

ownership and which are intervened by a street (local access-public, County, State or Federal street) shall not be considered contiguous.

Department. The Department of Public Works.

Depth. The horizontal distance between the front and rear boundary lines measured in the mean direction of the side boundary lines.

Director. "Within the Department of Public works, the Director of the Planning Division or the Director's duly appointed representative."

Divide. To separate a tract or contiguous tracts of land under the same ownership into smaller tracts and different ownerships by deed, contract or lease; and when used herein refers collectively to partitions and subdivisions. To divide land shall not include the following:

(1) Leasing or financing of apartments, offices, stores, or similar spaces within an apartment building, industrial building or commercial building.

(2) Renting or leasing of spaces within a mobile home park, vacation (recreational) trailer park, motel, tourist court, campground or industrial development.

(3) Minerals, oil or gas leases.

(4) A lease for agricultural purposes.

(5) Foreclosures of liens.

(6) Foreclosures of recorded contracts for the sale of real property.

(7) The creation of cemetery lots.

(8) Any adjustment of a property boundary line where an additional parcel of land is not created and where the existing tract of land reduced in size by the adjustment is not reduced below the minimum area requirements of the applicable zoning.

(9) The transfer of ownership of a lot or parcel in an approved and recorded subdivision plat or partition map.

Flood or Flooding. A general or temporary condition of partial or complete inundation of normally dry land areas from the inland or tidal waters from any source.

Floodplain. A physical geographic term describing any land area susceptible to being inundated by water from any source.

Floodway, Regulatory. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the waters of a base flood without cumulatively increasing the water surface elevation.

Improvement Agreement. An agreement that under prescribed circumstances may be used in lieu of required improvements of a performance agreement. It is a written agreement that is executed between the County and a developer; in a form

approved by the Board of County Commissioners, in which the developer agrees to sign at a time any and all petitions, consents, etc., and all other documents necessary to improve an abutting road or other required improvements to County standards and to waive all rights or remonstrances against such improvements, in exchange for which the County agrees that the execution of the improvement agreement will be deemed to be in compliance with the improvement requirements of the Code.

Lot. A unit of land that is created by a subdivision of land.

Map, Partition. A final diagram and other documentation relating to a major or minor partition.

Panhandle. A narrow extension of a tract, 60 feet or less in width, which is used as access to the main portion of the tract.

Parcel. A unit of land that is created by a partitioning of land.

Partition. Either an act of partitioning land or an area or tract of land partitioned. Partitions shall be divided into the following two types:

(1) Major Partition. A partition which includes the creation of a road.

(2) Minor Partition. A partition that does not include the creation of any road.

Partition Land. Divide an area or tract of land into two or three parcels within a calendar year when such area or tract of land exists as a unit or contiguous units of land under single ownership at the beginning of such year.

Performance Agreement. A written agreement executed by a subdivider divider or partitioner in a form approved by the Board and accompanied by a security also approved by the Board. The security shall be of sufficient amount to ensure the faithful performance and completion of all required improvements in a specified period of time.

Plat. A final diagram and other documents relating to a subdivision.

Road. The entire right-of-way of any public or private way that provides vehicular ingress and egress from property or provides travel between places by vehicles.

Sewerage Facility or Sewage Facility. The sewers, drains, treatment and disposal works and other facilities useful or necessary in the collection, treatment or disposal of sewage, industrial waste, garbage or other wastes.

(1) Sewerage Facility, Community. A sewerage facility, whether publicly or privately owned, which serves more than one parcel or lot.

(2) Sewerage Facility, Individual. A privately owned sewerage facility which serves a single parcel or

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lot for the purpose of disposal of domestic waste products.

(3) Sewerage Facility, Public. A sewerage facility, whether publicly or privately owned, which serves users for the purpose of disposal of sewage and which facility is provided, or is available, for public use.

Street. The term is synonymous with "road".

Subdivide Land. To divide an area or tract of land into four or more lots within a calendar year when such area or tract of land exists as a unit or contiguous units of land under a single ownership at the beginning of such year.

Subdivision. Either an act of subdividing land or an area or a tract of land subdivided as defined in this section.

Tract. A lot, parcel or unsubdivided or unpartitioned land under the same ownership. Contiguous units of unsubdivided or partitioned land under the same ownership shall be considered a single tract.

Width. The horizontal distance between the side boundary lines measured in the mean direction of the front and rear boundary lines.

13.050 General Requirements and Standards of Design and Development for Preliminary Plans. The following are the requirements to which the preliminary plan of a subdivision or partition must conform.

(1) Conformity with the Comprehensive Plan. All divisions shall conform with the Comprehensive Plan for Lane County and the following city comprehensive plans:

(a) The comprehensive plan for a small city, if the division site is within an urban growth boundary but outside the city limits. Such small cities are:

- (i) Cottage Grove
- (ii) Creswell
- (iii) Oakridge
- (iv) Lowell
- (v) Coburg
- (vi) Junction City
- (vii) Veneta
- (viii) Florence
- (ix) Dunes City

(b) The Eugene-Springfield Metropolitan Area Plan and any applicable Special Purpose/Functional Plan or Neighborhood Refinement/Community Plans, if the division site is within the plan boundaries but outside the limits of either city.

(2) Conformity with the Zoning. All divisions shall comply with all specifications of the applicable zoning requirements in Lane Code, including uses of land, area and dimension requirements, space for off street parking landscaping and other requirements as may be set forth.

(3) Relation to Adjoining Road System. A subdivision or partition shall provide for the continuation of major and secondary roads existing in adjoining subdivisions or partitions, or for their proper projection when adjoining property is not subdivided or partitioned, and such streets shall be of a width not less than the minimum requirements for roads set forth in LC Ch 15. Where the Approving Authority determines that topographic conditions make such continuation or conformance impractical, exceptions may be made as provided in LC 13.080.

(4) Redevelopment Plan.

(a) In subdividing or partitioning tracts of land into large lots which at some future time could be further divided, the Director may require that parcels, lots or blocks shall be of such size and shape, be so designed and meet such building site restrictions as will provide for extension and opening of streets at intervals which will permit a subsequent division of any parcel or lot into smaller sizes which shall have the minimum lot frontage on a street.

(b) Any person dividing tracts of land into large parcels or lots which at some future time could be further divided and still meet the minimum area requirement of the zone in which the land is located, shall provide suitable road access to each created parcel or lot so that the future development of each parcel or lot shall provide access for redevelopment parcels or lots.

(c) The County may require that special development recommendations and/or restrictions on the location of buildings be made a matter of public record when it is deemed necessary to ensure that redivision may take place in conformity with the purpose of this Chapter. If the restrictions are considered permanent, they may be recorded by separate document.

(d) Redevelopment plans may be required to show compliance to LC 13.050(4)(a), (b) & (c) above prior to preliminary approval.

(5) Access.

(a) Lots or parcels shall have verifiable access by way of a street, either County, local access - public or an easement. Verifiable access shall meet the following criteria:

(i) Each lot or parcel abuts on the street for a distance of at least 20 feet.

(ii) There is a legal right appurtenant to the lots or parcels to use the road for ingress and egress. A legal right to use an easement may be evidenced by: 1) an express grant or reservation of an easement in a document recorded with the County Recorder, 2) a decree or judgment issued by a court of competent jurisdiction, 3) an order of the Board establishing a statutory way of necessity or gateway road, or 4) an express easement set forth in an approved and recorded subdivision or partition.

(iii) The street provides actual physical access to the lots or parcels.

(b) County and local access - public streets used as access to lots or parcels shall be designed and developed according to the standards of LC Ch 15 and LM Ch 15.

(c) Easements used as access to lots or parcels shall meet the following criteria:

(i) There shall be no more than four lots, parcels or unsubdivided or unpartitioned tracts of land accessed by any portion of the easement, except that more than four lots in a cluster subdivision may be accessed by an easement. This restriction may be modified through compliance with the variance section of this Chapter.

(ii) Easements shall not be approved if the road is presently needed or is likely to be needed for access to adjacent properties or to be utilized for a County or public road in the normal development of the area.

(iii) The minimum width of easements shall be 20 feet.

(iv) All approved documents creating a private access easement shall provide for the installation, construction maintenance thereof of all public utilities and facilities which are now or may in the future be needed for the area abutting the road and the surrounding area.

(v) The County may require such improvements as are reasonably necessary to provide safe and adequate access to the lot or parcel.

(vi) A lot or parcel abutting a railroad or limited access road right-of-way may require special consideration with respect to its access requirements.

(vii) Any easement approved as a private access easement shall be documented on a form acceptable to the Department and shall contain the minimum

following information: grantor and grantee; description of dominant and servient tenements, description of the intent or purpose of the easement and a statement of maintenance responsibility.

(viii) All approved easements shall be recorded.

(ix) If the County determines that the access and transportation needs of the public would be better served if the private access easement being considered would be established as a public road, it may require that a public road dedication be made to a length and width deemed sufficient by the Department of Public Works.

(d) For the portion of a panhandle tract used as access to the main portion of the tract, the County may require such road improvements and design as are necessary to provide safe and adequate access to the main portion of the tract.

(6) Control Strip. The County may require that a strip of land contiguous to a road be dedicated or deeded to the public for the purpose of controlling access to or the use of a lot or parcel for any of the following reasons:

(a) To prevent access to abutting land at the end of a road in order to assure the proper extension of the road pattern and the orderly division of land lying beyond the road.

(b) To prevent access to the side of a road where additional width or improvement is required or future partition or subdivision action is needed.

(c) To prevent access to the side of a road from abutting property that is not part of the division until proportional road construction costs are conveyed to the appropriate developer. The proportional road construction costs must be computed by a licensed engineer and approved by the Department of Public Works. The agreement must be recorded and will not be valid after a period of 10 years.

(d) To prevent access to land unsuitable for development.

(e) To prevent or limit access to roads classified as arterials and collectors.

(7) Utility and Watercourse Easements.

(a) Utility Easements. The dedication of easements for the placement of overhead or underground utilities, including, but not limited to, electric power, communication facilities, sewer lines, water lines and gas lines shall be required where necessary. Such easements shall be clearly labeled for their intended purpose on all maps and plats and may be located along or

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centered on parcel or lot lines or elsewhere as determined necessary by the County to provide needed facilities for the present or future development of the area.

(b) Watercourses. When a partition or subdivision is traversed by a watercourse, such as a drainage way, channel or stream, there shall be provided a storm water or drainage easement conforming substantially with the lines of the watercourse, and of such design and development as may be deemed necessary to accommodate reasonable anticipated future development within the drainage area.

(8) Pedestrian and Bicycle Ways. When necessary for public convenience, safety, or as may be designated on an adopted master bike plan, the County may require that pedestrian or bicycle ways be improved and dedicated to the public. Such pedestrian and bicycle ways may be in addition to any standard sidewalk requirements of Lane Code, Chapter 15, Roads. Pedestrian and bicycle ways shall be not less than six feet in width and be paved with asphaltic concrete or portland cement concrete.

(9) Dangerous Areas. Any area determined by the Director to be dangerous for road or building development by reasons of geological conditions, unstable subsurface conditions, groundwater or seepage conditions, floodplain, inundation or erosion or any other dangerous condition shall not be divided or used for development, except under special consideration and restriction. Special consideration and restriction shall consist of a detailed report by a professional engineer stating the nature and extent of the hazard and recommending means of protecting life and property from the potential hazard and/or the County shall impose limitations designed to minimize the known danger on development commensurate with the degree of hazard. Areas of erosion or potential erosion shall be protected from loss of soil and vegetative cover by appropriate means which are compatible with the environmental character, such as restricting grading or building or constructing erosion control devices. Areas of flood plains, water areas and wetlands shall be retained in their natural state to the extent practicable to preserve water quality and protect water retention, overflow and natural functions. Structures will be required to maintain a flood elevation consistent with LC 11.500 (Flood Hazard Area). Areas of unstable surface or subsurface conditions shall be protected from movement by appropriate means which are compatible with environmental character, such as restricting grading or building or constructing suitable structures. Areas which are located within a designated floodway, unless a permit pursuant to LC 11.525 has been granted, shall be restricted from any building development or the installation of any permanent structure. The County may require that special

development recommendations and/or restrictions as to location of building or other development be made a matter of public record when it is deemed necessary to ensure proper disposition of the dangerous area. If the restrictions are considered permanent, they shall be shown on the plat or map, and if temporary in nature, shall be recorded by separate document by the partitioner or subdivider prior to the recording of the plat or map.

(10) Grading, Excavation and Clearing. Grading and clearing of any portion of a division by mechanical equipment for road and/or development purposes may be restricted or regulated either at the time of tentative plan approval or final approval if there is a finding that such grading or clearing presents a real threat of pollution, contamination, silting of water bodies or water supplies, erosion and slide damage, or alteration of natural drainage patterns in the area. In all cases, excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and erosion control. The character of soils for fills and the characteristics of parcels or lots made usable by means of fill shall be suitable for the intended purpose.

(11) Land for Public Purpose. When a public agency has demonstrated through a capital improvement program that it has definite plans to acquire a specified portion of a proposed division for a needed public use, and there is reasonable assurance demonstrating that steps will be taken within 90 days of preliminary approval to acquire the land, then the County may require that those portions of the division be reserved for public acquisition for a period not exceeding 90 days from the date of preliminary approval.

(12) Sewerage Facilities. Lots and parcels for which the applicable zoning districts permit residences, or for which residences are contemplated, shall be served by either an approved public or community sewerage facility or be suitable for an approved individual sewage disposal facility. Methods of sewage disposal shall be in accordance with and subject to the applicable provisions of ORS; appropriate rules, regulations and policies promulgated under authority of ORS; and all appropriate County ordinances and policies.

(a) Public or Community Sewerage Facilities.

(i) When lots or parcels are located within a reasonable distance of an existing satisfactorily operating and available sewerage system, and it is practical and feasible to connect with and be sewered by said system, the lots or parcels shall connect to the system. Should the existing facilities be unable to service the lots or parcels, individual sewage dis-systems may be considered as an interim measure if soil and other conditions are suitable for their use. If conditions pertaining to the ability of the public or community sewage

facility allow connection at a later date, connection will be required under the following circumstances: a public health hazard exists as defined by OAR Chapter 340-71-130(3), if the reason for not connecting to the public or community system were because of insufficient capacity of the public or community sewerage facility and these conditions cease to exist or if the reason for not connecting to the public or community system is based on engineering considerations such as pumping requirements and gravity sewers become available.

(ii) When a new public or community sewerage system is proposed for the division, there shall be submitted for approval a master plan for the sewage collection and disposal system to Lane County and the State Department of Environmental Quality. The master plan shall include at least the following: a conceptual plan for sewage collection, treatment and disposal facilities, including preliminary design of sewer lines, treatment units and final disposal, a conceptual plan for providing that the system be under the control of a city or other legal entity which has been formed in compliance with ORS, Chs 450 or 451 or a preliminary economic feasibility report.

(iii) If the lots or parcels are located within an area with an adopted detailed master sewage plan showing the location and depth of community sewers and proposed construction schedule which will eventually serve the lots or parcels, then the applicant shall provide detailed plans, schedule, a cost estimate prepared by a registered professional engineer and a bond to cover these estimated costs. The subject Plan and cost estimate shall have been approved by the Oregon Department of Environmental Quality and Lane County. Individual sewage facilities will be allowed on an interim basis until the system is connected to the community system as approved by the above plan and schedule.

(b) Individual Sewage Facilities. When lots or parcels are to be served by individual sewage disposal systems, there shall be furnished reasonable proof that each proposed parcel or lot can accommodate an individual sewage disposal system and at least one acceptable replacement area which meets the criteria established by OAR, Chs 340-71-005 to -45. If the individual sewage disposal system and replacement area are to be located partially or wholly off of the lot or parcel for which the

system and replacement area are designed to serve, then a variance must first be applied for and may be approved if in compliance with the variance section of this Chapter.

(13) Water Supply. Lots and parcels shall be served by an approved public, community or individual water system. No construction or development work on proposed lots or parcels shall be started until information pertaining to water availability and quality is submitted to and approved by the Department. Water system shall be in accordance with and subject to applicable provisions of ORSs, as well as all appropriate rules, regulations and policies promulgated under authority of these statutes, Lane Code and Manual.

(a) Public or Community Water System. The County may require that a new community or public water system be developed to serve lots or parcels when no existing public or community water system is available or suitable for use by the lots or parcels, and individual water systems are not feasible due to the density of the lots or parcels and/or the possibility of problems concerning the long term availability of adequate quantities of suitable water. Aquifer and quality tests as discussed in LC 13.050(13)(c) below shall be required.

(b) Individual Water Systems. When lots or parcels are to be served by individual water systems, sufficient evidence shall be submitted to show that each parcel or lot will have available at time of development an adequate supply of potable water which will meet minimum County standards for drinking water. Aquifer and quality tests as discussed in LC 13.050(13)(c) below may be required.

(c) Aquifer and Quality Tests or Geological Evaluation. Aquifer and quality tests or geological evaluation may be required by Lane County for any lot or parcel. These requirements may include, but need not be limited to, evaluation of existing well logs and preparation of a geological report on the area, an evaluation of the site by a professional geologist or engineering geologist or full scale aquifer tests as required. In determining the detail of analysis required, the following apply:

(i) Areas designated by Board order as having problems in the quantity or quality of available water as adopted, documented in Lane Manual and filed in the office of the Department shall meet the following requirements for all parcels less than 20 acres in size. The applicant must affirmatively demonstrate, in a manner acceptable to Lane County, that the proposed subdivision/partition is capable of sustaining the development anticipated with

sufficient potable water. This demonstration must include, but need not be limited to, aquifer tests. More specifically, the aquifer test shall show coefficient of transmissivity, permeability, storage and the specific yield. The bacteriology/chemical tests shall show compliance with standards set by the Oregon State Health Division and Lane County. The test procedure shall utilize standard acceptable practices for aquifer tests using pumped and observation wells and records of static water level, date, clock, elapsed time (in min.), depth of water, drawdown and recovery. Analysis using the non-equilibrium method (or other methods where appropriate) must be performed by a licensed geologist or engineer. A copy of all field notes and test results shall be submitted with the report, together with summary statements which indicate whether the proposed use of the aquifer could adversely impact the neighboring wells or properties or deplete the aquifer and the general impact of the proposed use.

(d) For all areas not designated as problem areas by the procedures documented in LC 13.050(13)(a) above, a pump test report or a well log report shall be supplied, unless determined by Lane County to be not necessary. Pump test and well log reports shall be prepared according to the following criteria:

(i) Pump Test. The test shall be a minimum five hour pumping duration and record the following information: static water level; pumping level; drawdown; recovery; residual drawdown, well yield (pumping rate) and specific capacity. Measurements shall be made before pumping begins, during the pumping phase and during the recovery phase as necessary.

(ii) Well log reports shall include a tax map showing the subject property and surrounding area, all well logs of record from adjacent and surrounding properties and the location of the wells on the tax lot map.

(14) Additional Cluster Subdivision Requirements.

(a) The land in a cluster subdivision not platted as a building lot shall be secured and maintained as private open space and recreation area by covenant or association prepared by the applicant and approved by Director or County Counsel. Said approved covenant shall be recorded with and referenced on the cluster subdivision plat.

(b) The largest lot in a cluster subdivision, if platted as a mobile home or dwelling lot, shall be restricted from further development, unless future zoning and/or changes in the comprehensive plan increase the density allowed for the overall cluster subdivision. Said restriction shall be in the form of a covenant prepared by the applicant and approved by the Director or County Counsel, and recorded with and referenced on the cluster subdivision plat.

(c) The type and number of living units intended for each cluster subdivision lot shall be specified in the covenants, and each lot shall be restricted from an increase in the number of living units, unless the future zoning and/or changes in the comprehensive plan increase the density allowed for the overall subdivision and unless new cluster subdivision plans are submitted and approved. Said restriction shall be in the form of a covenant prepared by the applicant and approved by the Director or County Counsel, and recorded with and referenced on the cluster subdivision plat.

13.100 Application Requirements for Preliminary Partition Plans.

(1) An application for preliminary partition approval shall be filed with the Department pursuant to LC 14.050.

(2) The application shall be accompanied by 12 copies of the preliminary partition plan.

(3) Preliminary partition plans shall show all required information and shall be clearly and legibly drawn to a scale sufficient enough to enable the approving authority to have an adequate understanding of what is proposed. The following information is required on a preliminary partition plan:

(a) North point, scale and date of the preliminary plan.

(b) Appropriate identification clearly stating the drawing is a preliminary partition plan.

(c) Names and addresses of the landowners, applicant and the engineer, surveyor, land planner, landscape architect or any other person responsible for designing the preliminary plan.

(d) The map number (township, range and section) and tax lot number of the tract being divided.

(e) The boundary lines of the tract to be divided and approximate acreage of the property

(f) For partitions of land within an adopted urban growth boundary, contour lines sufficient to show the direction and general grade of land slope having the following intervals:

- (i) One-foot contour intervals for ground slopes up to 5%.
- (ii) Two-foot contour intervals for ground slopes between 5% and 10%.
- (iii) Five-foot contour intervals for ground slopes exceeding 10%.
- (g) The names of adjacent subdivisions and the names of recorded owners of adjoining parcels of unsubdivided land. The records of the Department of Assessment and Taxation may be used for this purpose.
- (h) The approximate location, widths and names of existing or platted streets or other public ways (including easements) within in or adjacent to the tract, existing permanent buildings, and any addresses for the buildings, railroad rights-of-way and other important features such, as section lines, political subdivision boundary lines and school district boundaries.
- (i) The approximate location of existing sewerage systems for the tract being divided, the approximate location of water mains, culverts, drainage ways or other underground utilities or structures within the tract or immediately adjacent thereto.
- (j) Approximate location, acreage and dimensions of parcels of land to be dedicated for public use or reserved in the deeds for the common use of property owners in the property being divided, together with the purpose of conditions or limitations of such reservations, if any.
- (k) Proposed plan, if any, for draining surface water from the development.
- (l) The proposed street pattern or layout showing the name and widths of proposed streets and alleys.
- (m) Easements, together with their dimensions, purpose and restrictions on use.
- (n) Proposed means and location of sewage disposal and water supply systems.
- (o) Proposed parcels, approximate dimensions, size and boundaries. Residential parcels shall be numbered consecutively. Parcels that are to be used for other than residential purposes, shall be identified with letter designations.
- (p) Sites, if any, for residences.
- (q) Parks, playgrounds, recreation areas, parkways and open space for public use, clearly identified.
- (r) Predominant natural features, such as water courses and their flows, marshes, rock outcropping and areas subject to flooding, sliding or other natural hazards.

(4) A draft of any existing or proposed restrictions or covenants affecting the property shall accompany the application.

13.105 Application Requirements for Preliminary Subdivision Plans.

(1) An application for preliminary subdivision approval shall be filed with the Department pursuant to LC 14.050.

(2) The application shall be accompanied by 12 copies of the preliminary subdivision plan.

(3) Preliminary subdivision plans shall show all required information and shall be clearly and legibly drawn to a scale sufficient enough to enable the approving authority to have an adequate understanding of what is proposed. The following information is required on a preliminary subdivision plan:

(a) The proposed name of the subdivision.

(b) North arrow, scale and date of the preliminary plan.

(c) Appropriate identification clearly stating the drawing is a preliminary subdivision plan.

(d) Names and addresses of the landowners, applicant and the engineer, surveyor, land planner or landscape architect responsible for designing the preliminary plan.

(e) The map number (township, range and section) and tax lot number of the tract being divided.

(f) The boundary lines of the tract to be divided and approximate acreage of the property.

(g) For subdivisions of land within an adopted urban growth boundary, or for cluster subdivision lots of five acres or less, contour lines sufficient to show the direction and general grade of land slope having the following intervals:

(i) One-foot contour intervals for ground slopes up to 5%.

(ii) Two-foot contour intervals for ground slopes between 5% and 10%.

(iii) Five-foot contour intervals for ground slopes exceeding 10%.

(h) The names of adjacent subdivisions and the names of recorded owners of adjoining parcels of unsubdivided land. The records of the Department of Assessment and Taxation may be used for this purpose.

(i) The approximate location, widths and names of existing or platted streets or other public ways (including easements) within or adjacent to the tract, existing permanent buildings and any addresses for the buildings, railroad rights-of-way and other important features such as section lines, political subdivision boundary lines and school district boundaries.

(j) The approximate location of existing sewerage systems for the tract being divided, the approximate location of water mains, culverts, drainage ways or other underground utilities or structures within the tract or immediately adjacent thereto.

(k) Approximate location, acreage and dimensions of land to be dedicated for public use or reserved in the deeds for the common use of property owners in the property being divided; together with the purpose of conditions or limitations of such reservations, if any.

(l) Proposed plan for draining surface water from the development.

(m) The proposed street pattern or layout showing the name and widths of proposed streets and alleys.

(n) Easements, together with their dimensions, purpose and restrictions on use.

(o) Proposed means and location of sewage disposal and water supply systems.

(p) Proposed blocks, numbered in consecutive order.

(q) Proposed lots, approximate dimensions, size and boundaries. Residential lots shall be numbered consecutively. Lots that are to be used for other than residential purposes shall be identified with letter designations.

(r) Sites, if any, for residences.

(s) Parks, playgrounds, recreation areas, parkways, and open space for public use, clearly identified.

(t) Predominant natural features such as water courses and their flows, marshes, rock outcropping and areas subject to flooding, sliding or other natural hazards.

(u) For a cluster subdivision, the general location and type of proposed structures, and the area, uses and location of any common open space that will be provided at each stage.

(4) For a subdivision which is not a cluster subdivision, a draft of any proposed restrictions or covenants affecting the property shall accompany the application.

(5) An application for a cluster subdivision shall be accompanied by one copy of a written statement composed of the following information:

(a) A tabulation of land area to be devoted to various uses and a calculation of the average residential density per net acre.

(b) An explanation of the character of the cluster subdivision, the organization proposed to own and maintain any common areas and facilities and the type of ownership of individual units or spaces.

(c) Drafts of proposed covenants, deed restrictions and other documents relating to the dedication, improvements and maintenance of any common and private areas or facilities.

(d) Where the common area and/or open space in a cluster subdivision is not proposed to be graphically designated on a subdivision plat, the draft covenants and restrictions and conditions for a cluster subdivision shall include a Preliminary Development Plan of the entire property. The Development Plan shall include, at a minimum, the following information:

(i) Existing contours and proposed contours after development at intervals of:

(1) One foot for ground slopes of less than 5% or spot elevations and drainage features.

(2) Two feet for ground slopes between 5% and 10%.

(3) Five feet for ground slopes in excess of 10%.

(ii) Approximate location, arrangement and dimensions of proposed streets, driveways, sidewalks, pedestrian ways, trails, bikeways, off-street parking and loading areas.

(iii) Approximate location and dimensions of open space, common areas and dedicated properties.

(iv) Proposed drainage, water and sanitary systems and facilities, as required.

(v) Location, character and type of signs and lighting facilities.

13.110 Development Phasing.

(1) A subdivision may be completed in as many as three phases. Phase I may be completed as a partition or subdivision, depending upon the number of subunits of land included in this phase. Phases II and III must be completed as subdivisions. The preliminary subdivision plan must show each phase and be accompanied by time limitations for each phase.

(2) If the preliminary plan provides for development in more than one phase, it must be accompanied by an explanation of why the phasing is necessary and how it can be completed within the proposed time limitations.

(3) Time limitations for the various phases must meet the following requirements:

(a) Phase I requirements for final approval shall be completed within two years of preliminary approval.

(b) Phase II requirements for final approval shall be completed within three years of preliminary approval.

(c) Phase III requirements for final approval shall be completed within four years of preliminary approval.

13.120 Criteria for Approval of Preliminary Plans.

A decision on the preliminary plan shall be subject to Director approval pursuant to LC 14.100.

13.130 Duration of Preliminary Plan Approval.

(1) Approval of a preliminary partition or subdivision plan shall be valid for two years from the date of approval of the preliminary plan, provided that if approval of a preliminary subdivision plan provides phase development, the approval shall be valid for the time specified for each phase, subject to the limitations of LC 13.110.

(2) If any time limitations are exceeded, approval of the preliminary partition or subdivision plan, and any subsequent subdivision phases, shall be void, unless extended. Any subsequent proposal by the applicant for division of the property shall require new action by the Director pursuant to LC 14.100.

13.200 Granting of Extensions.

(1) Approval Authority. An extension to an approved preliminary partition or subdivision plan, or to a phased development to an approval preliminary subdivision plan, is a routine administrative action approvable by the Director.

(2) Criteria for Approval of Extensions.

(a) The applicant shall have made application for the extension within the original time set forth for completing the conditions of preliminary plan approval.

(b) The applicant shall have the burden of proof to demonstrate that he or she has made a good faith and reasonable effort and progress to meet the conditions set forth in the tentative approval in the time period specified, and that the reason for delay in meeting the condition could not have been reasonably avoided.

(c) The applicant shall have the burden of proof to demonstrate either:

(i) That the uncompleted conditions can be met within a period of time not to exceed one year beyond the original time set forth for completing the conditions of preliminary plan approval, or

(ii) That for reasons over which the applicant does not have control, certain of the conditions cannot be met within one year beyond the original expiration date set forth in the preliminary plan approval, but can be met within a reasonable time not exceeding five years beyond the original expiration date. The reasonable time shall be specified in any extension granted by the Director.

"Reasons over which the applicant does not have control" shall mean circumstances which would reasonably prevent any applicant, as opposed to a particular applicant, from meeting the uncompleted conditions within two years from the date of tentative approval.

(3) Application Requirements.

(a) An application for an extension of preliminary plan approval shall be completed on the form provided by the Department and shall contain any necessary supporting materials or documents.

(b) The application for an extension shall be accompanied by the required filing fee to help defray the costs of processing the application.

(4)

Notification of Decision on Application. The Director, after review of the application for an extension, shall give written notice of his or her decision and the reasons supporting the decision to the applicant.

13.300 Application Requirements for Final Partition Maps and Subdivision Plans.

(1) The application for final approval shall be filed with the Department within two years of the date of preliminary plan approval.

(2) The application for final approval shall be completed on the form provided by the Department and shall contain any necessary supporting materials or documents.

(3) The application for final approval shall be accompanied by the required filing fee to help defray the costs of processing the application.

13.310 Criteria for Approval of Final Partition and Subdivision Plans.

The approval of final partition and subdivision plans shall be routine administrative actions. The Director shall grant final approval if, by the Director's determination:

(1) The final map or plat and any supporting documents are in substantial conformity with the approved preliminary plan; and

(2) Any conditions imposed by the approval authority have been met.

(3) Final partition and subdivision plans shall be considered finally approved by the Director when the Director's signature and dates thereof have been written on the face of the maps or plats and when the maps or plats have been recorded.

(4) Approval or denial of final partition or subdivision plans shall be in writing to the applicant and/or the applicant's designated representative.

13.320 Final Partition Map Requirements.

(1) Conformance to Preliminary Plan. The map shall substantially conform to the preliminary plan as approved.

(2) Preparation. All maps for partitions shall be prepared by professional land surveyors registered with the State of Oregon.

(3) Map Format.

(a) Maps for partitions requiring surveys shall be prepared on 14" x 17" diazo or photographic reproductions of the survey map required for the partitions, and any information not included on the survey maps, but required for the partition maps, shall be computed and drawn onto the partition maps in permanent black ink.

(b) Maps of partitions not requiring surveys shall be computed and drawn in permanent black ink upon 14" x 17" transparent mediums, such as tracing linen, tracing paper or synthetic film.

(4) Survey Requirements. Surveys for partitions shall:

(a) Comply with ORS 209.250 and the survey for the map shall be of such accuracy that the error of closure shall not exceed 1 foot in 5,000 feet.

(b) Be completed with a survey map size of 8 1/2" x 14" or 14" x 17".

(c) Comply with the survey mapping standards set by the County Surveyor, and

(d) Shall comply with L.C. 13.320(1) and L.C. 13.320(5).

(5) Map Information. The partition maps shall contain the following information:

(a) The boundary lines with distance and bearings, the exact location and widths of existing or recorded streets intersecting the boundary of the tract.

(b) The lengths of arc, radii, internal angles, lengths and bearings of the tangents and the length and bearings of chords.

(c) The area of each parcel in either acres to the nearest 1/100th, or square feet.

(d) The dimensions shown on the map shall be of such accuracy that the error of closure on any portion shall not exceed 1 foot of 5,000 feet. Copies of closure calculation sheets may be requested.

(e) Location of the parcel by one-fourth Section and Township, Range.

(f) Names and addresses of the partitioner, owner, mortgagee, if any, the person preparing the map and partition number.

(g) North arrow, scale and date submitted.

(h) The name of any street intersecting or within the parcels.

(i) All easements provided for public services, utilities, access, or any type must be shown on the face of the map along with the recorder's number if filed for record. If the easement is not recorded, a copy of the executed easement document capable of being reproduced must be provided to Lane County.

(j) Zoning classification.

(k) Basis of bearing and the course of either a section corner, one-sixteenth corner or a Donation Land Claim Corner or a lot corner of a platted subdivision and the basis or source document, if not by survey, of the course to the corner.

(l) A written legal description of all parcels contained in the land partition. An additional 14" x 17" sheet of the same quality as required for the partition map may be used.

(m) A line for the approval signature of the Director, or Director's delegate, and the date and any other lines which show approvals required by the governing body may be placed on the map.

(n) Any additional information made a condition of the tentative plan.

13.330 Final Subdivision Plat Requirements.

(1) Conformance to Preliminary Plan. The plat shall substantially conform to the preliminary plan as approved.

(2) Preparation. All plats shall be prepared by a professional land surveyor registered with the State of Oregon.

(3) Format. All plats shall be created according to the format established by the County Surveyor and the provisions of Lane Code. Plats shall be clearly and legibly drawn to a standard engineer's scale in a manner which may be microfilmed without loss of detail. The drafting material and lettering thereon shall have characteristics of adequate strength and permanency as well as suitability for copying and as specified by the County Surveyor. The overall size of plats shall be 18 inches by 27 inches.

(4) General Information. The plat shall contain the following information:

(a) The Affidavit of the Surveyor who did the Plat and survey work.

(b) The date, north point and scale of the drawing.

(c) A sufficient description to define the location and boundaries of the Plat area.

(d) The lot lines for all lots within the plat area with dimensions in feet and hundredths of feet.

(e) The location and dimensions of all existing and proposed public or private roads and names, as appropriate.

(f) The description and location of all permanent reference monuments.

(g) The width and location of all existing or proposed public utility easements.

(h) A graphic designation of all areas being reserved for common use and the conditions, being imposed thereon or, in the case of a cluster subdivision, covenants and restrictions, including the final development plan which governs the use of all common areas, may be substituted for said graphic designation. The conditions, covenants and restrictions, and development plan shall be recorded prior to final plat approval and the recording number referenced on the final plat.

(i) A designation of all areas covered by water and the location, width and direction of flow of all water-courses.

(j) A designation of any area being dedicated by the applicant, including its purpose and an effective written dedication thereof.

(k) A designation of any special notice, requirement or restriction required by the County as a condition of approval.

(5) Accompanying Materials. The plat shall be accompanied by the following:

(a) An exact reproducible transparency which complies with LC 13.230(3).

(b) A title report issued by a title insurance company verifying ownership of all property that is to be dedicated to the public.

(c) Computation sheets for all boundary lines and of all lot lines.

(d) A copy of all documents relating to establishment and maintenance of private facilities including the final development plan as approved, concurrent with the conditions, covenants and restrictions.

(e) A copy of any documents relating to special notice, requirement or restriction required by the County as a condition of approval.

13.400 Amendments to Preliminary Plans and Final Maps or Plats.

(1) Approval of Minor Amendments. A minor amendment to an approved preliminary partition or subdivision plan, or to an approved map or plat, is a routine administrative action approvable by the Director.

(2) Approval of Major Amendments. Approval of a major amendment to an approved preliminary partition or subdivision plan, or final map or plat shall be an administrative action subject to the provisions of LC 14.100 for Director decisions.

13.500 Variances.

(1) Approval Authority. A decision on a variance shall be an administrative action subject to the provisions of LC 14.100 for a decision by the Director.

(2) Criteria for Approval of Variances. A variance to the requirements of LC Ch 13 may be approved if the Approving Authority finds:

(a) Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity which result from lot size or shape, topography or other circumstances over which the property owner, since the enactment of this Chapter, has had no control.

(b) The variance is necessary for the preservation of a property right of the applicant which is the same as that enjoyed by other property owners in the same zoning district in the area.

(c) The variance would conform with the purposes of this Chapter and would not be materially detrimental to property in the same zone or vicinity in which the property is located, or otherwise conflict or reasonably be expected to conflict with the Comprehensive Plan.

(d) The variance requested is the minimum variance which would alleviate the difficulty.

(e) The variance is not the result of a self-created hardship.

(3) Application Requirements.

(a) The application shall be submitted pursuant to LC 14.050 and concurrently with applications for preliminary or final approval.

13.600 Appeals.

(1) Procedure for Appeals. The procedure for appeals of Director decisions made pursuant to LC 14.100 shall be as specified for appeals to the Hearings Official in LC 14.500.

(2) Other Appealable Decisions. The following Director actions are appealable to the Hearings Official by the applicant, and the procedure for such appeals shall be as specified in LC 14.500 for appeals to the Hearings Official.

(a) A written decision to approve or deny an extension.

(b) A written decision to deny final approval of a map or plat.

13.700 Violations.

(1) Violation of LC Ch 13 is punishable, upon conviction, by a fine of not less than \$50, or by imprisonment in the County jail for a period not to exceed six months, or by both.

(2) In addition to criminal penalties provided for by LC 13.700(1) above, Lane County may seek equitable relief for violations of Lane Code Chapter 13 pursuant to LC 14.700(3).

(3) Whenever the Director determines that property has been partitioned or subdivided in violation of the provisions of this Chapter, the Director may prepare a report describing the nature of the violation, the legal description of the property and the name of the owner. Upon review of the report, and concurrence by the office of Legal Counsel, the Director shall record the report, with a statement that no building permits will be issued for the described property, in the Lane County Records of Deeds. The Director shall promptly forward a copy of the recorded report to the owner(s) of record of the subject property. At such time as the violation ceases to exist or is changed, the Director shall record an appropriate statement setting forth the current status of the property insofar as its relationship to the provisions of this Chapter is concerned. Nothing in this section shall be deemed to require such recording as a condition precedent to the enforceability of any other provisions of this Chapter.

(4) The enactment or amendment of this Chapter shall not invalidate any prior, existing or future prosecutions for violations committed under previous applicable Sections of LC Ch 13 then in effect.

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Chapter 14

APPLICATION REVIEW AND APPEAL PROCEDURES

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14.015

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.

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 with which they are used. Webster's Third New International Dictionary of the English Language, Unabridged, copyright 1961, shall be considered as providing ordinary 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 LC Ch 14.

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.

Hearings Official. A person who has been appointed by the Board to serve at their pleasure and at a salary fixed by them.

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.

Party. With respect to actions pursuant to LC 14.100 and LC 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 County official

3. Any person, or his or her representative, and entity who is specially, personally or adversely affected by the subject matter, as determined by the Approval Authority.

Person. A natural person, his 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, or any political subdivision, agency, board or bureau of the State.

Planning Commission. The Planning Commission of Lane County, Oregon, which shall consist of two Planning Commissions referred to as the Lane County Planning Commission and the West Lane Planning Commission.

Planning Director. See Director.

Received. Acquired by or taken into possession by the Director.

14.050 APPLICATION REQUIREMENTS, ACCEPTANCE & 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 Chs 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;

(b) Shall be accepted once a month by the Director, and the date of acceptance shall be the first working day of each month;

(c) Shall be, within seven days of receipt, reviewed by the Director to determine if they meet the requirements of LC 14.050 (1) and (2) above. Within this same seven day working period and whenever the Director determines that an application does not meet the criteria of LC 14.050 (1) and (2) above, the Director shall mail to the applicant a notice which generally discloses the application deficiencies. The Director shall not accept incomplete applications. Applications received by, but not rejected by, the Director within this seven day working period shall be presumed to be complete for the purpose of acceptance and scheduling of review according to LC 14.100 or 14.300 below; and

(d) Shall not be considered as accepted solely because of being received by the Department.

(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.

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 map and tax lot numbers.

(c) Identification of the property owner and applicant.

(d) A brief description of the nature of the application.

(e) Identification of whether the decision of the Director is to approve or deny the application and a disclosure of any conditions of approval.

(f) The time and date on which the decision will become final unless appealed.

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

(h) Where to receive more information.

(i) A statement that a copy of the decision may be reviewed during public service hours of the Land Management Division.

(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 (d) above.

(b) The time, date and place of the public hearing.

(c) Identification of which Approval Authority will conduct the hearing.

(d) Disclosure of any deadlines for the submittal of written materials prior to the hearing.

(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) An explanation of the requirements of this Chapter for submitting written materials in advance of the hearing.

(g) Where to receive more information.

(h) A statement that a copy of the decision may be reviewed during public service hours of the Land Management Division.

(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 and to persons having previously qualified as parties.

(c) 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 a good-faith attempt was made to notify all persons entitled to notice. 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"x28" 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.

14.100 DIRECTOR REVIEW PROCEDURE. All applications subject to this subsection 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 investigation report.

(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.

(4) Notice. If the decision is a denial, within two days of the date of action, the Director shall mail to the applicant the decision and an explanation of the appeal procedures. If the decision is an approval, the Director shall, within two days of the date of action, mail notice meeting the requirements of LC 14.070(1) above to the applicant and to the owners of property within 250 feet of the exterior boundaries of the contiguous property ownership involved.

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 or by incorporation by reference.

(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.

(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.

(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 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 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 31 day 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.

(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.

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 pursuant to LC 14.100 above, and which has been accepted by the Director pursuant to LC 14.500 below, shall be scheduled for the next regularly scheduled hearing for appeals no sooner than 21 days from the date of acceptance of the appeal and no later than 45 days from the date that the appeal was accepted.

(b) 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 30 days from the date of application acceptance and no later than 45 days from the date of application acceptance.

(c) 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, at least ten 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(2) above.

(3) Mailing of Notice. At least fourteen 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:

- (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 all property within 250 feet of the exterior boundaries of the contiguous property involved.

(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) Written Materials. 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. The Approval Authority may allow written materials to be submitted and received after this five day deadline if:

- (a) The written matters are solely responsive to written materials submitted at least 5 days in advance of the hearing, and
- (b) The responsive, written materials could not have been reasonably prepared and submitted at least 5 days in advance of the hearing.

Upon request, the application file containing these materials shall be made available to the public by the Department.

(6) 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.

(7) Request for Interpretation of County Policy. When, prior to or in the course of a hearing, the Hearings Official finds that the case raises a 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 30 day 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.

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, and the applicant or appellant may submit in writing their view as to what the 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.

(8) 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.

(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 to the Board.

(c) Disclose any ex parte contacts.

(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.

(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.

(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) At the conclusion of the hearing, the Approval Authority shall either make a decision and state findings which may incorporate findings proposed by any person or the Director; or in the Hearings Official's case, take the matter under advisement for a decision to be made at a later date or, may continue the hearing to a date certain. 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 identify who has party status and shall be completed in writing and signed by the Approval Authority within 10 days of the last hearing. A longer period of time may be taken to complete the findings and decision if the applicant consents to it and if the applicant agrees to a waiver of the statutory time period for the amount of additional time it takes to prepare the findings.

(9) 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 who have requested it, a copy of the

decision and findings; or if the decision and findings exceed five pages, the Director shall mail notice of the decision.

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 Board shall be confined to the record of the proceeding before the Hearings Official.

(2) Limited Additional Testimony. The Board 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 Board 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) Remand to Hearings Official. The Board may remand the appeal for a supplemental de novo hearing before the Hearings Official if it decides that the volume of new information offered by a party proceeding under LC 14.00(2) above would:

(a) Interfere with the Board's agenda; or

(b) Prejudice parties; or

(c) If the Board determines that the wrong legal criteria were applied by the Hearings Official. On remand, the Hearings Official shall apply the procedures of LC 14.300 above. If an appeal is desired from the Hearings Official's decision on remand, the procedures of LC 14.500 below, for an appeal of a Hearings Official decision shall be followed.

(d) In the event that the remand is requested by the applicant, the applicant shall first agree to a 60 day 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 14 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 Board, 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 Board 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 Board's elective review 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.

(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 Board, the Board 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 Hearings Official hearing, that only persons who qualified as parties at the hearing before the Hearings Official will be allowed to be heard, and that the issues discussed will be limited to those raised in the notice of appeal.

(c) Disclose any ex parte contacts.

(d) Call for abstentions based upon any conflicts of interest or biases due to ex parte contacts, and any member of the Board may respond to any challenges for bias meeting the standards of this Chapter.

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

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

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

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

(j) Allow the applicant to rebut, on his or her own behalf or by representative, any of the testimony or facts previously presented to the Board.

(k) Conclude the hearing.

(l) Questions may be asked at any time by the Board. Questions by the parties or Director may be allowed by the Board upon request. Upon recognition by the Board, 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.

(m) At the conclusion of the hearing, the Board shall either make a 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 Board may request proposed findings and conclusions from any party to the hearing. The Board, before finally adopting findings and conclusions, may circulate the same in proposed form to parties for written comment.

(10) Final Order. Upon the adoption of findings, the Board shall enter a final order affirming, reversing or modifying the decision of the Hearings Official. The Board shall mail a copy of the final order to all parties who made an appearance before them.

14.500 APPEAL PROCEDURE. The following requirements are for appeals to the Hearings Official or Board.

14.505 Appealable Decisions and Manner of Review.

(1) Decisions by the Director pursuant to LC 14.100 above may be appealed, and upon Director acceptance of an appeal, shall be reviewed by the Hearings Official pursuant to LC 14.300 above.

(2) Decisions by the Hearings Official pursuant to LC 14.300 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.

(3) An appeal to the Board shall not be a jurisdictional requirement for any judicial or agency review of a decision by the Hearings Official.

14.510 Appeal Period. A decision by the Director or Hearings

Official, once reduced to writing and signed, shall become final unless appealed as provided in LC 14.500(1) above, within 10 days of the date of signing of the decision. 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.

14.515 Appeal Content Requirements. All appeals shall:

(1) Be submitted in writing to, and received, by the Department within the 10 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:

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; or

v. The Approval Authority rendered a decision that violates a Statewide Planning Goal (until acknowledgement 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).

(e) The position of the appellant indicating whether the appellant wishes the application to be approved, denied or conditionally approved; and

(f) The signature of the appellant.

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 10 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 10 day appeal period. Appeals which are not so rejected by the Director shall be assumed to have been accepted.

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 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.

14.535 Hearings Official Reconsideration. Within two working days of acceptance of an appeal of a Hearings Official 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 14.500.35 (1) or(2)and LC 500.35.

(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

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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, 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 reconsidered 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 acceptance of the appeal, 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 date of the hearing, issue a reconsidered decision and supplemental findings, and within this same time period, mail copies of the decision and findings to persons who have qualified as parties and requested copies.

(3) 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 30-day waiver of any statutory application timelines, and such a waiver shall be in addition to any other waivers already given.

(4) Appeal of Reconsidered Decisions. Reconsidered decisions may be appealed to the Board within 10 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.

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) Initiating an Elective Review. Following the acceptance of an appeal from a Hearings Official decision and following an indication from the Hearings Official not to reconsider the decision, the Board shall determine whether or not they wish to conduct an on the record hearing for the appeal.

(3) Hearing Deadline. The determination mentioned in LC 14.600(2) above shall be held by the Board within 14 days of the expiration of the appeal period from the Hearings Official decision.

(4) Decision Criteria.

(a) Within seven days of the determination mentioned in LC 14.600(2) above, the Board shall adopt a written decision to have a hearing on the record for the appeal or not to further review the appeal.

(b) The order shall show compliance with one or more of the following criteria:

- i. The issue is of Countywide significance.
- ii. The issue will reoccur with frequency and there is a need for policy guidance.
- iii. The issue involves a unique environmental resource.
- iv. The Planning Director or Hearings Official recommends review.

(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.

14.700 LIMITATIONS UPON APPROVED AND DENIED APPLICATIONS.

Applications approved or denied according to the provisions of this Chapter shall be subject to the following limitations:

(1) Vesting of Approval.

(a) An application subject to approval or denial under any of the provisions of this Chapter shall be subject to the provisions of this Chapter and other Chapters of Lane Code in effect at the time the most recent decision to approve or deny the application occurs.

(b) Approval of an application for which all rights of appeal have been exhausted shall not be invalidated by subsequent revision of this Code, unless specifically provided otherwise in the revision or conditions of approval.

(2) Compliance With Conditions of Approval. Compliance with conditions of approval and adherence to submitted plans as approved is required. Any substantial departure from these conditions of approval and approved plans constitutes a violation of the applicable sections of Lane Code and may constitute grounds for revocation or suspension of the application.

(3) Revocation or Suspension.

(a) The Director may suspend or revoke approval of an application which was initially reviewed and approved or denied pursuant to LC 14.100 above and/or approved upon appeal. When taking such action, the Director shall follow LC 14.100(3) and (4) above in giving notice and addressing one or more application conflicts with the following criteria:

i. The site has been developed in a manner not authorized by the approval of the application;

ii. The applicant has not complied with the conditions of the approval;

iii. The applicant has secured the approval with false or misleading information; or

iv. The application was approved in error.

The Director's decision to suspend or revoke approval is appealable to the Hearings Official in the same manner provided in LC 14.500 above for appeals to the Hearings Official.

(b) For applications which were initially reviewed and approved or denied pursuant to LC 14.300 above, the Director may initiate a review by the Hearings Official to suspend or revoke application approval. The procedures of LC 14.300 above shall be followed by the Hearings Official, and the Hearings Official may suspend

or revoke approval of an application if the application is found to conflict with one or more of the criteria mentioned in LC 14.700(3)(a) above. The Hearings Official's decision to suspend or revoke approval of an application is appealable to the Board in the same manner as provided for in LC 14.500 above for appeals to the Board.

(4) Expiration of Approvals. Unless provided otherwise in the approval of an application or by other Chapters of Lane Code, conditional or tentative approval of an application shall be valid for a two-year period during which all conditions of tentative approval or the development authorized by the conditional approval must be completed. Such approval shall become null and void after two years from the date of approval, unless extended through the provisions for extensions contained in other applicable Chapters of Lane Code. Not all applications have extension provisions in Lane Code and therefore, cannot be extended.

(5) Limitations on Refiling Applications. An application for which a substantially similar application has been denied within the previous year shall be reviewed or heard by the Approval Authority only after the expiration of a one-year period from the last decision to deny the previous application. An earlier refiling may occur if it can be demonstrated that the basis for the original denial has been eliminated.