

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. 10-89

) IN THE MATTER OF AMENDING LANE CODE
) CHAPTER 14 TO COMPLY WITH CHAPTER
) 761, OR LAWS 1989, MAKING RELATED
) CHANGES TO THE PROCEDURES FOR
) ACCEPTANCE, NOTICE, REVIEW, ACTION
) AND APPEAL OF DECISIONS ON LAND USE
) APPLICATIONS, ELIMINATING POSTED
) NOTICE, REQUIRING FORMAL INTERVEN-
) TION IN APPEALS OF LAND USE DECI-
) SIONS, ADOPTING A SAVINGS AND
) SEVERABILITY CLAUSE AND DECLARING AN
) EMERGENCY

FILED

AT O'CLOCK

OCT 10 1989

County Clerk
for Lane County, Oregon
BY *[Signature]*
DEPUTY

WHEREAS, the Board deems it appropriate to consider for adoption these modifications to Lane Code Chapter 14 in order to comply with 1989 Or Laws, Ch 761, and to make certain housekeeping changes; and

WHEREAS, the Lane County Planning Commission and the West Lane Planning Commission conducted public hearings to consider the proposed amendments (LCPC: on September 19, 1989, WLPC on September 27, 1989), and the Board has received and considered their recommendations; and

WHEREAS, on September 20, 1989, the Board conducted a first reading on this Ordinance and on October 4, 1989, the Board conducted a second reading and public hearing on this Ordinance; and

WHEREAS, evidence and findings exist in the record indicating that this amendment complies with applicable requirements of state and local law;

NOW, THEREFORE, the Board of County Commissioners of Lane County ordains as follows:

Chapter 14 of Lane Code is hereby amended by removing and inserting the following pages:

REMOVE THIS PAGE

INSERT THIS PAGE

14.010 - 14.14.015 to
14.700(3) - 14.700(5),
i.e. 14-1 to 14-21
(a total of 21 pages)

14.14.010 - 14.015 to
14.14.700(3) - 14.700(5),
i.e. 14-1 to 14-21
(a total of 27 pages)

- 1 - IN THE MATTER OF AMENDING LANE CODE CHAPTER 14 TO COMPLY WITH CHAPTER 761, OR LAWS 1989, MAKING RELATED CHANGES TO THE PROCEDURES FOR ACCEPTANCE, NOTICE, REVIEW, ACTION AND APPEAL OF DECISIONS ON LAND USE APPLICATIONS, ELIMINATING POSTED NOTICE, REQUIRING FORMAL INTERVENTION IN APPEALS OF LAND USE DECISIONS, ADOPTING A SAVINGS AND SEVERABILITY CLAUSE AND DECLARING AN EMERGENCY

Said pages are attached hereto and incorporated herein by reference. The purpose of this substitution is in the matter of amending Lane Code Chapter 14 to comply with Chapter 761, Or Laws 1989, making related changes to the procedures for acceptance, notice, review, action and appeal of decisions on land use applications, eliminating posted notice, requiring formal intervention in appeals of land use decisions, adopting a savings and severability clause and declaring an emergency.

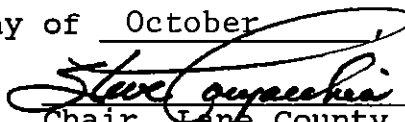
The provisions repealed by this Ordinance remain in full force and effect to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

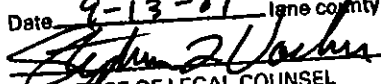
An emergency is hereby declared to exist, and this Ordinance, being enacted by the Board in the exercise of its police power for the purpose of meeting such emergency and for the immediate preservation of the public peace, health and safety, shall take effect immediately.

The attached Exhibit "A" Findings are adopted in support of this decision though not as a part of this Ordinance.

Enacted this 4th day of October, 1989.


Chair, Lane County Board of Commissioners


Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM
Date 9-13-89 Lane County

OFFICE OF LEGAL COUNSEL

14.010

Lane Code

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 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:

14.015

Lane Code

14.050(2)

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 person who makes an appearance before 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 and Investigation.

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

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

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

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

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

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

14.050(2)

Lane Code

14.050(3)

(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 and shall not be considered as accepted solely because of having been received;

(b) Shall be, within 14 days of receipt, reviewed by the Director to determine if they meet the requirements of LC 14.050(1) and (2) above and are complete. Applications shall be determined to be complete and shall be accepted by the Director when they include the required information, forms and fees. When the Director determines that an application is not complete, the Director shall mail written notice to the applicant and disclose exactly what information, forms or fees are lacking.

14.050(3)

Lane Code

14.050(4)

The application shall be deemed complete by the Director upon receipt of the missing information, forms or fees. If the applicant refuses to submit the missing information or forms, the application shall be deemed complete for review and action on the 31st day after the Director first received the application. The Director shall mail written notice to the applicant when the application is deemed complete or accepted..

(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

14.050(4)

Lane Code

14.070(1)

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 reference to the property address, if there is one, and to the Lane County Assessment map and tax lot numbers.

(c) Identification of the property owner and applicant.

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

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

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

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

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

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

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

(k) A statement that failure to raise an issue in an appeal to the Approving Authority precludes raising the issue in an appeal to the Land Use Board of Appeals.

14.070(2)

Lane Code

14.070(2)

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

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

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

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

(d) Disclosure of the requirements of this Chapter for the submittal of written materials prior to the hearing and a general statement of the requirements of this Chapter for submission of testimony and the procedure for conduct of hearings..

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

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

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

14.070(3)

Lane Code

14.100(3)

(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.

14.100(4)

Lane Code

14.200(3)

(4) Notice. If the decision is a denial, within two days of the date of action, the Director shall mail to the applicant notice of the decision meeting the requirements of LC 14.070(1) above. 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 record of property on the most recent property tax assessment role where such property is located:

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

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

(c) Within 500 feet of the exterior boundaries of the contiguous property ownership which is the subject of the application if the subject property is within a farm or forest zone._

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.

14.200(3)

Lane Code

14.200(3)

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

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

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

(h) The Approval Authority may take notice of judicially cognizable facts, and he or she, or any member of the Approval Authority, may utilize his or her

experience, technical competence and special knowledge in evaluation of the evidence presented at the hearing.

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

(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.

14.200(6)

Lane Code

14.200(9)

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

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

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

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

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

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

(b) Dispose of procedural requirements or similar matters.

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

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

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

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

(g) Continue the hearing to a date certain and for a period of time not to exceed 31 days from the date of the hearing being continued. No further notice need be given for continuance of a hearing to a date certain. In the event that the continuance is requested by the applicant, the applicant shall first agree to a 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

14.200(9)

Lane Code

14.300(1)

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 20 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 20 days in advance of the hearing, the Director shall mail notice of the hearing which meets the requirements of LC 14.070(2) above to:

- (a) The applicant;
- (b) The property owner, if different than the applicant;
- (c) The appellant, if there is one, and if the appellant is different than the applicant or property owner; and
- (d) The owners of record of all property on the most recent property tax assessment roll where such property is located:

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

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

- (iii) Within 500 feet of the exterior boundaries of the contiguous property ownership which is the subject of the application if the subject property is within a farm or forest zone.

(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. All documents or evidence relied upon by the applicant shall be submitted to the Department and made available to the public at least 20 days prior to the first evidentiary hearing. Unless otherwise specified by the Approval Authority, all other written materials, documents or evidence, exceeding two pages in length must be submitted to and received by the Department at least 10 days in advance of the hearing. The Approval Authority may allow written materials to be submitted and received after this 10-day deadline if.

- (a) The written materials are solely responsive to written materials submitted at least 10 days in advance of the hearing, and

(b) The responsive, written materials could not have been reasonably prepared and submitted at least 10 days in advance of the hearing.

If additional documents, evidence or written materials are provided contrary to the above deadlines, any party shall be entitled to a continuance of the hearing. Upon request, the application file containing these materials shall be made available to the public by the Department for inspection at no cost and copies will be provided at reasonable cost.

(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 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 waiver of the statutory application processing timelines requested by the applicant.

The Board, at its discretion, may elect to accept or reject the Hearings Official's request. When such a question is accepted by the Board, those persons receiving notice of the Hearings Official hearing, 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.

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

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

(i) Lists the applicable substantive criteria;

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

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

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

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

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

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

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

(l) Conclude the hearing.

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

(n) 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 time and date certain or, if requested by a party before the conclusion of the hearing, shall leave the record open for at least seven days after the hearing. 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 closing of the record for the last hearing. A longer period of time may be taken to complete the findings and decision if the applicant submits a written request to the Approval Authority consenting and agreeing to a waiver of the 120-day statutory time period for final action on the application equal to the amount of additional time it takes to prepare the findings.

(8) Decision and Findings Mailing. Within two days of the date that the written decision adopting findings is signed by the Approval Authority, the Director shall mail to the applicant, and all parties of record who have requested it, a copy of the

14.300(8)

Lane Code

14.400(4)

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 except as provided in LC 14.400(2) and 14.400(3) below.

(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) De Novo Hearing/Remand to Hearings Official. The Board may elect to hold a de novo hearing or 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 14.400(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,

14.400(4)

Lane Code

14.400(9)

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

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

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

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

(7) Written Material. Unless otherwise specified by the 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.
- (c) Copies of the written materials have been provided to all parties to the on-the-record appeal.

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

(9) Order of Procedure. In the conduct of a hearing on the record, and unless otherwise specified by the 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, pursuant to LC 14.600(4) have qualified to participate in the on-the-record hearing will be allowed to be heard, and that the issues discussed will be limited to those raised in the notice of appeal.

14.400(9)

Lane Code

14.500

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

(g) Allow parties other than the appellant or the applicant who have qualified to participate in the on-the-record hearing to be heard next.

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

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

(j) Allow the appellant 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.

14.500 Appeal Procedure. The following requirements are for appeals to the Hearings Official or Board.

14.505(1)

Lane Code

14.515(3)

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

14.515(3)

Lane Code

14.530

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

(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.

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

(1) For an appeal of a decision by the Director, notice of the appeal acceptance shall be mailed to the applicant, the applicant's representative, and to the appellant, if the appellant is different than the applicant. The notice shall disclose the tentative hearing date for the appeal and the requirements of this chapter for the submission of written materials prior to the hearing; and

(2) For an appeal of a decision by the Hearings Official, notice of the appeal acceptance shall be mailed to all persons who qualified as parties at the hearing with the Hearings Official. The notice shall disclose the tentative date on which the Board will elect whether or not to consider the appeal and the requirements of this chapter for participation in the appeal proceeding with the Board.

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:

14.530(1)

Lane Code

14.535(1)

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

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

14.535(1)

Lane Code

14.535(3)

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 reconsideration decision and supplemental findings.

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

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

(ii) Within 14 days of 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 reconsideration decision and supplemental findings, and within this same time period, mail copies of the decision and findings to persons who have qualified as parties.

(3) Timeline Waiver. In the event a decision of the Hearings Official is being appealed by the applicant for the same

14.535(3)

Lane Code

14.600(2)

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 Reconsideration 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) Procedure.

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

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

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

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14.600(3)

Lane Code

14.600(5)

(3) Decision Criteria. A decision by the Board to hear the appeal on the record must comply with one or more of the following criteria:

- (a) The issue is of Countywide significance.
- (b) The issue will reoccur with frequency and there is a need for policy guidance.
- (c) The issue involves a unique environmental resource.
- (d) The Planning Director or Hearings Official recommends review.

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

- (a) The applicant and the applicant's representative.
- (b) The Director.
- (c) The appellant and the appellant's representative.

(d) Other persons who have:

(i) At least one day prior to the date of the Board's determination, submitted into the possession of the Director a written request to participate including statements about how they qualify as parties and the issues they wish to speak about.

(ii) Have been qualified as parties by the Hearings Official in the decision being appealed.

(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(1)

Lane Code

14.700(3)

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) If an application subject to approval or denial under any of the provisions of this Chapter was complete when first submitted or if the applicant submits the requested information within 180 days of the date the application was first submitted, then approval or denial of the application shall be based upon the provisions of this Chapter and other Chapters of Lane Code in effect at the time the application was first submitted.

(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

14.700(3)

Lane Code

14.700(5)

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.

EXHIBIT "A" FINDINGS ORDINANCE 10-89

FINDING #1: LC 14.015, Definition of "Party."

B - Engrossed House Bill 2288, Section 12(2), amended ORS 197.830, effective October 4, 1989, and changed the requirements for who may qualify as a "party" for an appeal before the Land Use Board of Appeals. This new requirement provides that a person must have appeared orally or in writing in hearings at the local level in order to qualify as a party, and it limits appeals to LUBA. Prior to these amendments to ORS 197.830, the appellant had to also meet the test of, "Is aggrieved or has interests adversely affected by the decision". The current Lane Code definition of "party" parallels the old ORS 197.830 requirements, and needs to be revised to be consistent with the revised ORS 197.830. The revision to the ORS and as proposed to LC Ch 14 is a gatekeeping function which limits those who may appeal.

FINDING #2: LC 14.050(3), Application Acceptance Requirements

ORS 215.428(2) specifies requirements counties must follow for the acceptance of applications. Lane County's application acceptance requirements are contained in LC 14.050(1)-(3) and differ somewhat from those in ORS 215. The application acceptance requirements of Lane Code must be revised to comply with the ORS to avoid potential conflicts. Proposed change #2 would adopt the statutory application acceptance requirements. ORS 215 has a mandatory 120 day requirement for counties to complete the processing of all land use applications except for amendments to the comprehensive plan. A critical step counties must take in order to meet the 120 day timeline is to conduct a completeness check of for all land use applications before they are accepted, and in this manner, delays created by trying to process incomplete applications can be avoided. Review and acceptance or rejection of applications will largely be an administrative function which will not be codified.

FINDING #3: LC 14.070(1), Notice Requirements For Decision By Director

House Bill 2288, Section 10(3), amended ORS 197.762 to adopt significantly more detailed requirements for content and mailing of hearing notices. The revised hearing notice content requirements require counties to disclose much greater detail about the nature of the application and other uses which may also be allowed, the applicable criteria, requirements for submission of written and oral testimony, appeal rights and where to receive more information. Although these new requirements pertain to hearing notices, they should be adopted by Lane County for decisions by the Director, which do not require a hearing, in order to provide consistency and to avoid confusion between differing notice requirements for Director decisions and the initial hearing, and in order to limit administrative costs by having a standardized notice requirements. The changes proposed are to

2288 Section 10.a(2), because they are for the adoption of the statutory notice provisions. These changes are consistent with ORS 215.416(11) because they provide for mailing of notice of the Director's decision to the same persons who would have been entitled to notice had a hearing been held by the Hearings Official.

FINDING #7: LC 14.200(3)(e), Deletion of Incorporation of Evidence by Reference

Incorporation of evidence by reference presents a problem in terms of knowing the exact nature of the evidence being incorporated and then, at a later date, having to reproduce the referenced evidence for those who request it and for transmission of a copy of the record for appeals. Deletion of incorporation by reference will require that a copy of the evidence to be incorporated into the record must be provided up front to the Approval Authority, and this would avoid the aforementioned problems. This is an optional housekeeping measure which is consistent with the requirements of ORS 197 for establishing the record of land use decisions.

FINDING #8: LC 14.300(2), Publication of Notice for a "De Novo" Hearing

Because of the change in the requirements for mailing notice of the initial public hearing, to 20 days in advance of the hearing, per ORS 197 as amended by B-Engrossed House Bill 2288, Section 10a(3)(f)(A), the requirements of Lane Code 14.300(2) for the publication of legal notice should be changed from 10 days to 20 days. While the 20 day advance requirement does not apply to publication of legal notice, consistency with the mailing notice requirements helps to avoid confusion resulting from different requirements. This change to LC Ch 14.300(2) complies with ORS 197, as amended by B - Engrossed HB 2288, because it is optional and it complies with the 20 day hearing notice requirement.

FINDING #9: LC 14.300(3), Notice of "De Novo" Hearing to Nearby Owners

ORS 197.762, as amended by B-Engrossed House Bill 2288 10a.(3)(f)(A), requires that hearing notice be mailed at least 20 days in advance of the initial evidentiary hearing rather than the 14 days in advance as currently required by Lane Code 14.300(3). Lane Code needs to be revised to comply with the mandatory 20 notice requirement and the new requirements in 10a.(2) for who is entitled to receive notice. Since the proposed change to LC 14.300(3) would require that notice be mailed at least 20 days in advance of the evidentiary hearing, or ten days in advance if there will be two or more hearings, and that notices go to the owners of nearby property the same as discussed in change #6 above. The proposed changes comply with ORS 197 as amended by B - Engrossed HB 2288, since most applications would only involve one hearing and 20 day notice would be given.

FINDING #10: LC 14.300(4), Delete Posting of Notice Requirements

record. The proposed revision would provide the alternative for the Board to elect to hold a de novo hearing. This revision is a policy choice which is consistent with the authority given the Board by ORS 197 and 215 as the ultimate decision maker for the county. The Board should be careful to avoid unnecessarily using the de novo hearing option in order to limit their involvement in nonpolicy land use matters and to help expedite applications in order to comply with the statutory 120 day application processing timeline.

FINDING #15: LC 14.00(6), On the Record Hearing Mailing Timeline

Lane Code 14.400(6) contains a self imposed requirement to mail notice of a hearing on the record to parties at least 14 days in advance of the hearing. This timeline is very tight, because the notice must often be mailed on the same day that the Board elects to hear the application. A more practicle notice mailing requirement of 10 days is proposed. The proposed change to LC 14.400(6) complies with ORS 197 and ORS 215 because there are no statutory timelines for such notice and because mailing of notice at least 10 days in advance of the Board hearing is reasonable notice.

FINDING #16: LC 14.400(7), Copies of Materials to Parties

This is a house keeping measure intended to assist the Board and parties to an on the record appeal whenever written materials are proposed to be submitted after the five day deadline prior to the on the record hearing. This amendment would require that, in order to submit the late materials, copies must have been provided to all parties to the on the record appeal. This will assist the parties to the appeal to have an advance opportunity to review the materials and to be in a position to respond to the materials at the hearing. It also puts the burden on the person proposing to submit the materials to provide the parties with copies rather than the Director.

FINDING #17: LC 14.00(9)(B) & LC 14.400 (2),(3),(4); On-the-Record Hearing Participation Requirements

LC 14.400(9)(b) currently provides that anyone having received party status at the Hearings Official level may participate in the on-the-record hearing with the Board. The proposed revisions do not eliminate the ability of those with party status at the Hearings Official level to participate in on-the-record hearings with the Board. Rather, they establishe a procedure for those with party status to properly indicate if they intend to participate in the on-the-record appeal and allows the Board to determine who these participants are and to anticipate their testimony during the hearing. This is a housekeeping measure to improve the procedures for the conduct of on-the-record hearings and is consistent with the requirements in ORS 197 for participation in land use hearings.

FINDING #18: LC 14.400(9)(f),(g),(h),(j); Order of Testimony for On-the-Record Appeals

For an on-the-record hearing, the burden of proof is upon the

FINDING #22: LC 14.700(1)(a), Applicable Regulations

ORS 215.428(3) basically provides that if a permit application is complete when filed (or made complete within 180 days), and a county's plan and regulations are acknowledged, then the county must apply the standards and criteria of the plan and regulations that were in affect at the time the application was initially filed. In contrast, Lane Code 14.700(1)(a) provides that the standards and criteria to be applied to an application are those in effect at the time the most recent decision occurs. This provision of Lane Code needs to be brought into compliance with ORS 215. The proposed revision to LC 14.700(1)(a) complies with ORS 215.428(3) since it solely adopts the provisions of this statute.

UNDERLINING _____ indicates material being added.

LEGISLATIVE FORMAT

BRACKETS [] indicate material being deleted.

14.010

Lane Code

14.015

BOOK 141 PAGE 098

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 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:

14.015

Lane Code

14.050(2)

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]Any person who makes an appearance before the Approval Authority.

[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 and Investigation.

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

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

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

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

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

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

14.050(2)

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14.050[(4)]3

(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 and shall not be considered as accepted solely because of having been received;

(b) [Shall be accepted upon submission of required forms and fees during normal working hours;

(c)] Shall be, within [seven]14 days of receipt, reviewed by the Director to determine if they meet the requirements of LC 14.050(1) and (2) above and are complete. Applications shall be determined to be complete and shall be accepted by the Director when they include the required information, forms and fees. [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]When the Director determines that an application is not complete, the Director shall mail written notice to the applicant and disclose exactly what information, forms or fees are lacking.

16-83; 9.14.83
10-84; 9.8.84

14-3

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The applicaton shall be deemed complete by the Director upon receipt of the missing information, forms or fees. If the applicant refuses to submit the missing information or forms, the application shall be deemed complete for review and action on the 31st day after the Director first received the application. The Director shall mail written notice to the applicant when the application is deemed complete or accepted.

[(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

14.050(4)

Lane Code

14.070[(2)]1

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 reference to the property address, if there is one, and to the Lane County Assessment map and tax lot numbers.

(c) Identification of the property owner and applicant.

(d) [A brief description]An explanation of the nature of the application and the proposed use or uses that could be authorized by the decision.

(e) [Identification of whether the decision of the Director is to approve or deny the application and a disclosure of any conditions of approval.]The criteria from Lane Code and the comprehensive plan that apply to the application and decision.

(f) [The time and date on which the decision will become final unless appealed.]The name of the Department representative to contact and the telephone number where additional information may be obtained.

(g) [The deadline for and manner in which an appeal of the decision may be made.]A statement that the application, all documents and evidence relied upon by the applicant, and the applicable criteria are available for inspection at the Department at no cost and copies will be provided at reasonable cost.

(h) [Where to receive more information.]A statement that a copy of the staff report is available for inspection at no cost and copies will be provided at reasonable cost.

(i) [A statement that a copy of the decision may be reviewed during public service hours of the Land Management Division.]Identification of whether the decision is to approve or deny the application, a disclosure of any conditions of approval and the time and date on which the decision shall become final unless appealed.

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

(k) A statement that failure to raise an issue in an appeal to the Approving Authority precludes raising the issue in an appeal to the Land Use Board of Appeals.

14.070(2)

Lane Code

14.070(2)

(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)](g) 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] the requirements of this Chapter for the submittal of written materials prior to the hearing and a general statement of the requirements of this Chapter for submission of testimony and the procedure for conduct of hearings..

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

(f) [An explanation of the requirements of this Chapter for submitting written materials in advance of the hearing.] A statement that failure of an issue to be raised in a hearing, in person or by writing, or failure to provide sufficient specificity to afford the Approval Authority an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals on that issue.

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

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

14.070(3)

Lane Code

14.100(3)

(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.

14.100(4)

Lane Code

14.200(3)

(4) Notice. If the decision is a denial, within two days of the date of action, the Director shall mail to the applicant notice of the decision [and an explanation of the appeal procedures] meeting the requirements of LC 14.070(1) above. 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 record of property [within 250 feet of the exterior boundaries of the contiguous property ownership involved.] on the most recent property tax assessment role where such property is located:

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

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

(c) Within 500 feet of the exterior boundaries of the contiguous property ownership which is the subject of the application if the subject property is within a farm or forest zone.

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.

14.200(3)

Lane Code

14.200(3)

(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.

14.200(7)

Lane Code

14.200(9)

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

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

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

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

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

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

(b) Dispose of procedural requirements or similar matters.

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

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

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

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

(g) Continue the hearing to a date certain and for a period of time not to exceed 31 days from the date of the hearing being continued. No further notice need be given for continuance of a hearing to a date certain. In the event that the continuance is requested by the applicant, the applicant shall first agree to a 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

14.200(9)

Lane Code

14.300(1)

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.

14.300(2)

Lane Code

14.300[(7)](5)

(2) Publication of Notice. For a zone change application and/or plan amendment application, the Department shall cause to be published, at least [ten]20 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]20 days in advance of the hearing, the Director shall mail notice of the hearing which meets the requirements of LC 14.070(2) above to:

(a) The applicant;

(b) The property owner, if different than the applicant;

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

(d) The owners of record of all property [within 250 feet of the exterior boundaries of the contiguous property involved.]on the most recent property tax assessment roll where such property is located:

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

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

(iii) Within 500 feet of the exterior boundaries of the contiguous property ownership which is the subject of the application if the subject property is within a farm or forest zone.

(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. All documents or evidence relied upon by the applicant shall be submitted to the Department and made available to the public at least 20 days prior to the first evidentiary hearing. Unless otherwise specified by the Approval Authority, all other written materials, documents or evidence, 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]10 days in advance of the hearing. The Approval Authority may allow written materials to be submitted and received after this [five]10-day deadline if.

(a) The written [matters]materials are solely responsive to written materials submitted at least [5]10 days in advance of the hearing, and

(b) The responsive, written materials could not have been reasonably prepared and submitted at least [5]10 days in advance of the hearing.

If additional documents, evidence or written materials are provided contrary to the above deadlines, any party shall be entitled to a continuance of the hearing. Upon request, the application file containing these materials shall be made available to the public by the Department for inspection at no cost and copies will be provided at reasonable cost.

(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 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 waiver of the statutory application processing timelines requested by the applicant.

The Board, at its discretion, may elect to accept or reject the Hearings Official's request. When such a question is accepted by the Board, those persons receiving notice of the Hearings Official hearing, 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)](7) Order of Procedure. In the conduct of a public hearing, and unless otherwise specified by the Approval Authority, the Approval Authority shall:

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

(i) Lists the applicable substantive criteria;

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

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

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

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

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

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

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

(l) Conclude the hearing.

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

(n) 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 time and date certain or, if requested by a party before the conclusion of the hearing, shall leave the record open for at least seven days after the hearing. The Approval Authority may request proposed findings and conclusions from any person at the hearing. [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 closing of the record for the last hearing. A longer period of time may be taken to complete the findings and decision if the applicant submits a written request to the Approval Authority consent[s]ing [to it] and [if the applicant] agree[s]ing to a waiver of the 120-day statutory time period for final action on the application equal to the amount of additional time it takes to prepare the findings.

[9)](8) Decision and Findings Mailing. Within two days of the date that the written decision adopting findings is signed by the Approval Authority, the Director shall mail to the applicant, and all parties of record who have requested it, a copy of the

14.300[(9)](8)

Lane Code

14.400(4)

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 except as provided in LC 14.400(2) and 14.400(3) below.

(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) De Novo Hearing/Remand to Hearings Official. The Board may elect to hold a de novo hearing or 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 14.400(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,

14.400(4)

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14.400(9)

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]10 days in advance of the hearing, the Director shall mail notice of the hearing which meets the requirements of LC 14.070(3) above to:

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

(7) Written Material. Unless otherwise specified by the 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.
- (c) Copies of the written materials have been provided to all parties to the on-the-record appeal.

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

(9) Order of Procedure. In the conduct of a hearing on the record, and unless otherwise specified by the 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], pursuant to LC 14.600(4) have qualified to participate in the on-the-record hearing will be allowed to be heard, and that the issues discussed will be limited to those raised in the notice of appeal.

14.400(9)

Lane Code

14.500

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

(g) Allow parties other than the appellant or the applicant who have qualified to participate in the on-the-record hearing [in favor of the applicant's proposal] to be heard next.

(h) Allow the applicant, if different from the appellant [appellant and other parties] to be heard next in the same manner as in the case of the appellant [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] appellant 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(1)

Lane Code

14.515(3)

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

14.515(3)

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14.53[5(1)]0

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

(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.

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

(1) For an appeal of a decision by the Director, notice of the appeal acceptance shall be mailed to the applicant, the applicant's representative, and to the appellant, if the appellant is different than the applicant. The notice shall disclose the tentative hearing date for the appeal and the requirements of this chapter for the submission of written materials prior to the hearing; and

(2) For an appeal of a decision by the Hearings Official, notice of the appeal acceptance shall be mailed to all persons who qualified as parties at the hearing with the Hearings Official. The notice shall disclose the tentative date on which the Board will elect whether or not to consider the appeal and the requirements of this chapter for participation in the appeal proceeding with the Board.

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:

14.530(1)

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14.535(1)

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

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

14.535(1)

Lane Code

14.535(3)

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 reconsideration decision and supplemental findings.

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

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

(ii) Within 14 days of 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 reconsideration decision and supplemental findings, and within this same time period, mail copies of the decision and findings to persons who have qualified as parties [and requested copies].

(3) Timeline Waiver. In the event a decision of the Hearings Official is being appealed by the applicant for the same

14.535(3)

Lane Code

14.600[(5)](4)

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 Reconsideration 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) Procedure. [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]

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

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

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

14.600(4)

Lane Code

14.600(5)

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

(3) Decision Criteria. A decision by the Board to hear the appeal on the record must comply with one or more of the following criteria:

(a)[(i)] The issue is of Countywide significance.

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

(c)[(iii)] The issue involves a unique environmental resource.

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

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

(a) The applicant and the applicant's representative.

(b) The Director.

(c) The appellant and the appellant's representative.

(d) Other persons who have:

(i) At least one day prior to the date of the Board's determination, submitted into the possession of the Director a written request to participate including statements about how they qualify as parties and the issues they wish to speak about.

(ii) Have been qualified as parties by the Hearings Official in the decision being appealed.

(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(1)

Lane Code

14.700(3)

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) If an [An] application subject to approval or denial under any of the provisions of this Chapter was complete when first submitted or if the applicant submits the requested information within 180 days of the date the application was first submitted, then approval or denial of the application shall be [subject to] based upon 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] the application was first submitted.

(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

14.700(3)

Lane Code

14.700(5)

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.