



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

### NOTICE OF ADOPTED AMENDMENT

May 2, 2008

TO: Subscribers to Notice of Adopted Plan  
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Klamath County Plan Amendment  
DLCD File Number 002-08



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures\*

### **DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: May 19, 2008**

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

**\*NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Doug White, DLCD Community Services Specialist  
Jon Jinings, DLCD Regional Representative  
Les Wilson, Klamath County

<paa> ya

# Notice of Adoption



THIS FORM **MUST BE MAILED TO DLCD**  
**WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION**  
 PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

Jurisdiction: **Klamath County**

Local file number: **Ordinance 45.69**

Date of Adoption: **4/21/2008**

Date Mailed: **4/29/2008**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: 1/30/2008

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Klamath County is proposing text amendment changes to the Klamath County Land Development Code Chapter 30 regarding public hearings, notices and appeal procedures to comply with state law and administrative rule.

Does the Adoption differ from proposal? **No**, no explanation is necessary  
Same

Plan Map Changed from: **N/A**

to: **N/A**

Zone Map Changed from: **N/A**

to: **N/A**

Location: **Klamath County**

Acres Involved: **0**

Specify Density: Previous: **N/A**

New: **N/A**

Applicable statewide planning goals:

- |                                     |                                     |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |
|-------------------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>1</b>                            | <b>2</b>                            | <b>3</b>                 | <b>4</b>                 | <b>5</b>                 | <b>6</b>                 | <b>7</b>                 | <b>8</b>                 | <b>9</b>                 | <b>10</b>                | <b>11</b>                | <b>12</b>                | <b>13</b>                | <b>14</b>                | <b>15</b>                | <b>16</b>                | <b>17</b>                | <b>18</b>                | <b>19</b>                |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Was an Exception Adopted?  YES  NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes  No

If no, do the statewide planning goals apply?

Yes  No

If no, did Emergency Circumstances require immediate adoption?

Yes  No

**DLCD file No.** \_\_\_\_\_

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

---

Local Contact: **Les Wilson, Planning Director**

Phone: **(541) 883-5121** Extension: **3079**

Address: **305 Main Street**

Fax Number: **541-885-3644**

City: **Klamath Falls**

Zip: **97601-**

E-mail Address: **lwilson@co.klamath.or.us**

---

## **ADOPTION SUBMITTAL REQUIREMENTS**

This form **must be mailed** to DLCD **within 5 working days after the final decision**  
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and **TWO Complete Copies** (documents and maps) of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST  
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
635 CAPITOL STREET NE, SUITE 150  
SALEM, OREGON 97301-2540**

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

**BOARD OF COUNTY COMMISSIONERS**

**KLAMATH COUNTY, OREGON**

**IN THE MATTER OF AMENDING CHAPTER 30, )  
PUBLIC HEARINGS, NOTICE AND APPEAL, OF )  
OF THE KLAMATH COUNTY LAND ) ORDINANCE 45.69  
DEVELOPMENT CODE )  
\_\_\_\_\_)**

**WHEREAS**, the Klamath County Board of Commissioners has the authority to amend the Land Development Code (KCLDC); and

**WHEREAS**, the Klamath County Planning Director desires to amend the Land Development Code; and

**WHEREAS**, a legislative public hearing was held on March 25, 2008; and, Staff Report was provided; and, public testimony was considered before the Klamath County Planning Commission; and, the Planning Commission recommended approval to amend the KCLDC; and, said recommendation was forwarded to the Klamath County Board of Commissioners; and

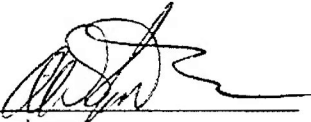
**WHEREAS**, the Klamath County Board of Commissioners have held a public hearing and have determined that it is in the best interest of Klamath County to amend Chapter 30, Public Hearings, Notice and Appeal, of the Klamath County Land Development Code by Order of the Klamath County Board of Commissioners;

**NOW, THEREFORE**, the Klamath County Board of Commissioners ordains that the amendments to the adopted Klamath County Land Development Code which are attached hereto, marked Exhibit "A", "Chapter 30, Public Hearings, Notice and Appeal," and incorporated herein by reference are hereby adopted.



DONE and DATED this 21<sup>st</sup> day of April, 2008.

**KLAMATH COUNTY BOARD OF COMMISSIONERS**


  
\_\_\_\_\_  
Chairman

  
\_\_\_\_\_  
Commissioner

  
\_\_\_\_\_  
Commissioner

APPROVED FOR LEGAL SUFFICIENCY:

ATTEST:

  
\_\_\_\_\_  
W. Daniel Bunch  
Klamath County

  
\_\_\_\_\_  
Recording Secretary

Exhibit A  
Chapter 30  
**CHAPTER 30**  
**PUBLIC HEARINGS, NOTICE AND APPEAL**

**ARTICLE 30**  
**BASIC PROVISIONS**

**30.010 – PURPOSE**

The purpose of this chapter is to prescribe procedures for public hearings, public notice and appeal of decisions reached as a result of the review procedures described in Chapter 20. The intent of this Chapter is to guarantee to all parties the opportunity to be heard, to present evidence, to have a record developed, and to have a decision rendered incorporating findings of fact and based on conclusions of law supported by substantial evidence in the whole record.

**30.020 - APPLICATIONS AND STAFF REPORTS**

- A. All documentation relied upon by an applicant in support of a development permit or other action governed by this code must be submitted in writing to the Planning Department by the date of notice established by the Planning Director in advance of reviews or quasi-judicial hearings. Administrative review or a public hearing shall not be scheduled or noticed until the permit application is deemed complete by the Planning Director or his/her designee (*ORS 215.427*).
- B. Klamath County will take final action on an application for a permit, limited land use decision, or zone change for land within an urban growth boundary, and on application for mineral aggregate extraction, within 120 days after the application is deemed complete. The County will take final action on all other applications for a permit, limited land use decision or zone change within 150 days after the application is deemed complete. The time periods established in this subsection may be extended at the written request of the applicant. (*ORS 215.427(4)*)
- C. Staff reports that include proposed findings addressing applicable review criteria shall be available for public inspection at least seven days prior to the first public hearing on the matter (*ORS 197.763(4)*). When a discretionary land use permit decision is made without a public hearing, a staff report that describes the relevant standards and criteria of this code shall be available at the time of Notice of Tentative Staff Decision (*ORS 216.416(8) & (11)*).

**Exhibit A**  
Chapter 30  
**ARTICLE 31**  
**PUBLIC HEARINGS**

**31.010 - RESPONSIBILITY OF THE PLANNING DIRECTOR (ORS 215.042)**

The Planning Director or his/her designee shall perform the following duties pertaining to administrative and/or land use permit reviews and public hearings:

- A. Establish and maintain a schedule of land use permit review and public hearing dates;
- B. Refer and schedule land use permit applications to the appropriate Review Body following applications being deemed complete (*ORS 215.427(2)*);
- C. Conduct the correspondence of the Review Body;
- D. Give notice in accordance with Article 32 and State law. Mail written notice of tentative decisions on Type II permits made without a hearing to applicants, their representatives and the owners of record of adjoining property. (*ORS 197.763, ORS 215.223, ORS 215.416 and ORS 215.503*);
- E. Maintain a record and enter into the record relevant dates such as those of giving notice, hearings, postponement and continuances, and a summary of action taken by the applicable Review Body;
- F. Prepare and maintain minutes of public meetings conducted under this code; and
- G. Mail a copy of the final order to applicants, their representatives and any parties who participated in a public hearing on the matter. Mail written notice of the approval or denial to all other parties to the proceeding. (*ORS 215.416(10)*)

**31.020 - SPECIAL HEARINGS**

The Planning Director may schedule special hearings after consulting with the presiding officer of the Review Body in order to accommodate and promote efficient hearing agendas.

# Exhibit A

## Chapter 30

### **31.030 - CHALLENGES TO IMPARTIALITY**

Except for hearings by the Board of County Commissioners concerning legislative amendments to the Comprehensive Plan or Land Development Code involving broad public policy, a party to a hearing or a member of a Review Body may challenge the impartiality of an individual to participate in the hearing and decision of the matter.

- A. A challenge shall state, by affidavit, the factual situation relating to the challenge including, but not limited to: an alleged personal bias, prejudice, ex parte contact, or personal interest in the matter.
- B. The challenge shall be delivered to the Planning Director at least 48 hours prior to the time set for a public hearing on the matter.
- C. The Planning Director shall inform the Review Body's chairperson of the challenge and the person(s) at whom the challenge is directed.
- D. The Review Body shall deal with the challenge before proceeding with a hearing.
- E. The challenge shall be incorporated into the record of the hearing.

### **31.040 – DISQUALIFICATION**

Except for hearings by the Board of County Commissioners concerning legislative amendments to the Comprehensive Plan or Land Development Code involving a substantial area and number of property owners or issues of broad public policy, no member of a hearing body shall participate in a discussion of the proposal or vote on the proposal when any of the following conditions exist:

- A. Any of the following have a direct or substantial financial interest in the proposal: the Review Body member or the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, any business in which the member is serving or has served within the previous two years, or any business which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment;
- B. The member owns property within the area entitled to receive notice of the public hearing;
- C. The member has a direct private interest in the proposal; or
- D. For any other reason, the member has determined that participation in the hearing and decision cannot be in an impartial manner.

# Exhibit A

## Chapter 30

### **31.050 - PARTICIPATION OF OFFICERS OR EMPLOYEES**

No officer or employee of Klamath County who has a financial or other private interest in a proposal shall participate in discussion with or give an official opinion to the hearing body on the proposal without first declaring for the record the nature and extent of such interest.

### **31.060 - EX PARTE CONTACTS**

Except for hearings by the Board of County Commissioners concerning a Comprehensive Plan or Land Development Code Amendment which involves a substantial area and number of property owners, or an issue of broad public policy, the general public has a right to have hearing body members free from pre-hearing or ex parte contacts on matters heard by them. It is recognized that a countervailing public right is free access to public officials on any matter.

- A. Hearing body members shall reveal any pre-hearing or ex parte contacts with regard to any matter before the commencement of the public hearing on the matter. If such contacts have impaired the member's impartiality or ability to vote on the matter, the member shall so state and not participate in the hearing.
- B. Contacts between County staff and the Review Body shall not constitute an ex parte contact (*ORS 215.422(4)*).
- C. No member of the Board of County Commissioners shall be barred from participating in a hearing concerning a Comprehensive Plan or Land Development Code amendment involving a substantial area and large number of people, or any other issue of broad public policy because of an ex parte contact.

### **31.070 - ABSTENTION OR DISQUALIFICATION**

Except for hearings by the Board of Commissioners concerning either a code amendment or a Plan revision which involves a substantial area and number of property owners, or an issue of broad public policy, disqualification for reasons other than the member's own judgment may be ordered by a majority of the members of a hearing body present and voting. The member who is the subject of the motion for disqualification may not vote on the motion.

### **31.080 - RIGHTS OF DISQUALIFIED MEMBER OF THE REVIEW BODY**

- A. An abstaining or disqualified member of the Review Body may be counted for purposes of forming a quorum. A member who represents personal interest at a hearing may do so only by abstaining from voting on the proposal, physically vacating the seat on the Review Body, and making full disclosure of his or her status and position at the time of addressing the Review Body.



# Exhibit A

## Chapter 30

- B. If all members of a Review Body abstain or are disqualified, all members present after stating their reasons for abstention or disqualification shall by so doing be re-qualified and proceed to resolve the issues.
- C. Except for hearings by the Board of Commissioners concerning either a change of zone or comprehensive plan designation which involves a substantial area and number of property owners, or an issue of broad public policy, a member absent during the presentation of evidence in a hearing may not participate in the deliberations or final decision regarding the matter of the hearing unless the member has reviewed the evidence received.

### **31.090 - BURDEN AND NATURE OF PROOF**

- A. Except for hearings by the Board of Commissioners concerning a legislative amendment to the Comprehensive Plan and/or Land Development Code involving a substantial area and number of persons, the burden of proof is upon the proponent to show that the proposal complies with or is consistent with the Comprehensive Plan and/or Land Development Code.
- B. Proposals must be supported by substantial evidence in the whole record showing compliance with all applicable elements of the Comprehensive Plan and Land Development Code.
- C. Approval or denial of a permit application shall be based on standards and criteria set forth in this code or other appropriate ordinance or regulation of the county and which shall relate approval or denial of a permit application to this code and any Comprehensive Plan for the area in which the proposed use of land would occur and to the Land Development Code and Comprehensive Plan for the county as a whole. *(ORS 215.412)*
- D. The more drastic the proposed change, or the greater the impact of the proposal on other land uses or properties, the greater the burden of proof upon the proponent to show how the proposal complies with or is consistent with the Comprehensive Plan and Land Development Code.

### **31.100 - ORDER OF PROCEEDINGS**

An order of proceedings for the conduct of a hearing will depend, in part, on the nature of the hearing. The following may be supplemented by rules of procedure.

- A. Before receiving information on the matter, the presiding officer of the hearing shall note for the record, or act on the following issues:
  - 1. Challenges to the impartiality of any member of the Review Body;

# Exhibit A

## Chapter 30

2. Conflict of interest or ex parte contacts by members of the Review Body;
  3. Abstentions or disqualifications of the Review Body;
  4. The nature of any site visit to the land or property in question by any member of the Review Body; and
  5. Objections to the proceedings based on jurisdictional grounds.
- B. Before receiving information on the matter, the presiding officer of the hearing shall make a statement to those in attendance that: *(ORS 197.763(5))*
1. Lists the applicable review criteria of the Comprehensive Plan and Land Development Code pertinent to the hearing;
  2. States that testimony, arguments and evidence must be directed to the applicable review criteria of the Comprehensive Plan or Land Development Code pertinent to the hearing or other criteria in the Comprehensive Plan or Land Development Code the person believes to apply to the decision; and
  3. States that failure to raise an issue with sufficient specificity to afford the Review Body or other parties an opportunity to respond to the issue may preclude future appeal based on that issue.
- C. The Review Body shall hear the staff report and recommendation.
- D. The Review Body shall open the evidentiary hearing for public testimony and submittal of evidence and arguments on the matter.
1. Testimony shall be received in a manner prescribed by the presiding officer.
  2. Unless otherwise specified all questions will be directed to the presiding officer or chairperson of the Review Body.
  3. Before any person testifies at a quasi-judicial hearing, that person shall establish standing in the matter as per Section 31.110.
- E. The chairperson of the Review Body may take official notice of information relating to the issue.
1. Provisions of state law, a Klamath County ordinance, resolution, rule or officially promulgated policy, or other public records and facts judicially noticeable by ORS Chapter 41 may be noticed by the presiding officer.

# Exhibit A

## Chapter 30

2. A matter officially noticed need not be established by evidence and may be considered by the Review Body in deciding the matter.
  3. Parties requesting official notice shall do so on the record.
  4. Any matter given official notice may be rebutted.
- F. At the close of public testimony, the record shall be closed to public testimony and the submittal of evidence and the Review Body may discuss the issue.
- G. All evidence, testimony, deliberations, and decisions shall be made before the public, shall be recorded, and shall be made a part of the record.

### **31.105 – CONDUCT OF QUASI-JUDICIAL HEARING (ORS 197.763).**

- A. An issue that may be the basis for an appeal to the Land Use Board of appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the Review Body and parties an opportunity to respond to each issue.
- B. If new evidence is submitted less than seven days before or during a public hearing, any party shall be entitled to a continuance or to have the record left open if the party has not had the opportunity to review the evidence. Such hearing continuance or extension of the record shall be for a minimum of seven days and be continued to a date, time and place certain. When the continuance or extension of the record is requested by the applicant, any applicable 120/150 day time limitation for final local action shall be extended by the corresponding amount of time.
- C. An opportunity shall be provided at a continued hearing for parties to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any party 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.
- D. When the Review Body leaves the record open for additional evidence, arguments or testimony, any party may file a written request for an opportunity to respond to the new evidence submitted during the period the record is left open. If such a request is filed, the Review Body shall reopen the record to admit new evidence, arguments or testimony.

# Exhibit A

## Chapter 30

### **31.110 – STANDING**

Before any person testifies at a quasi-judicial hearing, that person shall establish standing in the matter before the Review Body. Persons must show that their interests would be adversely affected by a decision or that they are entitled to notice under the provisions of this code. The Review Body may take testimony from a person whose standing is taken under consideration and may make its ruling regarding standing at the time of entry of its decision.

### **31.115 – DECISION**

- A. Following the close of the final evidentiary hearing on a matter before it, the Review Body may approve, conditionally approve or deny an application for a change of land use or development proposal, affirm, reverse or remand an issue on appeal, or shall continue the matter to a time and date certain for a decision. Hearings continued for a decision shall not be evidentiary hearings.
- B. A matter continued to a date and time certain for a decision shall be held within 45 days of the date the evidentiary hearing record is closed.
- C. A decision shall not become final until the Review Body adopts findings of fact and conclusion of law, and the decision is reduced to writing.
- D. A final decision, including local appeal, shall be made on all applications within 120 days of the date an application is deemed complete for the purposes of scheduling a public hearing pursuant to Article 32, except as provided for in ORS 215.427.

### **31.120 - FINAL ORDER**

- A. A decision of a Review Body on a land use decision shall be based on findings of fact and conclusions of law supported by substantial evidence in the whole record. The Planning Director, County Counsel, or the prevailing party (if designated by the Review Body), shall reduce the decision to writing and prepare the final order. The final order shall include, but not be limited to:
  - 1. Nature of the application or action;
  - 2. Name of the applicant or proponent of the action;
  - 3. Legal description of the affected land;
  - 4. Applicable standards and review criteria from the Comprehensive Plan and Land Development Code upon which the decision is to be based;

# Exhibit A

## Chapter 30

5. Statements of facts relevant to the situation and used by the Review Body in making its decision, including but not limited to:
    - a. General Background: nature of the request and description of the proposed use, location of the property, plan and zone designations, history of prior actions affecting the property;
    - b. Nature of the Site: size, shape, land use, topography, soils, physical characteristics of the property, available utilities and public facilities; and
    - c. Nature of the Surrounding Area: land uses of surrounding land, physical characteristics, utilities and public facilities, other environmental and infrastructure characteristics.
  6. Reasons supported by substantial evidence in the whole record showing how the factual situation presented addresses the standards and review criteria contained in the Comprehensive Plan and Land Development Code;
  7. Conclusions of law, and a decision stating the approval, conditioned approval, or denial of the matter;
  8. Order; and
  9. Conditions, if applicable
- B. A final order shall be prepared within 15 days of the decision.
- C. Notice of the decision and a copy of the final order shall be provided via first class mail to the applicant and other persons participating in the decision or requesting notice in writing, and shall enumerate appeal rights.
- D. A final order shall be filed with the Board of County Commissioners, the County Clerk's Office, and the Planning Department.



# Exhibit A

## Chapter 30

### **31.130 - RECORD OF PROCEEDINGS**

The secretary to the Review Body or his/her authorized representative shall be present at each hearing and shall cause the proceedings to be recorded.

- A. Testimony shall be transcribed if required for an appeal, if requested by the Review Body, or if requested and paid for by any other party.
- B. The Review Body shall, where practicable, retain as part of the hearing record each item of physical or documentary evidence presented and shall have the items marked to show the identity of the person offering the same and whether presented on behalf of a proponent or opponent. Exhibits received into evidence shall be retained in the hearing file until after the applicable appeal period has expired, at which time the exhibits may be released to the person identified thereon, or otherwise disposed of.
- C. The final order shall be included in the record.
- D. Any person shall have access to the record of the proceedings at reasonable times, places and circumstances. A person shall be entitled to obtain copies of the record for a reasonable cost.

**Exhibit A**  
Chapter 30  
**ARTICLE 32**  
**PUBLIC NOTICE**

**32.010 – PURPOSE**

The purpose of public notice is to provide an opportunity for affected or interested persons to participate in the local land use review and decision process.

**32.020 - NOTICE SCHEDULE**

- A. The Planning Director shall determine the type of notice for each land use decision, and may provide additional notice, in such a way that all persons reasonably determined to be potentially affected or interested in a local land use decision receive actual notice.
- B. The notice requirements for the various types of land use and development decisions are set forth in Section 32.070.

**32.030 - TYPES OF NOTICE**

- A. Published Notice - Notice of a land use review or hearing requiring advance notice by state law and this code shall be published in a newspaper of general circulation in Klamath County on 2 consecutive days not less than 20 days prior to the date of the scheduled review or hearing. (*ORS 215.060; ORS 215.223*)
- B. Posted Notice - Notice of a land use review or hearing requiring advance notice by this code shall be posted not less than 20 days prior to the date of the scheduled review or hearing at designated locations in the Federal Post Office in Klamath Falls, the Klamath County Courthouse, the Klamath County Courthouse Annex, the Klamath Falls City Hall, and at other locations as determined by the Planning Director.
- C. Mailed Public Hearing Notice - Notice of a quasi-judicial land use hearing shall be mailed by first class mail in the following manner: (*ORS 197.763(3)*)
  - 1. No later than 20 days prior to the date of the scheduled review or hearing:
    - a. To all owners of real property within 500 feet, including rights-of-way and water bodies, of the subject property for actions involving land planned and zoned for farm or forestry use;
    - b. To all owners of real property within 250 feet, including rights-of-way and water bodies, of the subject property for actions involving property

# Exhibit A

## Chapter 30

outside an urban growth boundary that is not zoned for farm or forest use;

- c. To all owners of real property within 100 feet, including rights-of-way and water bodies, of the subject property for actions wholly or partially within an Urban Growth Boundary;
  - d. To a public use airport owner if: *(ORS 215.416(7))*
    - 1) The land use decision could permit development of a structure greater than 35 feet in height, and the property is inside the runway "approach surface" as defined by the Oregon Department of Aviation; and
    - 2) The subject property is within 5,000 feet of the side or end of a runway at the Beaver Marsh airstrip, the Chiloquin airstrip, Crescent Lake airstrip or the Malin airstrip; or
    - 3) The subject property is within 10,000 feet of the side or end of a runway at Kingsley Field.
  - e. To each mailing address for tenants of a mobile home park for a zone change involving property encompassing all or part of a mobile home park as identified in ORS 446.003. Such notice may not be mailed more than 40 days before the date of the first hearing on a zone change. *(ORS 215.223(7))*
  - f. To all property owners affected by a legislative zone change involving a substantial area and number of property owners in accordance with ORS 215.503, if applicable.
  - g. Notice shall also be provided to any neighborhood or community organization formally recognized by the Board of Commissioners and whose boundaries include the site. *(ORS 197.763(2)(b))*
- D. Mailed Tentative Decision Notice - Notice of a quasi-judicial land use decision made without a hearing shall be mailed by first class mail in the following manner: *(ORS 215.416(11)(a))*
1. No later than 5 days following a written decision rendered pursuant to a Type II Administrative Review Procedure, provided the notice states the 12-day period for appeal of the tentative decision starts on the date the tentative decision is mailed:

# Exhibit A

## Chapter 30

- a. To all owners of real property within 750 feet, including rights-of-way and water bodies, of the subject property for actions involving land planned and zoned for farm or forestry use;
  - b. To all owners of real property within 250 feet, including rights-of-way and water bodies, of the subject property for actions involving property outside an urban growth boundary that is not zoned for farm or forest use;
  - c. To all owners of real property within 100 feet, including rights-of-way and water bodies, of the subject property for actions wholly or partially within an Urban Growth Boundary;
2. Notice shall also be provided to any neighborhood or community organization formally recognized by the Board of Commissioners and whose boundaries include the site. *(ORS 215.416(11)(c))*
- E. Persons who wish to receive mailed notice of hearing continuances must file a request with the Planning Department. Mailed notice of hearing continuances shall be limited to those persons who request such notification in writing; all others shall rely on posted or published notices as appropriate.
- F. Ownership List - For purposes of mailed property owner notification, owners of record shall be those listed on the most recent property tax assessment role of the Klamath County Assessor.

### **32.040 - CONTENT OF MAILED NOTICE** *(ORS 197.763; ORS 215.416)*

- A. Mailed notice of a public hearing shall:
1. Explain the nature of the application and the proposed use or uses which could be authorized;
  2. List the applicable criteria from the Comprehensive Plan and Land Development Code that apply to the application being considered;
  3. Set forth the street address or other easily understood geographical reference to the subject property;
  4. State the date, time and location of the hearing;
  5. State that a failure to raise an issue in the course of the hearing, either in person or by letter, or failure to provide statements or evidence sufficient to afford the Review Body an opportunity to respond to the issue precludes appeal based on that issue;

# Exhibit A

## Chapter 30

6. Include the name of the Planning Department staff person to contact and the telephone number where additional information may be obtained;
  7. State that a copy of the application, all documents and evidence relied upon by the applicant, and applicable criteria are available for inspection at no cost, and will be provided at reasonable cost;
  8. State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing, and will be provided at reasonable cost; and
  9. Include an explanation of the requirements for submission of testimony and the procedure for conduct of the hearing.
- B. Mailed notice of an administrative Type II decision shall:
1. Explain the nature of the application, the proposed use or uses which could be authorized, and the nature of the decision;
  2. Set forth the street address or other easily understood geographical reference to the subject property;
  3. Include the name of the Planning Department staff person to contact and the telephone number where additional information may be obtained;
  4. State that a copy of the application, all documents and evidence relied upon by the applicant, and applicable criteria are available for inspection at no cost, and will be provided at reasonable cost;
  5. State that any person who is adversely affected or aggrieved or who is entitled to written notice under this Section may appeal the decision by filing a written appeal in the manner and within the time period provided for by this code;
  6. State that the decision will not become final until the period for filing a local appeal has expired; and
  7. State that a person who is mailed a written notice of the tentative decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

### **32.050 - COST OF NOTICE**

The cost of notice required by this code shall be included in the application fee.



# Exhibit A

## Chapter 30

### 32.060 - RECEIPT OF NOTICE

Failure of any party to receive notice shall not automatically nullify a land use decision.

### 32.070 - NOTICE SCHEDULE

<u>Type of Application</u>	<u>Requirement</u>
Type I Permit	Mailed
Type II Permit without Hearing Variance, Land Partition, etc.	Mailed
Quasi-judicial Hearing Decision Conditional Use Permit Subdivision, PUD, DRO, etc. Change of Zone Designation or of Comprehensive Plan Designation	Published, Mailed & Posted
Legislative Amendments Comprehensive Plan, Plan Map, Land Development Code & Zoning Map	Published & Posted; Mailed Notice if Required by ORS 215.503

**Exhibit A**  
Chapter 30  
**ARTICLE 33**  
**APPEAL OF DECISIONS**

**33.010 – PURPOSE**

The purpose of this article is to establish uniform procedures for the appeal of decisions rendered pursuant to this code. (ORS 215.422)

**33.020 - APPEAL AUTHORITY**

- A. Decisions reached under the following review procedures may be appealed to the Board of County Commissioners:
1. Administrative Review - Article 22
  2. Hearings Officer - Article 24
  3. Planning Commission - Article 26

**33.030 - NOTICE OF APPEAL**

Notice of intent to appeal a decision rendered under the procedures of this code shall be filed no later than seven days following mailing of the final order. Notice shall be in the form of a signed letter, shall state the name(s) of the party or parties appealing the decision, and shall be received by Planning Department before the close of business on the seventh day or next business day if the seventh day falls on a weekend or county holiday. The fee established by the Board of County Commissioners shall accompany the notice of appeal.

**33.040 - STATEMENT OF APPEAL**

No later than 7 days following the filing of a notice of appeal pursuant to Section 33.030, the appellant shall file with the Planning Department a written statement of grounds for the appeal explaining:

- A. How the Comprehensive Plan, Klamath County Land Development Code, or applicable State law was incorrectly interpreted or applied in the decision; or
- B. What information in the record of decision was pertinent to the decision, but was not considered by the Review Body.

# Exhibit A

## Chapter 30

### **33.050 - EFFECT OF APPEAL**

- A. Failure to file an appeal within the specified time or in the manner prescribed in Sections 33.030 and 33.040 shall nullify the appeal and the decision shall be final.
- B. The proper filing of an appeal shall stay the effective date of the decision until a final decision is rendered through the local appeal process.

### **33.060 - STANDING TO APPEAL**

To have standing to appeal a decision rendered under the procedures of this code, persons or parties must have participated, either orally or in writing, in the local review process, and must show that their interests would be adversely affected by the decision.

### **33.070 - ACTION OF THE BOARD OF COUNTY COMMISSIONERS**

- A. Appeal hearings shall be conducted in accordance with Article 31.
- B. If the Board of County Commissioners elects to overturn or modify the previous decision it shall make a finding declaring one or more of the following conditions exist:
  - 1. The Planning Director, Hearings Officer or Planning Commission did not correctly interpret the requirements of the Land Development Code, Comprehensive Plan, or applicable State law; or
  - 2. The Planning Director, Hearings Officer or Planning Commission did not consider all of the information in the record that was pertinent to the case.
- C. The Board of County Commissioners may impose any necessary conditions if overturning or modifying the previous decision results in approval of an application.
- D. If time permits pursuant to ORS 215.427, the Board of County Commissioners may remand an appeal to staff or the appropriate Review Body for recommendations.
- F. The Board of County Commissioners may adopt by reference the findings and conclusions previously made, or make additional findings, and may amend or add to any conditions imposed.

# Exhibit A

## Chapter 30

- G. The Board of County Commissioners action on an appeal shall be governed by the same regulations of this code that applied to the original Review Body.
- H. Notice of an appeal hearing shall be given in the same manner as the prior review proceeding unless there was no prior evidentiary hearing. When the appeal hearing is the first evidentiary hearing on the matter, notice shall be provided in accordance with Section 32.030.
- I. In the case of a tie vote of the Board of County Commissioners, the decision of the original Review Body shall be final.

### **33.080 - DE NOVO APPEAL HEARINGS**

- A. In any appeal to the Board of County Commissioners of a decision for which a first evidentiary hearing was not conducted but for which public notice was required by Oregon law, the Board's review shall be de novo or "completely new from the start."
- B. Notice of a *de novo* appeal hearing shall be in accordance with the requirements of Article 32. All other appeal hearings shall be limited to the record.

F:\wilson\Amendments\Zone\KC Planning Text Amendments\CHAPTER 30 Hearing Final Draft - Publishable.doc

# Notice of Proposed Amendment

DATE STAMP	For DLCD Use Only
------------	-------------------

THIS FORM **MUST BE RECEIVED** BY DLCD  
**45 DAYS PRIOR TO THE FIRST EVIDENTIARY HEARING**  
 PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18 AND SENATE BILL 543,  
 EFFECTIVE JUNE 30, 1999

Jurisdiction: Klamath County Local file number: CLUP/ZC 5-08  
 Date First Evidentiary hearing: 3/25/2008 Date of Final Hearing: 3/25/2008  
 Date this Notice of Proposed Amendment was mailed to DLCD: 1/30/2008  
 Is this a **REVISED** Proposal previously submitted to DLCD?  YES  NO Date Submitted: \_\_\_\_\_  
 Comprehensive Plan Text Amendment  Comprehensive Plan Map Amendment  
 Land Use Regulation Amendment  Zoning Map Amendment  
 New Land Use Regulation  Other: \_\_\_\_\_

Briefly Summarize Proposal. Do not use technical terms. Do not write "See Attached". (limit of 500 characters)  
**Klamath County is proposing text amendment changes to the Klamath County Land Development Code Chapter 30 regarding public hearings, notices and appeal procedures to comply with state law and administrative rule.**

Plan Map Changed from: N/A to: N/A  
 Zone Map Changed from: N/A to: N/A  
 Location: Entire Klamath County Acres Involved: N/A  
 Specify Density: Previous: N/A New: Various Land Use Applications  
 Applicable Statewide Planning Goals: 1, 2  
 Is an Exception Proposed?  YES  NO

Affected State or Federal Agencies, Local Governments or Special Districts:  
**DLCD & Klamath County**

Local Contact: Leslie C. Wilson, Director Phone: (541) 883-5121 Extension: 3079  
 Address: 305 Main Street City: Klamath Falls Zip: 97601  
 Fax Number: 541-885-3644 Email Address: lwilson@co.klamath.or.us

DLCD File No.: \_\_\_\_\_