Chapter 14 – Application Review Procedures

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14.010 Purpose and Applicability

(1) Purpose. The purpose of this chapter is to establish standard procedures for submittal, acceptance, and decision-making that will enable the County, the applicant, and the public to reasonably review applications and participate in the local decision-making process in a timely and effective way.

(2) Applicability of Review Procedures. All land use and development permit applications and decisions, except building permits, will be decided by using the procedures contained in this chapter. The procedure “type” assigned to each application governs the decision-making process for that permit or approval. There are four types of permit/approval procedures as described in subsections (a) – (d) below.

(a) Type I Procedure (Ministerial Review). Type I decisions are made by the Director without public notice and without a public hearing. A Type I procedure is used in applying County standards and criteria that do not require the use of discretion (i.e., clear and objective standards);

(b) Type II Procedure (Director Review). Type II decisions are made by Director, with public notice of the decision and an opportunity for an appeal hearing in front of a Approval Authority. Alternatively the Director may refer a Type II application to the Approval Authority for its review and decision in a public meeting/hearing;

(c) Type III Procedure (Quasi-Judicial Review – Public Hearing). Type III decisions are made by the Approval Authority after a public hearing, with an opportunity for appeal to the Board of County Commissioners; or in the case of a Quasi-Judicial zone change (e.g., a change in zoning on one property in conformance with the Comprehensive Plan), a Type III decision is made by the Board of County Commissioners on recommendation of the Approval Authority. Quasi-Judicial decisions involve discretion but implement established policy.

(d) Type IV Procedure (Legislative Review). The Type IV procedure applies to the creation or revision, or large-scale implementation, of public policy (e.g., adoption of regulations, zone changes, annexation, and comprehensive plan amendments). Type IV reviews are considered by the Planning Commission, who makes a recommendation to the Board of County Commissioners. The Board of County Commissioners makes the final decision on a legislative proposal through the enactment of an ordinance.
14.015 Definitions

(1) **Purpose.** The purpose of Section 14.015 is to define terms that are used in the Lane County Application Review Procedures code (code) and other terms that may arise in interpreting the code, particularly those that may be uncommon or have more than one meaning.

(2) **When A Term Is Not Defined.** Terms not defined in this Code 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, will be considered a standard reference.

(3) **Conflicting Definitions.** Where a term listed in Section 14.015 is defined by another section of this Code or by other regulations or statutes referenced by this Code, the term is not redefined herein for purposes of that other code.

(4) **Definitions.** The definitions in Section 14.015 apply to all actions and interpretations under the Lane County Application Review Procedures code. The meanings of some terms in this chapter may, in certain contexts in which they are used, be clearly inapplicable. In such cases the context in which a term is used will indicate its intended meaning, and that intent will control.

   (a) **Acceptance.** Received by and considered by the Director to contain sufficient information and materials, including any required fee, to begin processing according to the application or appeal review procedures of this chapter. The first step of processing may be to deem the application complete or incomplete.

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

   (c) **Applicant.** A person who applies for a permit or approval under this Code. An applicant can be the owner of the property, a contract purchaser, or someone who is legally authorized to represent the owner, such as a builder, developer, or contract purchaser.

   (d) **Approval Authority.** A person or a group of persons, given authority by Lane Code to review and make decisions upon certain applications according to the review procedures of this chapter. The Approval Authority may include the Director, a Hearings Officer, or the Board of County Commissioners.

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

   (f) **Board.** The Lane County Board of Commissioners.

   (g) **Clear and Objective.** Decision criteria and standards that do not involve substantial discretion or individual judgment in their application.

   (h) **County.** Lane County, Oregon.
(i) **Day.** A calendar day, computed consistent with ORS 174.120.

(j) **Department.** The Lane County Department of Public Works.

(k) **Director.** The Director of the Land Management Division of the Lane County Public Works Department, or the Director’s designated representative within the Department.

(l) **Discretionary.** A permit action or decision that involves substantial judgment or discretion.

(m) **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.

(n) **Approval Authority.** A person or group of persons who has been appointed by the Board to serve at their pleasure. The Approval Authority will conduct hearings on applications as authorized by this Chapter and the Lane County Zoning and Development Code. The Approval Authority may be the Board of County Commissioners or the Planning Commission in some cases.

(o) **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, the Comprehensive Plan, any land use regulation, or new land use regulation where the decision requires the interpretation or exercise of policy or legal judgment. (ORS 197.015) Note: All decisions requiring Quasi-Judicial review by Lane County are Land Use Decisions. Decisions subject to Administrative review are considered Limited Land Use Decisions, pursuant with ORS 197.015.

A "Land Use Decision" does not include a decision made by a Lane County Approval Authority:

- (i) That is made under land use standards which do not require interpretation or the exercise of policy or legal judgment;
- (ii) That approves or denies a building permit issued under clear and objective land use standards;
- (iii) That is a limited land use decision;
- (iv) That 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;
- (v) That is an expedited land division as described in ORS 197.360;
- (vi) That approves, pursuant to ORS 480.450(7), the siting, installation, maintenance or removal of a liquid petroleum gas container or receptacle regulated exclusively by the State Fire Marshall under ORS 480.410 to 480.460;
- (vii) That 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;
- (viii) That authorizes an outdoor mass gathering as defined in ORS 433.735, or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period;
(ix) That is a decision in response to a writ of mandamus.

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

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

(r) **Legislative.** A legislative action or decision is the making of law, as opposed to the application of existing law to a particular use (e.g., adoption of, or amendment to, a comprehensive plan or development regulation).

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

(i) The approval or denial of a subdivision or partition plan, as described in ORS 92.040(1).

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

Limited Land Use Decision does not mean a final decision made by a Lane County Approval Authority 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.

(t) **Modification of application.** The submittal of new information by the applicant after an application has been deemed complete and prior to the close of the record on a pending application that would modify a development proposal by changing one or more of the following components: proposed use(s), operating characteristics, intensity, scale, site layout (including but not limited to changes in setbacks, access points, building design, size or orientation, parking, traffic or pedestrian circulation plans), or landscaping in a manner that requires the application of new criteria to the proposal or that would require the findings of fact to be changed. It does not mean an applicant's submission of new evidence that merely clarifies or supports the pending application.

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

(v) **Owner / Property Owner.** The owner of the title to real property or the contract purchaser of real property of record, as shown on the latest assessment records in the...
Office of the County Assessor. Owner also includes a deed holder or contract purchaser whose name does not appear in the latest assessment records, but who presents to the County a copy of a deed or contract of sale signed by the owner of record.

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

(i) The applicant and all owners or contract purchasers of record, as shown in the files of the Lane County Department of Assessment and Taxation, of the property which is the subject of the application.

(ii) Any person who makes an appearance before the Approval Authority.

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

"Permit" does not include:

(i) A limited land use decision;

(ii) 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;

(iii) 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

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

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

(z) **Planning Commission.** The Planning Commission of Lane County, Oregon.

(aa) **Quasi-judicial.** An action or decision that requires substantial discretion or judgment in applying the standards or criteria of this Code to the facts of a development or land use proposal, and requires a public hearing. See Section 4.1.040.

(bb) **Received.** Acquired by or taken into possession by the Director.

(1) Application Requirements. Applications for a Type II or III applications must:

(a) Be submitted by the property owner, a person with legal interest in the property, or a person who has written authorization from the property owner or person with legal interest in the property as defined herein to make the application.

(b) Provide proof of ownership or proof of legal interest in the form of a deed, or other recorded document.

(c) Be completed on a form prescribed by the County, include all applicable information specified on the form(s), and be submitted to the County.

(d) Include identification of relevant criteria and standards applicable to the specific approval being sought.

(e) Include a written statement explaining how the application satisfies each of the relevant criteria and standards in sufficient detail.

(f) Provide information demonstrating compliance with prior decision(s) and conditions of approval for the subject site, as applicable.

(g) Include supporting information required by the Lane County Land Use and Development Code and any other information deemed necessary to, in the judgment of the Director, address the relevant criteria and standards.

(h) Include a hard copy/printed copy of any electronic or digital materials that are submitted, including a transcript of any narrative. Electronic or digital materials includes but is not limited to electronic communication such as email or other electronic communication, or material or data stored on a storage device such as a compact disk (CD), DVD or other electronic or digital media device. If the electronic or digital materials cannot be provided in hard copy/printed form, the materials cannot be considered as part of the application; and

(i) Be accompanied by the required filing fee.

(2) Acceptance of Application & Completeness

(a) Acceptance. Applications received by the Director will not be considered accepted solely because of having been received.

Acceptance of an application will not preclude a determination at a later date that additional criteria need to be addressed or a later determination that additional information is needed to be deemed complete.

(b) Completeness. Type II and III applications will not be deemed complete until the Director has determined that the application requirements of 14.020(1) Application Requirements above have been met, and the application is deemed complete by the
Director, or is deemed to be complete under State law.

A complete application does not ensure that the application is approvable. Additionally, it does not preclude a determination at a later date that additional criteria need to be addressed or that the submitted information does not adequately address the applicable criteria.

(c) **Incomplete Applications.** If an application for a Type II or III is incomplete, the County 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. The application will be deemed complete upon receipt by the County 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.

(iv) If the application was complete when first submitted or the applicant submits additional information, as described in this sub-section, (c) Incomplete applications, within 180 days of the date the application was first submitted, approval or denial of the application will be based upon the standards and criteria that were applicable at the time the application was first submitted.

(d) **Void Applications.** On the one hundred and eight-first (181st) day after first being submitted, an application is void if the applicant has been notified of the missing information as required in this section and has not submitted:

(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.

(3) **Time Limit – 120/150-day Rule.** For land within an urban growth boundary and for applications for mineral aggregate extraction, the County must take final action for a permit, limited land use decision, or zone change, including resolution of all appeals under ORS 215.422, within 120 days from the date the Director deems the application complete for the purpose of processing, except as provided in 14.020(3)(a)-(f) below.

For permit applications on land outside of urban growth boundaries including a permit or zone change (Type II (Director Review) and Type III (Quasi-Judicial)), including resolution of all appeals under ORS 215.422, the County must take final action within 150 days from the date the Director deems the application complete for purposes of processing, except as provided in 14.020(3)(a)-(e) below.

Comment [lc40]: Existing 14.050(3)(b). ORS 215.427(2)

Comment [lc41]: Type I & IV applications subject to this???

Comment [lc42]: GOAL POST RULE

Comment [lc43]: ORS 215.427(3)(a).

Comment [lc44]: Existing 14.050(3)(c)

Comment [lc45]: ORS 215.427(4).

Comment [lc46]: This whole section below is from/replaces the existing LC 14.050(5)

Comment [lc47]: ORS 215.427(1)
(a) **Plan Amendment.** The 120-day or 150-day period for final action does not apply when an application is a change to an acknowledged comprehensive plan or land use regulation that was submitted to the Director of the Department of Land Conservation and Development under ORS 197.610.

(b) **Waiver.** The County may not compel an applicant to waive the statutory timeline requirements of ORS 215.427 (the 120-day or 150-day period) as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment application. In this case the applicant must waive the 120-day or 150-day time period.

An applicant may waive the 120-day or 150-day period for final action and associated right to a writ of mandamus as set forth in this section through a written request. If the statutory timeline requirements of ORS 215.427 (the 120-day or 150-day period) is waived, and the application is placed on hold, the application can only remain on hold for a maximum of 365 days, unless otherwise approved by the Director. On the 366th day of remaining on hold, without any other action taking place on the application, the application will be void.

(c) **Extension.** An applicant may extend the 120-day or 150-day period for final action as set forth in this section for a specific period of time through a written request. The total of all extensions, except as provided in (d) of this section for mediation, may not exceed 215 days.

(d) **Mediation.** The 120-day or 150-day period for final action may be extended by up to 90 additional days, if the applicant and the county agree that a dispute concerning the application will be mediated.

(e) **The 120-day or 150-day period for final action does not apply when an application is not wholly within the authority and control of Lane County.**

(4) **Refund of Fees.** Except when an applicant request an extension to or waives the 120-day or 150-day period as specified above, if the County does not take final action on an application for a permit, limited land use decision or zone change within 120 days or 150 days as applicable, after the application is deemed complete, the County must refund to the applicant either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.

(5) **Time Computation.** In computing time periods prescribed or allowed by this Chapter, except when otherwise provided, the time within which an act is required to be done 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 County is not open for business pursuant to County ordinance, in which case the period runs until 4:00 p.m. on the next day business day.
(6) **Supplementation of Application within First 30 days of Submittal.** An applicant may not submit any supplemental information for an application during the 30 days following submittal of its application except when requested 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.

(7) **Modification of Application.** Once an application has been deemed complete, an applicant may modify an application at any time during the approval process up until the issuance of a Director decision, or the close of the record for an application reviewed under a hearings process subject to the provisions below in this subsection (7), Modification of Application.

   a) The Review Authority will not consider any information submitted by or on behalf of an application that would constitute a modification of application (as that term is defined in Lane Code 14.015), unless the applicant submits an application for a modification, pays all required modification fees and agrees in writing to restart the 120-day or 150-day period for final review as of the date the modification is submitted. The 120-day or 150-day period for final review for an application, as modified, may be restarted as many times as there are modifications up to a total of 365 days from the day the application was originally accepted as complete.

   b) The Director or Approval Authority may require that the application be re-noticed and additional hearings be held. Upon the determination that the application be re-noticed, the applicant will be required to pay the applicable re-noticing fee.

   c) Up until the day a hearing is opened for receipt of oral testimony, the Director will have the sole authority to determine whether an applicant’s submittal constitutes a modification. After such time, the Approval Authority will make such determinations. The determination on whether a submittal constitutes a modification will be appealable only to LUBA and will be appealable only after a final decision is entered by the County on the application.

(8) **Submission of Documents.** The submission of documents by any party including any supplemental information, written comments, testimony, evidence, exhibits, or other materials that are to be entered into the record of any land use matter, must be submitted either at a noticed hearing or at the offices of the Department, unless specified otherwise by the Approval Authority or notice. The document is considered “submitted” when received. When electronic or digital materials are submitted as discussed under (9) below, a hard copy of any electronic or digital materials must be submitted within 1 business day of when the electronic submission is made.

(9) **Electronic or Digital Materials.** When electronic or digital materials are submitted, such as an email or other electronic communication, or material or data stored on a storage device such as a compact disk (CD), DVD or other electronic or digital media device, a hard copy/printed copy of the materials must also be submitted, including a transcript of any narrative. If the contents of the electronic or digital materials cannot be provided in hard copy/printed form, the materials cannot be considered as part of the application. The hard copy of any electronic or digital materials must be submitted within 1 business day of when the electronic submission is made.
(10) **Effect of Determinations Made Outside of Established Processes.** Any informal interpretation or determination, or any statement describing the uses to which a property may be put, made outside of a Type I, II, III, or IV process in accordance with this Chapter will be deemed to be a supposition only. Such informal interpretations, determinations, or statements will not be deemed to constitute a final County action effecting a change in the status of a person’s property or conferring any rights, including any reliance rights, on any person.

(11) **Consolidated Review of Applications.** At the option of the applicant, when an applicant applies for more than one type of land use or development permit for the same one or more contiguous parcels, or tract of land, the proceedings may be consolidated for review and decision. When proceedings are consolidated, required notices may be consolidated, provided the notice identifies each application to be decided. When more than one application is reviewed in a hearing, findings must address each application and a decision must be made on each application.

(12) **Director’s Duties.** The Director will perform all of the following duties with regard to administration of this Code:

   (a) Prepare application forms based on the provisions of this Code and applicable State law;

   (b) Prepare required notices, and process applications for review and action;

   (c) Assist the Approval Authority, Planning Commission, and the Board of County Commissioners in administering the hearings process;

   (d) Answer questions from the public regarding the County’s land use regulations.

   (e) Prepare staff reports summarizing pending applications, including applicable decision criteria;

   (f) Prepare findings consistent with County decisions on land use and development applications;

   (g) Prepare notices of final decisions, file the notices in the County’s records and mail a copy of the notices to all parties entitled to notice under this Code; and

   (h) Maintain and preserve the file and public record for each application as required by state law.

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

(14) **Approvals.** 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 County’s failure to notify the applicant of any requirement or procedure of another agency will not invalidate a permit or other decision made by the County under this Code.

(15) Limitations on Approved and Denied Applications. Applications approved or denied according to the provisions of this chapter are subject to the following limitations:

(a) Vesting of Approval

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

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

(b) Compliance with Conditions of Approval. Compliance with conditions of approval and adherence to submitted plans as approved 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 provide below.

(c) Modification of Approval. An application for modification of approval is subject to compliance with the following requirements:

(i) A complete application for modification of approval must contain the following:

(aa) The application is in writing and on the form provided by the Department;
(bb) The application is accompanied by the required fee;
(cc) The request is submitted to the Department prior to the expiration of the approval period or any other extensions;
(dd) The application states the reasons that prevent the applicant from complying with the approval;
(ee) The application identifies and addresses any standards or criteria that the original approval addressed; and
(ff) The application addresses the compliance of the requested modifications with any applicable standards or criteria.

(ii) The applicable criteria for the final land use decision have not changed.

(iii) A decision on a modification of approval must be made at the same level of decision maker (Approval Authority) that made the original final land use decision.

(d) Expiration of Approvals. Unless provided otherwise in the approval of an application or by other Chapters of Lane Code, conditional or tentative approval of an application
will be valid for a two-year period during which all conditions of tentative approval or the development authorized by the conditional approval must be complete.

Such approval will become null and void after two years from the date of approval, unless extended through the provisions for extensions contained in other applicable chapters of Lane Code, or as provided above. Not all decisions have extension provisions in Lane Code and therefore, may not be able to be extended.

(e) **Extensions.** An extension to an approval or development period is allowed without processing a modification of conditions application as discussed above. Approval of an extension to an approval/development period will be a Type I decision performed by the Director and is not subject to appeal. The Director may grant an extension subject to the following requirements:

(i) The request for extension must be submitted prior to the expiration date for the decision;

(ii) One extension period may be granted for up to twelve months, unless otherwise provided in the decision;

(iii) Additional one year extensions may be authorized where applicable criteria for the decision have not changed;

(iv) Extensions must be submitted in writing on the form provided by the Department;

(v) The application must be accompanied by the required fee;

(vi) An extension cannot be submitted earlier than 6 months before the expiration date.

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

(i) The Director may suspend or revoke the decision for an application which was initially issued pursuant to this Chapter, and/or approved or denied on appeal. When taking such action, the Director will follow LC 14.### above in giving notice and addressing one or more application conflicts with the following criteria:

(aa) The site has been developed in a manner not authorized by the approval of the application;

(bb) The approval has not been complied with;

(cc) The approval was secured with false or misleading information; or

(dd) The decision on the application was issued in error.

The Directors decision to suspend or revoke a decision is appealable to the Approval Authority in the same manner provided in LC 14.### for appeals to the Approval Authority.

(ii) For applications which were initially issued pursuant to LC 14.###, the Director may initiate a review by the Approval Authority to suspend or revoke the issued decision. The procedures of LC 14.### will be follow by the Approval Authority,
and the Approval Authority may suspend or revoke a decision if the application is found to conflict with one or more of the criteria in LC 14.020(13)(d)(i) above. The Approval Authority’s decision to suspend or revoke a decision is appealable to the Board of County Commissioners in the same manner as provided for in LC 14.### for appeals to the Board.

(g) **Limitations on Refiling Applications.** An application for which a substantially similar application has been denied within the previous year must be reviewed or heard at the same level of decision maker (Approval Authority) that the original application was reviewed at and only after the expiration of a one-year period from the last decision date on the previous application. At the Directors discretion, an earlier refiling may be allowed if it can be demonstrated that the basis for the original denial has been eliminated.

Comment [ic74]: Existing 14.700(5)
14.030 Type I Procedure (Ministerial Review)

(1) **Type I Procedure.** The Director, without public notice and without a public hearing, makes Type I decisions through the Type I procedure. Type I decisions are those where County standards and criteria do not require the exercise of discretion (i.e., the decision is based on clear and objective standards or criteria).

(2) **Types of Ministerial Applications.** The Director reviews proposals requiring a Type I review using a variety of application types including a Land Use Compatibility Statement (LUCS), a Declaratory Ruling, a Verification of Conditions, siting standards review, a final partition or subdivision plat application, floodplain verifications and floodplain fill permits, and other similar non-discretionary applications. A Type I application is an application process that is intended to ensure a project proposal meets the basic requirements of Chapter 16 (Land Use and Development Code) before more detailed plans are prepared, or if the conditions of an approval have been met before the County authorizes the Building Official to issue a building permit.

(3) **Application Requirements**

   (a) **Application Forms.** Approvals requiring Type I review must be made on forms provided by the County.

   (b) **Submittal Information.** At a minimum an application must include all of the following:

      (i) All of the applicable information requested on the application form;

      (ii) A written statement addressing the relevant criteria or standards in sufficient detail for review and action or a written statement clearly indicating what action is requested;

      (iii) Provide information demonstrating compliance with prior decision(s) and conditions of approval for the subject site or decision, as applicable;

      (iv) Include supporting information required by the Lane County Land Use and Development Code and any other information deemed necessary to, in the judgment of the Director, address the relevant criteria and standards; and

      (v) The required fee.

(4) **Criteria and Decision.** The Director’s review of a Type I application is intended to determine whether minimum code requirements are met and whether any other land use permit or approval is required prior to issuance of a building permit.

(5) **Effective Date.** A Type I decision is final on the date it is signed by the Director. It is not a land use decision as defined by above in Lane Code 14.015(p), and therefore is not subject to appeal.

(6) **Appeal.** Any appeal of a Type I decision goes directly to the Oregon State Land Use Board of Appeals (LUBA).
14.040 Type II Procedure (Director Review)

(1) **Type II Procedure.** The Director performs Type II reviews through the Type II procedure as specified below. Type II decisions are made by the Director with public notice of the decision and an opportunity for appeal to the Approval Authority. Alternatively the Director may refer a Type II application to the Approval Authority for its review and decision at a public hearing.

(2) **Application Requirements**

   (a) **Submittal Information.** At a minimum, the application must include all of the information required in 14.020(1) above.

(3) **Notice of Application**

   (a) **Notice Requirements.** At the discretion of the Director, Notice of application may be made for Type II applications.

      (i) After an application has been deemed complete, in accordance with 14.020(2) above, the Director mails information explaining the proposed development to the persons identified in LC 14.025(14) below, and if applicable, notice required by LC 14.025(# - Special notice section 14.160).

      (ii) Persons receiving notice pursuant to LC 14.025(#) – Special notice section/Areas of interest will have 20 days following the date of postmark of the notice to file written objections as required by LC 14.025(#)(#).

      (iii) All other persons will have 10 days following the date of postmark of the notice to provide the Director with any comments or concerns regarding the proposed development.

      (iv) After the end of the applicable comment period, the Director will complete the investigation report and mail notice of a decision or elect to schedule the application for a Approval Authority evidentiary hearing.

   (b) **Special Notice and Review Requirements for a Dwelling in the EFU Zone.** This special notice requirement is only applicable to review a dwelling in the EFU zone in accordance with Lane Code Ch. 16.212(7)(g) [ORS 215.213(4)], for a non-farm dwelling that is on a lot or parcel described in LC 16.212(7)(g), that is not larger than three (3) acres.

      (i) Upon receipt of an application for a permit under Lane Code 16.212(7)(g), notice must be set to the following:

         (aa) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be established; and

         (bb) Persons who have requested notice of such applications and who have paid a reasonable fee imposed by the county to cover the cost of such notice.
(ii) The notice required under this section must specify that "persons have 15 days following the date of postmark of the notice to file a written objection on the grounds only that the dwelling or 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 is received within 15 days of the notice the Director may approve or disapprove the application. If an objection is received a hearing must be set for the matter in the manner prescribed in 14.050.

(iv) The costs of the notice required by subsection 3(b)(i)(aa) of this section may be charged to the applicant for the permit requested under subsection 3(b) of this section.

(c) 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, "railroad company" has the meaning given that term in ORS 824.200 and 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) If a railroad-highway crossing provides or will provide the only access to land that is the subject of an application for a land use decision, a limited land use decision or an expedited land division, the applicant must indicate that fact in the application submitted to the Director.

(iii) The Director must provide notice to the Department of Transportation and the railroad company whenever the decision maker receives the information described under subsection (ii) of this section.

(d) Notice of Application Contents

(i) When a Notice of Application is provided, the notice will contain:

(aa) Identification of the application by Department file number.
(bb) Identification of the contiguous property ownership involved by reference to the property address, if there is one, and to the Lane County Assessment map and tax lot numbers.
(cc) Identification of the property owner and applicant.
(dd) An explanation of the nature of the application and the proposed use or uses that could be authorized by the decision.
(ee) A list of the criteria from Lane Code and the comprehensive plan that apply to the application and decision.
(ff) The name of the Department representative to contact and the telephone number where additional information may be obtained.
(gg) A statement that all evidence relied upon by the Director or Approval Authority, as applicable, to make its decision is in the public record and is available for public review. Copies of this evidence can be obtained at a
reasonable cost from the County.

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

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

(jj) The deadline for submitting written comments.

(kk) A statement indicating that if any person fails to address the relevant approval criteria with enough detail, they may not be able to appeal to the Land Use Board of Appeals or Circuit Court on that issue. Only comments on the relevant approval criteria are considered relevant evidence.

(ll) Statement that after the comment period closes the County will issue its decision and the decision will be mailed to the applicant and to anyone else who submitted written comments or who is otherwise legally entitled to notice.

(e) Notice of Application Procedure

(i) For a Notice of an Application, the Director mails notice of a pending Type II application to the following individuals and agencies not less than fourteen (14) days prior to making the Type II decision.

(aa) The purpose of the Type II decision notice is to give nearby property owners and other interested people and agencies the opportunity to submit written comments on the application before the Director issues the decision. The intent is to invite people to participate early in the decision-making process when the Director determines that the proposal warrants sending notice of the application.

(bb) Notice will be mailed to:

(A) All owners of record of real property on the most recent property tax assessment roll where such property is located:

(B) 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;

(C) 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

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

(cc) Any neighborhood group or community organization recognized by the governing body and whose boundaries include the site.

(dd) Any person who submits a written request to receive a notice; and

(ee) Any governmental agency that is entitled to notice under an
intergovernmental agreement entered into with the County and any other affected 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 County under this Code.

(f) At the conclusion of the comment period, the Director will review the comments received and prepare a decision approving, approving with conditions, or denying the application based on the applicable Code criteria. Alternatively, the Director may transmit all written comments received, if any, along with a copy of the application to the Approval Authority for review and decision at a schedule hearing.

(g) Where the Director refers an application subject to Type II Review to the Approval Authority, the Approval Authority will approve, approve with conditions, or deny the application through the Type II procedure based on the applicable Code criteria. The Approval Authority may continue its review to allow the applicant time to respond to questions, provided the Approval Authority must make a final decision within the statutory time frame (120/150 day rule) prescribed under State law (ORS 215.427) and as described in Section 14.020(3) of this Code. In accordance with the provisions of 14.020(3), the applicant may voluntarily waive their right to a final decision within the applicable timeframe and the Approval Authority may decide to accept oral and written testimony in a public hearing review of the application, in which case a new public notice must be mailed to those who received the original notice indicating the change to a quasi-judicial (public hearing) review procedure.

(4) Type II Review Procedures

(a) Review. The Director will review the application and prepare a written report to determine if the application can be approved or must be denied based upon the statements that explain the relevant criteria and standards, states the facts relied upon in rendering the decision, and explains the justification for the decision based on the criteria, standards and facts set forth.

The Director may elect to schedule the application for a hearing with the Approval Authority pursuant to LC 14.040(5) below.

(b) Decision. Approval or denial of an application shall be based on standards and criteria which are set forth in the zoning ordinance or other appropriate ordinance or regulation of the County and which relate approval or denial of the application to the zoning ordinance and comprehensive plan for the area in which the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the County as a whole.

(5) Elective Hearing Procedures

(a) Purpose. This section establishes the procedure and criteria which the Director shall follow in electing to have an evidentiary hearing for the application with the Approval Authority for a land use application otherwise subject to review pursuant to LC 14.100 above without a hearing. The purpose of the evidentiary hearing by the Approval Authority is to provide interested persons with a hearing and an opportunity to contribute
statements or evidence to the land use decision.

(b) Hearings Procedures

(i) Where an application is subject to review by the Director without a hearing under LC 14.040(4) above, the Director may instead elect to have an evidentiary hearing for the application with the Approval Authority, to review the application pursuant to LC 14.050 below.

(ii) The evidentiary hearing by the Approval Authority shall be scheduled for a date no later than 35 days from the date of application acceptance.

(iii) At least 20 days in advance of the evidentiary hearing the Director shall provide the applicant with a copy of the written report that addresses compliance with LC 14.040(4)(c) below and that identifies the hearing date.

(c) Hearing Criteria. An election by the Director to have an evidentiary hearing for the application with the Approval Authority must comply with one or more of the following criteria:

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

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

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

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

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

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

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

(viii) An applicant requests a hearing.

(6) Limited Land Use Decision Procedure (only within UGB's). Notwithstanding LC 14.100 above, all applications for Limited Land Use Decisions shall be reviewed as follows:
(a) **Mailed Notice of Application.** Written notice shall be mailed to owners of property within 100 feet of the entire contiguous site for which the application is made and to all neighborhood or community organizations recognized by the Board and whose boundaries include the site. The property owner’s list shall be compiled from the most recent property tax assessment roll. At the time that notice is provided, the Director shall place in the record an affidavit or other certification that such notice was given. The notice and related procedures shall:

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

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

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

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

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

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

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

(viii) Provide notice of the decision to the applicant and any person who submits comments under LC 14.040(8)(d)(i) above. The notice of decision must include an explanation of appeal rights.

(ix) Briefly summarize the decision-making process for the limited land use decision being made.

(b) Approval or denial of a limited land use decision shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

(c) The County may provide for a hearing before the Approval Authority on an appeal of a limited land use decision under this section. The hearing may be limited to the record developed pursuant to the initial hearing under subsection (3) of this section or may allow for the introduction of additional testimony or evidence. A hearing on appeal that allows the introduction of additional testimony or evidence shall comply with the requirements of ORS 197.763. Written notice of the decision rendered on appeal shall be given to all parties who appeared, either orally or in writing, before the hearing. The notice of decision shall include an explanation of the rights of each party to appeal the decision.
(7) Notice of Decision Procedures

(a) **Timing of Notice.** Within two (2) days of a Type II decision, the Director will proceed to prepare a notice of the decision.

(b) **Affidavit of Mailing.** The Director will cause an affidavit of mailing the notice to be prepared and made a part of the file. The affidavit must show the date the notice was mailed and must demonstrate that the notice was mailed to the parties above and was mailed within the time required by law.

(c) **Mailed Notice of Decision.** Notice of decision will be mailed to:

(i) The applicant;
(ii) The owners of record of property 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;
(iii) Any neighborhood group or community organization recognized by the governing body and whose boundaries include the site.
(iv) Any person who submits a written request to receive a notice; and
(v) Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the County and any other affected 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 County under this Code.

(vi) The failure of the property owner to receive notice as provided in this section will not invalidate such proceedings if the County can demonstrate by affidavit that such notice was given. The notice provisions of this section do not restrict the giving of notice by other means, including but not limited to posting, newspaper publication, radio or television.

(c) **Content of Mailed Notice of Decision:** The Type II mailed Notice of Decision will contain all of the following information:

(i) Identification of the application by Department file number;
(ii) Identification of the property owner and applicant;
(iii) Explain the nature of the application and the proposed use or uses which could be authorized;
(iv) Describe the nature of the County’s decision;

(v) The notice may be a summary, provided it references the specifics of the proposal and conditions of approval in the public record;

(vi) The address or other easily understood geographic description of the property proposed for development;

(vii) A statement of where a copy of the County’s decision can be obtained;

(viii) The name of a local government representative to contact and the telephone number where additional information may be obtained;

(ix) A statement that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria area available for inspection at no cost and will be provided at a reasonable cost;

(x) A statement that any person who is adversely affected or aggrieved or who is entitled to written notice under sub-section (b) of this section, Mailed Notice, above may appeal the decision by filing a written appeal pursuant to subsection 14.040(11), Appeal of Type II Decision, below.

(xi) The date the decision will become final, unless appealed;

(xii) A statement that the decision will not become final until the period for filing an appeal has expired; and

(xiii) A statement that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

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

(8) Effective Date of Decision. Unless the conditions of approval specify otherwise, a Type II Decision becomes effective twelve (12) days after the County mails the decision notice unless the decision is appealed pursuant with subsection 14.040(11) below.

(9) Appeal of Type II Decision. A Type II Decision made by the Director may be appealed to the Lane County Approval Authority; and a Type II Decision made by the Approval Authority may be appealed to the Board of County Commissioners, as applicable, pursuant with the following:

(a) Who May Appeal. The following people may have legal standing to appeal a Type II Decision:

(i) The applicant or owner of the subject property;

(ii) Any person who was entitled to written notice of the Type II decision;
(iii) Any other person who participated in the proceeding by submitting written
comments on the application to the County by the specified deadline.

(b) Appeal Filing Procedure. Any person with standing to appeal, as provided in subsection
(a) above, may appeal a Type II Decision by filing a Notice of Appeal according to the
following procedures.

(i) Time for Filing. A Notice of Appeal must be filed with the Director within twelve (12)
days of the date the Notice of Decision is mailed unless otherwise specified on the
Notice of Decision.

(ii) Content of Notice of Appeal. The Notice of Appeal must:

(aa) Be submitted in writing to, and received by the Department within the appeal
period;

(bb) Be accompanied by the required filing fee;

(cc) Be completed on the form provided by the Department and must contain the
following information:

(A) Identification of the decision being appealed, including the date of the
decision and the Department file number for the decision;

(B) A statement demonstrating the person filing the Notice of Appeal has
standing to appeal; and

(C) A statement explaining the specific issues being raised on appeal.

(c) Director Review of Appeal. Within two working days of the date that the appeal is
received by the Department, the Director shall review the written appeal to determine if it
was received within the 12 day appeal period and if it contains the contents required by
LC 14.040(9)(b)(ii) above. If it was not received within the appeal period or does not
contain the required contents, within this same two day period, the Director shall reject
the appeal and mail to the appellant the appellant’s appeal submittal contents and a
disclosure in writing identifying the deficiencies of content. The appellant may correct
the deficiencies and resubmit the appeal if still within the 12 day appeal period. Appeals
which are not so rejected by the Director shall be assumed to have been accepted.

(d) Mailed Appeal Notice. Within two (2) days of the date of acceptance of an appeal
pursuant to LC 14.040(9)(c) above, the Director shall mail notice of the appeal
acceptance in compliance with the following:

(i) For an appeal of a decision by the Director, notice of the appeal acceptance shall
be mailed to the applicant, the applicant’s representative, and to the appellant, if
the appellant is different than the applicant. The notice shall disclose the tentative
hearing date for the appeal and the requirements of this chapter for the submission
of written materials prior to the hearing;
(ii) For an appeal of a decision by the Approval Authority, notice of the appeal acceptance shall be mailed to all persons who qualified as parties at the hearing with the Approval Authority. The notice shall disclose the tentative date on which the Board will elect whether or not to consider the appeal; and

(iii) The Director will prepare an affidavit of notice, which will be made a part of the file. The affidavit must state the date that the notice was mailed.

(e) **Director Reconsideration.** Within two (2) days of receipt of an appeal of a decision by the Director, the Director may affirm, modify or reverse the decision in compliance with the following:

(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 can be made within the time constraints established by ORS 215.427(1) and shall prepare a written modification or reversal of the decision, together with supporting findings and give notice pursuant to LC 14.040(7) above.

(iii) If the Director elects to reconsider a decision without being requested to do so by the appellant, that appellant shall not be required to pay a fee for a subsequent appeal of the Director’s decision on reconsideration.

(f) **Scope of Appeal.** The appeal of a Type II Decision will be a hearing de novo either before the Approval Authority, where the contested decision was made by the Director, or before the Board of County Commissioners, where the Approval Authority made the contested decision. The appeal 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, but may include other relevant evidence and arguments. The hearing appeal body may allow additional evidence, testimony or argument concerning any relevant standard, criterion, condition, or issue.

(g) **Appeal Hearing Procedure.** Hearings on appeals of Type II decisions will follow the same procedure used for public hearings on Type III reviews under Section 14.050. Section 14.050 contains requirements for public hearing notices, conduct of hearings, and decision-making procedures.
14.050 Type III Procedure (Public Hearing)

(1) **Type III Procedure.** Type III decisions are made by the Approval Authority after a public hearing, with an opportunity for appeal to the Board of County Commissioners.

(2) **Application Requirements**

(a) **Application Forms.** Applications for projects requiring a Type III Review must be made on forms provided by the Director.

(b) **Submittal Information.** At a minimum, the application must include all of the information required in 14.020(1) above.

(3) **Notice of Hearing Procedures**

(a) **Mailed Notice of Hearing.** The County will mail public notice of a public hearing on a Quasi-Judicial application at least twenty-one (21) days before the hearing date to the individuals and organizations listed below. The Director will prepare an affidavit of notice, which will be made a part of the file. The affidavit must state the date that the notice was mailed. Notice will be mailed to:

(i) The applicant;

(ii) The property owner if different than the applicant;

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

(iv) The owners of record of property 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 and whose boundaries include the site;

(vi) Any person who submits a written request to receive a notice; and

(vii) Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the County and any other affected 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 County.
(viii) The failure of the property owner to receive notice as provided in this section will not invalidate such proceedings if the County can demonstrate by affidavit that such notice was given. The notice provisions of this section do not restrict the giving of notice by other means, including but not limited to posting, newspaper publication, radio or television.

(b) Content of Mailed Notice of Hearing. Mailed notice of a Quasi-Judicial public hearing must contain all of the following information:

(i) Identification of the application by Department file number;  
(ii) Identification of the property owner and applicant;  
(iii) Explain the nature of the application and the proposed use or uses which could be authorized;  
(iv) List the applicable criteria from Lane Code and the comprehensive plan that apply to the application and decision;  
(v) The address or other easily understood geographic description of the property proposed for development;  
(vi) The time, date and place of the public hearing;  
(vii) A statement that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue, precludes the ability to appeal to the Board of County Commissioners, Land Use Board of Appeals, or Circuit Court, as applicable, on that issue;  
(viii) The name of a local government representative to contact and the telephone number where additional information may be obtained;  
(ix) A statement that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria area available for inspection at no cost and will be provided at a reasonable cost;  
(x) A statement that a copy of the County’s staff report to the Approval Authority will be available for review at no cost at least seven (7) days before the hearing, and that a copy will be provided upon request at a reasonable cost;  
(xi) A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings;  
(xii) The following statement, “NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST BE FORWARDED TO THE PURCHASER.”
(c) **Posted Notice.** At least fourteen (14) days before the first hearing, not including appeal hearings, the County will post notice of the hearing on the subject property in clear view from a public right-of-way. The design of the sign will be prescribed by the Director, but must be at least 22 inches by 28 inches in size and have a brightly colored background. The posted notice will contain the following information:

1. The time, date and place of the public hearing.
2. The Department file number.
3. The general nature of the proposal.
4. Where more information may be obtained.

(d) **Published Notice.** At least twenty-one (21) days before the first hearing for zone change and/or plan amendment applications, the County will publish notice of the hearing in a newspaper with local circulation, in a format prescribed by the Director. The published notice will contain the following information:

1. The time, date and place of the public hearing.
2. The Department file number.
3. The general nature of the proposal.
4. Where more information may be obtained.

(4) **Conduct of the Public Hearing**

(a) **Staff Report.** A staff report will be completed seven days prior to the hearing. If the report is not completed 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 initial staff report is complete. The granting of a continuance under these circumstances will be at the discretion of the Approval Authority.

A copy of the staff report will be provided to the Approval Authority.

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

(c) **Standards of Evidence**

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

2. Evidence received at any hearing shall be of the quality that reasonable persons rely upon in the conduct of their everyday affairs.
(iii) No factual information or evidence not part of the record shall be considered in the determination or decision for the application.

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

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

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

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

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

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

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

(d) **Personal Conduct**

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

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

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

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

(e) **Limitations on Oral Presentations.** The Approval Authority may set reasonable time limits on oral testimony.

(f) **Standing.** Any interested person may appear and be heard in a Type III hearing, except that in appeals heard on the record, a person must have participated in a previous proceeding on the subject application.
Any persons appearing on the record at a hearing (including appeals) or presenting written evidence will have standing and will be a party. A person whose participation consists only of signing a petition will not be considered a party.

(g) **Record**

(h) **Disclosure of Ex Parte Contacts.** Prior to making a decision, the Approval Authority or any member comprising the “Approval Authority”, if more than one person, must reasonably attempt to avoid communication directly or indirectly with any party or their representative in connection with any issue involved in a pending hearing except upon notice and opportunity for all parties to participate. Should such communication, whether written or oral occur, the Approval Authority member must;

(i) Publically announce for the record the substance of such communication; and

(ii) Announce the parties’ right to rebut the substance of the ex parte communication during the hearing.

The Approval Authority or member must state whether they are capable of rendering a fair and impartial decision. If they are unable to render a fair and impartial decision, they must be excused from the proceedings.

Communication between County staff and the Approval Authority will not be considered to be an ex parte contact.

(i) **Disclosure of Personal Knowledge.** If the Approval Authority or any member thereof uses personal knowledge acquired outside of the hearings process in rendering a decision, the Approval Authority or member must state the substance of the knowledge on the record and allow all parties the opportunity to rebut such statement on the record.

**Site Visit.** For the purposes of this section, a site visit by the Approval Authority or member thereof will be deemed to fall within this rule. After the site visit has concluded, the Approval Authority must disclose their observations and conclusions gained from the site visit in order to allow for rebuttal by the parties.

(j) **Challenge for Bias, Prejudgment or Personal Interest.** Prior to or at the commencement of a hearing, any party may challenge the qualification of the Approval Authority, or any member comprising the “Approval Authority”, if more than one person, for bias, prejudgment or personal interest. The challenge must be made on the record and be documented with specific reasons supported by facts. Should qualifications be challenged, the Approval Authority or the member must disqualify themselves and withdraw from the proceedings if they are not capable of rendering a fair and impartial decision, or make a statement on the record of their capacity to hear and rule on the matter.

(k) **Hearings Procedure.** At the commencement of the hearing, the Approval Authority must state to those in attendance all of the following information and instructions:
(i) The purpose of the hearing and announce the order of the proceedings, including reasonable time limits on presentations by parties;

(ii) A statement by the Approval Authority regarding any pre-hearing/ex parte contacts, bias, personal knowledge, prejudice, or personal interest must be made;

(iii) Challenges to the Approval Authority’s qualifications to hearing the matter must be stated and challenges entertained;

(iv) The applicable approval criteria that apply to the application;

(v) A statement that testimony, arguments and evidence must be directed toward the approval criteria described in the staff report, or other criteria in the comprehensive plan or land use regulations that the person testifying believes to apply to the decision;

(vi) A statement that failure to raise an issue accompanied by statements or evidence with sufficient detail to give the Approval Authority and the parties an opportunity to respond to the issue, may preclude appeal to the Board, and the State Land Use Board of Appeals on that issue.

(l) Presenting and Receiving Evidence

(i) The Approval Authority may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant or personally derogatory testimony or evidence;

(ii) No oral testimony will be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing only as provided by this Section;

(iii) Members of the Approval Authority may visit the property and the surrounding area, and may use information obtained during the site visit to support their decision, if the information relied upon is disclosed at the beginning of the hearing and an opportunity is provided to dispute the evidence.

(m) Continuances

(i) Prior to the conclusion of the initial evidentiary hearing, any participant may request from the Approval Authority an opportunity to present additional relevant evidence, argument or testimony regarding the application that is within the scope of the hearing; if the Approval Authority grants the request, it will schedule a date to continue the hearing as provided in subsection (m) of this subsection, or leave the record open for additional written evidence or testimony as provided in subsection (n) below.

(ii) If the Approval Authority grants a continuance to the hearing, the hearing must be continued to a date, time, and place certain that is at least seven (7) days after the date of the first evidentiary hearing. An opportunity will be provided at the
continued hearing for persons to present and respond to new written evidence, arguments or oral testimony. If new written evidence is submitted at the continued hearing, any person may request, before the conclusion of the continued hearing, that the record be left open for at least seven (7) days, so that they can submit additional written evidence, arguments or testimony in response to the new written evidence. In the interest of time, after the close of the hearing, the Approval Authority may limit additional testimony to arguments and not accept additional evidence.

(iii) A continuance granted under this section is subject to the limitations of Section ORS 215.427 (“120/150-day rule”), unless the continuance is requested or agreed to by the applicant.

(iv) Any continuance or extension of the record requested by the applicant will result in a corresponding extension of the time limitations or ORS 215.427.

(v) Grounds for a continuance. Prior to or at the initial hearing, an applicant will receive a continuance upon any request if accompanied by a corresponding extension of the 150-day review period.

(n) Leaving the Record Open (Extension). If the Approval Authority leaves the record open for additional written evidence, arguments or testimony, the record must be left open for at least seven (7) days after the hearing. Any participant may ask the Approval Authority in writing for an opportunity to respond to new evidence (i.e., information not disclosed during the public hearing) submitted when the record was left open. If such a request is filed, the Approval Authority must reopen the record pursuant to sub-section (m) below, Reopening the record.

(i) An extension of the hearing or record granted pursuant with this section is subject to the limitations of ORS 215.427 (the “120/150-day rule”), unless the continuance is requested or agreed to by the applicant;

(ii) Unless waived by the applicant, the Approval Authority will grant the applicant at least seven (7) days after the record is closed to all other persons to submit final written arguments, but not evidence, provided the applicant may expressly waive this right;

(iii) A extension granted under this section is subject to the limitations of Section ORS 215.427 (“120/150-day rule”), unless the continuance is requested or agreed to by the applicant, and

(iv) Any continuance or extension of the record requested by the applicant will result in a corresponding extension of the time limitations or ORS 215.427.

(o) Reopening the Record. When the Approval Authority reopen the record to admit new evidence, arguments, or testimony, any person may raise new issues which relate to the new evidence, arguments, testimony or criteria which apply to the matter at issue.

(p) The Approval Authority, in making its decision, will consider only facts and arguments in the public hearing record; except that it may take notice of facts not in the hearing record.
(e.g., local, state, or federal regulations; previous County decisions; case law; staff reports). Upon announcing its intention to take notice of such facts in its deliberations, it must allow persons who previously participated in the hearing to request the hearing record be reopened, as necessary, to present evidence concerning the newly presented facts.

(5) **Conclusion of Hearing.** At the conclusion of the hearing, the Approval Authority shall either make a tentative decision and state findings which may incorporate findings proposed by any person or the Director, or take the matter under advisement for a decision to be made at a later date. The Approval Authority may request proposed findings and conclusions from any person at the hearing. The Approval Authority, before finally adopting findings and conclusions, may circulate the same in proposed form to parties for written comment. The written decision and findings shall be based on factual information, shall identify who has party status and shall be completed in writing and signed by the Approval Authority within 10 days of the closing of the record for the last hearing. A longer period of time may be taken to complete the findings and decision if the applicant submits a written request to the Approval Authority consenting and agreeing to a waiver of the 120-day or 150-day statutory time period for final action on the application equal to the amount of additional time it takes to prepare the findings.

(6) **Effective Date of Decision.** Unless the conditions of approval specify otherwise, a Quasi-Judicial Decision becomes effective ten (10) days after the County mails the decision notice unless the decision is appealed pursuant with subsection 14.040(4).

(7) **Appeal of Approval Authority’s Decision.** A Type III Quasi-Judicial Decision may be appealed to the Board of County Commissioners, as applicable, pursuant with the following:

(a) **Who May Appeal.** The following people may have legal standing to appeal the Approval Authority’s decision to the Board of County Commissioners as follows:

(i) The applicant or owner of the subject property;

(ii) Any other person who testified orally or in writing during the public hearing before the close of the public record.

(b) **Appeal Filing Procedure.** Any person with standing to appeal, as provided in subsection (a) above, may appeal a Type III Quasi-Judicial Decision by filing a Notice of Appeal according to the following procedures.

(i) **Time for Filing.** A Notice of Appeal must be filed with the Director within the timeframe specified on the Notice of Decision; typically, this will be within seven (7) [twelve (12) days] of the date the Notice of Decision is mailed. When the last day of the appeal period is a Saturday, Sunday, a Federal or County holiday, or a day which the Department is closed, the appeal period will run until 4:00 p.m. on the next business day.

(ii) **Content of Notice of Appeal.** The Notice of Appeal must:

(aa) Be submitted in writing to, and received by the Department within the appeal
(bb) Be accompanied by the required filing fee;

(cc) Identify the decision being appealed, including the date of the decision and the Department file number for the decision;

(dd) Include a statement demonstrating the person filing the Notice of Appeal has standing to appeal;

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

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

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

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

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

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

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

(ff) The position of the appellant indicating the issue raised in an appeal to the Board was raised before the close of the record at or following the final evidentiary hearing and whether the appellant wishes the application to be approved, denied or conditionally approved;

(gg) An election between the following two options:

(A) Request that the Board conduct a hearing on the appeal; or

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

(c) Approval Authority Reconsideration. Within two working days of acceptance of an
appeal of a Approval Authority’s decision, the Director shall forward a copy of the appeal to the Approval Authority. The Approval Authority shall have full discretion to affirm, modify or reverse the initial decision and to supplement findings as necessary. When affirming, modifying or reversing the initial decision, the Approval Authority shall comply with one of the following provisions.

(i) **Affirmation.** Within seven days of receipt and acceptance of the appeal by the Director, if the Approval Authority wishes to affirm the decision without further consideration, the Approval Authority shall mail to the appellant and give to the Director written notice of their decision to affirm the original decision.

(ii) **Reconsideration.** If the Approval Authority wishes to reconsider the decision, the Approval Authority must conclude that a final County decision can be made within the time contains established by ORS 215.427(1). Reconsideration shall comply with one of the following provisions.

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

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

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

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

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

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

   (B) Within 10 days of the close of the hearing record, issue a reconsideration decision and supplemental findings, and within this same time period, mail copies of the decision and findings to persons who have qualified as parties.
(iii) If the Approval Authority elects to reconsider a decision without being requested to do so by an appellant, that appellant shall not be required to pay a fee for a subsequent appeal of the Approval Authority decision on reconsideration.

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

(v) **Appeal of Reconsideration Decisions.** Reconsidered decisions may be appealed to the Board within 12 days of the date of the decision and in the same manner as provided for appeals of Approval Authority decisions in LC 14.500 above.

(d) **Board Elect to Hear Procedure.** The Board must determine whether or not they wish to conduct an on the record hearing for the appeal after an indication from the Approval Authority not to reconsider the decision and within 14 days of the expiration of the appeal period from the Approval Authority’s decision.

The Board may elect to hear or not hear the appeal. Appeals heard by the Board will be reviewed according to Subsection (4) above. A decision on any application appealed to the Board will become final upon signing of an order by the Board to not hear the appeal, or specifying that the final decision of an appeal the Board elected to hear. A decision not to hear an appeal will affirm the appealed decision in accordance with the standards below:

(i) Within seven days of the determination mentioned in LC 14.050(7)(d) above, the Board must adopt a written decision and order electing to have a hearing on the record for the appeal or declining to further review the appeal.

(ii) The Board order must specify whether or not the decision of the Board is to have a hearing on the record for the appeal and must include findings addressing the decision criteria in LC 14.050(7)(e) below. If the Board’s decision is to have a hearing on the record for the appeal, the Board order must also specify the tentative date for the hearing on the record for the appeal and must specify the parties who qualify to participate in the hearing on the record for the appeal.

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

(e) **Notice of Hearing.** Notice of an on the record hearing pursuant to this section must contain:

(i) The information required by LC 14.050(3)(b) above.
(ii) A statement regarding the purpose of the hearing and whether or not testimony will be limited to the record.

(iii) The names of parties who may participate in the Board hearing.

(iv) Where to receive more information.

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

(i) The issue is of Countywide significance.

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

(iii) The issue involves a unique environmental resource.

(iv) The Planning Director or Approval Authority recommends review.

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

(i) The applicant and the applicant’s representative.

(ii) The Director.

(iii) The appellant and the appellant’s representative.

(iv) Other parties of record may provide "Limited Additional Testimony" in accordance with LC 14.400(2).

(h) **On the Record Appeal.** If the Board’s decision is to hear the appeal on the record, then such a hearing shall be:

(i) Scheduled for a hearing date with the Board and within 14 days of the date of the Board’s decision.

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

(8) **Record of the Public Hearing**

(a) The Official public hearing record will include all of the following information:

(i) All materials considered by the Approval Authority;

(ii) All materials submitted by the Director to the Approval Authority regarding the
application;

(iii) An electronic 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 County 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.

(c) Exhibits will be numbered in the order presented and will be dated.

(d) When exhibits are introduced, the exhibit number or letter will be read into the record.

(e) When electronic or digital materials are submitted, such as an email or other electronic communication, or a storage device such as a compact disk or other media device containing electronic or digital materials is submitted, a hard copy/printed copy of the materials must also be submitted, including a transcript of any narrative. If the contents of the electronic or digital materials cannot be provided in hard copy/printed form, the contents/materials cannot be considered as part of the application.

(9) Effective Date and Appeals to State Land Use Board of Appeals. A Quasi-Judicial Decision or Appeal Decision, as applicable, is effective the date the County mails the decision notice. Appeals of the Board of County Commissioners decisions under this Chapter must be filed with the State Land Use Board of Appeals pursuant with ORS 197.805 - 197.860.
14.060 Type IV (Legislative Decisions)

(1) Timing of Requests. The Director [Board of County Commissioners] may establish a schedule or time limitations for when legislative code amendment or plan amendment requests will be accepted, or the Board of County Commissioners may initiate its own legislative proposals at any time. Legislative requests are not subject to the 120/150-day review period under ORS 215.427.

(2) Application Requirements

(a) Application Forms. Legislative applications must be made on forms provided by the Director.

(b) Submittal Information. At a minimum the application must contain all of the following:

(i) All of the applicable information requested on the application form;

(ii) A map and/or plan addressing the appropriate criteria and standards in sufficient detail for review and decision (as applicable);

(iii) The required fee, except when Lane County initiates request; and

(iv) One copy of a letter or narrative statement that explains how the application satisfies each and all of the relevant approval criteria and standards.

(3) Procedure. Hearings on Legislative Land Use requests are conducted similar to hearings on other Quasi-Judicial proposals, subject section 14.050 (3) above, except the notification procedure for Legislative Land Use requests must conform to State land use laws (ORS 215.416), as follows:

(a) The Director will notify in writing the Oregon Department of Land Conservation and Development (DLCD) of legislative amendments (zone change, rezoning with annexation, or comprehensive plan amendment) at least thirty-five (35) days before the first public hearing at which public testimony or new evidence will be received. The notice will include a DLCD Certificate of Mailing.

(b) At least twenty (20) days, but not more than thirty five (35) days, before the date of the first hearing on an ordinance that proposes to amend the comprehensive plan or any element thereof, or to adopt an ordinance for any zone change, a notice will be prepared in conformance with ORS 215.416 and mailed to:

(i) Each owner whose property would be directly affected by the proposal (e.g., rezoning or a change from one Comprehensive Plan land use designation to another). See also, ORS 215.416 for instructions;

(ii) Any affected governmental agency;

(iii) Any person who requests notice in writing; and
(c) At least ten (10) days before the scheduled Board of County Commissioners public
hearing date, public notice will be published in a newspaper of general circulation in the
County.

(d) For each mailing and publication of notice, the Director will keep an affidavit of
mailing/publication in the record.

(4) Final Decision and Effective Date. A Legislative Land Use decision, if approved, will take
effect and will become final as specified in the enacting ordinance, or if not approved, upon
mailing of the notice of decision to the applicant. Notice of a Legislative Land Use decision
will be mailed to the applicant, all participants of record, and the Department of Land
Conservation and Development within twenty (20) business days after the Board of County
Commissioners decision is filed with the Director. The County will also provide notice to all
persons as required by other applicable laws.