, Effective 10.4.89; 4-96; 11.29.96; 3-98, 7.8.98)*

**14.530 Director Reconsideration.**

Within two working days of receipt of an appeal of a decision by the Director, the Director may affirm, modify or reverse the decision in compliance with the following:

(1) Affirmation. To affirm the decision, no action by the Director is necessary.

(2) Modification or Reversal. To modify or reverse the decision, the Director **must conclude that the final county decision can be made within the time constraints established by ORS 215.427(1) and** shall prepare a written modification or reversal of the decision, together with supporting findings and give notice pursuant to LC 14.100(3) and (4) above.

(3) **If the Director elects to reconsider a decision without being requested to do so by the appellant, that appellant shall not be required to pay a fee for a subsequent appeal of the Director's decision on reconsideration.** *(Revised by Ordinance No. 16-83; Effective 9.14.83)*

#### **14.535 Hearings Official Reconsideration.**

Within two working days of acceptance of an appeal of a Hearings Official's decision, the Director shall forward a copy of the appeal to the Hearings Official. The Hearings Official shall have full discretion to affirm, modify or reverse his or her initial decision and to supplement findings as necessary. When affirming, modifying or reversing the initial decision, the Hearings Official shall comply with either LC 14.535(1) or (2).

(1) Affirmation. Within seven days of receipt and acceptance of the appeal by the Director, if the Hearings Official wishes to affirm the decision without further consideration, the Hearings Official shall mail to the appellant and give to the Director written notice of his or her decision to affirm the original decision.

(2) Reconsideration. If the Hearings Official wishes to reconsider his or her decision, **the Hearings Official must conclude that a final County decision can be made within the time constraints established by ORS 215.427(1).** ~~A then—the~~ reconsideration shall comply with either LC 14.535(a), (b) or (c) below:

(a) On the Record. If the reconsideration is limited to the existing record, then within seven days of acceptance of the appeal, the Hearings Official shall develop a reconsideration decision and supplemental findings.

(b) Brief of Additional Issues. If the reconsideration is not limited to the existing record, and if the Hearings Official wishes to allow written materials to be submitted briefing additional issues, then the Hearings Official shall:

(i) Within seven days of acceptance of the appeal by the Director, mail notice to all persons who qualified as parties at the hearing or hearings for the decision which is being reconsidered. The notice shall disclose the limited issues to be addressed for the reconsideration and timelines for submittal of new materials and rebuttal by the applicant.

(ii) Within 14 days of the close of the hearing record, issue a decision and supplemental findings. The decision and findings shall be, within two working days of issuance, mailed to all persons mentioned in LC 14.535(2)(b)(i) above.

(c) Limited Hearings. If the reconsideration is not limited to the existing record and if the Hearings Official wishes to reopen the record and to conduct a hearing to address limited issues, then the Hearings Official shall:

(i) Within seven days of acceptance of the appeal by the Director, mail notice to all persons who qualified as parties at the hearing or hearings for the decision which is being reconsidered. The notice shall disclose the same information required by LC 14.070(3) above. LC 14.200 and LC 14.300 above shall be followed in the conduct of the hearing.

(ii) Within 10 days of the close of the hearing record, issue a reconsideration decision and supplemental findings, and within this same time period, mail copies of the decision and findings to persons who have qualified as parties.

**(3) If the Hearings Official elects to reconsider a decision without being requested to do so by an appellant, that appellant shall not be required to pay a fee for a subsequent appeal of the Hearings Official decision on reconsideration.**

~~(43)~~ Timeline Waiver. In the event a decision of the Hearings Official is being appealed by the applicant for the same application to be reconsidered by the Hearings Official, then to receive reconsideration by the Hearings Official, the applicant must first agree to a waiver of any statutory application timelines, and such a waiver shall be in addition to any other waivers already given.

~~(54)~~ Appeal of Reconsideration Decisions. Reconsidered decisions may be appealed to the Board within ~~120~~ days of the date of the decision and in the same manner as provided for appeals of Hearings Official decisions in LC 14.500 above. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 4-96; 11.29.96)*

### **14.600 Elective Board Review Procedure.**

(1) Purpose. This section establishes the procedure and criteria which the Board shall follow in deciding whether or not to conduct an on the record hearing for an appeal of a decision by the Hearings Official.

(2) Procedure.

(a) The Board shall determine whether or not they wish to conduct an on the record hearing for the appeal after an indication from the Hearings Official not to reconsider the decision and within 14 days of the expiration of the appeal period from the Hearings Official's decision.

(b) Within seven days of the determination mentioned in LC 14.600(2)(a) above, the Board shall adopt a written decision and order electing to have a hearing on the record for the appeal or declining to further review the appeal.

(c) The Board order shall specify whether or not the decision of the Board is to have a hearing on the record for the appeal and shall include findings addressing the decision criteria in LC 14.600(3) below. If the Board's decision is to have a hearing on the record for the appeal, the Board order shall also specify the tentative date for the hearing on the record for the appeal and shall specify the parties who qualify to participate in the hearing on the record for the appeal.

(d) If the decision of the Board is to not have a hearing, the Board order shall specify whether or not the Board expressly agrees with or is silent regarding any interpretations of the comprehensive plan policies or implementing ordinances made by the Hearings Official in the decision being appealed. The Board order shall affirm the Hearings Official decision.

(3) Decision Criteria. A decision by the Board to hear the appeal on the record must conclude **that a final decision by the Board can be made within the time constraints established by ORS 215.427(1) and that** the issue raised in the appeal to the Board could have been and was raised before the close of the record at or following the final evidentiary hearing. **The Board's decision to hear the appeal ~~and~~ must** comply with one or more of the following criteria:

(a) The issue is of Countywide significance.

(b) The issue will reoccur with frequency and there is a need for policy guidance.

(c) The issue involves a unique environmental resource.

(d) The Planning Director or Hearings Official recommends review.

(4) Participation Criteria. Persons who may participate in a Board on-the-record hearing for an appeal are:

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14.600

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14.600

- (a) The applicant and the applicant's representative.
  - (b) The Director.
  - (c) The appellant and the appellant's representative.
- (5) On the Record Appeal. If the Board's decision is to hear the appeal on the record, then such a hearing shall be:
- (a) Scheduled for a hearing date with the Board and within 14 days of the date of the Board's decision.
  - (b) Conducted pursuant to LC 14.200 and LC 14.400 above. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 10-89, 10.4.89; 4-96; 11.29.96)*