

## Chapter 14 – Application Review and Appeal Procedures

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### **14.010 Purpose**

- (1) The purpose of this chapter is to establish standard procedures for submittal, acceptance, investigation, and review of applications and appeals, and to establish limitations upon approved or denied applications.
- (2) This chapter applies to Lane Code Chapters 3, 5, 9, 10, 11, 12, 13, 15, and 16, or portions thereof, as specified in those chapters. *(Revised by Ordinance No. 20-05, Effective 6.16.20)*

### **14.015 Definitions**

**When a Term is Not Defined.** Terms not defined in this section will have their ordinary accepted meanings within the context in which they are used. Webster’s Third New International Dictionary of the English Language, Unabridged, Copyright 1981, Principal Copyright 1961, will be considered a standard reference for defining the meanings of terms not defined in this section or elsewhere in Lane Code.

**Conflicting Definitions.** Where a term defined in LC 14.015 is defined in another section of Lane Code or by other regulations or statutes referenced by this chapter, the definition in this section will control.

**Definitions.** For the purpose of Chapter 14 of Lane Code, unless the context requires otherwise, the following words and phrases mean:

- (1) **Acceptance.** Received and considered by the Director to contain sufficient information and materials to begin processing in accordance with the procedures of this chapter.
- (2) **Appearance.** Submission of testimony or evidence in the proceeding, either oral or written. A person’s name appearing on a petition filed as a general statement of support or opposition to an application without additional substantive content, and that typically contains the names of a number of other persons, does not constitute an appearance.
- (3) **Appellant.** A person who submits to the department a timely appeal of a decision issued by the County.

- (4) **Applicant.** A person who applies to the department for a decision under this chapter. An applicant must be an owner of the property or someone authorized in writing by the property owner to make application.
- (5) **Approval Authority.** A person or a group of persons, given authority by Lane Code to review and make decisions upon certain applications in accordance with the procedures of this chapter. The approval authority may either be the Director, Hearings Official, or the Board, as specified for application types by this chapter or otherwise specified in LC Chapter 16.
- (6) **Argument.** The assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by a party to a decision. Argument does not include facts.
- (7) **Board.** The Lane County Board of Commissioners.
- (8) **County.** Lane County, Oregon.
- (9) **De Novo.** Review of an application in which all issues of law and fact are heard anew, and no issue of law or fact decided by the lower level review authority is binding on the parties in the new hearing. New parties may participate, and any party may present new evidence and legal argument by written or oral testimony.
- (10) **Department.** The Lane County Department of Public Works.
- (11) **Director.** The Planning Director of Lane County or the Planning Director's designated representative.
- (12) **End of Business.** The end of the business day is 4:00 PM Pacific Time.
- (13) **Evidence.** The facts, documents, data, or other information offered to demonstrate compliance or non-compliance with the standards believed by the proponent to be relevant to the decision.
- (14) **Hearings Official.** A person who has been appointed by the Board in accordance with Lane Manual 3.700 who makes land use decisions under this chapter.
- (15) **Hearing Authority.** The Hearings Official, Planning Commission, or Board who conduct hearings on applications as authorized by this chapter and Lane County land use regulations. The Hearing Official and Board are authorized to issue decisions on certain land use matters. The Planning Commission only makes recommendations on certain land use matters unless otherwise specified in LC Chapter 16.
- (16) **Land Use Decision.** A final decision or determination made by a Lane County approval authority that concerns the adoption, amendment, or application of the Statewide planning goals, a comprehensive plan provision, a land use regulation, or a new land use regulation where the decision requires the interpretation or exercise of policy or legal judgment.

A "Land Use Decision" does not include a decision made by a Lane County approval authority that:

- (a) Is an informal interpretation made under LC 14.020(1);
  - (b) Is made under land use standards that do not require interpretation or the exercise of policy or legal judgment;
  - (c) Approves or denies a building permit issued under clear and objective land use standards;
  - (d) Is a limited land use decision;
  - (e) Determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility that is otherwise authorized by and consistent with the comprehensive plan and land use regulations;
  - (f) Is an expedited land division as described in ORS 197.360;
  - (g) Approves, in accordance with ORS 480.450(7), the siting, installation, maintenance or removal of a liquefied petroleum gas container or receptacle regulated exclusively by the State Fire Marshal under ORS 480.410 to 480.460;
  - (h) Approves or denies approval of a final subdivision or partition plat or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan;
  - (i) Authorizes an outdoor mass gathering as defined in ORS 433.735, or other gathering of fewer than 3,000 people that is not anticipated to continue for more than 120 hours in any three-month period, except as provided in ORS 215.213(13)(c);
  - (j) Authorizes an outdoor assembly license in accordance with Lane Code 3.995; or
  - (k) Is a local decision or action taken on an application subject to ORS 215.427 or 227.178 after a petition for a writ of mandamus has been filed under ORS 215.429 or 227.179.
- (17) **Land Use Regulation.** Any Lane County zoning ordinance, land division ordinance adopted under ORS 92.044 to 92.046, or similar general ordinance establishing standards for implementing the Lane County Comprehensive Plan.
- (18) **Legislative.** An action or decision involving the creation, adoption, or amendment of a law, rule, or a map when a large amount of properties are involved, as opposed to the application of an existing law or rule to a particular use or property.
- (19) **Limited Land Use Decision.** Means a final decision or determination made by Lane County pertaining to a site within an urban growth boundary that concerns:
- (a) The approval or denial of a subdivision or partition plan, as described in ORS 92.040(1).
  - (b) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright,

including but not limited to site review.

Does not mean a final decision made by Lane County pertaining to a site within an urban growth boundary that concerns approval or denial of a final subdivision or partition plat or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan.

- (20) Ministerial.** An action or decision based on clear and objective standards and criteria where no discretion by the approval authority is required.
- (21) Owner.** A person on the title to real property as shown on the latest assessment records in the office of the Lane County Tax Assessor. Owner also includes a person whose name does not appear in the latest tax assessment records, but who presents to the County a recorded copy of a deed or contract of sale signed by the owner of record as shown in the Lane County Tax Assessor's records.
- (22) Party.** With respect to actions under this chapter, the following persons or entities are defined as parties:
- (a)** The applicant;
  - (b)** Any owner of the subject property that is the subject of the decision under consideration in accordance with this chapter; and
  - (c)** A person who makes an appearance before the approval authority or hearing authority.
- (23) Permit.** A discretionary approval of a proposed development of land under ORS 215 or county legislation or regulation adopted in accordance with ORS 215.
- "Permit" does not include:
- (a)** A building permit;
  - (b)** A limited land use decision as defined in LC 14.015(19);
  - (c)** A decision which determines the appropriate zoning classification for a particular use by applying criteria or performance standards defining the uses permitted within the zone, and the determination applies only to land within an urban growth boundary;
  - (d)** A decision which determines final engineering, design, construction, operation, maintenance, repair, or preservation of a transportation facility which is otherwise authorized by and consistent with the comprehensive plan and land use regulations; or
  - (e)** An expedited land division, as described in ORS 197.360.
- (24) Person.** Any individual, partnership, corporation, limited liability company, association, governmental subdivision or agency or public or private organization of any kind.
- (25) Planning Commission.** The Planning Commission of Lane County, Oregon.

- (26) **Quasi-judicial.** A land use action or decision that is not ministerial or legislative that requires discretion or judgment in applying the standards or criteria of this Code to an application for approval of a development or land use proposal.
- (27) **Received.** Acquired by or taken into possession by the Director. (*Revised by Ordinance No. 20-05, Effective 6.16.20*)

#### 14.020 General Provisions

- (1) **Effect of Informal Interpretation.** Any statement, interpretation, or determination provided by the department that is not in writing, or that is made outside of a Type I, II, III, or IV procedure in accordance with this chapter, is considered to be only a statement of opinion and not a final action effecting a change in the status of a person's property or conferring any rights, including any reliance rights, to any party.
- (2) **Pre-Application.** A pre-application conference is not a requirement of any application, but may be requested for a fee, where a project involves the need for multiple land use applications or for large scale or highly complex development projects. The purpose of the pre-application conference is to acquaint persons with the requirements of Lane Code, the applicable comprehensive plan, and other related documents prior to application. In no case will a pre-application conference or information provided therein be guaranteed to provide an exhaustive review of potential issues associated with any project nor will it preempt the enforcement of applicable regulations.

#### (3) Submission of Materials

- (a) **General.** The submission of any materials by any party including application materials, supplemental information, written comments, testimony, evidence, exhibits, or other documents that are entered into the record of any land use application must be submitted either at the offices of the Director or at a public hearing, unless specified otherwise by the hearing notice or hearing authority prior to the close of the record. Materials are considered submitted when received, or in the case of materials submitted at a public hearing, placed before the hearing authority.
- (b) **Electronic Materials.**
- (i) When application or appeal materials submitted in hard copy format are over 20 pages in length, an applicant or appellant must provide an identical electronic version of the submitted materials in addition to a hard copy. Any other party submitting written materials into the record that are over 20 pages is also encouraged to submit an identical electronic copy. Any electronic materials must be in a format acceptable to the Director. This provision should not be interpreted to prohibit electronic submittals of materials less than 20 pages in length. The County will scan submitted materials upon request for fee. The County cannot be held responsible for electronic submittals that are not received by the Director or not confirmed by the Director to have been received.
- (ii) When electronic materials over 20 pages in length are submitted by any party for inclusion in an application record, an identical hard copy of the

materials must also be submitted unless this requirement is waived by the Director.

- (c) **Deadline.** Where any materials including both hard and electronic copies are submitted to the offices of the Director and are subject to a date-certain deadline, the materials must be received by the Director by the end of business.
- (4) **Time Computation.** Except for application completeness review and processing timelines prescribed by LC 14.050, time periods prescribed or allowed by this chapter will be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, or a legal holiday or any day on which the Director's office is not open for business. *(Revised by Ordinance No. 20-05, Effective 6.16.20)*

#### 14.030 Procedure Types and Application Processing

- (1) **Procedure Types.** Application review will follow either a Type I, II, III, or IV procedure, set forth in subsections (a) through (d) below:

- (a) **Type I Procedure**

- (i) **Overview.** The Type I procedure involves the ministerial review of an application based on clear and objective standards and criteria. Uses or development evaluated through this process are those that are permitted outright in the applicable zone. In general, potential impacts of the proposed development have been already recognized through the adoption of County standards. The Type I procedure does not require interpretation or exercise of policy or legal judgement when evaluating development standards and criteria. A Type I determination is made by the Director without public notice or a hearing. A Type I determination may not be appealed at the County level except as otherwise provided in Lane Code or if found to constitute a permit and authorized by the Director.

The Type I procedure applies to a variety of applications including, but not limited to, a land use compatibility statement (LUCS), declaratory ruling, verification of conditions, final partition or subdivision plat, floodplain verification, or floodplain fill or floodplain development permit, and timeline extensions.

- (ii) **Elective Type II.** A Type I determination may be elevated by the applicant by submitting a Type II application or by the Director. If the application is to be elevated by the Director, the Director should first notify the applicant.
- (iii) **Review and Determination.** Upon accepting a Type I application, the Director will review the application for compliance with all applicable land use standards and regulations and adopted plans.
- (iv) **Effective Date of Determination.** A Type I determination is final on the date it is signed by the Director. Within five days of the determination date, the applicant and property owner will be mailed a copy of the determination.

- (b) **Type II Procedure**

- (i) **Overview.** The Type II procedure involves the Director's interpretation and exercise of discretion when evaluating approval standards and criteria. Uses or development evaluated through this process are uses that are conditionally permitted or allowed after Director review that may require the imposition of conditions of approval to ensure compliance with development standards and approval criteria. Type II decisions are made by the Director, in some cases after notice of application and opportunity to comment. Type II decisions may be appealed.

The Type II procedure applies to a variety of applications including, but not limited to review of applications for: permitted uses subject to standards, conditional use permits, and tentative partition and subdivision applications made pursuant to LC Chapter 13.

- (ii) **Review and Decision.** Upon determination of completeness required by LC 14.050(1), Type II applications will be reviewed in accordance with the following procedures:

- (aa) Notice of application will be mailed if required or elected by the Director or applicant, as provided in LC 14.060(1).
- (bb) At the conclusion of the comment period specified by the notice of application, or upon determination of application completeness if notice of application is not required or elected by the Director or applicant, the Director will review the application and written comments and prepare a written decision stating whether the application is approved, approved with conditions, or denied. The Director's decision will state the facts relied upon in rendering the decision. Approval or denial of an application must be based on applicable standards and criteria.
- (cc) Notwithstanding subsection (1)(b)(ii)(aa) and (bb), the Director may elect to process a Type II application through a Type III procedure in accordance with the procedures at subsection (1)(c) below if the application raises one or more of the following issues:
  - (A) An application raises an issue which is of countywide significance.
  - (B) An application raises an issue which will reoccur with frequency on which policy guidance is needed.
  - (C) An application involves a significant impact to an inventoried Goal 5 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 for which a compliance action is pending or with which a significant level of opposition is anticipated.
  - (E) An application involves opposing legal arguments regarding

unresolved interpretations of applicable state laws or regulations.

- (F) An application involves a contemplated use that 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 that would result in a significant level of new commercial or industrial traffic, or ongoing truck traffic, on local roads in a residentially zoned area, or the introduction of noise, odors or dust into a residentially zoned area.
- (H) At the discretion of the Director, if an applicant requests a Type III procedure and pays the additional required fee.

(dd) The Director will mail notice of a Type II decision in accordance with LC 14.060. Notice of decision should be mailed within two days.

(ee) Appeals of Type II decisions may be made requesting Director reconsideration or Hearings Official de novo review in accordance with the procedures at LC 14.080.

(ff) Appeals of Hearings Official decisions on Type II appeals requesting Hearings Official reconsideration may be made by a party or the Director. Requests to the Board for on-the-record review of Hearings Official decisions on Type II appeals may be made by the Director. Appeals requesting reconsideration and Planning Director requests for Hearings Official reconsideration or Board review must be made in accordance with the procedures at LC 14.080.

(iii) **Effective Date of Decision.** A Type II decision becomes final 12 days after the date the Director mails the notice of decision unless the decision is appealed in accordance with LC 14.080. If the decision is appealed, the effective date of the decision will be the date on which all County appeals are finalized or withdrawn. The effective date of a Hearings Official decision will be the date on which all County appeals or reconsideration requests are withdrawn or 12 days after the Director mails written notice of the Hearings Official decision unless further appealed to the Board. If the Director requests on-the-record review by the Board, the effective date of the decision will be the date on which the request is withdrawn or a final County decision by the Board is issued.

(iv) **Appeal to LUBA.** Appeals of the final County decision by the Hearings Official or Board may be appealed to the Land Use Board of Appeals in accordance with ORS 197, as further described at LC 14.080(7).

### (c) Type III Procedure

(i) **Overview.** The Type III procedure involves interpretation and exercise of discretion when evaluating approval standards and criteria. Applications subject to a Type III procedure are more complex and development impacts

may be more significant than Type II applications, warranting review through a public hearing. The Type III procedure involves public notice, a public hearing, decision by the Hearings Official unless otherwise specified by LC Chapter 16, and an opportunity for appeal requesting Hearings Official reconsideration by any party or request by the Director for Hearings Official reconsideration or on-the-record Board review.

- (ii) **Review and Decision.** Upon determination of completeness required by LC 14.050(1), Type III applications will be reviewed in accordance with the following procedures:

  - (aa) Notice of public hearing will be mailed, and as required, posted and published, as provided in LC 14.060.
  - (bb) The Hearings Official will conduct a public hearing, in accordance with the applicable hearing procedures found at LC 14.070.
  - (cc) To the extent possible, the Hearings Official should issue to the Director a written decision and findings within 10 days of close of the hearing record and identify parties to the proceeding.
  - (dd) The Director will mail notice of the decision in accordance with LC 14.060. Notice of decision should be mailed within two days of issuance of the Hearings Official decision.
  - (ee) Appeals of Type III Hearings Official decisions requesting reconsideration may be made by any party. Reconsideration of a Hearings Official decision may be requested by the Director. Request to the Board for on-the-record review of Hearings Official decisions may be made by the Director. Appeals requesting reconsideration and Planning Director requests for Hearings Official reconsideration or Board review must be made in accordance with the procedures at LC 14.080.
- (iii) **Effective Date of Decision.** A Type III decision becomes final 12 days after the date the Director mails the notice of decision unless the decision is appealed in accordance with LC 14.080. If the decision is appealed, the effective date of the decision will be the date on which all County appeals are finalized or withdrawn. If the Hearings Official decision is appealed or requested for reconsideration, the effective date of the affirmed or reconsidered Hearings Official decision will be the date on which all County appeals are withdrawn or 12 days after the Director mails written notice of the Hearings Official decision unless further appealed. If the Director requests on-the-record review by the Board, the effective date of the decision will be the date on which the request is withdrawn or a final County decision by the Board is issued.
- (iv) **Appeal to LUBA.** Appeals of the final County decision by the Hearings Official or Board may be appealed to the Land Use Board of Appeals in accordance with ORS 197, as further described at LC 14.080(7).

**(d) Type IV Procedure**

- (i) Overview.** The Type IV procedure applies to the creation, revision, or broad-scale implementation of public policy, land use regulations, the comprehensive plan, or zoning maps, except that a change to zoning map independent of a post-acknowledgement plan amendment is subject to a Type III procedure. The Type IV procedure also includes plan diagram or policy amendments affecting specific properties. The Type IV procedure involves the evaluation of subjective review criteria and plan policies, public notice, a hearing before the Planning Commission and Board, final decision issued by the Board, and an opportunity to appeal. For a property specific Type IV application, hearings before the Planning Commission and Board will be quasi-judicial and the County is not required to render a final decision on these matters within the timelines of LC 14.050. A Type IV quasi-judicial application may be initiated by an owner or authorized agent according to LC 14.040. The Director may initiate a Type IV application without a privately-initiated application.
- (ii) Review and Decision.** Upon determination of completeness, Type IV applications will be reviewed in accordance with the following procedures:

  - (aa)** Notice of Type IV public hearings will be mailed and published as provided in LC 14.060. Additionally, for a Type IV quasi-judicial application that concerns a specific property or properties, the applicant must post notice on the subject property and the County must mail notice of a Type IV quasi-judicial application in accordance with LC 14.060.
  - (bb)** The Planning Commission will conduct a public hearing in accordance with the applicable procedures at LC 14.070 and make a recommendation to the Board.
  - (cc)** The Board will conduct a public hearing in accordance with the applicable procedures at LC 14.070 and will issue a decision after considering the staff report, Planning Commission recommendation and public comment, and deliberating on the matter.
  - (dd)** The Director will mail notice of the Board's decision in accordance with LC 14.060. Notice of a Type IV land use decision will be mailed to the applicant, all parties, and the Department of Land Conservation and Development within 20 days after the Board makes the decision. The Director will also provide notice to any person as required by other applicable laws.
- (iii) Final Decision and Effective Date of Decision.** A decision on a Type IV application is final when reduced to writing, signed and mailed to those entitled to notice of decision. If approved, the decision will take effect on the effective date of the enacting ordinance.
- (iv) Appeal to LUBA.** Appeals of the final County decision by the Board may be appealed to the Land Use Board of Appeals in accordance with ORS

197, as further described at LC 14.080(7).

- (2) Consolidated Review of Applications.** When an applicant files more than one application concurrently for the same property or tract of land, the applicant may elect to consolidate the review of the concurrent applications. When review of concurrent applications subject to different procedure types is consolidated, all of the applications will be reviewed under the highest procedure type. When proceedings are consolidated, required notices may be consolidated, provided the notice identifies each application and cites their respective review criteria. When more than one application is reviewed, findings of fact must address each application and a decision must be made on each application.
- (3) Limited Land Use Decision Procedure (only within UGBs).** All applications for limited land use decisions must be reviewed and decided by the Director through a Type II procedure and are also subject to the following requirements:

  - (a)** Notice of application must be mailed in accordance with LC 14.060(1)(a).
  - (b)** Approval or denial of an application for a limited land use decision must be based upon and accompanied by a brief statement that explains the standards and criteria considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the standards, criteria, and facts set forth.
  - (c)** A limited land use decision by the Director may be appealed to the Hearings Official in accordance with LC 14.080. *(Revised by Ordinance No. 20-05, Effective 6.16.20)*

#### **14.040 Application Requirements**

- (1) Minimum Submittal Requirements.** Applications for a Type I through Type IV procedure must be submitted on a form provided by the Director, address all applicable standards and criteria, and include the following materials and information:

  - (a)** Applications must include at least one hard copy of all application materials, no larger than 11 inch x 17 inch in size, and an electronic copy if required by LC 14.020(3)(b);
  - (b)** All applicable information requested on the application form;
  - (c)** Required filing fee, except that the required filing fee may not be required when Lane County initiates an application;
  - (d)** Signature of each applicant;
  - (e)** Signature of a property owner or property owner's authorized representative;
  - (f)** Proof of property ownership by providing a certified or recorded copy of a deed, or land sale contract, or Lane County Tax Assessor's records;
  - (g)** Assessor's map and tax lot number of the subject property;

- (h) A site plan drawn to a standard engineer's scale, and conforming to the County's site plan submittal standards;
  - (i) Information demonstrating compliance with any applicable prior decisions and conditions of approval for the subject property;
  - (j) A written narrative clearly indicating what action is requested and addressing all applicable standards and criteria;
  - (k) Supporting information required to evaluate the application and address the applicable standards and criteria;
  - (l) A written statement indicating whether a railroad-highway crossing provides or will provide the only access to land that is the subject of an application; and
  - (m) Additional information needed to evaluate applicable standards and criteria.
- (2) **Fees Required.** In addition to any other applicable approval criteria, an approvable Type II or III application must be accompanied by the appropriate filing fee unless the Director authorizes a waiver or reduction to filing fees pursuant to Lane Manual Chapter 60.850.
- (3) **Determination of Application Requirements.** The Director may waive any of the requirements of subsection (1) above if deemed to be inapplicable to the application.
- (4) **Applicant's Burden.** It is the applicant's responsibility to provide evidence demonstrating that the application complies with all applicable standards and criteria.
- (5) **Modification of Application.** Once an application is deemed complete, an applicant may modify an application subject to the following provisions:
- (a) **Applicability.**
    - (i) A modification of application is a procedure required when an applicant submits:
      - (aa) Additional or revised application materials that include a new or substantially revised site plan; or
      - (bb) Written materials that include or require substantial new findings of fact.
    - (ii) A modification of application does not apply to:
      - (aa) An applicant's submission of new evidence or proposed conditions of approval that merely clarify or support the pending application;
      - (bb) Reductions to the scope of the project to mitigate project impacts where such reductions do not involve the siting of proposed development closer to adjoining properties or Goal 5 inventoried resources, or relocation of the proposed access or circulation pattern; or

**(cc)** Type I applications.

**(b) Requirements.** The Director or hearing authority will not consider information submitted by or on behalf of an applicant that would constitute a modification of application unless the applicant first submits a request that complies with the following:

**(i)** The request includes:

**(aa)** A completed application form that has been signed by the applicant and owner, and that describes the modification of application requested;

**(bb)** The required fee;

**(cc)** Any modified application materials; and

**(dd)** Written authorization for an extension of applicable timelines pursuant to LC 14.050(2) that is effective as of the date the modification of application is submitted and that corresponds with the amount of time calculated between the date of application completeness and the date of the modification of application request. Any such timeline extension must also comply with subsection (5)(b)(ii) below.

**(ii)** The applicable time limit for final review for an application may be extended as many times as there are modification of applications submitted, subject to the limitations, exceptions, and clarifications in ORS 215.427. The total of all extensions may not exceed 215 days per ORS 215.427(5).

**(iii)** The modification of application may be submitted up until the issuance of a Type II Director decision, or close of the open record period allowing submittal of new information for an application reviewed under a Type III or IV hearing procedure, but in no case may it be submitted later than the 215<sup>th</sup> day after the date the application was deemed complete.

**(c) Procedure.**

**(i)** A modification of application will be processed under the same procedure type as the original application.

**(ii)** The Director or hearing authority may require additional notice and if applicable, public hearing.

**(iii)** For Type II applications that do not involve a public hearing, or for procedure types requiring public hearing up until the date and time a hearing is opened for receipt of oral testimony on an application, the Director will have the sole authority to determine whether an applicant's submittal constitutes a modification of application. After such time for procedures that involve a public hearing, the hearing authority will make such determinations. The determination of whether a submittal constitutes a modification of application will be appealable only after a decision is entered on the application.

- (6) **New Application.** If an application is modified in such a manner that approval for a different land use is requested or a different set of approval criteria or development standards apply, a new application will be required. The new application will be subject to all submittal and processing requirements of this Chapter applicable to the procedure type. *(Revised by Ordinance No. 20-05, Effective 6.16.20)*

#### 14.050 **Completeness Review and Time Limits**

- (1) **Type II or III Completeness Review.** Within 30 days of a Type II or Type III application being received, the Director will evaluate the application for completeness in accordance with subsections (a) through (e) below.
- (a) An application submitted to the Director will not be considered accepted solely because of having been received. Upon receipt of an application, the Director will date stamp the application and verify that the appropriate application fee and materials have been submitted before accepting the application. Acceptance of an application will not preclude a later determination that the application is incomplete.
  - (b) Applications will be evaluated for completeness with applicable application requirements of LC 14.040.
  - (c) **Supplementation of Application within First 30 days of Submittal.** An applicant may not submit any supplemental information for an application within the first 30 days following acceptance of the application or until the application has been deemed complete, whichever is first, except when requested or otherwise authorized by the Director. Any supplemental information submitted by an applicant in violation of this section will not be considered in determining whether the application is complete and will be returned to the applicant.
  - (d) **Complete Application.** An application will be deemed complete if the application requirements have been fully satisfied upon initial filing or through the procedures set forth in subsection (1)(e)(i) - (iii) below. When the Director deems the application complete, the Director will notify the applicant in writing. If the Director has not issued in writing a completeness determination within 30 days from the date the application is received by the Director, the application is automatically deemed complete on the 31<sup>st</sup> day after it was received.
  - (e) **Incomplete Application.** If an application is incomplete, the Director will notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information within the timeframe set forth in subsection (1)(f) below. The application will be deemed complete upon receipt by the Director of:
    - (i) All of the missing information;
    - (ii) Some of the missing information and a written notice from the applicant that no other information will be provided; or
    - (iii) Written notice from the applicant that none of the missing information will be provided.

- (f) **Void Applications.** On the 181st day after first being submitted, an incomplete application is void if the applicant has been notified of missing information and the application has not been deemed complete in accordance with subsection (1)(e)(i) - (iii) above.
  - (g) **Applicable Standards and Criteria.** If an application was complete when first submitted or the applicant submits additional information in accordance with subsection (1)(e) above within 180 days of the date the application was first submitted, review of the application will be based upon the standards and criteria that were applicable at the time the application was first submitted.
- (2) **Time Limit.** Subject to the limitations, exceptions and clarifications in ORS 215.427 and except as provide in subsection (1) above, the County must take final action, including resolution of all appeals under ORS 215.422, within the timelines set forth in subsections (2)(a) to (d) below. Violation of these timelines does not constitute a procedural error by the County, but provides the applicant with the remedy set forth in ORS 215.429.
- (a) For land within an urban growth boundary and applications for mineral aggregate extraction the County must take final action on an application for a permit, limited land use decision, or zone change, within 120 days after the application is deemed complete.
  - (b) For applications for new telecommunication towers or collocations, the County must take final action within any applicable time limit set forth by the Federal Communications Commission or within a timeframe mutually agreed upon by the County and the applicant in accordance with FCC ruling, as applicable.
  - (c) For all other applications, the County must take final action within 150 days after an application for a permit, limited land use decision, or zone change is deemed complete.
  - (d) The time periods specified in subsection (2)(a) and (c) above may be extended for a specified time period at the written request of the applicant, subject to the limitations of ORS 215.427(5).
  - (e) The time periods in subsection (2)(a) and (c) do not apply to a Type IV decision changing an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610. *(Revised by Ordinance No. 20-05, Effective 6.16.20)*

#### 14.060 Notice Requirements

##### (1) Notice of Application

- (a) **Special Notice for Limited Land Use Decision.** For a limited land use decision, written notice of the application must be mailed to owners of property within 100 feet of any part of the tract for which the application is made and to any neighborhood or community organization recognized by the

Board and whose boundaries include the site, and to any transportation agencies, such as Oregon Department of Transportation, whose facilities or services may be affected by the proposed action. The notice must provide at least a 14 day period for submission of written comments prior to the decision. The notice must include the information required by subsection (5).

- (b) Optional.** Notice of a Type II application may be mailed in accordance with subsections (4) and (5) below. Notwithstanding subsections (4) and (5) below, the Director may choose to mail notice of the application only to affected governmental agencies. The notice will provide at least a 15 day period for submission of written comments prior to the decision. This provision does not preclude an applicant's ability to request notice of application.
- (c) Special Notice and Review Requirements for a Dwelling in the EFU Zone.** For an application for a dwelling on EFU-zoned land in accordance with LC 16.212(7)(g), the Director must provide notice of application consistent with the following.

  - (i)** The notice of application must be mailed in accordance with subsections (4) and (5) below and to:

    - (aa)** Owners of land that is within 750 feet of the lot or parcel on which the dwelling will be established; and
    - (bb)** Any person who requested notice of such applications and who paid a reasonable fee established by the County to cover the cost of such notice.
  - (ii)** The notice required under this section must specify that there are 15 days following the date of the postmark of the notice to file a written objection on the grounds only that the dwelling or activities associated with it would force a significant change in or significantly increase the costs of accepted farming practices on nearby lands devoted to farm use.
  - (iii)** If no objection based on the grounds identified in subsection (1)(c)(ii) above is received within 15 day notice period, the Director must approve, approve with conditions, or deny the application. If an objection is received based on the grounds identified in (1)(c)(ii) above, the Director must set the matter for a hearing and process the application through a Type III procedure.
  - (iv)** The costs of the notice required by subsection (1)(c)(i) of this section may be charged to the applicant.
- (d) Special Notice to Railroad Company upon Certain Applications for Land Use Decision, Limited Land Use Decision or Expedited Land Use Decision**

  - (i)** As used in this section, the term "railroad company" includes every corporation, company, association, joint stock association, partnership or person, and their lessees, trustees or receivers, appointed by any court

whatsoever, owning, operating, controlling or managing any railroad.

- (ii) The Director must provide notice of application, in accordance with the timelines established in this section in accordance with subsections (4) and (5) below to the Oregon Department of Transportation and the railroad company if the applicant indicates that a railroad-highway crossing provides or will provide the only access to land that is the subject of the application for a land use decision, limited land use decision, or expedited land division.
- (e) **Timing of Notice of Application.** Notice of application provided pursuant to subsection (1)(a) to (d) will be mailed after determination that the application is complete in accordance with LC 14.050(1).

**(2) Notice of Public Hearing**

- (a) **Mailed Notice for a De Novo Hearing.** Mailed notice of a de novo public hearing containing the information required by subsection (5) below will be provided as follows:
  - (i) **Type III.** The Director must mail notice of hearing on a Type III application at least 20 days prior to the public hearing date. Notice of public hearing will be mailed to the persons and agencies listed in subsection (4) below.
  - (ii) **Type IV.** At least 20 days before the date of the first Type IV public hearing, notice of public hearing will be mailed to:
    - (aa) The applicant;
    - (bb) Each owner whose property would be directly affected by the proposal.
    - (cc) Any affected governmental agency;
    - (dd) To any transportation agencies, such as Oregon Department of Transportation, whose facilities or services may be affected by the proposed action; and
    - (ee) Any person who requests notice in writing of a specific application.
    - (ff) For a Type IV quasi-judicial application, notice must be mailed to the persons and agencies listed at subsection (4)(a).
- (b) **Mailed Notice for an On-the-Record Hearing.** Mailed notice of an on-the-record hearing will be provided as follows:
  - (i) The Director must mail notice of an on the record hearing at least 10 days prior to the hearing date. Notice of hearing will be mailed to:
    - (aa) Applicant;
    - (bb) Property owner;



**(dd)** General nature of the proposal; and

**(ee)** Where more information may be obtained.

**(ii)** Prior to the public hearing, the applicant must submit to the Director an affidavit of posting indicating that the notice was posted in accordance with this subsection.

**(iii)** The applicant must remove and lawfully dispose of the sign within 14 days of the close of the public hearing.

**(e) Published Notice of Hearing**

**(i)** At least 21 days before the first hearing for zone change and/or plan amendment application, the Director must publish notice of the hearing in a newspaper of general circulation. The notice provisions of this section does not restrict the giving of notice by additional means, including mail, radio, and television. The published notice will contain the same information required in subsection (5)(d) below as applicable.

**(ii)** For an on the record hearing on a zone change, published notice must be provided in the same manner as described above, except that notice must be published at least 10 days before the first on the record hearing.

**(3) Notice of Decision.** A notice of a decision will be mailed to the persons identified in (4) below. The notice of decision will contain the information identified in (5) below.

**(4) Mailing List**

**(a)** When notice of an application is sent in accordance with LC 14.060(1)(b) above, and for notice of a Type II decision, a Type III hearing, or a Type IV quasi-judicial hearing, notice will be mailed to the following persons:

**(i)** Applicant;

**(ii)** Property owner;

**(iii)** Appellant (if applicable);

**(iv)** Owners of record of properties on the most recent property tax assessment roll where such property is located:

**(aa)** Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;

**(bb)** Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone; or

**(cc)** Within 750 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone.

- (v) Any neighborhood group or community organization recognized by the governing body as specified in Lane Manual Chapter 3 and whose boundaries include the site;
  - (vi) Any person who submits a written request to receive a notice of the specific application;
  - (vii) Any person who requests and remits payment for an annual subscription for notice per Lane Manual for a specific type of application involved;
  - (viii) Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the County and any other affected governmental agencies. At a minimum, the Director will notify the road authority if different than Lane County. The failure of another agency to respond with written comments on a pending application will not invalidate a permit or land use decision issued by the Director or Hearings Official; and
  - (ix) For a notice of decision, appeal, or Type IV hearing: any person who appeared either orally or in writing before the approval authority or prior hearing authority.
- (b) A notice of a Type IV legislative hearing or Type III or IV decision must be mailed to the following persons:
- (i) Applicant;
  - (ii) Property owner (if applicable);
  - (iii) Appellant (if applicable);
  - (iv) Any party to the application;
  - (v) Any person who submits a written request to receive a notice of the specific application or specific type of application involved; and
  - (vi) Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the County and any other affected governmental agencies. At a minimum, the Director will notify the road authority if different than Lane County. The failure of another agency to respond with written comments on a pending application will not invalidate an action or permit approval made by the hearing authority under this Code
- (5) **Mailed Notice Content.** Any mailed notice of application, decision, or public hearing must contain information in subsection (5)(a) below, and where applicable, the additional information specified in subsection (5)(b) through (e).
- (a) **Minimum Content Required**
- (i) Identification of the application by department file number;

- (ii) Identification of the property owner, and if different than the owner, the applicant and/or the applicants or owners authorized representative;
  - (iii) Identification of appellant (if applicable);
  - (iv) Identification of the address and assessor's map and tax lot number of, or other easily understood geographical reference to, the subject property and any contiguous properties in the same ownership;
  - (v) Explanation of the nature of the application and the proposed use or uses which could be authorized by the decision;
  - (vi) List of the applicable standards and criteria, by commonly used citation, from the applicable comprehensive plan that apply to the application and decision;
  - (vii) Name, phone number, and email of the department representative to contact to obtain additional information;
  - (viii) Statement that a copy of the application, all documents and evidence submitted by or on behalf of the applicant, applicable standards and criteria, and a copy of any staff report are available for inspection at no cost and copies will be provided at reasonable cost; and
  - (ix) Statement that "NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST BE FORWARDED TO THE PURCHASER."
- (b) **Content for Notice of Application.** In addition to the information required by subsection (5)(a) above, a mailed notice of application for a Type II application must contain the following information:
- (i) Place, date, and time that comments are due;
  - (ii) A general explanation of the requirements for submission of testimony;
  - (iii) State that issues that may provide the basis for an appeal must be raised in writing with sufficient specificity to enable the Director to respond to the issue prior to the expiration of the comment period; and
  - (iv) Statement that after the close of the comment period, the Director will issue and provide notice of the decision to persons who provided written comments or are otherwise legally entitled to notice of decision.
- (c) **Content for Notice of Limited Land Use Application.** In addition to the information required by subsection (5)(a) and (b)(i)-(ii) above, a mailed notice of application for a limited land use decision must provide a brief summary of the local decision making process for the limited land use decision being made.
- (d) **Content for Notice of Public Hearing.** In addition to the information required by subsection (5)(a)(i)-(ix) above, mailed notice of public hearing must contain

the following information:

- (i) The time, date, and location of the hearing;
  - (ii) Identification of which hearing authority will conduct the public hearing;
  - (iii) A statement that failure to raise an issue in a hearing, in person or in writing, or failure to provide statements or evidence sufficient to afford the hearing authority an opportunity to respond to the issue, precludes the ability to appeal to the Land Use Board of Appeals on that issue;
  - (iv) A statement that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and copies will be provided upon request at a reasonable cost; and
  - (v) A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.
- (e) **Content for Notice of Decision.** In addition to the information required by subsection (5)(a) above, a mailed notice of decision must contain the information listed below. The notice may be a summary, provided it references the specifics of the proposal and the conditions of approval in the record.
- (i) Description of the nature of the decision;
  - (ii) Statement of where a copy of the decision can be obtained;
  - (iii) Statement of how to appeal the decision;
  - (iv) Deadline for an appeal;
  - (v) Date the decision will become final, unless appealed; and
  - (vi) For a Type II decision:
    - (aa) Statement that the decision will not become final until the period for filing a local appeal has expired;
    - (bb) Statement that any person who is adversely affected or aggrieved or who is entitled to notice of decision may appeal the decision by filing a written appeal; and
    - (cc) Statement that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals.
- (6) **Additional Notice.** Mailed, posted, or published notice may be provided that exceeds the requirements of this chapter. The requirements for notice must not restrict additional notification considered necessary or desirable by the Board of Commissioners, Planning Commission, or Director for any reason. *(Revised by Ordinance No. 20-05, Effective 6.16.20)*

## 14.070 Public Hearings Process

- (1) Staff Report.** At least seven days prior to a public hearing, the Director will provide a staff report to the hearing authority and parties to the application, and make it available to the public upon request. If the report is not provided by such time, the hearing will be held as scheduled, but any party may at the hearing or in writing prior to the hearing request a continuance of the hearing to a date certain that is at least seven days after the date the staff report is provided. The granting of a continuance under these circumstances will be at the discretion of the hearing authority.
- (2) Personal Conduct**

  - (a)** No person may be disorderly, abusive, or disruptive of the orderly conduct of the hearing.
  - (b)** No person may testify without first receiving recognition from the hearing authority and stating their full name and address.
  - (c)** No person may present irrelevant, immaterial, or unduly repetitious testimony or evidence.
  - (d)** Audience demonstrations such as applause, cheering, and display of signs, or other conduct disruptive of the hearing are not permitted. Any such conduct may be cause for immediate suspension of the hearing or removal of the offender from the hearing.
- (3) Limitations on Oral Presentations.** The hearing authority may set reasonable time limits on oral testimony.
- (4) Appearing.** Any interested person may appear either orally before the close of a public hearing or in writing before the close of the written record, except that for an on the record hearing, persons who may appear are limited to those described at LC 14.080(5)(c)(vii). Any person who has appeared in the manner prescribed in LC 14.080(5)(c)(vii) will be considered a party to the proceeding.
- (5) Disclosure of Ex Parte Contacts**

  - (a)** Any member of a hearing authority for a quasi-judicial application must reasonably attempt to avoid ex parte contact. As used in this section, ex parte contact is communication directly or indirectly with any party or their representative outside of the hearing in connection with any issue involved in a pending hearing except upon notice and opportunity for all parties to participate. Should a hearing authority member engage in ex parte contact, that member must:

    - (i)** Publically announce for the record at the hearing the substance, circumstances, and parties to such communication;
    - (ii)** Announce that other parties are entitled to rebut the substance of the ex parte communication during the hearing; and
    - (iii)** State whether they are capable of rendering a fair and impartial decision.

- (b) If the hearing authority or member thereof is unable to render a fair and impartial decision, or recommendation in the case of the Planning Commission, they must recuse themselves from the proceedings.
  - (c) Communication between the Director and the hearing authority or a member thereof is not considered an ex parte contact.
- (6) **Disclosure of Personal Knowledge.** If any member of a hearing authority uses personal knowledge acquired outside of the hearing process in rendering a decision, they must state the substance of the knowledge on the record.
- (7) **Site Visit.** For the purposes of this section, a site visit by any member of a hearing authority will be deemed to be personal knowledge. If a site visit has been conducted, the hearing authority member must disclose their observations and conclusions gained from the site visit.
- (8) **Challenge for Bias, Prejudgment, or Personal Interest.** Prior to or at the commencement of a hearing, any party may challenge the qualification of any member of the hearing authority for bias, prejudice, or personal interest. The challenge must be made on the record and be documented with specific reasons supported by facts. Should qualifications be challenged, that hearing authority member must either recuse themselves from the proceedings, or make a statement on the record that they can make a fair and impartial decision and will hear and rule on the matter.
- (9) **Potential Conflicts of Interest.** No member of the hearing authority may participate in a hearing or a decision upon an application when the effect of the decision would be to the private pecuniary benefit or detriment of the member or the member's relative or any business in which the member or a relative of the member is associated unless the pecuniary benefit arises out of:
- (a) An interest or membership in a particular business, industry occupation or other class required by law as a prerequisite to the holding by the member of the office or position;
  - (b) The decision, or recommendation in the case of the Planning Commission, would affect to the same degree a class consisting of an industry, occupation or other group in which the member or the member's relative or business with which the member or the member's relative is associated, is a member or is engaged; or
  - (c) The decision, or recommendation in the case of the Planning Commission, would affect to the same degree a class consisting of an industry, occupation or other group in which the member or the member's relative or business with which the member or the member's relative is associated, is a member or is engaged.
- (10) **Qualification of a Member of the Hearing Authority Absent at a Prior Hearing.** If a member of the hearing authority was absent from a prior public hearing on the same matter which is under consideration, that member will be qualified to vote on the matter if the member 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 must not vote and must abstain from the proceedings.

- (11) Hearing Authority's Jurisdiction.** In the conduct of a public hearing, the hearing authority will have the jurisdiction to:
- (a) Regulate the course, sequence and decorum of the hearing.
  - (b) Decide procedural requirements or similar matters consistent with this chapter.
  - (c) Rule on offers of proof and relevancy of evidence and testimony and exclude repetitious, immaterial, or cumulative evidence.
  - (d) Impose reasonable limitations on the number of witnesses heard and set reasonable time limits for oral presentation, and rebuttal testimony.
  - (e) Take such other action appropriate for conduct of the hearing.
  - (f) Grant, deny, or in appropriate cases, attach such conditions to the matter being heard to the extent allowed by applicable law and 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 as provided at LC 14.070(17).
  - (h) Allow the applicant to withdraw and cancel the application. Subsequent to the cancellation of the application, if the applicant wishes to proceed with the same or different proposal requiring a land use application, a new application may be submitted and the new application must be processed in compliance with all the provisions of this chapter.
- (12) Hearing Procedures.** At the commencement of a hearing, the hearing authority must state to those in attendance all of the following information and instructions:
- (a) Date of the hearing;
  - (b) Department file number;
  - (c) Nature, purpose, and type of the hearing;
  - (d) When applicable, the parties that may participate in the hearing and/or issues to which the hearing is limited;
  - (e) Identification of the address and assessor's map and tax lot number of, or other easily understood geographical reference to, the subject property, if applicable;
  - (f) Order of the proceedings, including reasonable time limits on oral presentations by parties;
  - (g) For a quasi-judicial application, a statement disclosing any pre-hearing ex parte contacts;
  - (h) For a Type III or IV procedure, a statement disclosing any personal knowledge, bias, prejudice, or personal interest on the part of the hearing authority;

- (i) Call for any challenges to the hearing authority's qualifications to hear the matter. Any such challenges must be stated at the commencement of the hearing, and the hearing authority must decide whether they can proceed with the hearing as provided in subsection (9) above;
  - (j) List of the applicable approval standards and criteria for the application;
  - (k) Statement that testimony, arguments, and evidence must be directed toward applicable approval standards and criteria, or other standards and criteria in the Lane County land use regulations or comprehensive plan that the person testifying believes to apply to the decision;
  - (l) Statement that failure to raise an issue accompanied by statements or evidence with sufficient detail to give the hearing authority and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals on that issue;
  - (m) Statement that the failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the hearing authority to respond to the issue precludes an action for damages in circuit court;
  - (n) Statement that prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments, or testimony regarding the application. The hearing authority must grant the request by either continuing the public hearing or leaving the record open for additional written evidence, arguments, or testimony in accordance with subsection (17) below; and
  - (o) Statement that the decision of the approval authority may be appealed in accordance with LC 14.080.
- (13) Order of Proceeding.** In the conduct of a public hearing other than an on the record hearing, the following order of procedure will generally be followed. However, the hearing authority may modify the order of proceeding.
- (a) The Director will present the staff report;
  - (b) The applicant will be heard first;
  - (c) Allow persons in favor of the proposal to be heard;
  - (d) Allow persons neither in favor or opposed of the proposal to be heard;
  - (e) Allow persons opposed to the proposal to be heard;
  - (f) Allow the Director to present any further comments or information in response to the testimony and evidence;
  - (g) Allow the applicant final rebuttal; and

- (h) Conclude the hearing.
- (15) **Questions.** The hearing authority at any point during the hearing may ask questions of the Director or parties. Questions by parties, interested persons, or the Director may be allowed by the hearing authority at their discretion. Questions must be directed to the hearing authority. Questions posed directly to the Director or any party are not allowed. The hearing authority may allow questions to be answered by the Director or a party if a question pertains to them. They will be given a reasonable amount of time to respond solely to the question.
- (16) **Presenting and Receiving Evidence.** No oral testimony will be accepted after the close of the hearing. Written testimony may be received after the close of the hearing only in accordance with subsections (17) through (19) below.
- (17) **Continuances and Leaving the Record Open.** If the hearing is an initial evidentiary hearing, prior to the conclusion of the hearing any participant may request an opportunity to present additional evidence or testimony regarding the application. The hearing authority must grant such request by continuing the public hearing in accordance with subsection (17)(a) below or leaving the record open for additional written evidence, arguments, or testimony in accordance with subsection (17)(b) below.
- (a) If the hearing authority grants a continuance, the hearing must be continued to a date, time, and place certain that is at least seven days after the date of the initial evidentiary hearing. An opportunity must be provided at the continued hearing for persons to present and respond to new evidence, arguments, or 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, arguments, or testimony for the purpose of responding to the new written evidence.
- (b) If the hearing authority leaves the record open for additional written evidence, arguments, or testimony, the record must be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such request is filed, the hearing authority must reopen the record in accordance with subsection (19) below.
- (c) A continuance or leaving the record open (extension) granted under this section is subject to the applicable time limit for processing the application, unless the continuance or extension is requested or agreed to by the applicant, in which case the continuance or extension will result in a corresponding extension of the applicable time limit. A continuance or extension to the applicable timeline is subject to the total time limit set in LC 14.050(2).
- (d) Unless waived by the applicant, the hearing authority must grant the applicant at least seven days after the record is closed to all other parties to submit final written argument in support of the application, excluding new evidence. The applicant's final rebuttal will be considered part of the record, but must not include any new evidence. This seven-day period will not be counted toward the applicable time limit for processing the application.

- (e) At the discretion of the Director, if prior to the initial public hearing, or at the discretion of the hearing authority if at the hearing, an applicant may receive a continuance upon any request for a continuance if accompanied by a corresponding extension of the applicable time limit subject to the total time limit set forth in LC 14.050(2), and the applicable fee.
- (18) Rescheduling.** In the event that a noticed public hearing must be rescheduled due to an emergency situation, the rescheduling of the meeting will constitute sufficient notice of a public hearing provided the following minimum procedures are observed:
- (a) Notice is posted on the door of the building in which the hearing is scheduled advising of the cancellation and the date, time, and place for the rescheduled meeting or that new notice will be sent indicating that new date, time, and place.
  - (b) Reasonable attempts are made prior to the scheduled hearing to announce the cancellation and rescheduling by direct communication to applicants and known interested parties and through available news media to the general public.
- (19) Re-opening the Record.** When the hearing authority re-opens the record to admit new evidence, arguments, or testimony, the hearing authority must allow people who previously participated in the hearing to request the hearing record be re-opened, as necessary, to present evidence concerning the newly presented facts. Upon announcement by the hearing authority of their intention to take notice of such facts in its deliberations, any person may raise new issues which relate to the new evidence, arguments, testimony, or standards and criteria which apply to the matter at issue.
- (20) Record of the Hearing.** The hearing authority will consider only facts and arguments in the hearing record; except that it may consider laws and legal rulings not in the hearing record (e.g., local, state, or federal regulations; previous department decisions; or case law).
- (a) The hearing record will include all of the following information:
    - (i) All oral and written evidence submitted to the hearing authority;
    - (ii) All materials submitted by the Director to the hearing authority regarding the application;
    - (iii) A recording of the hearing;
    - (iv) The final written decision; and
    - (v) Copies of all notices given as required by this chapter and correspondence regarding the application that the Director mailed or received.
  - (b) All exhibits presented will be kept as part of the record and marked to show the identity of the person offering the exhibit. Exhibits will be numbered in the order presented and will be dated.

**(21) Conclusion of Hearing**

- (a) After the close of the hearing record, the hearing authority may either make a decision and state findings which may incorporate findings proposed by any party or the Director, or take the matter under advisement for a decision to be made at a later date. If the Planning Commission is the hearing authority, it will make a recommendation with findings to the Board in lieu of issuing a decision.
- (b) The hearing authority may request proposed findings and conclusions from any party at the hearing. The hearing authority, before adopting findings and conclusions, may circulate them in draft form to parties for written comment.
- (c) The decision and findings must be completed in writing and signed by the hearing authority within ten 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 provides written consent to an extension to any applicable timelines in which the County must process the application for an amount of time that is equal to the amount of additional time it takes to prepare the findings.

**(22) Decision and Findings Mailing.** Upon a written decision adopting findings being signed by the approval authority, the Director will mail to the applicant and all parties a copy of the decision and findings, or if the decision and findings exceed five pages, the Director will mail notice of the decision. *(Revised by Ordinance No. 20-05, Effective 6.16.20)*

#### **14.080 Appeals**

**(1) Appeal Requirements.** A person or party identified in subsection (1)(a) may initiate an appeal of a Type II or III decision by filing a notice of appeal under this section. Appeals must comply with subsection (1)(a) through (d) below. The requirements of subsection (1)(a) through (c) are jurisdictional and must be satisfied as a requirement for the Director to accept the appeal in accordance with subsection (2)(a).

**(a) Allowable Appeals.**

**(i) Type I.** Type I determinations may not be appealed at the County level except as otherwise provided in Lane Code, or if found to constitute a permit and authorized by the Director. Where found to constitute a land use decision, the appeal will be processed in the same manner as an appeal of a Type II decision.

**(ii) Type II.** A Type II decision issued by the Director for which a hearing has not been held may be appealed by:

**(aa)** A person who is entitled to written notice under LC 14.060; or

**(bb)** Any person who is adversely affected or aggrieved by the application.

**(iii) Hearings Official Decision on Type II Appeal.** Appeals of Hearings Official decisions on Type II appeals requesting Hearings Official reconsideration may be made by any party, or reconsideration may be requested by the

Director. Requests for Board review of Hearings Official decisions on Type II appeals may be made by the Director.

**(iv) Type III.** Appeals of Type III Hearings Official decisions requesting Hearings Official reconsideration may be made by any party, or reconsideration may be requested by the Director. Requests for Board review of Type III Hearings Official decisions may be made by the Director.

**(b) Filing Deadline.** A notice of appeal must be filed with the Director prior to the end of business on the 12<sup>th</sup> day after the date the notice of decision is mailed.

**(c) Notice of Appeal Requirements.** A notice of appeal must:

**(i)** Be submitted in writing on a form provided by the Director, and signed by the appellant or their authorized representative;

**(ii)** Be received by the Director within the appeal period;

**(iii)** Be accompanied by the required filing fee in all circumstances except as provided in subsection (3)(a)(iii) or (4)(d)(iv) below;

**(iv)** Identify the decision being appealed, including the date of the decision and the department file number for the decision;

**(v)** Include a statement demonstrating the person filing the notice of appeal is entitled to file the appeal, consistent with subsection (1)(a) above; and

**(d) Appeal Statement.** In addition to the appeal requirements of subsection (1)(a) through (c) above, the notice of appeal should include the items listed under (1)(d)(i) and (ii) below. The requirements of subsection (1)(d)(i) and (ii) below are not jurisdictional and will not be interpreted as a basis for appeal rejection under subsection (2)(b)(i).

**(i)** A written statement explaining the issues being raised on appeal with sufficient specificity to afford the approval authority the opportunity to respond to each issue raised.

**(ii)** A written explanation with detailed support specifying one or more of the following as assignments of error or reasons for reconsideration;

**(aa)** The Director or Hearings Official exceeded their jurisdiction;

**(bb)** The Director or Hearings Official failed to follow the procedure applicable to the matter;

**(cc)** The Director or Hearings Official rendered a decision that is unconstitutional;

**(dd)** The Director or Hearings Official misinterpreted the Lane Code or Lane Manual, state law or federal law, or other applicable standards and criteria; or



**(3) Appeal Process for a Type II Decision**

- (a) Reconsideration.** Within two days of acceptance of an appeal of a Type II decision, the Director may affirm, modify, or reverse the decision in compliance with the following:

  - (i) Affirmation.** To affirm the decision, no action by the Director is necessary.
  - (ii) Modification or Reversal.** To modify or reverse the decision, the Director must conclude that the final County decision on the application can be made within the applicable limits at LC 14.050(2), prepare a written modification or reversal of the decision, together with supporting findings, and mail notice of decision in accordance with LC 14.060 above. Notice of a modification or reversal of the decision should be mailed within two days of the Director's decision and provide for a new 12-day appeal period.
  - (iii)** If the Director elects to reconsider the decision without request by the appellant, the appellant will not be required to pay a fee for a subsequent appeal of the Director's reconsidered decision.
- (b) De Novo Hearing.** Appeal of a Type II decision made by the Director will result in a de novo hearing before the Hearings Official. A hearing on an appeal of Type II decision will follow the same procedure used for a hearing on a Type III review in accordance with the applicable procedures at LC 14.070 with notice in accordance with the Type III hearing notice requirements of LC 14.060. The Hearings Official's review will not be limited to the application materials, evidence and other documentation, and specific issues raised in the review leading up to the Type II Decision. The Hearings Official's review may include consideration of additional evidence, testimony or argument concerning any relevant standard, criterion, condition, or issue submitted or raised during the open record period.
- (c) Appeal of Hearings Official Decision.** Appeals filed under (1)(c) requesting Hearings Official reconsideration or Director requests made under (1)(e) for Hearings Official reconsideration or Board review of Hearings Official decisions on an appeal of a Type II decision will be processed in accordance with subsection (4) and (5) below.
- (4) Hearings Official Reconsideration.** Appeals filed under (1)(c) requesting Hearings Official reconsideration or written notice of a Director request made under (1)(e) for Hearings Official reconsideration of a Hearings Official decision will be processed according to the following procedures.

  - (a)** If the applicant requests reconsideration by the Hearings Official, the applicant must first agree to an extension of any applicable timelines in which the County must process the application, and such an extension must be in addition to any other extensions already requested by the applicant.
  - (b)** Within two days of acceptance of an appeal requesting Hearings Official reconsideration filed under (1)(c) or written notice of a Director request for reconsideration under (1)(e), the Director must forward a copy of the appeal or Director's written notice to the Hearings Official. The Hearings Official will have

full discretion to affirm, modify, or reverse the initial decision and to supplement findings as the Hearings Official deems necessary. When affirming, modifying, or reversing the initial decision, the Hearings Official must comply with (4)(c) affirmation or (4)(d) reconsideration procedures below.

- (c) **Affirmation.** Within seven days of acceptance of the appeal by the Director, if the Hearings Official wishes to affirm the decision without further consideration, the Hearings Official must provide a written decision to this effect to the Director. The Director must mail written notice of the Hearings Official's decision to affirm the original decision to the appellant and other parties of record.
- (d) **Reconsideration.** If the Hearings Official wishes to reconsider the decision, the Hearings Official must conclude that a final decision can be made by the County within the applicable time limits at LC 14.050(2). If the reconsideration will cause the final decision to not be made within the applicable time limits at LC 14.050(2), the Hearing Official cannot reconsider the decision. Reconsideration must comply with subsection (4)(d)(i), (ii), or (iii) below.
  - (i) **On the Record.** If the reconsideration is limited to the existing record, then within seven days of the Director's acceptance of the appeal, the Hearings Official must prepare a reconsideration decision and supplemental findings and provide the reconsidered decision to the Director. Within two days of the decision, the Director must mail the reconsidered decision in conformance with the notice of decision requirements at LC 14.060.
  - (ii) **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 limited issues, then the Hearings Official must:
    - (aa) Within seven days of acceptance of the appeal by the Director, request that the Director mail notice to any person who qualifies as a party to the decision under reconsideration. The notice must disclose the limited issues to be addressed for the reconsideration and timelines for submittal of new materials and rebuttal by the applicant; and
    - (bb) Within 14 days of the close of the hearing record, issue a decision and supplemental findings. The decision and findings should be mailed by the Director within two days of issuance to the same parties as subsection (4)(d)(ii)(aa) in accordance with the applicable notice of decision procedures at LC 14.060.
  - (iii) **Limited Hearing.** 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 must:
    - (aa) Within seven days of acceptance of the appeal by the Director, request that the Director mail notice to any person who qualifies as a party to the decision that is being reconsidered. The notice must be in conformance with LC 14.060. The conduct of the hearing will be in accordance with the applicable provisions of LC 14.070; and

**(bb)** Within 10 days of the close of the hearing record, issue a reconsideration decision and supplemental findings, and within this same time period, the Hearings Official must notify the Director to mail a copy of the decision and findings to people who qualify as a party to the application in conformance with notice of decision procedures at LC 14.060.

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

**(e) Appeal of Reconsidered Decisions.** Affirmed or reconsidered Hearings Official decisions may be appealed in the manner allowed by subsection (1)(a)(iii) within 12 days of the date that the decision is mailed, subject to the same requirements of LC 14.080 for the initial Hearings Official reconsideration

**(5) Director Request for Board Review.** A request by the Director for review by the Board of a Type III Hearings Official decision will be processed in accordance with the procedures below.

**(a)** The Director may request that the Board affirm the Hearings Official decision or conduct an on-the-record hearing if the Hearings Official decision involves:

- (i)** Interpretation of County policies or issues of countywide significance;
- (ii)** Issues that will reoccur with frequency or for which there is a need for policy guidance;
- (iii)** Issues involving impacts to an inventoried Goal 5 resource; or
- (iv)** The Director or Hearings Official recommends review.

**(b) Board Order.** The Board must adopt a written decision and order electing to affirm the Hearings Official decision or to conduct a hearing on-the-record as follows:

- (i)** If the Director requests that the Board affirm the decision of the Hearings Official, the Board will review the order on the consent calendar. The order will state that the Board has elected to ratify and affirm the decision of the Hearings Official and state either that the Board expressly agrees with or remains silent on any interpretations made by the Hearings Official. The Board order will incorporate the decision of the Hearings Official by reference and attachment. In affirming the decision, the Board will consider only those materials contained in the hearing record as provided in LC 14.070(20), except that in this context, the Hearings Official is the hearing authority.

- (ii) If requested by the Director, or if the order to affirm the decision under (5)(b) is not adopted and the Board so elects, the Board will conduct an on-the-record hearing. The Board order must specify the date for the on-the-record hearing, the parties who qualify to participate in the on the record hearing, and whether the Board finds that an opportunity for limited additional testimony based on subsection (5)(c)(ii) is warranted and will be provided.

**(c) Hearing Procedures for On the Record Hearings.** An on-the-record hearing must be conducted according to the following procedures and LC 14.070 as applicable. The below procedures are in addition to or apply in place of other hearing procedures in LC 14.070 where these procedures are duplicative of or conflict with those procedures.

- (i) **Review on the Record.** Evidence considered by the Board must be confined to the record of the proceeding before the previous approval authority except as provided in subsection (ii) and (iii) below.
- (ii) **Limited Additional Testimony.** The Board may admit additional testimony and other evidence without holding a de novo hearing, if the approval authority is satisfied that the testimony or other evidence could not have been presented before close of the record on prior hearing proceedings. In deciding whether to admit additional testimony or evidence, the approval authority will consider:
  - (aa) Prejudice to parties;
  - (bb) Convenience or availability of evidence at the time of the prior hearing proceedings;
  - (cc) Impact to opposing parties;
  - (dd) When notice was given to other parties of the intended attempt to admit the new evidence prior to the close of the record;
  - (ee) The competency, relevancy, and materiality of the proposed testimony or other evidence; and
  - (ff) Whether the matter should be remanded to the approval authority for a de novo hearing under subsection (iii) below.
- (iii) **De Novo Hearing/Remand.** The Board may elect to hold a de novo hearing or remand the appeal for a supplemental de novo hearing before the approval authority that held the previous hearing if it decides that the volume of new information offered by a party proceeding under subsection (ii) above would:
  - (aa) Interfere with the approval authority's agenda;
  - (bb) Prejudice parties; or

- (cc) If the approval authority determines that the wrong legal criteria were applied by the previous approval authority.
- (iv) On remand pursuant to subsection (iii), the previous approval authority must apply the applicable hearing conduct procedures of LC 14.070. If an appeal is desired from the previous approval authority's decision on remand, the procedures of LC 14.080 apply. In the event that a de novo hearing or remand is requested by the applicant, the applicant must first agree to an extension of any applicable timelines in which the County must process the application, and such extension must be in addition to any other extensions of applicable application processing timelines already requested by the applicant, subject to LC 14.050(2).
- (v) **Notice of an On the Record Hearing.** Notice of an on the record hearing will be mailed, and as required, posted and published, in accordance with LC 14.060 at least 10 days in advance of the hearing.
- (vi) **Written Material.** Unless otherwise specified by the Board, all written materials exceeding two pages in length to be submitted for consideration at an on the record hearing if permitted under subsection (ii) above must be submitted to and received by the Director at least five days in advance of the hearing. Upon request, the application file containing these materials must be made available to the public by the Director. The approval authority may allow written materials to be submitted and received after this five day deadline if:

  - (aa) The written materials are limited to those solely responsive to the written materials submitted at least five days in advance of the on the record hearing;
  - (bb) The responsive, written materials could not have been reasonably prepared and submitted at least five days in advance of the on the record review hearing; and
  - (cc) Copies of the written materials have been provided to all parties to the on the record hearing.
- (vii) **On the Record Hearing Participation.** The only people who may participate in a Board on the record hearing are:

  - (aa) The Director;
  - (bb) The applicant and the applicant's representative;
  - (cc) The appellant and the appellant's representative; and
  - (dd) Another party of record may provide limited additional testimony, but only in accordance with subsection (ii) above.
- (viii) **Order of Proceeding.** In the conduct of an on the record hearing the following order of proceeding will be followed:

- (aa) The Director will present the staff report;
  - (bb) The appellant will be heard first;
  - (cc) The applicant, if different from the appellant will be heard next;
  - (dd) The appellant will be allowed to rebut;
  - (ee) Conclude the hearing.
- (iv) **On the Record Hearing Order.** Upon the adoption of findings on the on the record hearing, the Board must adopt a written decision and order affirming, reversing, or modifying the decision of the Hearings Official. If the decision of the Board is to affirm the decision of the Hearings Official, the Board order adopted by the Board must state whether or not the Board has elected to ratify and affirm the decision of the Hearings Official and any interpretations therein, and the Board order will incorporate the decision of the Hearings Official by reference and attachment.
- (5) **Effective Date.** A decision on any application reviewed by the Board will become final upon signing of an order by the Board to adopt and affirm the Hearings Official decision or order by the Board specifying the decision of an on the record hearing. The Director will mail notice of the Board order to parties of record upon receipt of the signed order. The notice of Board order will state that any appeal of the Board decision can be appealed to LUBA in accordance with ORS 197.
- (6) **Appeals of Final County Decision.** Appeal of a final County decision made under this chapter must be filed with Land Use Board of Appeals in accordance with ORS 197. If a decision is appealed beyond the jurisdiction of the County, the approval period does not begin until review before the Land Use Board of Appeals and/or the appellate courts have been completed, including any remand proceedings. *(Revised by Ordinance No. 20-05, Effective 6.16.20)*

#### **14.090 Limitations on Approved and Denied Applications**

- (1) An application reviewed in accordance with the provisions of this chapter is subject to the limitations at subsection (1) through (9) below.
- (2) The applicant may be required to obtain building permits and other approvals from other agencies, such as a road authority or natural resource regulatory agency. The Director's failure to notify the applicant of any requirement or procedure of another agency will not invalidate a decision made under this chapter.
- (3) **Vesting of Approval.** Approval of an application for which all rights of appeal have been exhausted cannot be invalidated or modified by subsequent revisions of Lane Code, unless specifically provided for otherwise in Lane Code or the conditions of approval.
- (4) **Compliance with Conditions of Approval.** Compliance with conditions of approval and adherence to approved plans is required. Any departure from the 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 approval unless

a modification of approval is approved as provided in subsection (5) below.

**(5) Modification of Approval.** An application for modification of approval must comply with the subsection (5)(a) through (c) below.

- (a)** An application for modification of approval must:
  - (i)** Be in writing on a form provided by the Director;
  - (ii)** Include the required application fee;
  - (iii)** Be received by the Director prior to the expiration of the approval time period to complete any conditions of approval of the decision for which modification is requested, where calculation of the expiration date includes any time extension approved in accordance with subsection (7) below;
  - (iv)** Identify and address any standards or criteria that the original approval addressed; and
  - (v)** Address compliance of the requested modifications with any applicable standards or criteria.
- (b)** The applicable standards and criteria for the final decision have not changed; and
- (c)** A decision on a modification of approval must be made by the same approval authority as the original final decision unless the original decision allows modification by a different approval authority.

**(6) Expiration of Approvals**

- (a)** A permit for a discretionary approval is valid for two years from the date of the final decision, unless otherwise specified in the approval, by other provisions of Lane Code, and or unless the approval period is extended pursuant to subsection (7). Subject to the requirements of subsection (7), the Director may grant one extension period of 12 months, and additional one-year extensions may be authorized by the Director.
- (b) Resource Dwellings.**
  - (i)** A permit for a discretionary approval for a residential development on agricultural or forest zoned land outside of an urban growth boundary is valid for four years, unless the approval period is extended pursuant to subsection (7) below. As used in this section, “residential development” only includes the dwellings provided for LC 16.212(3)-2.5 and -2.6, LC 16.214, LC 16.211(2)-2.1 to -2.5, and LC 16.210(2)-2.1 to -2.2.
  - (ii)** Subject to the requirements of subsection (7), an extension of a permit described in subsection (6)(b)(i) is valid for two years, and the Director may approve no more than five (5) additional one-year extensions of a permit.

- (c) A land division decision is valid subject to Lane Code Chapter 13 except as provided in subsection (7) below.
- (d) A telecommunication tower decision is valid subject to Lane Code 16.264.

**(7) Time Extension Requirements**

- (a) **Submittal Requirements.** Unless prohibited by the approval or other provisions of Lane Code, the Director may grant an extension to the approval period of a permit as allowed by subsection (6) if:
  - (i) The extension request is submitted in writing on the form provided by the department and accompanied by the required fee; and
  - (ii) The request for extension is submitted prior to the expiration of the approval period, but not earlier than six months before the expiration date, of the permit or extension.
- (b) **Standards.**
  - (i) Additional one year extensions that are allowed by subsection (6)(a) or (c), beyond the initial extension, may be authorized where applicable criteria for the decision have not changed.
  - (ii) Additional one-year extensions allowed by subsection (6)(b) may be authorized if the applicable residential development statute has not been amended following the approval of the permit, except the amendments to ORS 215.750 by Oregon Laws 2019 (Enrolled House Bill 2225).
- (c) Approval of an extension granted under this section is a Type I administrative determination, is not a land use decision, and is not subject to appeal as a land use decision.

**(8) Revocation or Suspension of a Decision**

- (a) The Director may suspend or revoke a decision issued in accordance with this chapter for any reason listed in subsection (8)(a)(i) through (iv) below. When taking such action, the Director will notify the owner and/or applicant of the reason for the suspension or revocation and what steps, if any the applicant must take to remedy the reason for the Director's decision.
  - (i) The site has been developed in a manner not authorized by the approval of the application;
  - (ii) The approval has not been complied with;
  - (iii) The conditions of approval have not been completed; or
  - (iv) The approval was secured with false or misleading information.
- (b) The Director's decision to suspend or revoke a decision is appealable to the Hearings Official in the same manner as provided for in LC 14.080 for an appeal

of a Type II decision. The appeal period will commence the day the Director mails notice to the owner and/or applicant of the Director's decision to suspend or revoke the decision. The notice must state that the owner and/or applicant has the right to appeal the Director's decision and what the procedure is for the applicant to appeal. If the Director elects to refer the matter to the Hearings Official under subsection (8)(c) below, the Director must include in the notice to the owner and/or applicant that the matter has been referred to the Hearings Official and the steps the owner and/or applicant must take to contest the reasons for the suspension or revocation.

- (c) The Director may initiate a review by the Hearings Official to suspend or revoke the issued decision in lieu of making the decision to suspend or revoke the decision. Hearings Official review will follow the procedure for processing of appeals of a Type II decision, and the Hearings Official may suspend or revoke a decision for one or more of the reasons specified in subsection (8)(a) above. A Hearings Official's decision to suspend or revoke a decision is appealable to the Board in the same manner as provided for in LC 14.080 for appeals to the Board.
- (d) If the reason for the suspension or revocation is remedied before the decision becomes final, by the expiration of the appeal time, or by the date of the hearing official hearing, then the suspension or revocation is void.

**(9) Limitations on Refiling Applications.** Except for a Type I application, an application for which a substantially similar application relating to the same property or tract has been denied within the previous year will not be accepted. At the Director's discretion, an earlier refiling may be allowed if it can be demonstrated that the basis for the original denial has been eliminated. *(Revised by Ordinance No. 20-05, Effective 6.16.20)*

#### **14.100 LUBA Remands**

- (1) Remanded County Decisions.** A County decision remanded by the Land Use Board of Appeals (LUBA) or state appellate court will be processed according to the procedures below. Except for (1)(d)(v), these procedures do not apply to voluntary remands.
  - (a) Remand Request.** To request County processing of the matter on remand, the applicant must submit a completed application on a form provided by the Director and the required filing fee. The completed form and fee must be received by the Director within the time frames at subsection (1)(d) below for the County to commence review.
  - (b) Hearing.** For remands that require a remand hearing, or for which the County opts to conduct a hearing, the following requirements apply:
    - (i)** For Type IV decisions, and Type II and III decisions for which the Board reviewed the decision of the Hearings Official and issued the final land use decision, the Board will conduct the remand hearing to review and address issues raised in the final LUBA order.
    - (ii)** For Type II and III decisions made by the Hearings Official for which the

Board did not review the decision of the Hearings Official and issue the final land use decision, the Hearings Official will conduct the remand hearing and render a decision on the matter.

- (iii) A LUBA remand hearing will be conducted in accordance with LC 14.070 except that where the procedures of this subsection are duplicative of or conflict with those procedures, the procedures of this subsection will apply.
  - (iv) The Board and Hearings Official may only consider issues identified in the LUBA order as the basis for the remand.
- (c) **Notice.** The Director must mail notice at least 20 days prior to the hearing in accordance with LC 14.060(2)(c).
- (d) **Time Limit.** For a permit, limited land use decision, or zone change, final action on a LUBA remand must occur within the timelines set forth below:
- (i) The County must take final action within 120 days of the date the applicant submits a request pursuant to LC 14.100(1)(a). If the County does not receive the request within 180 days of the effective date of the LUBA final order or the final resolution of the judicial review, the application is deemed terminated on the 181<sup>st</sup> day. For purposes of this subsection, the effective date of the LUBA final order is the last day for filing a petition for judicial review under ORS 197.850(3).
  - (ii) The 120-day period established under subsection (1)(d)(i) of this section may be extended for up to an additional 365 days if the parties enter into mediation as provided by ORS 197.860 prior to the expiration of the initial 120-day period. The application is deemed terminated if the matter is not resolved through mediation prior to the expiration of the 365-day extension.
  - (iii) The 120-day period established under subsection (1)(d)(i) of this section applies only to decisions wholly within the authority and control of the governing body of the County.
  - (iv) Subsection (1)(d)(i) of this section does not apply to a remand proceeding concerning a decision making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610.
  - (v) If the County withdraws a decision for the purposes of reconsideration under ORS 197.830(13)(b) by filing a notice of withdrawal with LUBA, it must file a copy of its decision on reconsideration with LUBA within 90 days after the filing of the notice of withdrawal or within such other time as LUBA may allow.
- (e) **Appeal and Effective Date of Decision.**
- (i) Notice of the Board or Hearings Official decision on remand will be as provided by LC 14.060.

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- (ii)** A Hearings Official decision on remand may be appealed in the same manner as an appeal of a Hearings Official's decision on an appeal of Type II decision or on a Type III application, in accordance with LC 14.080. Appeal of a Board remand decision is governed by ORS Chapter 197. *(Revised by Ordinance No. 20-05, Effective 6.16.20)*