

CHAPTER 2. REVIEW AND DECISION-MAKING

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CHAPTER 2¹. REVIEW AND DECISION-MAKING

2.1 SUMMARY OF ADMINISTRATION AND REVIEW ROLES

Table 2.1-1 summarizes the review and decision-making responsibilities of the entities that have specific roles in the procedures set forth in Chapter 3. Complete descriptions of the duties and responsibilities of the entities are set forth in the following sections. Footnotes for Table 2.1-1 appear below. Even though not referenced in Table 2.1-1, other boards, commissions, and agencies may be asked to provide comments during the County's review of land use applications.

Table 2.1-1 Footnotes:

[1] The White City Planning Commission (WCPC) reviews land use actions within the White City Urban Unincorporated Community (WCUUC) and the Jackson County Planning Commission (JCPC) reviews actions of countywide significance and land use actions outside the WCUUC.

[2] Not a land use decision per ORS 197.015.

[3] ORS 215.416 and 215.416 (11)(b) provides opportunity to appeal the decision.

[4] Responsibility for making final County decisions when an appeal is filed will transfer to WCPC upon passage by the Board of Commissioners of a development services funding mechanism for the WCUUC.

[5] Staff decision unless referred directly to hearing under Section 2.7.4 (C).

¹Ordinance 2006-10, effective 2-18-2007; Ordinance 2009-1, effective 8-16-09

TABLE 2.1-1: ORDINANCE ADMINISTRATION AND REVIEW ROLES

Procedure	Cross Reference Chapters	Planning Division	Hearings Officer	Planning Commissions[1]		Board of Commissioners
				Jackson Co.	White City	
Type 1 Permits	3.1.2	Decision [2]	-	-	-	-
Type 2 Permits [5]: <ul style="list-style-type: none"> • Site Development Plan • Public Park Minor Alteration/Expansion • Partition • Property Line Adjustment on Resource Lands • Administrative Adjustment • Historic Property Minor Alteration/Noncompatible Property/Parcel Area Reduction • Destination Resort Final Development Plan • Sewer Extension for Public Health 	3.1.3 3.2 3.2.10 3.3.2 3.4 3.12 7.1.1(F) 8.9 7.1.5 3.6	Decision	Hearing/ Decision [3] (If appealed or referred by Director)	-	Hearing/ Decision [3, 4]	-
Type 2 Permits [5] <ul style="list-style-type: none"> • Written Interpretations 	3.9	Decision	-	-	-	Hearing/Decision (if appealed)
Type 3 Permits [5]: <ul style="list-style-type: none"> • Partition with roads • Variances • Historic Property New Construction/Major Alteration/Allowable Use Permit 	3.1.4 3.3.2 3.11 7.1.1(F)	Decision	Hearing/ Decision [3] (If appealed or referred by Director)	-	Hearing/ Decision [3, 4]	
Type 4 Permits: <ul style="list-style-type: none"> • Public Road Creation requiring a TSP amendment • Sewer Extension requiring a Goal Exception • Comprehensive Plan or Zoning Text Amendment • Comprehensive Plan or Zoning Map Amendment • UGB/Urban Fringe/Urban Buffer Amendment • Jackson County Park Plan • Historic Property Designation/Moving/Demolition 	3.1.5 3.10 ¹ 3.6 3.7.1 3.8 3.7.3(E) 3.7.4 3.7.5/ 7.1.1(F)	Recommendation	-	Hearing/Recommendation	Hearing/Recommendation	Hearing/Decision
Type 4 Permits: <ul style="list-style-type: none"> • Subdivision • Planned Unit Development • Destination Resort Preliminary Development Plan • Solid Waste Disposal • Public Road Creation with no TSP amendment 	3.3.2 3.5 7.1.5 6.3.6(C) 3.10 ¹	Recommendation	-	Hearing/Decision	Hearing/Decision	Review/ Decision (if appealed)

2.2 BOARD OF COMMISSIONERS

2.2.1 Review and Decision-Making Responsibilities

Without limiting any authority granted to the Board of County Commissioners (a.k.a., Board of Commissioners, Board, or BoC) by State law or by other ordinances of the County, the Board will, with respect to this Ordinance, have the powers and duties set forth in Table 2.1-1, to be carried out in accordance with the terms of this Ordinance. The Board may, consistent with Section 2.6.10, remand matters to the Planning Commissions to conduct further proceedings and make additional recommendations or confirm or revise its decision.

In addition, the Board may elect to hear quasi-judicial planning applications initially decided by the Planning Commission or the Hearings Officer that have been remanded by the Land Use Board of Appeals (LUBA), the Oregon Court of Appeals, or the Oregon Supreme Court, when the remand requires an interpretation of the Land Development Ordinance or Comprehensive Plan. The Board also has the authority to act as the Urban Renewal Agency, and to delegate that authority to the Planning Commission.

2.2.2 Scope of Review of Specified Decisions

A) *Review on the Record*

- 1) Except as limited in this section and notwithstanding any other provisions of the LDO, the Board of Commissioners' review of appeals from decisions will be on the record created at the hearing conducted by the lower reviewing body, provided, however, that the Board of Commissioners must conduct a de novo hearing on appeals of Sewer Extensions that require a goal exception (Section 3.6.2), the adoption of Jackson County Public Park Overlays (Section 3.7.4), Comprehensive Plan or Zoning Text Amendments (Section 3.7.1), Comprehensive Plan or Zoning Map Amendments (Section 3.8) and UGB/Urban Fringe Buffer Amendments (Section 3.7.3(E)).
- 2) For purposes of this section, the record shall consist of the following elements from the hearing conducted by the reviewing body from which the appeal is being taken: the recording of the hearing made by the County pursuant to Section 2.7.6(F)(2), all exhibits received, all motions and objections made by the parties and all actions taken by the reviewing body from which the appeal is being taken.
- 3) Transcript
 - a) The appellant or any other party may provide the Board of Commissioners with a transcript or a portion of a transcript of the hearing from which the appeal is being taken which must be prepared by a Certified Shorthand Court Reporter from the recording made by the County, and its accuracy must be attested to.
 - b) One copy of the transcript will be provided for each Commissioner and one extra copy will be provided for the

file. Only one transcript is required to bear the original affidavit. The absence of a transcript from the record on appeal shall not be construed as a defect in the record.

- c) The transcript, if any, must be provided by the date set by the Board of Commissioners for the receipt of written arguments on the appeal.

4) *Argument.*

- a) Participants in an appeal are entitled to submit written argument in support of their position. No new evidence may be submitted, and only evidence that is a part of the record on appeal may be referenced.
- b) The Board of Commissioners shall establish a schedule for submittal of arguments by the participants provided, however, that the applicant shall have the opportunity to submit final rebuttal argument not sooner than 7 days following the submittal of argument by the other participants.

- 5) The Planning Division may prepare a memorandum for the record summarizing the matter under appeal. The memorandum may also include a recommendation. No new evidence may be submitted, and only evidence that is a part of the record on appeal may be referenced.

- 6) The timing and content of the decision of the Board of Commissioners shall conform to the requirements of the ORS and the LDO.

B) *Discretionary De Novo Hearing*

- 1) An appellant may request in writing that the Board of Commissioners hold a de novo hearing on the appeal at the time of the filing of the notice of appeal. Such a request must provide specific reasons for the request.

- 2) The Board of Commissioners may grant a request for a de novo review at its discretion after consideration of the following factors:

- a) Whether a de novo hearing could cause the time limits in ORS 215.427 to be exceeded. For the purposes of this subsection, if an applicant is the appellant and the appellant has submitted together with its notice of appeal a written consent for an extension of the time limit adequate to allow for a de novo hearing and decision, consistent with the maximum limitation in ORS 215.427, then this criterion shall not be considered;

- b) If the recording of the hearing below, or a portion of thereof, is unavailable due to a malfunction of the recording device during the hearing, whether review on the

record would be hampered by the absence of all or a portion of that element of the hearing below;

- c) Whether the substantial rights of the parties would be significantly prejudiced without de novo review;
 - d) Whether the request is necessitated by failure of the appellant to present evidence that was or should have been available at the time of the hearing below;
 - e) Whether the appeal contains an allegation that statutes, ordinances, regulations or procedures were violated in the hearing or decision below;
 - f) Whether the Planning Commission or the Director has recommended that a de novo hearing be conducted on the appeal, and
 - g) Whether in its sole judgment a de novo hearing is necessary to fully and properly evaluate a significant policy issue relevant to the matter being appealed.
- 3) In the absence of a request for a de novo hearing, the Board of Commissioners may independently decide to conduct a de novo hearing on an appeal.
 - 4) The Board of Commissioners may, at its discretion, determine to limit the issues on appeal to those listed in the notice of appeal or to one or more specific issues from among those listed on the notice of appeal.

2.3 PLANNING COMMISSIONS

2.3.1 Appointment; Membership

Planning Commission members are appointed by the Board of Commissioners, as provided in Part 12 of the *Codified Ordinances of Jackson County* and any adopted Planning Commission Bylaws.

2.3.2 Review and Decision-Making Responsibilities, Adoption of User's Guide

The Jackson County and White City Planning Commissions will, with respect to this Ordinance, have the powers and duties set forth in Table 2.1-1, and as set out in Part 12 of the *Codified Ordinances of Jackson County*. The Jackson County Planning commission has the authority to adopt, modify and amend the Jackson County Planning Division User's Guide.

2.3.3 Jurisdiction

There are two Planning Commissions within Jackson County. Jurisdiction over planning matters is split between the two (2) planning commissions depending on the geographic area that is the subject of an application.

For applications within the White City Urban Unincorporated Community (WCUUC), the White City Planning Commission has jurisdiction, performing applicable reviews and making recommendations to the Board of Commissioners on some Type 4 applications. In addition, certain Type 4 applications

(subdivisions, and planned unit developments) within the WCUUC will be decided by the WCPC following an evidentiary hearing before them.² Upon passage of a development services funding mechanism for the WCUUC, the White City Planning Commission will also act as the appeal body for all Type 2 and Type 3 applications within the WCUUC.

The remainder of the County and issues of countywide significance are the responsibility of the Jackson County Planning Commission. The Jackson County Planning Commission performs the applicable review of quasi-judicial applications, rendering final decisions on subdivisions, planned unit developments and large destination resorts, and makes recommendations to the Board of Commissioners on long-range matters. Where amendments are made to the Jackson County Comprehensive Plan, Jackson County Land Development Ordinance or other long-range documents, the Jackson County Planning Commission has jurisdiction and is empowered to author such amendments and make recommendations to the Board of Commissioners.

2.4 HEARINGS OFFICER

2.4.1 Appointment

The Hearings Officer(s) will be appointed by the Board of Commissioners and will serve at the pleasure of and at a rate of compensation fixed by the Board.

2.4.2 Review and Decision-Making Responsibilities

The Hearings Officer(s) will, with respect to this Ordinance, have the powers and duties set forth in Table 2.1-1, to be carried out in accordance with the terms of this Ordinance.

2.4.3 Decisions Final

The Hearings Officer will have authority to render a final decision on quasi-judicial land use applications and remands of those applications from LUBA when the Hearings Officer rendered the original decision, unless the remand requires an interpretation of the Comprehensive Plan or this Ordinance. When such interpretation is required, the Board of Commissioners may hear the remanded application (see Section 2.2). When the Hearings Officer interprets this Ordinance, the interpretation will only apply to the application in question. The Hearings Officer will not reconsider a final decision once rendered, except as necessary on remand from a higher authority. Likewise, the Hearings Officer may not remand applications back to the Development Services Department. The Hearings Officer may, however, request research assistance from Planning Staff prior to rendering a final decision.

2.5 PLANNING DIVISION

2.5.1 Review and Decision-Making Responsibilities

The Planning Division will, with respect to this Ordinance, have the powers and duties set forth in Table 2.1-1, to be carried out in accordance with the terms of this Ordinance.

²Ordinance 2004-12, effective 2-6-2005

2.5.2 Other Powers and Duties

Authority to administer this Ordinance is vested in the Planning Director. The Director may render advisory opinions in addition to binding Written Interpretations, as described in Section 3.9 of this Ordinance. Advisory opinions will be neither appealable nor binding upon the County.

2.6 COMMON PROCEDURES

The following general provisions apply to all applications for permits under this Ordinance. However, zone map and Comprehensive Plan map amendment applications are subject to the requirements of Sections 2.6.1 through 2.6.3, 2.6.5, 2.6.6 and 2.6.10.

2.6.1 Authority to File Applications

- A) Unless otherwise specified in this Ordinance, applications for review and approval of all development proposals may be initiated by the property owner, purchaser under a recorded land sale contract, condemner who has been granted immediate possession by a court of competent jurisdiction, agent duly authorized in writing, or a public agency.

- B) When an authorized agent files an application under this Ordinance on behalf of a property owner, the agent will provide the County with written documentation that the property owner has authorized the filing of the application. Such authorization will be considered valid until withdrawn by the property owner.

2.6.2 Filing Applications

Before engaging in any activity regulated by this Ordinance, an applicant must file an application for a land use permit on forms provided by the County accompanied by the required fee. All prior outstanding fees and charges must be paid prior to an application being submitted. Such fees and charges applicable to the property are the responsibility of the property owner. Each application for development activity must be submitted on forms provided by the Planning Division. The application will be accompanied by all information identified on the application form, along with the appropriate fee. The Planning Division may require an applicant to submit additional information deemed necessary to take action on the application in accordance with this Ordinance and applicable State laws.

2.6.3 Application Completeness³

- A) An application that is consistent with the submittal requirements specified in the Land Development Ordinance and the User's Guide will be considered complete once all outstanding fees and charges are paid, and sufficient information to address all applicable standards and criteria is included.

- B) Within 30 days of the date an application is filed, the Planning Division will notify the applicant, in writing, specifying what additional information is required. The application will be deemed complete upon receipt of the missing information.

³Ordinance 2004-12, effective 2-6-2005

- C) If the applicant who receives notice of an incomplete application refuses to submit the missing information, the application will be deemed complete upon receipt of:
 - 1. All of the information;
 - 2. Some of the information and written notice that no other information will be provided or
 - 3. Written notice from the applicant that none of the missing information will be provided. *ORS 215.427(2)*

- D) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection C of this section and has not submitted:
 - 1. All of the information;
 - 2. Some of the information and written notice that no other information will be provided or
 - 3. Written notice that none of the missing information will be provided.

- E) In the event the Planning Division fails to notify the applicant within 30 days of the date the application was filed, the application will be deemed complete on the 31st day.

2.6.4 Timetable for Final Decisions

- A) For lands located within an urban growth boundary, and all applications for mineral or aggregate extraction, the County will take final action on applications submitted under this Ordinance, except applications for Comprehensive Plan amendments, within 120 days after the application is deemed complete. *(ORS 215.427 (1))*

- B) For all other applications submitted under this Ordinance, except applications for Comprehensive Plan amendments, the County will take final action within 150 days after the application is deemed complete. County review of Post-Acknowledgement Plan Amendment (PAPA) Applications for Aggregate Resource Land will take final action within 180 days after the application is deemed complete. *[ORS 215.427 (1), OAR 660-023-0180(5)]*

- C) At the written request by the applicant, the period set in subsection A of this section may be extended for a specified period of time. The total of all extensions may not exceed 215 days. *[ORS 215.427 (5)]*

2.6.5 Simultaneous Application Review

- A) Applications for more than one land use decision on the same property may, at the applicant's discretion, be combined and heard or reviewed concurrently. Multiple land use applications involving different processing Types will be heard and decided under the higher processing type. For example, a combined application involving a Subdivision (Type 4) with a Variance (Type 3) will be reviewed and decided as a Type 4 request. Simultaneously reviewed applications will be required to pay the applicable fees for each application.

- B) When applications of differing review types are combined resulting in different review authorities, the review authority shall be that authority required for the highest review type, e.g., if one application requires a

Type 2 review by Planning Division staff and another requires review by the Planning Commission, the Planning Commission will be the review authority for the simultaneous review.

- C) When applications of different review types require the same review types but result in different appeal bodies, the Director shall designate one of the appeal bodies to have jurisdiction based on the following criteria and the Director's decision in this regard shall be final.
 - 1) The nature of the appeal;
 - 2) The efficiency of the appeal processes available, and
 - 3) Such other factors as the Director may deem appropriate to the applications that have been combined.
- D) The final decision rendered by the review authority may be appealed to LUBA.
- E) The Planning Commissions are authorized to consider and conditionally approve or deny land development applications that are paired with and contingent upon approval of a Comprehensive Plan or Zoning map or text amendment. The relevant Planning Commission's order of approval for the dependent land use permit application will be contingent upon affirmative action by the Board of Commissioners approving the Comprehensive Plan or Zoning map or text amendment(s) that would enable issuance of the dependent land use permit(s). If the Planning Commission or Board denies the map or text amendment(s), then any other application submitted concurrently and dependent upon it will also be denied. A land use permit decision that is contingent upon approval of a map or text amendment will not become final until a decision by the Board of Commissioners to adopt the map or text amendment becomes final. Since this decision may be appealed to LUBA after the final County decision, any development permits that rely on the decision will be held in abeyance by the County until the LUBA appeal period has lapsed. *(ORS 197.620, 197.830, and Jackson Co. Charter Chapter III, Section 14)*

2.6.6 Statement Supporting Decision Required [ORS 215.416(9)-(10)]

Approval or denial of any quasi-judicial development application under this Ordinance will be based on and accompanied by a brief statement that:

- A) Explains the criteria and standards considered relevant to the decision;
- B) States the facts relied upon in rendering the decision; and
- C) Explains the justification for the decision based on the criteria, standards, and facts set forth.

Written notice of the approval or denial will be given to all parties to the proceeding.

2.6.7 Conditions of Approval

- A) ***General Authorization to Impose Conditions of Approval***

In approving any type of development application, the decision-making body is authorized to impose such conditions as may be necessary to assure compliance with the applicable provisions of this Ordinance, the Comprehensive Plan, or other requirements of law. Any conditions attached to approvals will be directly related to the impacts of the proposed use or development and will be roughly proportional in both extent and amount to the anticipated impacts of the proposed use or development.

B) ***Compliance with Conditions Required***

An applicant who has received development approval will comply with all conditions of approval in a timely manner. The County may modify, alter, suspend, or revoke an approved application for noncompliance with conditions of approval. The County may establish a fee to cover the reasonable costs of inspections and other actions to determine whether conditions have been complied with.

C) ***Enforcement and Penalties for Noncompliance with Conditions***

If the County modifies, alters, suspends, or revokes an approved application for noncompliance with conditions of approval, it may proceed under the penalty provisions of this Ordinance and/or schedule a public hearing before the Board of Commissioners. At the conclusion of any such hearing, and based upon findings of fact and conclusions of law, the hearings body will take such action on the application as it deems appropriate under the provisions of this Ordinance. Notice of any hearing scheduled under this Section will be served upon the owner of record of the subject property and, if different from the owner, the applicant or operator under the application in the same manner as a summons is served under Rule 7 of the Oregon Rules of Civil Procedure. Notice to all others will be accomplished pursuant to the standard review procedure set forth in Section 2.7, below.

D) ***Modification of Conditions Previously Approved***

- 1) Following an applicant's written application, the County may modify or amend one or more conditions of approval for an application previously approved and final.
- 2) Such an application shall be reviewed by the Director within 21 days of submittal to determine whether the condition requested to be modified or amended was imposed to assure compliance with a standard or in order to satisfy the requirements of a criterion. Upon completion of that review, the Director shall take the following actions:
 - a) If the condition being considered was imposed to assure compliance with a standard or if it can be modified as an administrative adjustment under Section 3.12, the Director may determine whether to authorize the modification or amendment that has been requested.
 - b) If the condition being considered was imposed in order to satisfy the requirements of a criterion, the Director shall refer the request to the review authority having initial

jurisdiction over the original application using the same type of review procedure as the original review.

- 3) No modification of a condition shall be approved if the Director determines that the modification would render the permit inconsistent with changes in a state goal, policy, statute or administrative rule, the Comprehensive Plan or this Ordinance that has been adopted after the date of the final decision approving the permit. In that event, a new application must be submitted for the permit.
- 4) The County may establish a fee to cover the reasonable costs of an application made under this provision.

2.6.8 Expiration and Extension of Land Use Permits

Except as provided in Section 4.1.3 for land use permits in EFU and forest zones, and as provided in Section 7.1.5 with regard to destination resort preliminary development plans and final development plans, a land use permit will become void four years, or such lesser time as the permit may specify, after the date of the final decision if development has not been initiated. (See Section 13.3) For the purposes of this section “date of the final decision” shall mean the date the final County decision approving the permit is signed or, if the final County decision is appealed, the date the final appellate body affirms the County decision or dismisses the appeal.

A one-year extension may be granted by the Director where all of the following standards are met:

- A) An extension request is filed prior to the applicable expiration date or within 30 days after that date;
- B) The extension request is filed in written form and includes all exhibits and fees required by the County. Extension requests filed up to 30 days after the expiration date are subject to double fees;
- C) The provisions of this Ordinance or State law do not prohibit the extension;
- D) The approval criteria for the original decision found in a state goal, policy, statute or administrative rule, the Comprehensive Plan or this Ordinance have not changed; and

Additional one (1) year extensions may be authorized where the applicable standards for an extension set out in (A) through (D) above are met. Authority to grant extensions of time will rest with the Director and is a Type 1 decision. Such decisions are not subject to appeal as land use decisions.

2.6.9 Amendment of Approved Land Use Permits

A valid land use permit that existed on the date of adoption of this Ordinance may be amended, extended, or modified in accordance with the procedures and standards established for the most comparable current application, as identified by the Director.

2.6.10 Remands

A remand of a decision may result from an order by the Land Use Board of

Appeals, the Oregon Court of Appeals, the Oregon Supreme Court or by order of the Board of Commissioners pursuant to Section 2.6.10(A).

A) ***Remands from the Board of Commissioners***

- 1) The Board of Commissioners may remand a Type 3 or Type 4 land use decision or other land use action to the previous decision making body upon making findings consistent with the following criteria:
 - a) New substantial evidence is being offered for consideration that was unavailable at the time of review by the previous decision making body and is significant enough to call into serious question whether that decision would have been different;
 - b) The wrong legal criteria were applied by the previous decision making body;
 - c) Incomplete legal criteria were applied by the previous decision making body;
 - d) The previous decision making body improperly or incorrectly interpreted a provision of this Ordinance in reaching its decision;
 - e) The volume of new evidence offered would seriously interfere with the Board of Commissioners' agenda or unreasonably prejudice parties to the review;
 - f) The proposed new evidence is of sufficient importance to merit a reconsideration by the previous decision making body.
- 2) The Board of Commissioners may issue an order of remand based on its review of the record and the proposed new evidence in advance of a hearing, provided that such order is made and published not less than 7 days in advance of the scheduled hearing on the matter under consideration. The Board of Commissioners may also order a remand at any time during a hearing on the matter under consideration.
- 3) The order of remand must specify which criteria of Section 2.6.10(A)(1) provides the basis for the remand, and the parties to the remand hearing shall be limited to introducing that evidence and such other evidence specifically found by the remand hearings body to be relevant to confront the allowed new information.
- 4) Nothing in this section shall prohibit, prevent or limit the ability of the Board of County Commissioners from referring a remand decision to the Planning Commission, Planning Division, Hearings Officer, and/or other entity for review, recommendation, and/or decision consistent with the duties and authorities designated to that decision making authority in Section 2.3-2.5 of this Chapter.

- 5) The County may establish a fee to cover the reasonable costs of remands under this provision. The fee will be assessed against the Applicant.

B) *Standards and Criteria and Time Limits*

- 1) *Remands Generally*
Unless otherwise required by this Ordinance or provisions of state law, reconsideration of quasi-judicial land use decisions remanded will be based on the standards and criteria in effect at the time the completed application first submitted if the application was subject to ORS 215.427. Applications not subject to ORS 215.427 will be reconsidered based on the standards and criteria in effect at the time of the County's final decision on remand.
- 2) *Remands from the Board of Commissioners*
If the application involves a zone change or permit request which is not dependent on a Comprehensive Plan amendment, final action of the County will occur within the time limits established in ORS 215.427.
- 3) *Remands from the Land Use Board of Appeals*
If the application involves a zone change or permit request which is not dependent on a Comprehensive Plan amendment, final action of the County will occur within 90 days of the effective date of the remand order issued by the Land Use Board of Appeals. Notwithstanding the preceding provision, the 90-day period will not begin until the applicant requests in writing that the County proceed with the remand. [ORS 215.435]

C) *Scope of Review on Remand*

- 1) *Remands from State Bodies*
Consideration of matters remanded from the Land Use Board of Appeals, the Oregon Court of Appeals or the Oregon Supreme Court is subject to the rulings and orders from those bodies, Oregon Revised Statutes, Oregon Administrative Rules and prevailing case law.
- 2) *Remands from the Board of Commissioners*
Consideration of matters remanded pursuant to Section 2.6.10(A) is limited as follows:
 - a) The decision making body to which the remand is referred is limited to considering only the existing prior record and the new evidence allowable pursuant to Section 2.6.10(A)(3).
 - b) The review conducted on remand is limited to a consideration of whether the new evidence allowable pursuant to Section 2.6.10(A)(3) requires a different decision than previously reached, in light of the record as a whole.

D) **Notice and Procedure**

- 1) Notice for a remand hearing shall conform to the requirements of Section 2.7.6 or 2.7.7, as applicable, provided however, if a party requests expedited review pursuant to Section 2.7.6, the County may assess an additional fee to cover the additional cost of that process.
- 2) A determination on remand will be made pursuant to a quasi-judicial hearing in conformity with 2.8.2 and 2.8.3 or 2.8.4, as applicable.
- 3) A remand hearing shall be subject to the notice provisions of Section 2.7.6.

E) **Appeal**

No appeal may be taken from a remand decision ordered pursuant to Section 2.6.10(A). Such decisions shall return to the Board of Commissioners for consideration. Remand decisions resulting from an order of LUBA may be appealed to the LUBA.

2.7 STANDARD REVIEW PROCEDURE

All applications for development approval are subject to some (but not all) processes in the standard review procedure. The table below summarizes the standard review procedure applicable to development applications under this Ordinance. Each procedure is illustrated on the accompanying diagram, and footnotes for the tables appear below. Specific provisions and approval criteria applicable to each type of application are included in Chapter 3.

Time periods in this Ordinance are computed by excluding the first day and including the last day. If the last day is Saturday, Sunday, or other state legal holiday, the act must be performed on the next working day. [OAR 661-010-0075]

Footnotes for Tables 2.7-1 and 2.7-2 (Amended by Ord. 2004-2RM, eff. 1-30-2005, Ord. 2004-12, eff. 2-6-2005, Ord. 2004-14, eff. 2-13-2005, and Ord. 2009-1, eff. 8-16-2009)

[1] Includes Major Comprehensive Plan Map and all Comprehensive Plan Text amendments.

[2] e.g., outdoor gatherings reviewed by WCPC; rendering plant, tannery, slaughter house; composting plant; waste disposal (recycling plant, sanitary landfill); new public roads in resource zones.

[3] Unless referred directly to hearing under Section 2.7.4(C).

[4] Responsibility for making final County decisions when an appeal is filed will transfer to WCPC upon passage by the Board of Commissioners (BoC) of a development services funding mechanism for the WCUUC.

[5] Notice of application may be sent at the County's discretion. See Section 2.7.3.

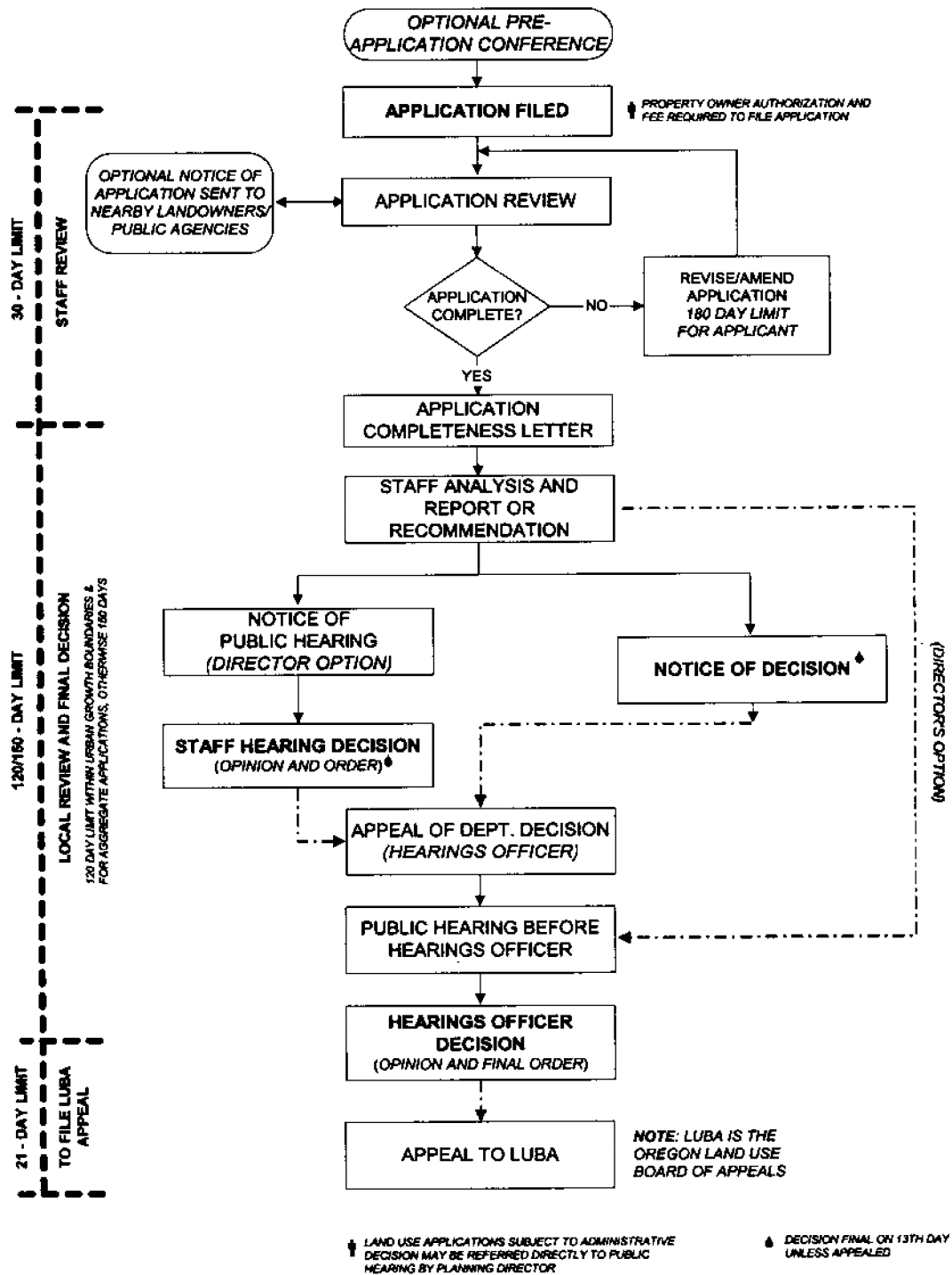
**Table 2.7-1 SUMMARY OF REVIEW PROCEDURE FOR ALL TYPE 1 THROUGH 3 APPLICATIONS
X = APPLICABLE**

Description	Review Type		
	1	2 (e.g., Site Development Plan, Partition, Property Line Adjustment, Administrative Adjustment)	3 (e.g., Variances, Historic Allowable Use Permit)
Cross Reference Chapters	3.1.2	3.1.3, Chapters 7 and 8	3.1.4
Pre-application Conference	-	-	-
Application	-	X	X
Notice of Application	-	[5]	X
Planning Staff Decision or Recommendation	X	X	X
Notice of Staff Decision [3]	-	X	X
Notice of quasi-judicial hearing if appealed	-	X	X
Notice of required evidentiary hearing	-	-	-
Hearings Officer Decision if appealed	-	X	X
JCPC Decision or Recommendation	-	-	-
<i>WCPC Decision or Recommendation</i> See Note [4]	-	X	X
BoC Decision on appeal	-	-	-
BoC required final Decision	-	-	-

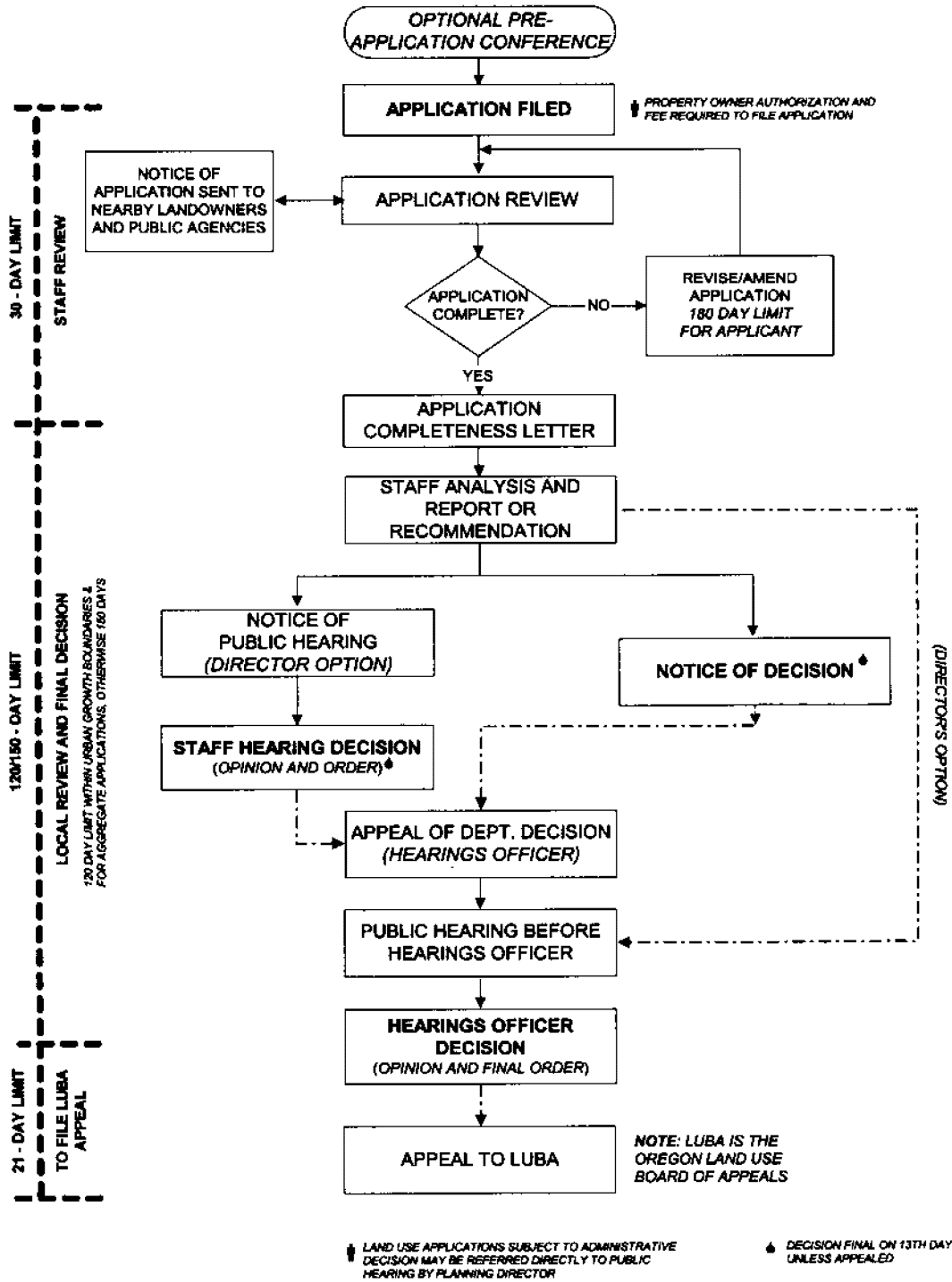
Table 2.7-2 SUMMARY OF REVIEW PROCEDURE FOR TYPE 4 APPLICATIONS
X = APPLICABLE

	Sewer extension		Subdivision	PUD	Destination Resort Preliminary Development Plan	Minor map amendment	Plan/LDO text amendment [1]	Other Type 4 review [2]
Cross Reference Chapters	3.6	3.3.2	3.3.2	3.5	6.3.8	3.7.3(C)	3.7.2	3.1.5
Pre-application Conference	X	X	X	X	X	X	-	X
Application	X	X	X	X	X	X	-	X
Notice of Application	X	-	X	X	X	X	-	X
Planning Staff Decision or Recommendation	X	X	X	X	X	X	X	X
Notice of Staff Decision [3]	-	-	-	-	-	-	-	-
Notice of quasi-judicial hearing <i>if appealed</i>	-	-	-	-	-	-	-	-
Notice of <i>required</i> evidentiary hearing	X	X	X	X	X	X	X	X
Hearings Officer Decision <i>if appealed</i>	-	-	-	-	-	-	-	-
JCPC Decision or Recommendation	X	X	X	X	X	X	X	X
WCPC Decision or Recommendation [4]	-	X	X	X	-	X	-	X
BoC Decision on appeal	-	-	X	X	X	-	-	-
BoC required final Decision	X	X	-	-	-	X	X	X

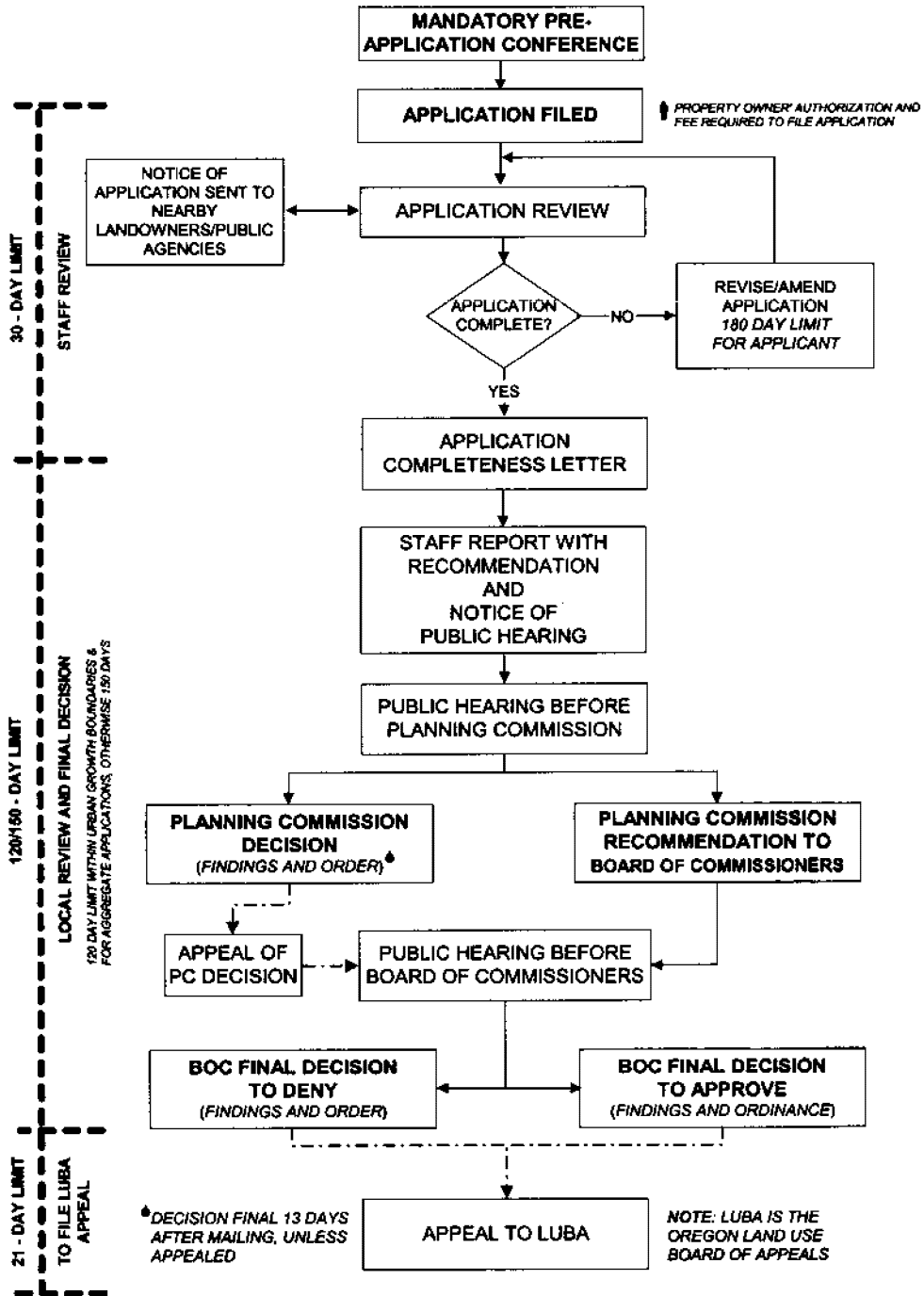
TYPE 2 PERMIT REVIEW PROCESS



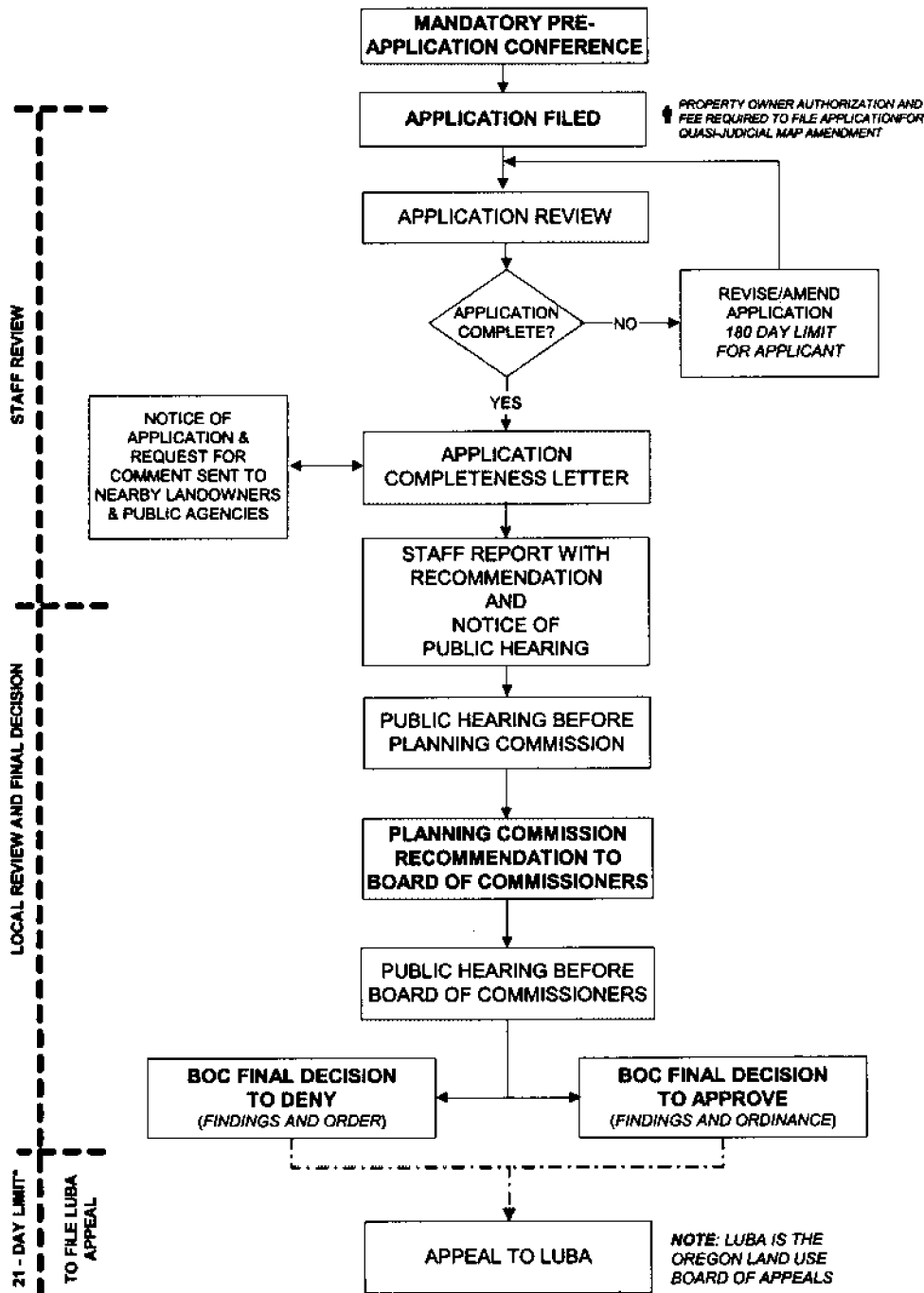
TYPE 3 PERMIT REVIEW PROCESS



TYPE 4 PERMIT REVIEW PROCESS



**TYPE 4 REVIEW PROCESS FOR
COMPREHENSIVE PLAN OR ZONING CODE AMENDMENTS*
(MAP OR TEXT)**



**No time limits apply for processing Comprehensive Plan amendment applications at the local level. See Section 2.6.5 for simultaneous application review requirements.*

2.7.1 Pre-Application Conference

A) *Applicability*

- 1) A pre-application conference is mandatory prior to submission of all Type 3 and 4 land use applications (Table 2.7-2) and optional at the applicant's request for Type.
- 2) Type 2 and 3 Review Applications
 - a) If, within 6 months following the pre-application conference, the application is filed, deemed complete by the Planning Staff and pursued to approval by the applicant, the fee paid for the pre-application conference will be applied in full to subsequent Development Services Department permits required for the approved project.
 - b) Nothing in this section assures approval of an application under this Ordinance or eligibility for refund under Section 2.7.1(A)(2)(a).

B) *Description*

The purpose of a pre-application conference is to familiarize the applicant with the provisions of this Ordinance and other land use laws and regulations applicable to the proposed development. Any potential applicant may request a pre-application conference with the Planning Division. Along with a written request for the conference, the applicant will identify the type of development permit sought and will provide a description of the character, location, and magnitude of the proposed development and any other supporting documents such as maps, drawings, or models.

C) *Procedures*

- 1) The Planning Division will schedule a pre-application conference after receipt of a written request and the appropriate fee.
- 2) The written request shall be on forms provided by the Planning Division and shall include a draft application for the proposed development, a plot plan and other application elements identified in the User's Guide.
- 3) The Planning Division will notify other agencies and persons deemed appropriate to attend to discuss the proposal. Following the conference, the Planning Division will prepare a written summary of the discussion and send it to the applicant.

2.7.2 Application Required

With the exception of Type 1 uses, an application is required for all land use permits regulated by this Ordinance. (See Section 2.6.2)

2.7.3 Notice of Application

A) *Applicability*

Once an application has been deemed complete in accordance with Section 2.6.3, a Notice of Application will be prepared for the types of permits noted in Table 2.7-1 and 2.7-2. For those applications that may

be referred directly to hearing under Section 2.7.4(C), a Notice of Application will be prepared and mailed to adjacent property owners during the initial 30-day completeness review.

B) ***Notice of Application Requirements***

Within 15 days of a Type 3 or 4 application being deemed complete that has not been referred directly to hearing under Section 2.7.4(C), the Planning Division will mail written notice to all persons entitled to Notice of Decision, pursuant to Section 2.7.5. In addition, notice will be sent to any parties who requested notice, and may be sent at the County's option to:

- 1) Any agencies or other jurisdictions that may be affected by the proposed action, and
- 2) The Department of Land Conservation and Development.

C) ***Content of Notice of Application***

Notices sent under this Section will state that the County has accepted an application, describe the nature of the proposed land use activity, and provide an opportunity to submit written comments within 14 days to the County.

2.7.4 Planning Staff Decision/Recommendation

A) ***Applicability***

1) *Planning Staff Decision*

Unless referred directly to a public hearing, a Planning Staff decision will be issued for all Type 2 or 3 reviews without a hearing, subject to Section 2.7.5.

2) *Planning Staff Recommendation*

The Planning Staff will prepare a written recommendation for all Type 4 reviews.

B) ***Description***

1) Following certification of the application as complete, the Planning Staff will review the application and refer it to the appropriate review agencies.

2) For applications requiring a decision, the Planning Staff will approve, approve with conditions, or deny the application in a written staff decision. For applications requiring a Planning Staff recommendation, a written staff report will be prepared that includes a staff recommendation.

3) The staff decision or recommendation will be based on factual information that supports findings as to whether the application complies with all applicable criteria of this Ordinance. In addition, responses and comments received will be considered prior to issuance of a decision or recommendation.

C) ***Elective Hearing Procedure***

Notwithstanding any other provision of this Ordinance, the Director may

refer any Type 2 or 3 land use application directly to a first evidentiary hearing⁴. The purpose of an evidentiary hearing is to resolve unique land use issues by providing interested parties with an opportunity to present evidence before any land use decision is made by the County. Hearings may be before either the Director or a Hearings Officer in accordance with subsections (1) and (2) below:

- 1) *Director Evidentiary Hearing:* A decision to conduct a Director evidentiary hearing must be based on a finding that one or more of the following criteria is applicable to the application:
 - a) An application raises an issue that is of countywide significance.
 - b) An application raises an issue that will reoccur with frequency and is in need of policy guidance.
 - c) An application involves a unique environmental resource based upon evidence provided by a State or Federal agency, or by a private professional with expertise in the field of the resource of concern.
 - d) An application involves an existing use with neighborhood opposition or where there is an enforcement action pending against the use which the application proposes to remedy.
 - e) An application involves persons with opposing legal arguments regarding unresolved interpretations of applicable state laws or regulations.
 - f) An application involves a contemplated use that would be of a different type than the uses of nearby properties and the owners of three or more nearby properties object to the use or request a hearing.
 - g) An application involves a contemplated use that would result in any of the following offsite impacts based upon information provided to the Director: the introduction of new commercial or industrial traffic, or ongoing truck traffic on local roads in a residential neighborhood; or the introduction of noise, odors or dust into a residential neighborhood.
 - h) An applicant or recognized CAC requests a hearing.
 - i) The Planning Division has not deemed an application complete under Section 2.6.3(A) and the applicant has declined to submit some or all of the additional information identified pursuant to Section 2.6.3(B) and requested that the application be deemed complete pursuant to Section 2.6.3(D).
 - j) An application concerns a property with a history of violations of this Ordinance or the Jackson County Code, regardless of whether the application is for a use that has generated the history of violations.

- 2) *Hearings Officer Evidentiary Hearing:* An election by the Director to refer an application to the Hearings Officer must demonstrate

⁴Some applications within the WCUUC will transfer to the White City Planning Commission upon passage by the Board of Commissioners of a development services funding mechanism for the WCUUC. (See Table 2.1-1)

that the application satisfies one or more of criteria (a), (d), (e), (f), (h), (i), or (j) above.

- 3) The evidentiary hearing before the Director or Hearings Officer will be scheduled for a date no later than 60 days from the date the application is deemed complete.
- 4) A copy of the staff report containing the findings of fact and addressing the application review criteria upon which a decision can be based will be made available to the applicant and public at least seven (7) days prior to the hearing.
- 5) Notice of the elective hearing will follow the process in Section 2.7.6.
- 6) Notice of a decision made by the Director after an elective hearing will be provided as specified in Section 2.7.6(G)(1).
- 7) Appeal from a decision made by the Director after an elective hearing will be as specified in Section 2.7.6(H).

2.7.5 Notice of Planning Staff Decision Made Without A Hearing

A) ***Applicability***

A Notice of Decision by the Planning Staff will be sent for all Type 2 or 3 reviews, unless referred directly to hearing (see Section 2.7.4(C)). When no appeal of the staff decision is received, or one is received that does not meet the requirements of this Ordinance, the decision will be final on the 13th day after the Notice of Decision is mailed.

B) ***Recipients of Notice of Decision***

Notices will be provided to the following:

- 1) The applicant, agent, and owner of the subject property;
- 2) The owners of record of property as shown on the most recent property tax assessment roll where such property is located:
 - a) Within 100 feet of the property that is the subject of the notice, when the subject property is wholly or in part within an urban growth boundary;
 - b) Within 250 feet of the property that is the subject of the notice, when the subject property is located outside an urban growth boundary and not within a farm or forest zone; or
 - c) Within 750 feet of the property that is the subject of the notice, when the subject property is within a farm or forest zone;
 - d) Notwithstanding (a) through (c) above, notice of a proposed aggregate use will be provided to all property owners within a 1,000 foot radius of the parcel to be used for aggregate removal or surface mining, to residences within one-half (1/2) mile of the mining site, and to owners of property adjacent to private aggregate site access roads.

When the property borders another county, the property owner must supply, as part of their application, property owner addresses for those ownerships located in the adjacent county. The addresses supplied must be verified by the adjacent county or a title company as originating from the most recent tax assessment rolls of that county. At the County's option, applicants may also be required to supply those property owner addresses within Jackson County that are required to receive notice;

- 3) Any other persons that submitted comments to the County on the application or requested notice in writing;
- 4) Any neighborhood or community organization recognized by the Board and whose boundaries include the subject property;
- 5) At the discretion of Planning Staff, the Department of Land Conservation and Development; and
- 6) Any other persons, agencies or jurisdictions deemed appropriate by the County.

C) **Content of Notice of Decision**

Notices of Decision will include the following information:

- 1) An explanation of the nature of the application and the proposed use or uses that could be authorized;
- 2) A description of the nature of the decision;
- 3) The street address or other easily understood geographical reference to the subject property;
- 4) The name and telephone number of the Planning Staff member who may be contacted for additional information regarding the application;
- 5) Indicate that a copy of the application, all documents and evidence relied upon in support of the application, and the applicable criteria are available for inspection at no cost and can be provided at reasonable cost;
- 6) Indicate that any person who is adversely affected or aggrieved or who is entitled to notice may appeal the decision by filing a written request for hearing accompanied by the appropriate fee;
- 7) Indicate that a person who is mailed written notice of the decision cannot appeal directly to the Land Use Board of Appeals under ORS 197.830; and
- 8) Indicate that the decision will not become final until the period for filing a request for hearing has expired. The appeal period will expire 12 days after the date that the written Notice of Decision is mailed. [ORS 215.416(11)(a)(C); ORS 197.763(3)(a, c, g, h)]

D) **Appeal of a Decision**

- 1) Decisions made without first holding an initial evidentiary hearing may be appealed by any person or entity who:
 - a) Is entitled to notice under this Section; or
 - b) Is adversely affected or aggrieved by the decision, whether or not they received notice.
- 2) An appeal must:
 - a) Be made in writing;
 - b) Identify the decision that is being appealed and the date of the decision;
 - c) To the best of the appellant's ability, state the specific reason(s) for the appeal, including the sections of this Ordinance and other authorities, if any, upon which the appeal is based. Nothing in this requirement limits the issues that can be raised during the appeal, and failure to list reasons with specificity cannot be the basis for refusing to hear or for denying the appeal.
 - d) Be received by the Planning Staff at the address listed in the notice prior to the end of the appeal period; and
 - e) Be accompanied by the required fee established by the County.
- 3) If an appeal is timely filed and is accompanied by the required fee, the decision will not be final. Planning Staff will schedule the application for an initial hearing on the earliest available date, taking into consideration procedures set out in Section 2.7.6 of this Ordinance and the date by which a final decision must be rendered.
- 4) If all persons or entities that requested a hearing withdraw their appeal prior to the final decision by the review authority, the appealed decision will become final on the date the appeal was withdrawn.
- 5) If the person or entity appealing the decision prevails at the hearing or upon subsequent appeal, the initial hearing fee will be refunded. Appeals that are not filed before the end of the appeal period, or that are not accompanied by the required fee, will not be accepted.

E) **Applegate Rural Service Commercial (ARS) and Sams Valley Rural Service Commercial (SVRS)**

Additional notification will be provided as specified in the Applegate and Sams Valley rural community plans and the User's Guide.

2.7.6 Quasi-Judicial Hearing

A) **Applicability**

A quasi-judicial hearing is required in those cases where:

- 1) A Type 2 or 3 application is referred directly to the Hearings Officer, or the Director elects to hold a hearing (Section 2.7.4(C));
- 2) A Planning Staff decision on a Type 2 or 3 application, made without a hearing, is appealed to the Hearings Officer (Section 2.7.5(D));
- 3) A decision by the Director on a Type 2 or 3 application, made after a hearing, is appealed to the Hearings Officer (Section 2.7.6(H)); or
- 4) The Planning Commission or Board of Commissioners holds a hearing on a quasi-judicial Type 4 application (Table 2.7-2).
- 5) The Planning Commission holds a remand hearing pursuant to an order of the Board of Commissioners under Section 2.6.10(A).

B) **Review Authorities**

The following review authorities will conduct quasi-judicial land use hearings.

- 1) The Director will hear applications that meet the criteria of Section 2.7.4(C)(1).
- 2) The Hearings Officer will hear all Type 2 and 3 applications which have been appealed under Section 2.7.5(D) or 2.7.6(H) or referred by the Director under Section 2.7.4(C)(2). Where no first evidentiary hearing has been held, the hearing held by the Hearings Officer will be a de novo evidentiary hearing, at which any relevant issue may be raised. The Hearings Officer's decision rendered after a quasi-judicial hearing will be the final decision of the County.
- 3) The Planning Commission will hear all quasi-judicial Type 4 applications, conduct a public hearing and either render a decision, or forward a recommendation to the Board of Commissioners.
 - a) For a subdivision, planned unit development, or large destination resort application, a quasi-judicial hearing will be scheduled for a date no later than 45 days from the date the application is deemed complete, taking into consideration noticing requirements of subsection (C), below, and the date by which a final decision must be reached.
 - b) A Planning Commission decision rendered after a quasi-judicial hearing on a subdivision, planned unit development, or large destination resort application may be appealed to the Board of Commissioners as provided in Section 2.7.6(H). If not appealed as provided, the Planning Commission's decision will be the final decision of the County.
 - c) For all other quasi-judicial Type 4 applications, the Planning Commission will conduct a public hearing and

forward its recommendation to the Board of Commissioners.

- 4) The Planning Commission will hear all Type 3 and Type 4 review matters which have been remanded by the Board of Commissioners under Section 2.6.10(A). Such hearings will be limited pursuant to the provisions of Section 2.6.10. Following a determination made by the Planning Commission on the remand, the matter will return to the Board of Commissioners so that it may continue its review.
- 5) The Board of Commissioners will conduct a quasi-judicial hearing on any appeal of a decision by the Planning Commission on a subdivision, planned unit development, or large destination resort application. Appeal hearings before the Board of Commissioners will be de novo evidentiary hearings, at which the Board may consider any issue raised in making its decision. A hearing date will be scheduled on the earliest available date, taking into consideration the noticing requirements of subsection (C), below, and the date by which a final decision must be reached.

For all other quasi-judicial Type 4 reviews, the Board of Commissioners will conduct a quasi-judicial hearing after receiving the recommendation of the Planning Commission (Table 2.7-2). The hearing before the Board of Commissioners will be a de novo evidentiary hearing, at which the Board may consider any issue raised in making its decision. The decision of the Board of Commissioners rendered after a quasi-judicial hearing will be the final decision of the County.

C) *Timing of Quasi-Judicial Hearing Notice*

- 1) When a quasi-judicial public hearing is scheduled on a development application, the Planning Staff will mail the required notice of hearing not less than 20 days prior to the hearing. Alternatively, if two (2) quasi-judicial public hearings are scheduled, the notice will be mailed not less than 10 calendar days prior to the date of the first public hearing and will include both public hearing dates.
- 2) For all Comprehensive Plan amendments, a notice of public hearing shall be published in a newspaper of general circulation at least 10 days prior to the hearing. *[ORS 215.060 and 215.223]*
- 3) For applications not proposing a plan amendments, at the Director's option, a notice of public hearing may also be published in the Legal Notices Section of a newspaper of general circulation at least 10 days prior to the hearing.
- 4) Nothing in subsections 1, 2, or 3 shall restrict the giving of notice by other means, such as email, mail, radio, television, posting on the County website and any other reasonable means of communication.

D) **Recipients of Quasi-Judicial Hearing Notice**

Notices will be provided to:

- 1) The appellant(s), if any;
- 2) All persons who are entitled to receive notice under Section 2.7.5(B);
- 3) Any other persons or agencies deemed appropriate by the County; and
- 4) People who participated in person or in writing in any prior hearing on the application, including those requesting notice in writing.

Notwithstanding subsections (1) through (4) above, notices for zone change applications must be sent to surrounding property owners within 250 feet, minimum, of the subject property. [ORS 215.223]

E) **Content of Quasi-Judicial Hearing Notice**

All notices required under this Section will contain the following information:

- 1) An explanation of the nature of the application and the proposed use or uses that could be authorized;
- 2) The street address or other easily understood geographical reference to the property which is the subject of the application;
- 3) A list of the approval criteria from this Ordinance that apply to the application;
- 4) The date, time and location of the hearing;
- 5) The name and telephone number of the Planning Staff member who may be contacted for additional information regarding the application;
- 6) In addition, the notice must state that:
 - a) Testimony, arguments, and evidence must be directed toward the approval criteria, or other criteria in the Ordinance which the person believes apply to the application;
 - b) Failure to raise an issue at the hearing, in person or by letter, or failure to provide sufficient specificity to afford the hearing body an opportunity to respond to the issue precludes an appeal based on that issue;
 - c) A copy of the application, all documents and evidence relied upon in support of the application and the approval criteria are available for inspection at no cost and will be reproduced at reasonable cost;
 - d) A copy of any staff report on the application will be available for inspection at no cost at least seven (7) days

before the hearing and can be reproduced at reasonable cost; and,

- e) A copy of rules governing conduct of the hearing and submission of evidence and testimony at the hearing may be inspected at the Planning Division at no cost any time prior to the hearing and can be reproduced at reasonable cost.

F) ***Procedures and Decision***

- 1) When a quasi-judicial hearing is required, as specified in Section 2.7.6(A), the hearings body will conduct a quasi-judicial hearing in accordance with Section 2.8 of this Ordinance and will render a written decision or recommendation. A copy of the staff report containing the findings of fact and addressing the application review criteria upon which a decision can be based will be made available to the applicant and public at least seven (7) days prior to the hearing.
- 2) A verbatim record of the hearing shall be made by digital, mechanical or other suitable means.
- 3) All quasi-judicial decisions of the County will be based on written findings of fact prepared by either the Hearings Officer, Director, or Planning Staff explaining the justification for the decision, based on facts set forth and the relevant standards and criteria set forth in this Ordinance.

G) ***Notice of Quasi-Judicial Hearing Decision***

- 1) Notice of a quasi-judicial decision made by the Director will be mailed as follows:
 - a) To the applicant, property owner, agent, and to all persons who participated either in person or writing at the hearing.
 - b) At the Director's option, the notification of decision may be expanded to include all persons who were entitled to receive notice under Section 2.7.5(B).
- 2) Notice of a quasi-judicial decision made by the Hearings Officer will be mailed to the appellant (if any), applicant, property owner, agent, and to all persons who participated either in person or in writing at the hearing. In addition, if the Hearings Officer reverses or modifies a Planning Staff or Director decision, all persons who were entitled to receive notice under Section 2.7.5(B) may also be mailed notice.
- 3) Notice of a quasi-judicial decision made by the Planning Commission will be made by mailing a Notice of Decision on a subdivision, planned unit development, or large destination resort to all persons who are entitled to receive notice under Section 2.7.5(B) and to all persons who participated either in person or in writing at the hearing.

- 4) Notice of a quasi-judicial decision made by the Board of Commissioners will be mailed as follows:
 - a) In the case of applications falling under ORS 215.427, notice of the County's final decision will be mailed to all persons who are entitled to receive notice under Section 2.7.5(B) and to all persons who participated either in person or in writing at the hearing.
 - b) In the case of other Type 4 applications or appeals to the Board of Commissioners, notice will be mailed as follows:
 - i) To the appellant, applicant, property owner, agent, and to all persons who participated either in person or in writing at the hearing.
 - ii) If requested by the Board of Commissioners, notice may also be sent to all persons who were entitled to receive notice under Section 2.7.5(B).

- 5) A Notice of Quasi-Judicial Hearing Decision will include the following information:
 - a) A description of the nature of the decision;
 - b) The street address or other easily understood geographical reference to the subject property;
 - c) The date of the decision; and
 - d) If the decision is by the Director or Planning Commission, a statement that the decision will not become final until the appeal period has expired, and that the appeal period will expire 12 days after the Notice of Quasi-Judicial Hearing Decision is mailed; or
 - e) If the decision is by the Hearings Officer or Board of Commissioners, a statement that the decision is the final decision of the County and may be appealed to the Land Use Board of Appeals under ORS 197.830 to 197.845.

H) ***Appeal of Quasi-Judicial Hearing Decision***

- 1) Decisions made by the Director after holding quasi-judicial hearing may be appealed to the Hearings Officer, and decisions made by the Planning Commission after holding a quasi-judicial hearing may be appealed to the Board of Commissioners, by any person or entity who:
 - a) Participated in the first evidentiary hearing either orally or in writing; and either
 - b) Was entitled to notice of the hearing under Section 2.7.6; or
 - c) Is adversely affected or aggrieved by the decision.

- 2) An appeal must:
 - a) Be made in writing;
 - b) Identify the decision that is being appealed and the date of the decision;

- c) State the specific reason(s) for the appeal, including the sections of this Ordinance and other authorities, if any, upon which the appeal is based. Nothing in this requirement limits the issues that can be raised during the appeal, and any failure to list reasons with specificity cannot be the basis for refusing to hear or for denying the appeal;
 - d) Be received by the Planning Staff at the address listed in the notice prior to the end of the appeal period. The appeal period will expire 12 days after the date the Notice of Quasi-Judicial Hearing Decision is mailed; and
 - e) Be accompanied by the required fee established by the County.
- 3) If an appeal is timely filed and is accompanied by the required fee, the decision appealed will not be final. Planning Staff will schedule the appeal for a hearing on the earliest available date, taking into consideration procedures set out in Section 2.7.6 and the date by which a final decision must be rendered.
 - 4) If all persons or entities that requested a hearing withdraw their appeal prior to the final decision by the review authority, the appealed decision will become final on the date the appeal was withdrawn.
 - 5) Appeals that are not filed before the end of the appeal period, or that are not accompanied by the required fee, will not be accepted.
- l) ***Appeal of a Director's First Evidentiary Hearing Decision***
 - 1) *Review on the Record*
 - a) Except as limited in this section and notwithstanding any other provisions of the LDO, the Hearings Officer's review of appeals from Director's First Evidentiary Hearing decisions will be on the record created at the hearing.
 - b) For purposes of this section, the "record" shall consist of the following elements from the hearing conducted by the Director: the recording of the hearing made by the County pursuant to Section 2.7.6(F)(2), all exhibits received, all motions and objections made by the parties and all actions taken by the Director.
 - c) Transcript
 - i) The appellant or any other party may provide the Hearings Officer with a transcript or a portion of a transcript of the hearing which must be prepared by a Certified Shorthand Court Reporter from the

recording made by the County, and its accuracy must be attested to.

- ii) One copy of the transcript will be provided for the Hearings Officer and one extra copy will be provided for the file. Only one transcript is required to bear the original affidavit. The absence of a transcript from the record on appeal shall not be construed as a defect in the record.
 - iii) The transcript, if any, must be provided by the date set by the Planning Division for the receipt of written arguments on the appeal.
- d) The timing and content of the decision of the Hearings Officer shall conform to the requirements of the ORS and the LDO.
- e) *Argument:*
- i) Participants in an appeal are entitled to submit written argument in support of their position. No new evidence may be submitted, and only evidence that is a part of the record on appeal may be referenced.
 - ii) The Hearings Officer shall establish a schedule for submittal of arguments by the participants provided, however, that the applicant shall have the opportunity to submit final rebuttal argument not sooner than 7 days following the submittal of argument by the other participants.
- f) The Planning Division may prepare a memorandum for the record summarizing the matter under appeal. The memorandum also may include a recommendation. No new evidence may be submitted, and only evidence that is a part of the record on appeal may be referenced.

2) *Discretionary De Novo Hearing*

- a) An appellant may request in writing that the Hearings Officer hold a de novo hearing on the appeal at the time of the filing of the notice of appeal. Such a request must provide specific reasons for the request.
- b) The Hearings Officer may grant a request for a de novo review at his or her discretion after consideration of the following factors:
 - i) Whether a de novo hearing could cause the time limits in ORS 215.427 to be exceeded. For the purposes of this subsection, if an applicant is the appellant and the appellant has submitted together

with its notice of appeal a written consent for an extension of the time limit adequate to allow for a de novo hearing and decision, consistent with the maximum limitation in ORS 215.427, then this criterion shall not be considered;

- ii) If the recording of the hearing, or a portion of thereof, is unavailable due to a malfunction of the recording device during the hearing, whether review on the record would be hampered by the absence of all or a portion of that element of the hearing;
 - iii) Whether the substantial rights of the parties would be significantly prejudiced without de novo review;
 - iv) Whether the request is necessitated by failure of the appellant to present evidence that was or should have been available at the time of the hearing;
 - v) Whether the appeal contains an allegation that statutes, ordinances, regulations or procedures were violated in the hearing or decision;
 - vi) Whether the Director has recommended that a de novo hearing be conducted on the appeal, and
 - vii) Whether in the Hearings Officer's sole judgment a de novo hearing is necessary to fully and properly evaluate a significant issue relevant to the matter being appealed.
- b) In the absence of a request for a de novo hearing, the Hearings Officer may independently decide to conduct a de novo hearing on an appeal.
 - c) The Hearings Officer may, at his or her discretion, determine to limit the issues on appeal to those listed in the notice of appeal or to one or more specific issues from among those listed on the notice of appeal.

2.7.7 Legislative Hearing and Planning Commission Recommendation

A) *Applicability*

The following types of applications require a legislative hearing:

- 1) Major Comprehensive Plan map amendments;
- 2) Amendments to the Comprehensive Plan text;
- 3) Amendments to the Land Development Ordinance; and
- 4) Any other application for legislative approval requiring a Type 4 review.

B) **Description**

- 1) The Planning Commission will conduct the first evidentiary hearing on the application pursuant to the relevant procedures set forth in Section 2.8.4.
 - a) A legislative hearing will be conducted for all the types of amendment applications listed in Section 2.7.7(A), above. Notice of the hearing will be prepared in accordance with ORS 215.503, if applicable.
 - b) The Planning Commission will consider the application, the Planning Staff report and recommendation, and the evidence presented at the public hearing, and then recommend the Board of Commissioners either approve, approve with conditions, or deny the application. The Planning Commission recommendation will include written findings of fact prepared by the Planning Staff explaining the justification for the recommendation, based on the facts set forth and relevant local and state laws.
- 2) The Board of Commissioners will conduct a public hearing on the application pursuant to the relevant procedures set forth in Section 2.8.4. Upon receipt of a Planning Commission recommendation, the Board of Commissioners will hold at least one (1) public hearing before taking final action on the application. The Board will then take final action to approve, approve with conditions, or deny the application. The Board of Commissioners may either adopt or direct Planning Staff to modify the findings and recommendation of the Planning Commission as part of its action.

2.8 PUBLIC HEARING PROCEDURES

2.8.1 Initiation of Hearing

A land use hearing may be initiated by any of the following:

- A) An appeal made pursuant to Section 2.7.5(D) or 2.7.6(H); or
- B) Referral of a Type 2 or 3 application directly to hearing by the Director pursuant to Section 2.7.4(C)(1) or (2); or
- C) Filing of a Type 4 application.

2.8.2 Authority of Presiding Officer

- A) In conducting a public hearing, the presiding officer will have discretionary authority to dispose of motions, requests, and similar matters; rule on admissibility of evidence; impose reasonable time limitations on testimony and rebuttal; question any person testifying at the hearing and allow others to do the same; and take all such actions as may be reasonably necessary to maintain order.
- B) All decisions of the presiding officer on procedural issues will be final,

except that the presiding officer may be overruled by a majority vote of the members of the hearings body.

2.8.3 Order of Proceedings in Quasi-Judicial Hearings

- A) At the commencement of a hearing, the presiding officer will:
- 1) List the applicable approval criteria from this Ordinance that apply to the application;
 - 2) State that testimony, arguments, and evidence must be directed toward the approval criteria, or other criteria in this Ordinance which the person believes apply to the application;
 - 3) State that failure to raise an issue with sufficient specificity to afford the hearings body and the parties an opportunity to respond to the issue precludes an appeal based on that issue;
 - 4) Advise those in attendance that unless there is a continuance, if a participant so requests before the conclusion of the hearing, the public record will remain open for a period of at least seven (7) days after the hearing [ORS 197.763(6)(a)]; and
 - 5) Explain to those in attendance their appeal rights.
- B) The presiding officer, after complying with subsection (A) above, will call upon a representative of the Planning Staff for a report on the application for a land use decision and may permit members of the hearings body to inquire of the Planning Staff regarding the application.
- C) After hearing the report of the Planning Staff, the presiding officer will open the public hearing and ask first to hear from the applicant or the applicant's representative followed by all who wish to testify in favor of the application. The applicant bears the burden of proof. This means that the applicant must proceed first and bears the burden to present sufficient evidence to satisfy all of the approval criteria of this Ordinance that apply to the application.
- When all in favor have testified, the presiding officer will ask for testimony from those opposed to the application. If there is testimony offered in opposition to the application, the presiding officer will permit the applicant or his representative to present rebuttal. Rebuttal will be limited to evidence and testimony directed to issues raised by the opposition. The officer will also ask for testimony from those neutral to the application. Before testifying, all witnesses must first state their name and address for the record.
- D) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The hearings body shall grant such request by continuing the public hearing pursuant to Section 2.8.3(E) or leaving the record open for additional written evidence, arguments or testimony pursuant to paragraph Section 2.8.3(F) of this subsection. [ORS 197.763(6)(a)]
- E) If the hearings body grants a continuance, the hearing shall be continued

to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence. *[ORS 197.763(6)(b)]*

- F) If the hearings body leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the hearings body for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings body shall reopen the record pursuant to Section 2.8.3(l). *[ORS 197.763(6)(c)]*
- G) A continuance or extension granted pursuant to this section shall be subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179, unless the continuance or extension is requested or agreed to by the applicant. The County may assess a fee for any continuance initiated by the applicant. *[ORS 197.763(6)(d)]*
- H) Unless waived by the applicant, the hearings body shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. This seven-day period shall not be subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179. *[ORS 197.763(6)(e)]*
- I) When the hearings body reopens a record to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue. *[ORS 197.763(7)]*
- J) Participants at hearings must conduct themselves in an orderly and respectful manner at all times. The presiding officer may exclude persons disrupting the proceedings from the hearing room or may adjourn the hearing.
- K) Upon completion of evidence and testimony, if there has been no request to continue the hearing or leave the public record open, the presiding officer will close the public hearing and the record.
- L) Once the public hearing and record are closed, the decision-making body will proceed to deliberate prior to making a decision or formulating its recommendation.
- M) For purposes of this section
 - 1) "Evidence" means facts, documents, data or other information

offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision. [ORS 197.763(9)(b)]

- 2) “Argument” means 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. [ORS 197.763(9)(a)]
- 3) “Hearings body” means whatever authority is conducting an quasi-judicial hearing, including the Hearings Officer.

2.8.4 Order of Proceedings in Legislative Hearings

- A) At the commencement of a hearing, the presiding officer will call upon a representative of the Planning Staff for a report on the land use matter under consideration and may permit members of the hearings body to inquire of the Planning Staff.
- B) After hearing the report of the Planning Staff, the presiding officer will open the public hearing and ask first to hear from those who wish to testify in favor of the land use matter under consideration. When all in favor have testified, the presiding officer will ask for testimony from those opposed. The officer may also ask for testimony from those neutral to the application. Before testifying, all witnesses must first state their name and address for the record.
- C) Participants in hearings must conduct themselves in an orderly and respectful manner at all times. The presiding officer may exclude persons disrupting the proceedings from the hearing room or may adjourn the hearing.
- D) Upon completion of evidence and testimony, the presiding officer will, in the absence of any motions to continue the public hearing or leave the public record open, close both.
- E) Once the hearing and public record are closed, the presiding officer will call for deliberation by the hearings body prior to making a decision or formulating its recommendation.