



T. B. C.

Goal One is Citizen Involvement

Lane County Board of Commissioners
125 East 8th Avenue
Eugene, OR 97401

April 7, 2009

**RE: Proposed amendments to LC Chapter 14, Application Review and Appeal
Procedures for Permits and Zone Changes**

Dear Chair Sorenson and Commissioners:

Over the past several years LandWatch Lane County and Goal One Coalition have become increasingly aware of pressing problems with the way the permit and zone change process works in Lane County. The hearings and appeals process is complicated, convoluted, repetitive, time consuming – and so costly that Lane County citizens, applicants and neighbors alike, are in effect priced out of the process.

LandWatch and Goal One are jointly proposing that Lane Code Chapter 14 be revised to simplify, streamline, and reduce the cost of reaching a final county decision on applications for permits and zone changes.

A. Framework of state law

ORS 215.406(1) authorizes counties to appoint one or more hearings officials.

ORS 215.406(2) authorizes planning commissions and governing bodies to exercise the powers of a hearings official, “in the absence of a hearings official.”

ORS 215.416(11)(a)(A) authorizes a “hearings official or other such person as the governing body designates” to approve or deny an application for a permit without a hearing, so long as opportunity for a hearing is provided.

ORS 215.416(1)(a)(D) requires that an appeal from a decision made by a hearings officer without a hearing to be to the planning commission or governing body of the county. An appeal from “such other person as the governing body designates” may be to a hearings officer, the planning commission or the governing body.

B. Purpose and effect of proposed amendments

1. To eliminate code provisions providing for reconsideration of Director and Hearings Official decisions, thereby eliminating delay and expense.
2. To eliminate the option of a Planning Director hearing, again eliminating expense and expediting the county’s land-use decision-making process.

GOAL ONE COALITION

3. To make a Hearings Official decision following an initial public hearing the final county decision unless the Board at its discretion determines to review the decision. This eliminates the cost and delay of a second local appeal while maintaining the Board's ability to determine county policy.

A draft of proposed amendments to Lane Code Chapter 14, in legislative format, is attached to this letter. The draft amendments would accomplish the objectives identified in this letter.

Please note that the proposed amendments retain the current LC 14.300(6), which authorizes the Hearings Official to ask the Board for interpretive or policy guidance and thus contributes significantly to the Board's ability to set and guide county policies and obtain deference on review. Together with proposed provisions in 14.500(2), the Board will retain its ability to direct and control matters of policy and interpretation.

LandWatch and Goal One request that the Board direct the Land Management Division to initiate the land use regulation amendment process as soon as possible. Considering and adopting amendments to LC Chapter 14 will require the filing of a PAPA notice to DLCD and public hearings before the Planning Commission and Board of Commissioners.

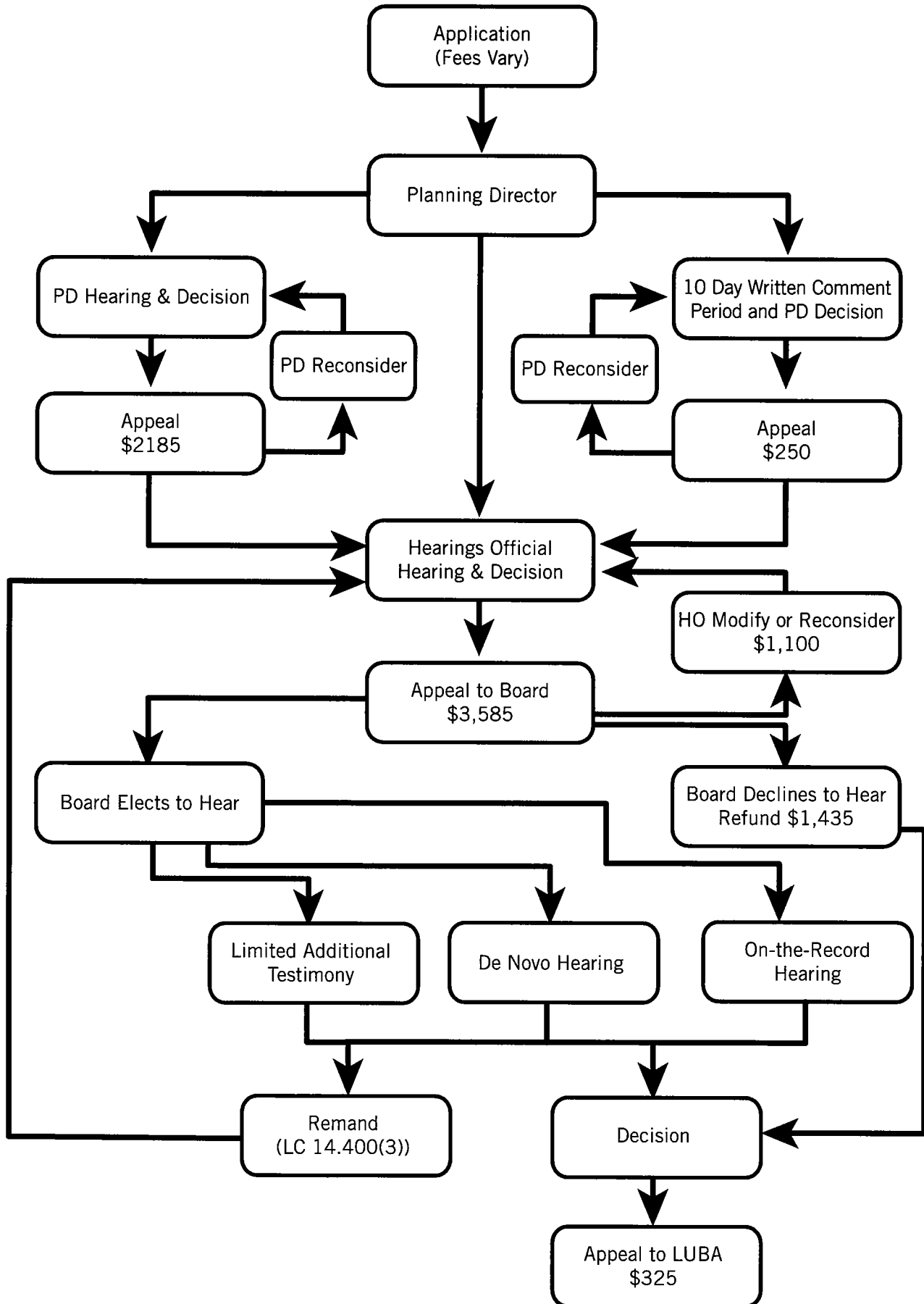
Thank you for your attention to this important matter.

Sincerely,

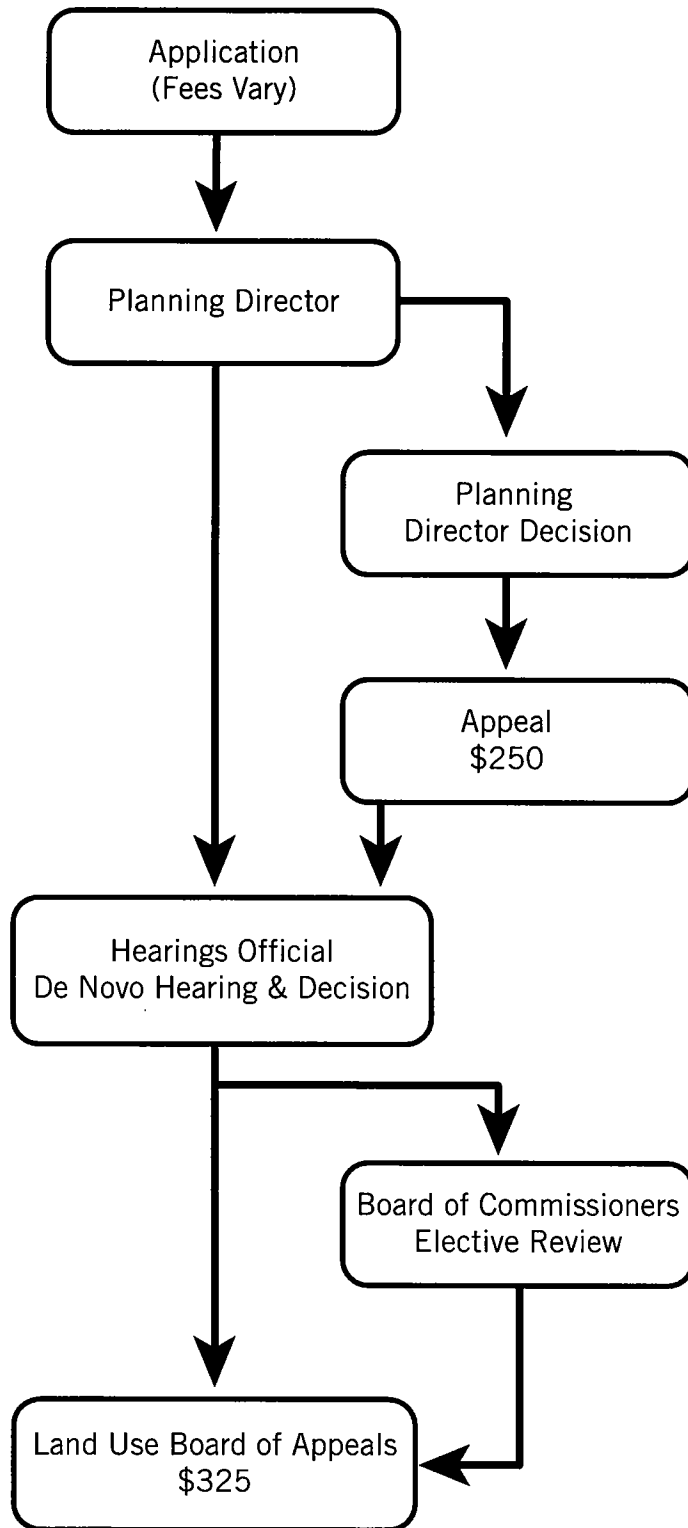
Robert Emmons
President, LandWatch Lane County

James Just
Executive Director, Goal One Coalition

Permits and Zone Changes



Permits and Zone Changes



Proposed amendments to Lane Code Chapter 14
Draft "E" 4/3/2009

[14.010 – 14.070 omitted]

14.100 Director Review Procedure.

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

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

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

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

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

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

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

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

14.110 Director Elective Hearing Procedure.

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

(2) Procedure.

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

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

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

~~(3) Director Hearing Criteria. An election by the Director to conduct a Director evidentiary hearing must comply with one or more of the following criteria:~~

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

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

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

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

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

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

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

~~(h) An applicant requests a hearing.~~

~~(4) Hearings Official Hearing Criteria. An election by the Director to have an evidentiary hearing for the application with the Hearings Official shall demonstrate that the application involves persons with opposing legal arguments regarding unresolved interpretations of applicable state laws or regulations.~~

[14.200 General Hearing Rules omitted]

14.300 De Novo Hearing Procedure.

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

(1) Hearing Deadlines.

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

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

(e)(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 20 days from the date of application acceptance and no later than 35 days from the date of application acceptance.

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

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

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

(2) Publication of Notice. For a zone change application and/or plan amendment application, the Department shall cause to be published in a newspaper of general circulation, at least 20 days in advance of the hearing, a notice of the hearing which contains the information required by LC 14.070(2) above.

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

(a) The applicant;

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

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

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

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

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

(iii) Within 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.

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

(f) Any person who has made an appearance.

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

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

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

County must expedite processing of the application, and such waiver shall be in addition to any other waiver of the statutory application processing timelines requested by the applicant.

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

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

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

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

(i) Lists the applicable substantive criteria;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) Conclude the hearing.

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

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

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

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

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

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

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

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

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

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

(8) Decision and Findings Mailing. Within two days of the date that the written decision adopting findings is signed by the Approval Authority, the Director shall mail to the applicant, and all parties of record, a copy of the decision and findings; or if the decision and findings exceed five pages, the Director shall mail notice of the decision.

14.400 On The Record Hearings Procedure.

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

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

(2) Limited Additional Testimony. The ~~Approval Authority~~ **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 ~~Approval Authority~~ **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. The ~~Approval Authority~~ **Board** may elect to hold a de novo hearing ~~or remand the appeal for a supplemental de novo hearing before the previous Approval Authority~~ if it decides that the volume of new information offered by a party proceeding under LC 14.400(2) above would:

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

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

(4) Hearing Deadlines. An appeal ~~A review~~ of a Hearings Official decision ~~which has been reviewed by the Board pursuant to LC 14.600 below and for which an on the record hearing has been approved, shall be heard by the Board within 14 days of the date of the decision by the Board to conduct the on the record hearing.~~

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

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

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

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

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

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

(9) Order of Procedure. In the conduct of a hearing on the record, and unless otherwise specified by the ~~Approval Authority~~ **Board**, the ~~Approval Authority~~ **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 hearing of the ~~previous Approval Authority~~ **Hearings Official**, that only the persons identified in LC 14.600(4) will be allowed to participate in the on-the-record hearing, and that the issues discussed will be limited to those raised in the notice of appeal.

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

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

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

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

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

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

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

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

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

(j) Conclude the hearing.

(k) Questions may be asked at any time by the ~~Approval Authority~~ **Board**. Questions by the parties or Director may be allowed by the ~~Approval Authority~~ **Board** upon request. Upon recognition by the ~~Approval Authority~~ **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.

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

(10) Written Decision or Final Order. Upon the adoption of findings, the ~~Approval Authority~~ **Board** shall enter a written decision or final order affirming, reversing or modifying the decision of the ~~previous Approval Authority~~ **Hearings Official**. The decision or final order shall be based on factual information. The Director shall, within two working days of the date of the written decision or final order, mail a copy of the written decision or final order to all parties of record.

14.500 Appealable Decisions and Manner of Review.

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

(2) A ~~Decisions by the Hearings Official pursuant to LC 14.300 or 14.400~~ **will become final 14 days after the decision is issued and signed unless the Board at its sole discretion determines to review the decision.** ~~above may be appealed to the Board. Upon Director acceptance of such an appeal, the Board may elect to hear or not hear the appeal, and shall follow LC 14.600 below in deciding whether or not to hear the appeal. Appeals heard by the Board shall be reviewed according to LC 14.400 above. A decision on any application appealed to the Board shall become final upon signing of an order by the Board to not hear the appeal or specifying the final decision in an appeal the Board elected to hear. A decision not to hear an appeal shall affirm the appealed decision pursuant to LC 14.600(2)(d) below.~~ **Review by the Board shall be conducted according to LC 14.400 above.**

(3) Unless appealed, a decision on any application shall be final upon expiration of the period provided by this chapter for filing an appeal.

14.510 Appeal Period.

A decision by the Director, ~~or Hearings Official~~, once reduced to writing and signed, shall be appealed as provided in LC 14.500 above, within ~~40~~ **12** days of the date of signing of the decision provided notice of the decision occurs as required by law. When the last day of the appeal period so computed is a Saturday, Sunday, a Federal or County holiday, or a day during which the

Department is closed because of a temporary work furlough, the appeal period shall run until 5:00 o'clock p.m. on the next business day.

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: ~~or reasons for reconsideration~~;
 - (i) The Approval Authority exceeded his or her jurisdiction;
 - (ii) The Approval Authority failed to follow the procedure applicable to the matter;
 - (iii) The Approval Authority rendered a decision that is unconstitutional;
 - (iv) The Approval Authority misinterpreted the Lane Code or Manual, State Law (statutory or case law) or other applicable criteria;
 - (v) The Approval Authority rendered a decision that violates a Statewide Planning Goal (until acknowledgment of the Lane County Comprehensive Plan, or any applicable portion thereof has been acknowledged to be in compliance with the Statewide Planning Goals by the Land Conservation and Development Commission); ~~or~~
 - (vi) ~~Reconsideration of the decision by the Approval Authority in order to submit additional evidence not available at the hearing and addressing compliance with relevant standards and criteria.~~
 - (e) ~~The position of the appellant indicating the issue raised in an on-the-record appeal to the Hearings Official or appeal to the Board was raised before the close of the record at or following the final evidentiary hearing and whether~~ **A statement of the position of the appellant, indicating whether** wishes the application to **should** 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~~ **12**-day appeal period. Appeals which are not so rejected by the Director shall be assumed to have been accepted.

14.525 Notice of Appeals and Review.

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

- (1) For an appeal of a decision by the Director made without an evidentiary hearing pursuant to LC 14.300 above, notice of the appeal acceptance shall be mailed to the applicant, the

applicant's representative, and to the appellant, if the appellant is different than the applicant. The notice shall disclose the tentative hearing date for the appeal and the requirements of this chapter for the submission of written materials prior to the hearing;

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

(23) For an appeal a review of a decision by the Hearings Official, notice of the appeal acceptance review 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 review and the tentative date on which the Board will conduct the review.

14.530 Director Reconsideration.

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

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

(2) ~~Modification or Reversal.~~ To modify or reverse the decision, the Director shall prepare a written modification or reversal of the decision, together with supporting findings and give notice pursuant to LC 14.100(3) and (4) above.

14.535 Hearings Official Reconsideration.

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

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

(2) ~~Reconsideration.~~ If the Hearings Official wishes to reconsider his or her decision, then the reconsideration shall comply with either LC 14.535(a), (b) or (c) below:

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

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

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

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

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

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

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

~~(3) Timeline Waiver. In the event a decision of the Hearings Official is being appealed by the applicant for the same application to be reconsidered by the Hearings Official, then to receive reconsideration by the Hearings Official, the applicant must first agree to a waiver of any statutory application timelines, and such a waiver shall be in addition to any other waivers already given.~~

~~(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 review of a decision by the Hearings Official.

(2) **Procedure.**

(a) The Board shall within 14 days determine whether or not if they wish to review 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) **If the Board determines to review a Hearings Official decision, the Board shall** Within seven days of the its determination mentioned in LC 14.600(2)(a) above, the Board shall adopt a written decision and order electing to have a review 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 the review hearing will be on the record, will allow limited additional testimony, or will be de novo. 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~~ The Board order shall also specify the tentative date for the review hearing on the record for the appeal and shall specify the parties who qualify to participate in the review hearing, on the record for the appeal.

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

(3) **Decision Criteria.** A decision by the Board to hear the appeal conduct a on the record review hearing must may conclude that an issue the issue raised in the appeal decision is of concern to the Board could have been and was raised before the close of the record at or following the final evidentiary hearing and must comply with one or more of the following criteria because:

(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 on review are:

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

(b) The Director.

(c) ~~The appellant and the appellant's representative~~ **Any participant in the hearing before the Hearings Official.**

(5) ~~On the Record Appeal~~ **Review**. If the Board's decision is to hear the appeal **determines to conduct a** ~~on the record~~ **review**, 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 **written decision order**.

(b) Conducted pursuant to LC 14.200 and LC 14.400 above.