



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

www.oregon.gov/LCD



NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

Date: 02/11/2015
Jurisdiction: Coos County
Local file no.: AM-14-11
DLCD file no.: 009-14

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 01/26/2015. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office. This amendment was submitted without a signed ordinance.

Notice of the proposed amendment was submitted to DLCD less than 35 days prior to the first evidentiary hearing.

Appeal Procedures

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A 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).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

DLCD Contact

If you have questions about this notice, please contact DLCD's Plan Amendment Specialist at 503-934-0017 or plan.amendments@state.or.us



FORM 2

DLCD

Notice of Adoption

This Form 2 must be mailed to DLCD within 20-Working Days after the Final Ordinance is signed by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

DATE STAMP	<input type="checkbox"/> In person <input type="checkbox"/> electronic <input type="checkbox"/> mailed
	DEPT OF
	JAN 29 2015
	LAND CONSERVATION AND DEVELOPMENT For Office Use Only

Jurisdiction: **Coos County**Local file number: **AM-14-11**Date of Adoption: **1/20/2015**Date Mailed: **1/23/2015**Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? ☒ Yes ☐ No Date: 8/28/2014☐ 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".

The text changes were to application process, timelines and requirments and to correct the grandfathered provisions which was retitled nonconforming uses. The nonconforming uses are based on state law.

Does the Adoption differ from proposal? Yes, Please explain below:

The diffrence is just corrections for typo purposes and to the appeal deadlines.

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location:

Acres Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

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

Was an Exception Adopted? ☐ YES ☒ NO

Did DLCD receive a Notice of Proposed Amendment...

35-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:

ODOT, County Roadmaster, County Surveyor, Department of State Lands and Oregon Department of Aviation

Local Contact: **Jill Rolfe, Planning Director**

Phone: **(541) 396-7770** Extension:

Address: **250 N. Baxter**

Fax Number: **541-396-1022**

City: **Coquille**

Zip: **97423-**

E-mail Address: **planning@co.coos.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 20 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light **green paper if available**.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

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

9. **Need More Copies?** Please print forms on **8½ -1/2x11 green paper only if available**. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.



Coos County Planning Department

Coos County Courthouse Annex, Coquille, Oregon 97423

Mailing Address: 250 N. Baxter, Coos County Courthouse, Coquille, Oregon 97423

Physical Address: 225 N. Adams, Coquille, Oregon

(541) 396-7770

FAX (541) 756-8630 / TDD (800) 735-2900

planning@co.coos.or.us

Jill Rolfe, Planning Director

January 23, 2015

Plan Amendment Specialist
Dept. of Land Conservation & Development
635 Capitol Street NE Suite 150
Salem, OR 97301-2540

DEPT OF

JAN 26 2015

LAND CONSERVATION
AND DEVELOPMENT

RE: Adoption of amendments Form 2

Dear Plan Amendment Specialist:

Please find the Form 2 DLCD Notice of Adoption for a post acknowledgment plan amendment, local file number AM-14-11. The amendments were adopted by the Board of Commissioners on January 20, 2015.

Thank you and if you have any questions please contact staff at 541-396-770 or planning@co.coos.or.us.

Sincerely,
COOS COUNTY PLANNING DEPARTMENT

Jill Rolfe, Planning Director

ec: David Perry, DLCD
c: File

BEFORE THE BOARD OF COMMISSIONERS
OF THE COUNTY OF COOS, OREGON

IN THE MATTER OF AMENDING THE COOS)
COUNTY ZONING & LAND DEVELOPMENT) FINAL DECISION AND
ORDINANCE CHANGES TO CHAPTER V) ORDINANCE 14-09-012PL
(FILE NUMBER AM-14-11))

WHEREAS, pursuant to Article 1.2 of the Coos County Zoning and Land Development Ordinance (hereinafter referred to as the "CCZLDO"); the Coos County Board of Commissioners initiated a text amendment to Chapter V Administration;

WHEREAS, staff drafted the proposed text amendment to address reorganization, clarification of process, readability issues and necessary updates to be in compliance with land use laws and to reorganize;

WHEREAS, staff presented the proposed text to the Citizen Advisory Committee, Planning Commission, and Board of Commissioners in work sessions;

WHEREAS, staff completed the draft and provided 35 day notice to Department of Land Conservation and Development and 20 day notice to the required land owners, interested parties and agencies;

WHEREAS, pursuant to the procedures as set forth in Article 1.2 of the CCZLDO, the proposed text amendments were considered by the Planning Commission at a public hearing on October 2, 2014 and a recommendation to the Board of Commissioners was made;

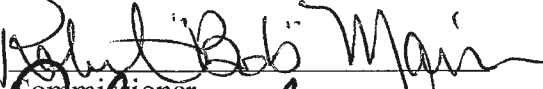
WHEREAS, on October 16, 2014 the Board of Commissioners held a public hearing for testimony on the matter and reviewed the Planning Commission recommendation. At said hearing the time period for written comments was extended until November 17, 2014;


WHEREAS, on December 19, 2014 after review of the record the Board of Commissioners deliberated on the proposed changes. The Board of Commissioners approved the proposal with modifications and instructed staff to make the changes and correct any typos; and


NOW THEREFORE, IT IS HEREBY ORDERED that the Coos County Board of Commissioners hereby adopts the proposed changes found in Attachment A, attached hereto and incorporated by reference herein. Also, attached in Attachment B are the findings that address the testimony received.

ADOPTED this 20th day of January 2015.

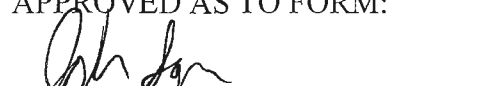
BOARD OF COMMISSIONERS


Commissioner


Commissioner


Commissioner

APPROVED AS TO FORM:


Office of County Counsel

CHAPTER V - ADMINISTRATION

ARTICLE 5.0 ADMINISTRATION AND APPLICATION REVIEW PROVISIONS

SECTION 5.0.100 PRE-APPLICATION CONFERENCE:

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.

A pre-application is strongly recommended prior to submission of plan or ordinance amendment application or rezone application. For other types of applications an applicant may request a pre-application conference under this Ordinance.

A pre-application conference shall be requested by filing a written request along with the applicable fee to the Planning Department. The written request should identify the development proposal, provide a description of the character, location and magnitude of the proposed development and include any other supporting documents such as maps, drawings, or models.

The Planning Department will schedule a pre-application conference after receipt of a written request and the appropriate fee. The Planning Department will notify agencies and persons deemed appropriate to attend to discuss the proposal. Following the conference, the Planning Department will prepare a written summary of the discussion and send it to the applicant.

SECTION 5.0.150 APPLICATION REQUIREMENTS:

(Chapter 6 Land Divisions have additional submittal requirements)

Applications for development or land use action shall be filed on forms prescribed by the County and shall include sufficient information and evidence necessary to demonstrate compliance with the applicable criteria and standards of this Ordinance and be accompanied by the appropriate fee. An application shall not be considered to have been filed until all application fees have been paid. All applications shall include the following:

1. Applications shall be submitted by the property owner or a purchaser under a recorded land sale contract. "Property owner" means the owner of record, including a contract purchaser. The application shall include the signature of all owners of the property. A legal representative may sign on behalf of an owner upon providing evidence of formal legal authority to sign.
2. An application for a variance to the requirements of the Airport Surfaces Overlay zone may not be considered unless a copy of the application has been furnished to the airport owner for advice as to the aeronautical effects of the variance. If the airport owner does not respond to the application within twenty (20) days after receipt, the Planning Director may act to grant or deny said application.
3. One original and *one* exact unbound copy of the application *or an electronic copy* shall be provided at the time of submittal ~~for the following:~~ **all applications reviews:**

~~Amendment/Rezone~~ _____ 19 copies

Planning Commission (including appeals)	14 copies
Board of Commissioner (including appeals)	6 copies
Administrative	1 copy

The County may, at its sole discretion, reject materials that do not contain the requisite number of copies. It may be requested that the County make the requisite number of copies subject to the submitter paying applicable copy charges. An application may be deemed incomplete for failure to comply with this section.

The burden of proof in showing that an application complies with all applicable criteria and standards lies with the applicant.

This was moved from Section 5.2

SECTION 5.0.175 Application Made by Transportation Agencies, Utilities or Entities:

1. A transportation agency, *utility company or entity with the private right of property acquisition pursuant to ORS Chapter 35* may submit an application to the Planning Department for a permit or zoning authorization required for a transportation project without landowner consent otherwise required by this ordinance.
2. *For any new applications submitted after the effective date of this section, such A* transportation agency, *utility, or entity* must mail certified notice to the Planning Department and any owner of land upon which the transportation proposed project would be constructed at least ten (10) days before submitting an application to the Planning Department. Said notice shall state the transportation agency, *utility, or entity's* intent to file the application and must include a map, brief description of the proposed transportation project, and a name and telephone number of an official *or representative of the project* with the transportation agency available to discuss the proposed project.
3. *A Such* transportation agency, *utility or entity* (applicant) must comply with all *other* applicable requirements of this ordinance; ~~however, a property divided by the sale or grant of property for state highway, county road, City Street or other right-of-way purposes shall continue to be considered a single unit of land until such time as the property is further subdivided or partitioned, including property owners that were provided with notice of any hearing on any hearing on the application pursuant to ORS 197.763~~
4. Notwithstanding any other requirement of this ordinance, approvals granted to a *such* transportation agency for a transportation improvement, *utility or entity* shall not become effective *for construction on a property under the approval* until *the transportation agency, utility or entity obtains either the written consent of the property owner or the property rights necessary for construction on that property* the subject property is acquired for the project.
5. Any permit subject to this section will be effective *valid* for two (2) years unless a request for renewal for another two (2) years is received from the transportation, *utility or entity* agency within 2 years *after the date of approval*, is received from the transportation agency within 2 year period, in which case renewal will be automatic to a maximum of 5 renewals. *The date of approval is the date the appeal period has expired and no appeals have been filed, or all appeals have been exhausted and final judgments are effective.*[OR-92-07-012PL]

SECTION 5.0.200 APPLICATION COMPLETENESS (ORS 215.427):

1. An application will not be acted upon until it has been deemed complete by the Planning Department. In order to be deemed complete, the application must comply with the requirements of Section 5.0.150, and all applicable criteria or standards must be adequately addressed in the application. If the County Road Department recommends traffic impact analysis (TIA) the application will not be deemed complete until it is submitted.
2. *For land within an urban growth boundary and applications for mineral aggregate extraction, the governing body of a county or its designee shall take final action on an application for a permit, limited land use decision, including resolution of all appeals under ORS 215.422 (Review of decision of hearings officer or other authority), within 120 days after the application is deemed complete unless an application has been deemed incomplete, voided or extended as discussed in this section . The governing body of a county or its designee shall take final action on all other applications for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422 (Review of decision of hearings officer or other authority), within 150 days after the application is deemed complete, unless an application has been deemed incomplete, voided or extended as provided for in this section.*
3. *If an application for a permit or limited land use decision is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection 2 upon receipt by the governing body or its designee of:*
 - a. *All of the missing information;*
 - b. *Some of the missing information and written notice from the applicant that no other information will be provided; or*
 - c. *Written notice from the applicant that none of the missing information will be provided.*
4. *If the application was complete when first submitted or the applicant submits additional information, as described in Subsection 3, within 180 days of the date the application was first submitted and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251 (Compliance acknowledgment), approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.*
5. *If the application is for industrial or traded sector development of a site identified under Section 11 below, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with Section 4 above.*
6. *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 (3) of this section and has not submitted:*
 - a. *All of the missing information;*

- b. *Some of the missing information and written notice that no other information will be provided; or*
 - c. *Written notice that none of the missing information will be provided.*
- 7. *The period set in Subsection 2 of this section may be extended for a specified period of time at the written request of the applicant. The total of all extensions, except as provided in Section 12 of this section for mediation, may not exceed 215 days.*
- 8. *The period set in Section 2 of this section applies:*
 - a. *Only to decisions wholly within the authority and control of the governing body of the county; and*
 - b. *Unless the parties have agreed to mediation as described in Section 11 of this section or ORS 197.319(2)(b) (Procedures prior to request of an enforcement order)*
- 9. *Timelines as described in this section do not apply to a decision of the county making a change to an acknowledged comprehensive plan or dependent on the approval of a comprehensive plan amendment.*
- 10. *Except when an applicant requests an extension of the timelines, if the governing body of the county or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days or 150 days, as applicable, after the application is deemed complete, the county shall refund to the applicant either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.*
- 11. *A county may not compel an applicant to waive the period set in ORS 215.429 (Mandamus proceeding when county fails to take final action on land use application within specified time) as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment.*
- 12. *The periods set forth in this section may be extended by up to 90 additional days, if the applicant and the county agree that a dispute concerning the application will be mediated. [1997 c.414 §2; 1999 c.393 §§3,3a; enacted in lieu of 215.428 in 1999; 2003 c.800 §30; 2007 c.232 §1; 2009 c.873 §15; 2011 c.280 §10]*
- 13. ~~Within 30 days of the date the application is filed, the Planning Department will notify the applicant, in writing, specifying the information that is missing. The application will be deemed complete upon receipt of the missing information.~~
- 14. ~~An applicant will have 180 days from the date of filing of the application to provide the Planning Department any information requested to make an application complete. When an applicant fails to submit the requested information, the application will be deemed withdrawn on the 181st day after the application was filed.~~
- 15. ~~If the applicant who receives notice of an incomplete application refuses, to submit the missing information, the application will be deemed complete on the 31st day after the Planning Department first received the application.~~
- 16. ~~In the event the Planning Department 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.~~

SECTION 5.0.250 TIMETABLE FOR FINAL DECISIONS (ORS 215.427):

(Legislative decisions are not subject to the time frames in this section)

1. For lands located within an urban growth boundary, and all applications for mineral or aggregate extraction, the County will take final action within 120 days after the application is deemed complete.
2. For all other applications, the County will take final action within 150 days after the application is deemed complete.
3. These time frames may be extended upon written request by the applicant.
4. Time periods specified in this Section shall be computed by excluding the first day and including the last day. If the last day is a Saturday, Sunday, legal holiday or any day on which the County is not open for business, the time deadline is the next working day. [OAR 661-010-0075]
5. The period for expiration of a permit begins when the appeal period for the final decision approving the permit has expired and no appeals have been filed, or all appeals have been exhausted and final judgments are effective.
6. ~~Land use permits that have been approved by the county shall be held in abeyance until the decision is final and all fees are paid. That is, until the appeal period has expired and no appeals have been filed, or all appeals have been exhausted and final judgments are effective.~~

SECTION 5.0.300 FINDINGS REQUIRED [ORS 215.416(9)-(10)]:

Approval or denial of an application shall be in writing, based upon compliance with the criteria and standards relevant to the decision, and include a statement of the findings of fact and conclusions related to the criteria relied upon in rendering the decision.

SECTION 5.0.350 CONDITIONS OF APPROVAL:

1. Conditions of approval may be imposed on any land use decision when deemed necessary to ensure compliance with the applicable provisions of this Ordinance, Comprehensive Plan, or other requirements of law. Any conditions attached to approvals shall be directly related to the impacts of the proposed use or development and shall be roughly proportional in both the extent and amount to the anticipated impacts of the proposed use or development.
2. An applicant who has received development approval is responsible for complying with all conditions of approval. Failure to comply with such conditions is a violation of this ordinance, and may result in revocation of the approval in accordance with the provisions of Section 1.3.300.
3. At an applicant's request, the County may modify or amend one or more conditions of approval for an application previously approved and final. Decisions to modify or amend final conditions of approval will be made by the review authority with the initial jurisdiction over the original application using the same type of review procedure in the original review.

SECTION 5.0.400 CONSOLIDATED APPLICATIONS:

1. Applications for more than one land use decision on the same property may be submitted together for concurrent review. If the applications involve different review processes, they will be heard or decided under the higher review procedure. For example, combined applications involving an administrative review and hearings body reviews, will be

subject to a public hearing.

2. Applications that are paired with a Plan Amendment and/or Rezone application shall be contingent upon final approval of the amendment by the Board of Commissioners. If the Board denies the amendment, then any other application submitted concurrently and dependent upon it shall also be denied.

SECTION 5.0.450 COORDINATION WITH DIVISION OF STATE LANDS (DSL) STATE/FEDERAL WATERWAY PERMIT REVIEWS:

If the County is notified by DSL that a state or federal permit has been requested for a use or activity requiring County review, the County shall:

1. If the applicant has received prior County review (pursuant to this Article) for a use or activity requiring a state or federal waterway permit, Coos County shall notify DSL that the project was or was not found to be consistent with this Ordinance;
2. If the applicant has not received prior County review for a state or federal waterway permit, and if Coos County is notified by DSL requesting County comment on a proposed project, Coos County shall respond to DSL and the applicant within 3 working days. Said notification shall state that local authorization is required pursuant to the Coos County Comprehensive Plan or this Ordinance;
3. Notice shall be provided to the Division of State Lands, the applicant and owner of record within 5 working days for any permit or approval required under this ordinance for the following developments within wetlands as shown on the National Wetland Inventory Map:
 - a. Subdivision or planned unit developments;
 - b. New Structures;
 - c. Conditional use permits or variances that involve physical alterations to the land or construction of new structures.

SECTION 5.0.500 INCONSISTENT APPLICATIONS:

Submission of any application for a land use or land division under this Ordinance which is inconsistent with any previously submitted pending application shall constitute an automatic revocation of the previous pending application to the extent of the inconsistency.

Such revocation shall not be cause for refund of any previously submitted application fees.

SECTION 5.0.550 HEARINGS BODY REVIEW OF ADMINISTRATIVE DECISIONS:

Notwithstanding Article 5.8 (Appeals), a contested quasi-judicial hearing shall be held to review ***all noticeable*** Planning Director's decisions ~~regarding an administrative conditional use~~, when, within ~~fifteen (15) days of notice of the decision~~, ***the appeal period***, two or more members of the Planning Commission advise the Planning Director, orally or in writing, of their desire for a public hearing to review the application.

Said hearing shall be held pursuant to Article 5.7.

SECTION 5.0.600 BOARD OF COMMISSIONERS REVIEW OF APPLICATIONS AND APPEALS:

A decision of the Planning Director or Hearings Body may be called up by the Board of Commissioners at any time prior to the expiration of the appeal period. Hearings will be one of

following:

1. Full de novo hearing. If there has been no hearing prior to the initial decision, a full de novo hearing is required for an appeal. New issues may be raised and new testimony, arguments, and evidence may be accepted and considered by the Board;
2. Limited evidentiary hearing. Evidence presented at the hearing shall be limited to only specific issues, criteria or conditions specifically identified by the Board;
3. Review of the record. Only the evidence, data and written testimony submitted prior to the close of the record will be reviewed. No new evidence or testimony related to new evidence will be considered, and no public hearing will be held.
4. The Board of Commissioners reserves the right to pre-empt any permit review process or appeal process and hear any permit application or appeal directly. The Board also reserves the right to appoint a Hearings Officer or Hearings Body to hear and consider any permit application or appeal. Notice of appeals of administrative actions shall be promptly forwarded to the Board of Commissioners, which may elect to hear the appeal instead of the Planning Commission.
5. ***The Board of Commissioners may elect to hire a hearings officer to conduct one or more hearings on any matter. The hearing will follow all notification requirements and timelines listed in this Chapter. After the hearings are complete and the record is closed:***
 - a. *The hearings officer shall supply a recommendation with findings for the Board of Commissioners;*
 - b. *The Board of Commissioners will review the recommendations in a public hearing but will not take further testimony unless the record is reopened in which a new public hearing will be scheduled;*
 - c. *Planning Staff will provide a report to the Board of Commissioners at which time Planning Staff may suggest modifications;*
 - d. *After reviewing the record, recommendations and staff's report the Board of Commissioners may:*
 - i. *Accept the recommendation;*
 - ii. *Accept the recommendation with modification;*
 - iii. *Reject the recommendation and send it back to the hearings officer for new findings;*
 - iv. *Reject the recommendation and instruct County Counsel to consult with Planning Staff to make new findings.*

The following section will be moved to 5.2

SECTION 5.0.700 EXPIRATION AND EXTENSION OF CONDITIONAL USES

~~All conditional uses, except for site plans, variances and land divisions, remain valid for the period set forth in ORS 215.417. Any conditional use not initiated within said time frame may be granted a two year extension as specified in ORS 215.417 provided that:~~

- ~~A. An application for said extension is filed with the Planning Department prior to the expiration of the deadline. The applicant must state the reasons that prevented him from beginning or continuing development within the approval period; and~~
- ~~B. The Planning director finds:~~

- ~~i. that there have been no substantial changes in the land use pattern of the area or other~~

- circumstances sufficient to cause a new conditional use application to be sought for the same use; and
- ii. ~~that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.~~

~~Additional extensions granted are ministerial decisions and not a land use decisions as described in ORS 197.015 and are not subject to appeal as land use decisions per OAR 660-33-140(3). (OR 93-12-017PL 2-23-94) (OR 95-05-006 PL 11-29-95) (OR 05-01-002PL 3-21-05)~~

SECTION 5.0.900 NOTICE REQUIREMENTS (ORS 197.763):

1. Notice Public Hearing :

- a. The Planning Department shall forward a copy of the application to any affected city or special district pursuant to applicable provisions of this Ordinance;
- b. The Planning Department shall mail a copy of the staff report to the city, special district, applicant and Hearings Body at least seven (7) days prior to the scheduled public hearing.
- c. Notice shall be mailed at least twenty days prior to the hearing, or ten before the first evidentiary hearing if there will be or more hearings. Notice shall:
 - i. Describe the nature of the application and the proposed use or uses that could be authorized;
 - ii. Set forth the address or other easily understood geographical reference to the subject property;
 - iii. Include the name of the local government representative to contact and a telephone number where additional information may be obtained;
 - iv. 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;
 - v. List the applicable criteria that apply to the application;
 - vi. State the date, time, and location of the hearing;
 - vii. State that failure of an issue to be raised, in person or in writing, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue;
 - viii. 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
 - ix. Include a general explanation of the requirements of submission of testimony and the procedure for the conduct of the hearings.
 - x. The Planning Director shall cause notice of the hearing to be mailed to ~~all affected property owners pursuant to this section,~~ **the applicant and to all neighborhood or community organizations recognized by the County and whose boundaries include the site and to the owners of record of property on the most recent property tax assessment roll where such property is located:**

- 1) **Within 100 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is wholly or in part within an urban growth**

- boundary;
- 2) **Within 250 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is outside an urban growth boundary and not within a farm or forest zone;**
 - 3) **Within 500 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is within a farm or forest zone**
- d. Notice of the decision shall be afforded to the applicant and those persons participating in the public hearing.
2. Notice of Administrative Decisions
- a. Notice of an Administrative Decision will be provided to the following:
 - i. The applicant and the owners of the subject property, affected cities, special districts, Hearings Body members and other parties requesting notification;
 - ii. The owners of record of property as described in ORS 215.416(11)(c), **the applicant and to all neighborhood or community organizations recognized by the County and whose boundaries include the site and to the owners of record of property on the most recent property tax assessment roll where such property is located:**
 - a. **Within 100 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is wholly or in part within an urban growth boundary;**
 - b. **Within 250 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is outside an urban growth boundary and not within a farm or forest zone;**
 - c. **Within 750 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is within a farm or forest zone.**
 - iii. Notice of an Administrative Decision shall:
 - 1) Describe the nature of the application and the proposed use or uses that could be authorized;
 - 2) Set forth the address or other easily understood geographical reference to the subject property;
 - 3) Include the name of the local government representative to contact and a telephone number where additional information may be obtained;
 - 4) State that a copy of the application, all documents and evidence relied upon by the application, 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 notice under (i) may appeal the decision by filing a written appeal within fifteen days of the date the Notice was mailed;

- 6) State that the decision will not become final until the fifteen day period for filing an appeal has expired; and
 - 7) State that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.
3. Plan Map Amendment/Rezone
- a. If the application includes an exception to a goal, notice shall comply with ORS 197.732. The notice shall be published at least 20 days prior to the date of the hearing. All notice requirements in "A" of this Section shall apply.
 - b. At least 35 days prior to the initial hearing, notice shall be provided as required by ORS 197.610. [OR 04 12 013PL 2/09/05]
 - c. Notice of decision shall be afforded to the applicant and those participating in the process. Notice of the decision shall also be afforded to any witness participating in the public hearing and requesting such notification.
 - d. Requirements for hearings on a rezone of property containing a mobile home park shall be provided pursuant to ORS 215.223(7).
 - e. Special notice requirements for zone changes within the environs of public use airports shall be provided pursuant to ORS 215.223(4), (5), and (6).
4. Legislative Amendment
- a. The Board of Commissioners shall conduct one or more public hearings with 10 days advance published notice of each of the hearings.
 - b. The public notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration. (ORS 215.060 & ORS 215.223)
 - c. Notice to DLCD shall be provided 35 days prior to the initial hearing per ORS 197.610. Notice of adoption is subject to ORS 197.615. [OR 04 12 013PL 2/09/05]
 - d. Notice to Cities and Districts.
5. For conditional use applications within Urban Growth Boundaries and Areas of Mutual Interest, the Planning Department shall comply with the notice requirements contained in the Urban Growth Management and Special Districts Coordination Agreements.
6. The following agencies shall be notified of all Conditional Use determinations involving waterway permits:
- a. State Agencies:
 - Department of State Lands
 - Department of Fish & Wildlife-Charleston, OR
 - Department of Environmental Quality
 - Department of Forestry
 - South Slough Estuarine Sanctuary Commission
 - b. Federal Agencies:
 - Army Corps of Engineers
 - National Marine Fisheries Service
 - U.S. Fish & Wildlife Service
 - c. Other Notification:
 - State Water Resource Department (uses including appropriation of water only)
 - State Department of Geology and Mineral Industries (mining and mineral extraction only)
 - State Department of Energy (generating and other energy facilities only)

Department of Economic Development (docks,
industrial and port facilities, and marinas only)
Coquille Tribe
Confederated Tribes of Coos, Lower Umpqua & Siuslaw
Indians

SECTION 5.0.950 FAILURE TO RECEIVE NOTICE:

The failure of the property owner to receive notice as provided in this Article shall not invalidate such proceedings if the local government can demonstrate by affidavit that such notice was given. The notice provisions of this Article shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television.

ARTICLE 5.1 PLAN AMENDMENTS AND REZONES

SECTION 5.1.100 LEGISLATIVE AMENDMENT OF TEXT ONLY:

~~SECTION 1.2.100.~~ An amendment to the text of this ordinance or the comprehensive plan is a legislative act within the authority of the Board of Commissioners. [OR 04 12 013PL 2/09/05]

~~SECTION 1.2.200~~ 5.1.110 WHO MAY SEEK CHANGE:

A text amendment may be initiated by the Board of Commissioners, Planning Commission or by application of a property owner or their authorized agent. An application by a property owner shall be accompanied by the required fee. [OR 04 12 013PL 2/09/05] **Text amendments initiated by the Board of Commissioners shall comply with ORS 215.110(2).**

~~SECTION 1.2.300~~ 5.1.115 ALTERATION OF A RECOMMENDED AMENDMENT BY THE PLANNING DIRECTOR:

The Planning Director may recommend an alteration of a proposed amendment if, in the director's judgment, such an alteration would result in better conformity with any applicable criteria. The Planning Director shall submit such recommendations for an alteration to the Hearings Body prior to the scheduled public hearing for a determination whether the proposed amendment should be so altered.

~~SECTION 1.2.325~~ 5.1.120 PROCEDURE FOR LEGISLATIVE AMENDMENT:

The Board of Commissioners shall conduct one or more public hearings with 10 days advance published notice of each of the hearings. The public notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration. (ORS 215.060 & ORS 215.223). Notice to DLCD shall be provided 35 days prior to the initial hearing per ORS 197.610. Notice of adoption is subject to ORS 197.615. [OR 04 12 013PL 2/09/05]

~~SECTION 1.2.350~~ 5.1.125 MINOR TEXT CORRECTIONS:

The Director may correct this ordinance or the Comprehensive Plan without prior notice or hearing, so long as the correction does not alter the sense, meaning, effect, or substance of any adopted ordinance. [OR 04 12 013PL 2/09/05]

~~SECTION 1.2.400~~ 5.1.130 NEED FOR STUDIES:

The Board of Commissioners, Hearings Body, or Citizen Advisory Committee may direct the

Planning Director to make such studies as are necessary to determine the need for amending the text of the Plan and/or this Ordinance. When the amendment is initiated by application, such studies, justification and documentation are a burden of the initiator.

SECTION ~~4.2.650~~ 5.1.135 STATUS OF HEARINGS BODY RECOMMENDATIONS TO THE BOARD OF COMMISSIONERS:

A Hearings Body recommendation for approval or approval with conditions shall not in itself amend this Ordinance or constitute a final decision.

SECTION ~~5.1.100~~ 5.1.200 REZONES:

Rezoning constitutes a change in the permissible use of a specific piece of property after it has been previously zoned. Rezoning is therefore distinguished from original zoning and amendments to the text of the Ordinance in that it entails the application of a pre-existing zone classification to a specific piece of property, whereas both original zoning and amendments to the text of the Ordinance are general in scope and apply more broadly.

SECTION ~~5.1.200~~ 5.1.210 RECOMMENDATION OF REZONE EXPANSION BY THE PLANNING DIRECTOR:

The Planning Director may recommend an expansion of the geographic limits set forth in the application if, in the Planning Director's judgment, such an expansion would result in better conformity with the criteria set forth in this Ordinance for the rezoning of property. The Planning Director shall submit a recommendation for expansion to the Hearings Body prior to the scheduled public hearing for a determination whether the application should be so extended.

SECTION ~~5.1.250~~ 5.1.215 ZONING FOR APPROPRIATE NON-FARM USE:

Consistent with ORS 215.215(2) and 215.243, Coos County may zone for the appropriate non-farm use one or more lots or parcels in the interior of an exclusive farm use zone if the lots or parcels were physically developed for the non-farm use prior to the establishment of the exclusive farm use zone.

SECTION ~~5.1.350~~ 5.1.220 PROCESS FOR REZONES:

1. Valid application must be filed with the Planning Department at least 35 days prior to a public hearing on the matter.
2. The Planning Director shall cause an investigation and report to be made to determine compatibility with this Ordinance and any other findings required.
3. The Hearings Body shall hold a public hearing pursuant to hearing procedures at Section 5.7.300.
4. The Hearings Body shall make a decision on the application pursuant to Section ~~5.1.400~~ 5.1.225.
5. The Board of Commissioners shall review and take appropriate action on any rezone recommendation by the Hearings Body pursuant to Section ~~5.1.550~~ 5.1.235.
6. A decision by the Hearings Body that a proposed rezone is not justified may be appealed pursuant to Article 5.8.

SECTION ~~5.1.400~~ 5.1.225 DECISIONS OF THE HEARINGS BODY FOR A REZONE:

The Hearings Body shall, after a public hearing on any rezone application, either:

1. Recommend the Board of Commissioners approve the rezoning, only if on the basis of the

initiation or application, investigation and evidence submitted, all the following criteria are found to exist:

- a. The rezoning will conform with the Comprehensive Plan or Section ~~5.1.250~~ **5.1.215**; and
 - b. The rezoning will not seriously interfere with permitted uses on other nearby parcels; and
 - c. The rezoning will comply with other policies and ordinances as may be adopted by the Board of Commissioners.
2. Recommend the Board of Commissioners approve, but qualify or condition a rezoning such that:
- a. The property may not be utilized for all the uses ordinarily permitted in a particular zone;
 - b. The development of the site must conform to certain specified standards; or
 - c. Any combination of the above.

A qualified rezone shall be dependent on findings of fact including but not limited to the following:

- i. such limitations as are deemed necessary to protect the best interests of the surrounding property or neighborhood;
 - ii. Such limitations as are deemed necessary to assure compatibility with the surrounding property or neighborhood;
 - iii. Such limitations as are deemed necessary to secure an appropriate development in harmony with the objectives of the Comprehensive Plan; or
 - iv. Such limitations as are deemed necessary to prevent or mitigate potential adverse environmental effects of the zone change.
3. Deny the rezone if the findings of 1 or 2 above cannot be made. Denial of a rezone by the Hearings Body is a final decision not requiring review by the Board of Commissioners unless appealed.

SECTION ~~5.1.450~~ 5.1.230 STATUS OF HEARINGS BODY RECOMMENDATION OF APPROVAL:

The recommendation of the Hearings Body made pursuant to ~~5.1.400~~ **225**(1) or (2) shall not in itself amend the zoning maps.

SECTION ~~5.1.550~~ 5.1.235 BOARD OF COMMISSIONERS ACTION ON HEARINGS BODY RECOMMENDATION:

Not earlier than 15 days following the mailing of written notice of the Hearings Body recommendation pursuant to Section ~~5.1.400~~ **225**, the Board of Commissioners shall either:

- ~~1A.~~ adopt the Hearings Body recommendation for approval or approval with conditions;
- ~~2B.~~ reject the Hearings Body recommendation for approval or approval with conditions and dismiss the application;
- ~~3C.~~ accept the Hearings Body recommendation with such modifications as deemed appropriate by the Board of Commissioners; or
- ~~4D.~~ if an appeal has been filed pursuant to Article 5.8, the Hearings Body recommendation shall become a part of the appeal hearing record, and no further action is required to dispense with the Hearings Body recommendation.

SECTION ~~5.1.600~~ 5.1.240 REQUIREMENTS FOR "Q" QUALIFIED CLASSIFICATION:

Where limitations are deemed necessary, Board of Commissioners may place the property in a

“Q” Qualified rezoning classification. Said “Q” Qualified Classification shall be indicated by the symbol “Q” preceding the proposed zoning designation (for example: Q C-1).

SECTION 5.1.650-5.1.450 PERMITS AND APPLICATIONS MORATORIUM:

1. After a proposed rezoning has been set for public hearing, no building or ~~septic~~ *sewage disposal system permits* shall be issued until final action has been taken. Final action constitutes either:
 - a. Withdrawal of the application by the applicant;
 - b. Expiration of the County’s appeal period without an appeal having been filed; or
 - c. Final order of Board of Commissioners upon hearing the appeal.
2. Following final action on the proposed rezoning, the issuance of a verification letter shall be in conformance with the application approval.

ARTICLE 5.2 CONDITIONAL USES

SECTION 5.2.100 Conditional Uses.

1. Hearings Body Conditional Uses (HBCU or C). A Hearings Body conditional use is a use or activity which is basically similar to the uses permitted in a district but which may not be entirely compatible with the permitted uses. An application for a conditional use requires review by the Hearings Body to insure that the conditional use is or may be made compatible with the permitted uses in a district and consistent with the general and specific purposes of this Ordinance.
2. Administrative Conditional Uses (ACU). An Administrative Conditional use is a use or activity with similar compatibility or special conservation problems. An application for an administrative conditional use requires review by the Planning Director to insure compliance with approval criteria.

~~SECTION 5.2.250 APPLICATION MADE BY TRANSPORTATION AGENCIES~~ (Move to chapter 5.0)

SECTION 5.2.400 PROCESS FOR CONDITIONAL USES: A conditional use may be initiated by filing an application with the Planning Department using forms prescribed by the Department.

Upon receipt of a complete application, the Planning Department may take action on a conditional use request by issuing an administrative decision or scheduling a public hearing as determined by the applicable zoning.

The Planning Director, may at his or her discretion, refer any administrative conditional use to the Hearings Body. If such a referral is made the process for review and decision shall be the same as a conditional use otherwise reviewed by the Hearings Body.

SECTION 5.2.500 CRITERIA FOR APPROVAL OF APPLICATIONS: An application for a conditional use or an administrative conditional use shall be approved only if it is found to comply with this Article and the applicable review standards and special development conditions set forth in ~~Tables 4.2 a through 4.2 f, and Table 4.3 a~~ *the zoning regulations* and any other applicable requirements of this Ordinance.

SECTION 5.2.600 EXPIRATION AND EXTENSION OF CONDITIONAL USES

All conditional uses, except for site plans, variances and land divisions, remain valid for the period set forth in ORS 215.417. ~~Any conditional use not initiated within said time frame may be granted a two year extension as specified in ORS 215.417 provided that:~~

- ~~1. An application for said extension is filed with the Planning Department prior to the expiration of the deadline. The applicant must state the reasons that prevented the proposal from beginning or the development from continuing within the approval period; and~~
- ~~2. The Planning director finds:~~
 - ~~a. That there have been no substantial changes in the land use pattern of the area or other circumstances sufficient to cause a new conditional use application to be sought for the same use; and~~
 - ~~b. That the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.~~

~~Additional extensions granted are ministerial decisions and not a land use decisions as described in ORS 197.015 and are not subject to appeal as land use decisions per OAR 660-33-140(3). (OR 93-12-017PL 2-23-94) (OR 95-05-006 PL 11-29-95) (OR 05-01-002PL 3-21-05)~~

Any conditional use not initiated within the time frame set forth in subsection (3) of this section may be granted an extension provided that an applicant has made a request and provided the appropriate fee for an extension prior to the expiration of the conditional use permit approval. Such request shall be considered an Administrative Action and shall be submitted to the Director.

- 1. Extensions on Farm and Forest Zoned Property shall comply with OAR 660-033-0140 Permit Expiration Dates which states:*
 - a. Except as provided for in subsection (e) of this section, a discretionary decision, except for a land division, made after the effective date of this section approving a proposed development on agricultural or forest land outside an urban growth boundary is void two years from the date of the final decision if the development action is not initiated in that period.*
 - b. Coos County may grant one extension period of up to 12 months if:*
 - i. An applicant makes a written request for an extension of the development approval period;*
 - ii. The request is submitted to the county prior to the expiration of the approval period;*
 - iii. The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and*
 - iv. The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.*
 - c. Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.*
 - d. If a permit is approved for a proposed residential development on agricultural or forest land outside of an urban growth boundary, the permit shall be valid*

- for four years. An extension of a permit described in subsection (e) of this section shall be valid for two years.*
- e. For the purposes of subsection (e) of this section, "residential development" only includes the dwellings provided for under in the EFU and Forest zones in Chapter 4.*
 - f. Extension requests do not apply to temporary use permits, compliance determinations or zoning compliance letters.*
- 2. Extensions on all non-resource zoned property shall be governed by the following.*
- a. The Director shall grant an extension of up to two (2) years so long as the use is still listed as a conditional use under current zoning regulations.*
 - b. If use or development under the permit has not begun within two (2) years of the date of approval and an extension has not been requested prior to the expiration of the conditional use then that conditional use is deemed to be invalid and a new application is required.*
 - c. If an extension is granted, the conditional use will remain valid for the additional two years from the date of the original expiration.*
- 3. Time frames for conditional uses and extensions are as follows:*
- a. All conditional uses within non-resource zones are valid four (4) years from the date of approval; and*
 - b. All conditional uses for dwellings within resource zones outside of the urban growth boundary or urban unincorporated community are valid four (4) years from the date of approval.*
 - c. All non-residential conditional uses within resource zones are valid (2) years from the date of approval.*
 - d. For purposes of this section, the date of approval is the date the appeal period has expired and no appeals have been filed, or all appeals have been exhausted and final judgments are effective.*
 - e. Additional extensions may be applied.*
- 4. Extensions are subject to notice as described in § 5.0.900(2) and appeal requirements of 5.8 for a Planning Director's decision.*

ARTICLE 5.3. VARIANCES

SECTION 5.3.100 GENERAL: Practical difficulty and unnecessary physical hardship may result from the size, shape, or dimensions of a site or the location of existing structures thereon, geographic, topographic or other physical conditions on the site or in the immediate vicinity, or from population density, street location, or traffic conditions in the immediate vicinity. Variances may be granted to overcome unnecessary physical hardships or practical difficulties. The authority to grant variances does not extend to use regulations, minimum lot sizes or riparian areas within the Coastal Shoreland Boundary.

SECTION 5.3.150 SELF-INFLECTED HARDSHIPS: A variance shall not be granted when the special circumstances upon which the applicant relies are a result of the actions of the applicant, or **current** owner(s) or previous owner(s) willful violation including but not limited to:

- ◆ self-created hardship
- ◆ willful or accidental violations

◆—manufactured hardships

This does not mean that a variance cannot be granted for other reasons.

SECTION 5.3.200 VARIANCE: The Planning Director shall consider all formal requests for variances for zoning and land development variances.

Section 5.3.350 CRITERIA FOR APPROVAL OF VARIANCES: No variance may be granted by the Planning Director unless, on the basis of the application, investigation, and evidence submitted;

1. Both findings “a” and “b” below are made:
 - a. That a strict or literal interpretation and enforcement of the specified requirement would result in unnecessary physical hardship and would be inconsistent with the objectives of this Ordinance;
 - b. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved which do not apply to other properties in the same zoning district; or
 - c. That strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges legally enjoyed by the owners of other properties or classified in the same zoning district;
2. That the granting of the variance will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the near vicinity.
3. In addition to the criteria in (1) above, no application for a variance to the Airport Surfaces Floating Zone may be granted by the Planning Director unless the following additional finding is made: “the variance will not create a hazard to air navigation”.
4. In lieu of the criteria in (1) above, an application for a variance to the /FP zone requirements shall comply with Section 4.6.227.
5. *Variance regulations in CCZLDO Article 5.3 shall not apply to Sections 4.11.400 through 4.11.460, Chapter VII and Chapter VIII.*

SECTION 5.3.360 EXPIRATION AND EXTENSION OF VARIANCES:

Any Variance not initiated within the time frame set forth in subsection (3) of this section may be granted a an extension provided that an applicant has made a request and provided the appropriate fee for an extension prior to the expiration of the variance approval. Such request shall be considered an Administrative Action and shall be submitted to the Director.

5. *Extensions on Farm and Forest Zoned Property shall comply with OAR 660-033-0140 Permit Expiration Dates which states:*
 - a. *Except as provided for in subsection (e) of this section, a discretionary decision, except for a land division, made after the effective date of this division approving a proposed development on agricultural or forest land outside an urban growth boundary is void two years from the date of the final decision if the development action is not initiated in that period.*
 - b. *CoosCounty may grant one extension period of up to 12 months if:*
 - i. *An applicant makes a written request for an extension of the development approval period;*
 - ii. *The request is submitted to the county prior to the expiration of the approval period;*

- iii. *The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and*
 - iv. *The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.*
- c. *Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.*
- d. *If a permit is approved for a proposed residential development on agricultural or forest land outside of an urban growth boundary, the permit shall be valid for four years. An extension of a permit described in subsection (e) of this section shall be valid for two years.*
- e. *For the purposes of subsection (s) of this section, "residential development" only includes the dwellings provided for under in the EFU and Forest zones in Chapter 4.*
- f. *Extension requests do not apply to temporary use permits, compliance determinations or zoning compliance letters.*
- 6. *Extensions on all non-resource zoned property shall be governed by the following.*
 - a. *The Director shall grant an extension of up to two (2) years so long as the variance criteria have not changed under the current zoning regulations.*
 - b. *If use or development under the permit has not begun within two (2) years of the date of approval and an extension has not been requested prior to the expiration of the variance then that variance is deemed to be invalid and a new application is required.*
 - c. *If an extension is granted, the variance will remain valid for the additional two years from the date of the original expiration.*
- 7. *Time frames for variances and extensions as follows:*
 - f. *All variances within non-resource zones are valid four (4) years from the date of approval; and*
 - g. *All variances within resource zones are valid (2) years from the date of approval.*
 - h. *For purposes of this section, the date of approval is the date the appeal period has expired and no appeals have been filed, or all appeals have been exhausted and final judgments are effective.*
 - i. *Additional extensions may be applied.*
- 8. *Extensions are subject to notice as described in § 5.0.900(2) and appeal requirements of 5.8 for a Planning Director's decision.*

ARTICLE 5.4 VESTED RIGHT (MOVED FROM CHAPTER 1)

A parcel shall be considered vested for completion of the construction of a nonconforming use when an administrative conditional use is granted, based on findings establishing:

- 1. The good faith of the property owner in making expenditures to lawfully develop his property in a given manner;
- 2. The amount of reliance on any prior zoning classification in purchasing the property and making expenditures to develop the property;
- 3. The extent to which the expenditures relate principally to the use of an applicant claims is vested, rather than to ancillary improvements, such as but not limited to roads, driveways, which could support other uses allowed as of right;

4. The extent of the purported vested use as compared to the uses allowed in the subsequent zoning ordinances;
5. Whether the expenditures made prior to existing zoning regulations show that the property owner has gone beyond mere contemplated use and has committed the property to the purported vested use which would in fact have been made on the subject property but for the passage of the existing zoning regulation; and
6. The ratio of the prior expenditures to the total cost of the proposed use.

ARTICLE 5.5 TEMPORARY PERMITS

SECTION 5.5.100 TEMPORARY USES: A temporary use permit may be approved to allow the limited use of structures or activities which are temporary or seasonal in nature and do not conflict with the zoning district in which they are located. No temporary use permit shall be issued which would have the effect of permanently rezoning or granting a special privilege not shared by other properties in the same zoning district. A temporary use permit is not required for events and gatherings permitted in the in a zoning district.

SECTION 5.5.200 TEMPORARY EVENTS: Temporary Events are events held outside of a public park or fairgrounds, that have an expected attendance of 1,000 or less people that will not continue for more than three days in any three month period, and that will be located in a rural or resource area. Temporary Events are exempt from administrative review, provided that proof of compliance with the following standards is demonstrated prior to the event, and ministerial authorization is obtained from the Director:

1. It must be demonstrated that health standards are met, including, County food handling requirements, a method for waste disposal, and provision for portable sanitation.
2. Off street parking shall be provided at no cost for all vehicles associated with the gathering.
3. There must be a plan for safe and adequate access to the event site. The plan for access shall be approved by the County Roadmaster.
4. It shall be demonstrated that fire protection and suppression will be provided by a public entity or that fire protection equipment will be on site and approved by the appropriate fire district or association.
5. Event organizers shall sign an agreement holding themselves responsible for any incidents of trespass or vandalism on adjacent or nearby properties.
6. Except for events sponsored by non-profit organizations, there shall be no commercial aspect including admission charges or vendors at the event.

SECTION 5.5.300 TEMPORARY STRUCTURES, ACTIVITIES OR USES:

Temporary structures, activities or uses may be authorized, subject to notice pursuant to administrative notice procedures found in Article 5.0, as necessary to provide for housing of personnel on large construction sites, storage and use of supplies and equipment, or to provide for temporary sales offices for uses permitted in the zoning district. Other uses may include temporary signs, outdoor events, short term uses, roadside stands, or other uses not specified in this ordinance and not so recurrent as to require a specific or general regulation to control them.

No temporary permits shall be issued except upon a finding that approval of the proposed

structure, activity or use would not permit the permanent establishment within a zoning district of any use which is not permitted within the zoning district, or any use for which a conditional use permit is required.

Conditional Approval of Temporary Use Permits may have reasonable conditions imposed by the approving authority. The conditions of approval for temporary permits shall be directly related to minimizing the potential impact of the proposed use to other uses in the vicinity.

1. Guarantees and evidence may be required that such conditions will be or are being complied with. Such conditions may include but are not limited to:
 - a. Special yards and spaces.
 - b. Fences or walls.
 - c. Control of points of vehicular ingress and egress.
 - d. Special provisions on signs.
 - e. Landscaping and maintenance thereof.
 - f. Maintenance of the grounds.
 - g. Control of noise, odors or other nuisances.
 - h. Limitation of time for certain activities.
2. Any temporary permit shall clearly set forth the conditions under which the permit is granted and shall clearly indicate the time period for which the permit is issued. No temporary permit shall be transferable to any other owner or occupant, but may be renewable through the ministerial process as long as the circumstances of the request have not changed.
3. All structures for which a temporary permit is issued:
 - a. Shall meet all other requirements of the zoning district in which they are located;
 - b. Shall meet all applicable County health and sanitation requirements;
 - c. Shall comply with state building codes requirements; and
 - d. Shall be removed upon expiration of the temporary permit unless renewed by the Director, or used in conjunction with a permitted use.
4. Temporary permits shall be issued for the time period specified by the Approving Authority but may be renewable upon expiration as an Administrative Action if all applicable conditions can again be met. In case shall a temporary permit be issued for a period exceeding one (1) year, unless the temporary permit is renewed.
5. Renewal of a temporary permit shall follow the same procedure as the initial application.
6. If a use is permitted in a zoning district then a temporary permit may not be issued for that use. All structures must comply with floodplain and airport requirements.

ARTICLE 5.6 NONCONFORMING

SECTION 5.6.100 NONCONFORMING USES:

The lawful use of any building, structure or land at the time of the enactment or amendment of this zoning ordinance may be continued. Alteration of any such use may be permitted subject to Sections 5.6.120 and 5.6.125. Alteration of any such use shall be

permitted when necessary to comply with any lawful requirement for alteration in the use. Except as provided in ORS 215.215 (Reestablishment of nonfarm use), a county shall not place conditions upon the continuation or alteration of a use described under this Section when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use. A change of ownership or occupancy shall be permitted.

As used in this Section, alteration of a nonconforming use includes:

1. A change in the use of no greater adverse impact to the neighborhood; and
2. A change in the structure or physical improvements of no greater adverse impact to the neighborhood.

SECTION 5.6.105 EXCEPTIONS TO RESTORATION OR REPLACEMENT OF NONCONFORMING USES:

Restoration or replacement of any use described in Section 5.6.100 may be permitted outright when the restoration is made necessary by fire, other casualty or natural disaster. Restoration or replacement shall be commenced within one year from the occurrence of the fire, casualty or natural disaster. If restoration or replacement is necessary under this Section, restoration or replacement shall be done in compliance with any Special Development Considerations of Article 4.11 that apply to the property.

SECTION 5.6.110 INTERRUPTION OR ABANDONMENT OF NONCONFORMING USES:

A non-conforming use or activity may not be resumed if it was subject to interruption or abandonment for more than one (1) year, unless the resumed use conforms to the requirements of zoning ordinances or regulations applicable at the time of the proposed resumption.

SECTION 5.6.115 SURFACE MINING:

Surface mining use continued under Section 5.6.100 shall not be deemed to be interrupted or abandoned for any period after July 1, 1972, provided:

1. The owner or operator was issued and continuously renewed a state or local surface mining permit, or received and maintained a state or local exemption from surface mining regulation; and
2. The surface mining use was not inactive for a period of 12 consecutive years or more.
3. For purposes of this subsection, inactive means no aggregate materials were excavated, crushed, removed, stockpiled or sold by the owner or operator of the surface mine.

SECTION 5.6.120 ALTERATIONS, REPAIRS OR VERIFICATION:

Alterations, repairs or verification of a nonconforming use requires filing an application for a conditional use (See CCZLDO Article 5.2). All such applications shall be subject to the provisions of Section 5.6.125 of this ordinance and consistent with the intent of ORS 215.130(5)-(8). Alteration of any nonconforming use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. The County shall not

condition an approval of a land use application when the alteration is necessary to comply with State or local health or safety requirements, or to maintain in good repair the existing structures associated with the use.

SECTION 5.6.125 CRITERIA FOR DECISION:

When evaluating a conditional use application for alteration or repair of a nonconforming use, the following criteria shall apply:

1. The change in the use will be of no greater adverse impact to the neighborhood;
2. The change in a structure or physical improvements will cause no greater adverse impact to the neighborhood; and
3. Other provisions of this ordinance, such as property development standards, are met.

For the purpose of verifying a nonconforming use, an applicant shall provide evidence establishing the existence, continuity, nature and extent of the nonconforming use for the 10-year period immediately preceding the date of the application, and that the nonconforming use was lawful at the time the zoning ordinance or regulation went into effect. Such evidence shall create a rebuttable presumption that the nonconforming use lawfully existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of the application.

SECTION 5.6.130 GENERAL EXCEPTIONS TO MINIMUM PROPERTY SIZE REQUIREMENTS:

If a single parcel, lot or contiguous units of land existing in a single ownership were created in compliance with all applicable laws and ordinances in effect at the time of their creation and have an area or dimension which does not meet the property size requirements of the zone in which the property is located, such lots or units may be occupied by a use permitted in the zone.

1. Nothing in this ordinance shall be interpreted to limit the conveyance of such lots or contiguous units of land, provided that such holdings are sold as a single ownership.
2. Nothing in this ordinance shall be deemed to prohibit construction of conforming uses on such lots or units or the sale of such lots or units within subdivisions or land partitioning approved prior to the adoption of this ordinance, subject to other requirements of this ordinance.

ARTICLE 5.7 PUBLIC HEARINGS

SECTION 5.7.300 Quasi-Judicial Land Use Hearings Procedures

1. The presiding officer shall provide an opportunity for members to announce conflicts or abstain from participating and allow challenge to any member participating as a decision maker in a quasi-judicial hearing.
2. At the beginning of a hearing under the Comprehensive Plan or land use regulations of Coos County, a statement shall be made to those in attendance that:
 - a. Lists the applicable substantive criteria;
 - b. States that testimony and evidence must be directed toward the criteria listed or other criteria in the Plan or implementing ordinances which the person believes to

- apply to the decision; and
- c. States that failure to raise an issue with statements and evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals.
3. Presentation of Testimony (for hearings other than appeals on the record):
- a. *For First Evidentiary Hearing including an appeal of a Planning Director's decision:*
- i. *Staff Report;*
 - ii. *Applicant;*
 - iii. *Additional testimony by other parties in support of the application;*
 - iv. *Testimony by opponents;*
 - v. *Neutral parties;*
 - vi. *Applicant's rebuttal arguments;*
 - vii. *Upon completion of evidence and testimony, if there has been no request to continue the hearing or leave the record open, the Chair will close the public hearing. A request for continuance or an opportunity to submit additional evidence is subject to provisions of Section 5.7.400;*
 - viii. *After closing the record, the Hearings Body will deliberate and reach a decision. The final decision will be reduced to writing and will include the findings upon which the decision is based. Notice of the decision will be mailed to all parties; and*
 - ix. *Appeals of Planning Director's decision will be de novo and processed in accordance with § 5.7.300.*
- b. *For Appeals of a Hearings Body decision (testimony may be limited to parties only):*
- i. *Staff Report;*
 - ii. *Applicant or, in the case of an appeal of a prior decision, appellant;*
 - iii. *Additional testimony by other parties in support of the application or appeal;*
 - iv. *Testimony by opponents or, in the case of an appeal, the applicant and others in support of the application;*
 - v. *Neutral parties;*
 - vi. *Applicant's rebuttal arguments, or in the case of an appeal of a prior decision, appellant's rebuttal arguments;*
 - vii. *Upon completion of evidence and testimony, if there has been no request to continue the hearing or leave the record open, the Chair will close the public hearing. A request for continuance or an opportunity to submit additional evidence is subject to provisions of Section 5.7.400; and*
 - viii. *After closing the record, the Hearings Body will deliberate and reach a decision. The final decision will be reduced to writing and will include the findings upon which the decision is based. Notice of the decision will be mailed to all parties.*
4. Representatives
- a. A party may represent themselves or be represented by an attorney. Consultants and other non-attorney professionals may appear as fact witnesses for any party, but may not appear as a legal representative.
- b. Any person presenting **written** testimony on behalf of a group, company or any

other organization, except an attorney, **consultant, owner, officer, or employee of that group, company, or organization** must enter written evidence into the record establishing that the person is authorized to appear on behalf of the organization. Such written authorization must:

- i. *Be written on the group, company, or organization's official letterhead;*
- ii. *Name the person authorized to appear on behalf of the group, company, or organization;*
- iii. *Specify the scope of the authorization; and*
- iv. *Contain the signature of a person with authority to grant the authorization.*

Failure of a person to submit such written authorization shall cause the group, company, or organization to not achieve party status for the purposes of the proceeding and shall preclude the group, company, or organization from having standing to file an appeal.

- c. *Any person presenting oral testimony on behalf of a group, company or any other organization, with the exception of an attorney, shall present a letter of authorization at that time to show that the person testifying does in fact represent that group, company or organization. If the letter is not presented at the time the hearings body or designee shall in its discretion, allow the person to submit that authorization prior to the close of the record.*

Failure to provide written proof of authorization to represent a group, company or organization shall result in the group, company or organization not having standing in the event of an appeal. The person who provided the testimony shall be the only one to achieve party status in the event of an appeal. The hearings body or designee has discretion to not consider the testimony as part of the record if a person presenting testimony on behalf of a group, company, or organization fails to comply with the rules of Section 4. If this is the decision of the hearings body or designee then it will be made part of the final order and decision. If the determination is made that testimony was disqualified under this subsection then standing has not been achieved. That party may not appeal the matter unless other forms of testimony accepted forms of testimony was received and granted them standing under CCZLDO Section 5.8.160.

- i. ~~Be written on the group, company, or organization's official letterhead;~~
 - ii. ~~Name the person authorized to appear on behalf of the group, company or organization;~~
 - iii. ~~Specify the scope of the authorization; and~~
 - iv. ~~Contain the signature of a person with authority to grant the authorization.~~
- ~~[Amended OR 08-09-009PL 5/13/09]~~

5. Submission of Written Evidence

- a. **Petitions:** Any party may submit a petition into the record as evidence. The petition shall be considered as written testimony of the party who submitted the petition. A petition shall not be considered to be written testimony of any individual signer. To have standing, a person must participate orally at the hearing or submit other individual written comments. Anonymous petitions or petitions that do not otherwise identify the party submitting the petition, shall not be

- accepted as evidence.
- b. Required Number of Copies: Submission of written materials for consideration shall be provided ~~as follows for hearings before the:~~ ***in the form one original hard copy and one exact copy or one original hard copy and one electronic copy.***
 - i. ~~Planning Commission—15 copies~~
 - ii. ~~Board of Commissioners—7 copies~~

The County may, at its sole discretion, reject any materials that do not contain the requisite number of copies. It may be requested that the County make the requisite number of copies subject to the submitter paying the applicable copy charges.
 - c. E-mail testimony may be submitted; however, it is the responsibility of the person submitting the testimony to verify it has been received by Planning Staff by the applicable Deadline.
 - d. All written testimony must contain the name of the person(s) submitting it and current mailing address for mailing of notice.
 - e. The applicant bears the burden of proof that all of the applicable criteria have been met; however, in the case of an appeal, the appellant bears the burden of proving the basis for the appeal, such as procedural error or that applicable criteria have not in fact been met. [Amended OR 08-09-009PL 5/13/09]
6. Definitions: As used in this Article the following definitions shall apply:
- a. “Party” means any person, organization or agency who has established standing under the provisions of this Article 5.8.
 - b. “Witness” means any person who appears and is heard at a hearing and is not a “party”. A witness shall not be considered a “party” unless the Board of Commissioners determines that the person is a party in accordance with Article 5.8.

SECTION 5.7.400. Requests to Present Additional Evidence.

1. Prior to conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. If such a request is received, the Hearings Body will either continue the public hearing, in accordance with subsection (~~B~~2), or leave the record open for additional written arguments, evidence or testimony, in accordance with subsection (~~C~~3).
2. 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 hearing. At the continued hearing, parties may present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, prior to the conclusion of the hearing any person may request that the record be left open for at least seven days to submit additional written evidence, arguments or testimony, but such additional evidence shall be limited to responding to the new written evidence submitted at the continued hearing.
3. 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 party may file a written request 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 to a date and time certain to admit new evidence, argument or testimony but

any additional evidence shall be limited to responding to the new written evidence submitted during the period the record was left open. While the record is open, any person may raise new issues which relate to the new evidence, arguments, testimony or criteria which apply to the matter.

4. Unless waived by the applicant, the Hearings Body will 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 will not be counted towards the 120- or 150-day decision time-frame.
5. Except for the time frame identified in Section 5.7.400(D 4), a continuance or extension granted pursuant to this section is subject to the 120- or 150- day decision time-frame unless the continuance is requested or agreed to by the applicant.
6. If the Hearings Body leaves the record open, prior to the conclusion of the initial evidentiary hearing they will specify the date the record will close and the date, time and location when they will reconvene to deliberate and make a decision on the application.

ARTICLE 5.8 APPEAL REQUIREMENTS

SECTION 5.8.100 Appeals General

Coos County has established an appeal period of *fifteen* (15) days from the date written notice of administrative or Planning Commission decision is mailed *with the exception of Property Line Adjustments and lawfully created parcel determinations, which are subject to a twelve (12) day appeal period.*

The Board of Commissioners or Hearings Body shall dismiss an appeal for failure to follow the requirements of this article. [OR 04 12 013PL 2/09/05]

SECTION 5.8.150 Standing to Appeal a Planning Director's Decision:

A decision by the Planning Director to approve or deny an application shall be appealed as identified in the Sections below. The appeal must be filed within the appeal period and meet one of the following criteria:

1. In the case of a decision by the Planning Director, the ~~petitioner~~ **appellant** was entitled to notice of the decision; or
3. The person is aggrieved or has interests adversely affected by the decision.

SECTION 5.8.160 Standing to Appeal a Hearings Body, Appointed Hearings Officer(s) or Board of Commissioner Decision:

A decision by the Hearings Body, Appointed Hearings Officer(s) or Board of Commissioners to approve or deny an application shall be appealed as identified in the Sections below. The appeal must be filed within the appeal period. In the case of an appeal of a Hearings Body decision to the Board of Commissioners, the ~~petitioner~~ **appellant** must have appeared before the Hearings Body *or appointed Hearings Officer(s)* orally or in writing. [OR 04 12 013PL 2/09/05]

SECTION 5.8.170 Appeal procedures:

An appellant shall file the appeal for review on the appropriate county form and the form shall be completely filled out as required by this section. If an appellant fails to correctly fill out the form, and there has already been a public hearing on the matter, the Board of

Commissioners may deny the appeal based on failure to comply with this section. In the event the appeal is denied based on a failure to comply with this section, a refund of unexpended fees shall be returned to the appellant.

The appeal form shall contain the following:

- 1. The name of the applicant and the County application file number;*
- 2. The name and signature of each petitioner and a statement of the interest of each petitioner to determine party status. Multiple parties shall join in filing a single petition for review, but each petitioner shall designate a single Contact Representative for all contact with the Planning Department. All communications regarding the petition, including correspondence, shall be with the Contact Representative;*
- 3. The appellant must explain how they have achieved party status pursuant to the applicable sections of 5.8.150 or 5.8.160;*
- 4. The date that the notice of the decision was mailed as written in the notice of decision;*
- 5. The nature of the decision and the specific grounds for appeal citing specific criteria from the Coos County Zoning and Land Development Ordinance, Comprehensive Plan, Statute or Rule.*
- 6. The appellant must explain in detail, on the appeal form or attached to the appeal form, how the application did not meet the criteria in the case of an approval or why the criteria or should not apply; or, in the case of a denial the appellant shall explain why the application did meet the criteria or why certain criteria did not apply to the application.*
- 7. Appeals of Planning Director's decision will be de novo;*
- 8. Appeals of Planning Commission's or appointed Hearings Officer(s) decision shall be reviewed by the Board of Commissioners or Hearings Officer if the Board of Commissioners so chooses. The Board of Commissioners shall, provided there has been an initial evidentiary hearing:*
 - a. Decline to hear the matter and enter an order affirming the lower decision; or*
 - b. Accept the appeal and:*
 - i. Make a decision on the record without argument;*
 - ii. Make a decision on the record with argument;*
 - iii. Conduct a hearing de novo; or*
 - iv. Conduct a hearing limited to specific issues.*
 - c. In the decision, the Board shall affirm, modify, or reverse the lower decision, and accept any or all of the findings and conditions in the Hearings Body decision, or modify or adopt new findings and conditions on a permit.*
 - d. If the Board allows argument only on the record, no new evidence shall be submitted.*
 - e. Any legal issues not specifically raised are considered waived for purposes of appeal to the Land Use Board of Appeals (LUBA).*
 - f. Where a hearing is limited to specific issues, any evidence or argument submitted must be relevant to the specific issue.*
 - g. All items to be submitted to the County must actually be received by the County Planning Department no later than 5:00 p.m. on the on the last day of the appeal period. If the last day of the appeal period falls on a weekend or County holiday, then the item must actually be received by the County Planning Department no later than 12:00 p.m. on the next County business day following*

the deadline date. All items to be mailed to another party must be postmarked no later than the end of the appeal period.

- h. The decision of the Board of Commissioners shall not be final for the purpose of appeal until reduced to writing and signed by the Board.*

SECTION 5.8.200. Appeals of Administrative Decisions.

~~1. Notice of Appeal (NOA) shall be filed with the Department on the NOA form provided by the County along with any required filing fee. Upon receipt of an appeal, the Department shall schedule a public hearing before the Hearings Body and provide public notice as provided in Section 5.0.900(A). The hearing on appeal of an administrative decision shall be de novo (ORS 215.416).~~

~~2. The appeal hearing procedure shall be in accordance with Section 5.7.300.
[OR 04 12-013PL-2/09/05]~~

SECTION 5.8.223 Appeal of Hearings Body Decision to Board of Commissioners.

~~1. The review of the decision of the Hearings Body by the Board of Commissioners shall include:~~

- ~~a. All materials, pleading, memoranda, stipulations, and motions submitted by any party to the proceeding and received or considered by the Hearings Body as evidence;~~
- ~~b. All materials submitted by the Planning Department with respect to the application;~~
- ~~c. Minutes of the public hearing of the Hearings Body; and~~
- ~~d. The findings and action of the Hearings Body and the notice of decision.~~

~~2. A Notice of Appeal (NOA) shall be filed with the Department on the NOA form provided by the County along with any required filing fee.~~

~~3. The Planning Staff shall notify the Board of Commissioners of the Notice of Appeal and within ten days of receipt. Then planning staff shall provide the record to the Board of Commissioners for review. Provided there has been an initial evidentiary hearing, the Board of Commissioners Shall:~~

- ~~a. Decline to hear the matter and enter an order affirming the lower decision; or~~
- ~~b. Accept the appeal and:
 - ~~(1) Make a decision on the record without argument;~~
 - ~~(2) Make a decision on the record with argument~~
 - ~~(3) Conduct a hearing de novo; or~~
 - ~~(4) Conduct a hearing limited to specific issues.~~~~

~~In the decision, the Board Shall affirm, modify, or reverse the lower decision, and accept any or all of the findings and conditions in the Hearings Body decision, or modify or adopt new findings and conditions on a permit.~~

~~4. If the Board allows argument only on the record, no new evidence shall be submitted.~~

~~5. Any legal issues not specifically raised are considered waived for purposes of further appeal.~~

- ~~6. Where a hearing is limited to specific issues, any evidence or argument submitted must be related to the specific issue. Any evidence or argument submitted must be related to those specific issues.~~
- ~~7. All items to be submitted to the County must actually be received by the County Planning Department no later than 5:00 p.m. on the deadline date. If the deadline date falls on a weekend or County holiday, then the item must actually be received by the County Planning Department no later than 12:00 p.m. on the next County business day following the deadline date. All items to be mailed to another party must be postmarked no later than the deadline date.~~
8. The decision of the board shall not be final until reduced to writing and signed by the Board.

SECTION 5.8.230 Board of Commissioners Action

1. The Board of Commissioners shall affirm, modify, or reverse all or part of the action of the Hearings Body or shall remand the matter for additional review or information. [OR 04 12 013PL 2/09/05]
2. A final decision by the Board of Commissioners or Hearings Officer shall be appealed to the Land Use Board of Appeals (LUBA).

SECTION 5.8.250 Reconsideration of Administrative Decision

1. During the period set forth at Section 5.8.100, the Planning Director shall withdraw the decision for the purposes of reconsideration, any administrative decision.
2. If an administrative decision is withdrawn for the purposes of reconsideration, the Planning Director shall, within 30 days of the withdrawal, affirm, modify or reverse the administrative decision.
3. Notice of the reconsidered administrative decision shall be provided in the same manner as notice of the original administrative decision, and any appeal of said decision shall proceed pursuant to Article 5.8. [OR-92-07-012PL]

SECTION 5.8.300 Record Presented to Hearings Body or Board of Commissioners

After notice of intent to appeal has been filed pursuant to Section 5.8.200, then: [OR 96-06-007PL 9/4/96]

1. For appeals of administrative decisions, the Planning Director shall forward to the Hearings Body a copy of:
 - a. the application for the subject administrative permit; and
 - b. the written findings establishing the basis for his decision; and
 - c. the notice of intent to appeal.
2. For appeals of Hearings Body decisions, the Planning Director shall forward to the Board of Commissioners a copy of:
 - a. the application for the requested action; and
 - b. the staff report on the request; and
 - c. the public hearing record of the Hearings Body's decision; and,
 - d. the notice of intent to appeal.

SECTION 5.8.400 Multiple Appeals

Multiple appeals of the same land use decision shall be consolidated into one hearing, at the discretion of the Planning Director, Planning Commission or Board of Commissioners, provided the appeals involve the same or substantially similar issues and/or a common question of law or fact. The consolidation process must not work to deprive any appellant of his or her right to a full and fair hearing on the merits of their case. Such consolidation of the appeals into one hearing will avoid unnecessary costs or delay and will assist in the proper resolution of the matter in question. ***If consolidation is granted by then a reduction of fee may be due to the parties when the final decision is rendered.***

~~**SECTION 5.8.500. (RESERVED)** [OR 04 12 013PL 2/09/05]~~

~~**SECTION 5.8.600. (RESERVED)** [OR 04 12 013PL 2/09/05]~~

SECTION 5.8.700 Reconsideration of Final Decision by Board of Commissioners

1. At any time subsequent to the filing of a notice of intent to appeal a decision made by the Board of Commissioners, and prior to the date set by the Land Use Board of Appeals for filing the record on said appeal, the Board of Commissioners Shall withdraw its decision for the purposes of reconsideration. If the Board withdraws its final decision order for purposes of reconsideration, it shall, within such time as the Land Use Board of Appeals Shall allow, affirm, modify or reverse its decision. [OR 92-07-012PL]
2. Hearings on reconsidered decisions will, at the County's sole discretion, be either:
 - a. Based on the record. New findings shall be drafted for the Board's consideration and shall be presented to the Board at a regularly scheduled Board meeting. No new evidence or testimony shall be considered, or;
 - b. De novo allowing additional evidence and testimony. Participation shall be strictly limited to those persons or organizations who are parties to the LUBA appeal.
3. The Board of Commissioners shall limit the scope of a hearing on reconsideration.

SECTION 5.8.800 Review of Remanded Decisions

When LUBA remands a decision and orders the County to pay the cost of the filing fee to the petitioner, the applicant must provide to the County proof of payment before the remanded application will be considered. If the applicant does not pay the fee within 45 days from the date of the LUBA remand, the application shall be deemed withdrawn by the applicant.

Any request for hearing on remand shall be subject to the appropriate fee.

1. Decisions remanded by the Land Use Board of Appeals will be scheduled for hearing only if the applicant files a written request that the governing body take up the remand within 45 days from the date of the final LUBA order¹, the request must be accompanied by the appropriate fee;
2. Within 30 days of receiving the request a hearing will be scheduled before the Board of Commissioners.

¹ Subsequent appeals could change the date of the final LUBA order.

3. If no written request is submitted to take up the remand, the application shall be deemed to be withdrawn and action will be taken to void the implementing Ordinance.
4. Hearings on remanded decisions Shall be, in the sole discretion of the Board, either:
 - a. Based on the record without argument. The remand will be based solely on the existing evidentiary record. No new testimony, evidence or argument will be considered. The scope of the hearing will be limited to the remand issues LUBA identified in its final opinion.
 - b. Based on the record with argument:
 - i. In written form with no oral argument. Written argument shall be submitted to the Planning Department at least 10 days prior to the hearing in order to be considered. No further written argument will be accepted after the 10 day deadline or at the hearing.
 - ii. In written form with oral argument. Written argument shall be submitted to the Planning department at least 10 days prior to the hearing in order to be considered. No further written argument will be accepted after the 10 day deadline or at the hearing.
 - iii. Written and oral argument that will be accepted prior to and at the hearing.
 - c. Limited to the issues identified by LUBA in its decision. New evidence and testimony shall be presented solely on the issues remanded by LUBA in its decision.
 - d. De novo allowing new evidence and testimony.
5. The Board of Commissioners solely in its discretion shall further limit the scope of any hearing on remand.
6. At the direction of the Board the party prevailing at the remand hearing shall prepare the findings of fact necessary to support the decision.
7. The decision of the Board shall not be final for the purpose of appeal until reduced to writing and signed by the Board.

ARTICLE 5.9 ZONING COMPLIANCE LETTER

SECTION 5.9.100 Zoning Compliance Required:

Zoning Compliance Letters (ZCL) are required to be obtained prior to engaging in any type of development or initiation of use or activity listed in the Coos County Zoning and Land Development Ordinance. However, there may be other types of reviews required before a zoning compliance letter may be issued. A compliance determination form must be submitted to verify compliance with regulations prior to the issuance of a zoning compliance letter by the Coos County Planning Department unless the following applies:

- 1. If the compliance letter is needed for a sewage disposal system permit or evaluation;*
- 2. If a final land use decision covering the property or site has been issued and is still valid; or*
- 3. If the use or activity involves a Coos County sign-off for a land use compatibility statement (LUCS) as found on state and federal forms a zoning compliance letter will*

not be required in addition to that form unless the project involves permits from State Building Codes or sewage disposal system permits from Department of Environmental Quality (DEQ).

A ZCL must be obtained from Coos County Planning prior to applying for state building permits and/or sewage disposal system permits from DEQ. the applicant shall first obtain a zoning compliance letter (verification letter) from the Coos County Planning Department. This ZCL verification compliance letter is valid for one two years from the date it is issued. However, if the request for the ZCL has changed a new ZCL will be required prior to obtaining state permits.

Prior to the expiration of a ZCL an applicant may request additional time to apply for building permits for the project. A new zoning compliance letter will be issued for a year subject to the fee set on the official fee schedule adopted by the Board of Commissioners.

If the request otherwise requires *land use* review (*compliance determination*, conditional use, variance, partitioning, etc.), a compliance letter shall not be issued unless it is for a *sewage disposal system* evaluation or replacement of existing on-site system if a land use review has not been completed.

If the requested use or development is permitted in the zone or is authorized by a final land use approval of Coos County that has not expired, no further, *land use* review is required and the Planning Department will issue the compliance letter.

If the land use approval includes conditions of approval, the applicant will sign the *ZCL* compliance letter with the understanding that the conditions must be met or the authorization will be revoked.

A zoning compliance letter allows the state permitting (Sanitation and building) process to begin. A zoning compliance letter will not extend a land use authorization.

Fences, retaining walls, re-roofing and interior remodeling do not require zoning authorization but may require a permit from State Building Codes.

ARTICLE 5.10 COMPLIANCE DETERMINATIONS AND REVIEWS

SECTION 5.10.100 Compliance determinations:

An application for Compliance Determination (CD) are required to be submitted to the Planning Department with the elements described in § 5.10.200. Once the application is received the Planning Staff will review the CD against the applicable zoning district to determine if additional reviews or notifications are required.

If the application requires any type of discretionary analysis or interpretation, findings of compatibility or conditions of approval, then the application will be treated as an administrative conditional use and is subject to notice requirements of §5.10.400. If the application simply requires a check-off of clear and objective development standards, no administrative conditional use is required and a zoning compliance letter will be issued.

A compliance determination is not required in the following circumstances:

- 4. If the compliance letter is needed for a sewage disposal system permits or evaluation; or*
- 5. If a final land use decision covering the property or site has been issued and is still valid.*

There are two types of compliance determinations: one for Balance of County and the other for Estuary Plans.

SECTION 5.10.200 APPLICATION REQUIREMENTS:

The application form must be completed with a plot plan attached and include the following:

- 1. If this is for an industrial or commercial use a parking plan is required (see Article 7.5).*
- 2. If this is bare land and a driveway has not be completed a driveway confirmation form is required to be completed by the Roadmaster (see Article 7.6 for bonding options)*
- 3. If this is bare land and the request is for a dwelling an address is required.*
- 4. If this is for an estuary zoned property as defined in Chapter III then applicable zoning district standards and policies must be addressed.*

SECTION 5.10.300 REVIEW FOR BALANCE OF COUNTY ZONING DISTRICTS:

- 1. Compliance determinations will be reviewed based on the zoning district requirements and any applicable special development considerations for permitted uses.*
- 2. If it is determined that other land use reviews are required, staff will prepare a letter explaining what applications and criteria are required to be submitted. If other land use reviews are required, this application will automatically be upgraded to an administrative conditional use review and deemed incomplete until such time the application requirements for an administrative conditional use have been satisfied. Once a final land use decision is issued, then a zoning compliance letter will be issued.*
- 3. If a compliance determination application is received for a use or activity that is not listed, a denial will be issued as a final land use decision (see § 5.10.400 for notification, unless the proposed use is subject to § 4.1.190 Uses Not Listed).*
- 4. If no other reviews are required and discretion was used to make the determination of compliance then a final land use decision will be issued and notice under § 5.10.400.*

All new and replacement developments, with the exception of sewage disposal system permits, require a driveway confirmation and must be obtained as part of this review unless one has been completed. Industrial and Commercial development will require a parking plan and access plan in lieu of a driveway confirmation. Parking plans, driveways and accesses will be reviewed by the County Roadmaster in conjunction with the CD application.

SECTION 5.10.300 REVIEW FOR USES AND ACTIVITIES IN AN ESTUARY MANAGEMENT PLAN ZONE:

- 1. Compliance determinations will be reviewed for any permitted uses subject to general conditions which require policies to be addressed. If the policies require a conditional use that process shall be followed.*
- 2. If it is determined that other land use reviews are required the planning, staff will*

provide a letter explaining what applications and criteria are required to the applicant and the application will be deemed incomplete until all submittal requirements have been met. Once all conditional use applications have received a final land use decision a zoning compliance letter will be issued.

- 3. If a compliance determination application is received for a use or activity that is not listed a denial will be issued unless § 4.1.190 Uses Not Listed applies.*
- 4. If no other reviews are required the compliance determination and discretion was used to determine compliance the compliance determination decision will serve as the final land use decision. However, if the application simply requires a check-off of clear and objective development standards, no administrative conditional use is required and a zoning compliance letter will be issued and the compliance determination will not be characterized as a land use decision.*

All new and replacement developments, with the exception of sewage disposal system permits, require a driveway permit and/or parking permit prior as part of this review unless one has been completed. Industrial and Commercial development will require a parking plan to be submitted as part of the compliance determination review. Parking plans will be reviewed by the County Roadmaster.

SECTION 5.10.400 NOTIFICATION:

If the property is located within in an area that requires a notification to other agencies for comments that notification shall be mailed out for comments once the review of the Compliance Determination begins. Staff will review special development consideration maps and overlay maps to determine if a notice is required.

If the property is located in an area that requires one of the following notifications, the time line for a final land use decision will not be issued until the comment period has expired.

- Oregon Department of Fish and Wildlife has 10 days to comment.*
- Local Tribes have 30 days to comment.*
- Department of State Lands (DSL) has 30 days to comment.*
- Oregon Department of Aviation has 30 days to comment, unless notice has been submitted to FAA for comment.*
- Review the files to see if a driveway confirmation has been completed by the Road Department.
 - Driveway confirmations are required for replacement and new dwellings. Driveways may be bonded to allow for all development to be completed.*
 - If the development is commercial or industrial a parking plan will be required to be reviewed by the Roadmaster for compliance with parking standards.**

If the Compliance Determination is to serve as a final land use decision then there will be a notice of the decision mailed to the applicant and to all neighborhood or community organizations recognized by the County and whose boundaries include the site and to the owners of record of property on the most recent property tax assessment roll where such property is located:

- 1. Within 100 feet of the exterior boundaries of the contiguous property ownership which*

is the subject of the notice if the subject property is wholly or in part within an urban growth boundary;

- 2. Within 250 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is outside an urban growth boundary and not within a farm or forest zone;*
- 3. Within 750 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is within a farm or forest zone.*

If appealed the process in Article 5.8 will be followed. If a use is permitted outright the use may not be the subject of appeal unless discretion was used to determine if a standards or policies have been met then the decision may be appealed. Compliance determinations are only valid for a two year period. However, a two year extensions may be provided so long as the project has not changed which would requiring additional review.

AM-14-11

The findings document addresses the applicable comments that have been received for this text amendment. Several of the comments are repetitive covering the same issue. Therefore, staff has condensed those issues down by sections. This only addresses comments on the ordinance text changes for AM-14-11. There were other comments made that were beyond the proposed changes in which did not receive a response.

Chapter V

§ 5.0.175 Application Made by Transportation Agencies, Utilities or Entities:

1. A transportation agency, *utility company or entity with the private right of property acquisition pursuant to ORS Chapter 35* may submit an application to the Planning Department for a permit or zoning authorization required for a ~~transportation~~ project without landowner consent otherwise required by this ordinance.
2. ***For any new applications submitted after the effective date of this section, such A*** transportation agency, *utility, or entity* must mail certified notice to the Planning Department and any owner of land upon which the ~~transportation~~ proposed-project would be constructed at least ten (10) days before submitting an application to the Planning Department. Said notice shall state the transportation agency, *utility, or entity's* intent to file the application and must include a map, brief description of the proposed ~~transportation~~ project, and a name and telephone number of an official ***or representative of the project with the transportation agency*** available to discuss the proposed project.
3. A ***Such*** transportation agency, *utility or entity* (applicant) must comply with all ***other*** applicable requirements of this ordinance; ~~however, a property divided by the sale or grant of property for state highway, county road, City Street or other right of way purposes shall continue to be considered a single unit of land until such time as the property is further subdivided or partitioned. Including property owners that were provided with notice of any hearing on any hearing on the application pursuant to ORS 197.763~~
4. Notwithstanding any other requirement of this ordinance, approvals granted to a ***such*** transportation agency ~~for a transportation improvement~~, *utility or entity* shall not become effective ***for construction on a property under the approval*** until ***the transportation agency, utility or entity obtains either the written consent of the property owner or the property rights necessary for construction on that property*** the subject property is acquired for the project.
5. Any permit subject to this section will be effective ***valid*** for two (2) years unless a request for renewal for another two (2) years is received from the transportation, *utility or entity* agency within 2 years ***after the date of approval***, ~~is received from the transportation agency within 2-year period~~, in which case renewal will be automatic to a maximum of 5 renewals. ***The date of approval is the date the appeal period has expired and no appeals have been filed, or all appeals have been exhausted and final judgments are effective.***[OR-92-07-012PL]

Comments submitted by:

Joan Lynch
Jody McCaffree
Janet C. Stoffel
Jan Dilley
Kathy Dodds
Jenmarie Frangopoulos
Katy Eymann
Jonathan Hanson
Richard Knablin
Beverly Segner
JC Williams

Response:

This provision only allows for submittal of an application and does not allow for a use or property takeover. A use should be determined allowable prior to eminent domain being used to obtain a portion of the property. If eminent domain was used to obtain a strip of land and then a use denied, you would have a strip of land that was unusable for any other purpose. This would allow an application to go through the process and, if denied, the property would stay intact. Notification would still be given to all parties as required. This is the same process that the County used in siting its own pipeline. Once the land use approvals were given then negotiations for easements and properties could be done.

This provision does not give anyone the authority of eminent domain and the utility company or entity with the private right of property acquisition pursuant to ORS Chapter 35 would have to provide documentation that they have that right.

There has been no legal argument provided by the opponents for staff to review. There has been some testimony provided regarding the Natural Gas Act which is not relevant as explained above the company or agency relying on this provision to submit an application would be required to justify they have the ability to use the *private right of property acquisition pursuant to ORS Chapter 35*.

Ms. Eymann suggested using Tillamook County Code in place of subsection 5 but she only provides an excerpt and no background on this provision; therefore, it may not be consistent with the intent of Coos County's ordinance. If anything should be changed in this section, it should be deleting subsection 6 all together. It seems that subsection 6 may be a conflict with the extension criteria proposed in § 5.2.600 and § 5.3.360, which is specific to the type of application that is applied for.

There were a few arguments that stated this provision would not be consistent with Coastal Zone Management (CZM) program. Administrative procedures are not found to be enforceable policies under the CZM program. See attached March 13, 2014 memo concerning acknowledgement of Coos County Comprehensive Plan and Zoning Ordinance compliance with the program. Please note, Chapter V of the CCLDO is not listed as an enforceable policy under the CZM because application procedures are not relevant or enforceable criteria in determining compliance with CZM. Therefore, there is nothing

legally presented in this written argument. Therefore, the Board of Commissioners adopted the proposed language changes.

§ 5.0.200(2) Land within an urban growth boundary and applications for mineral aggregate extraction, the governing body of a county or its designee shall take final action on an application for a permit, limited land use decision, including resolution of all appeals under ORS 215.422 (Review of decision of hearings officer or other authority) ***

Comments submitted by: Katy Eymann
Beverly Segner

Response:

To make this clear the word “For” was included before the word “Land”. The sentence now reads “For land within an urban growth boundary and applications for mineral aggregate extraction, the governing body of a county or its designee shall take final action on an application for a permit, limited land use decision, including resolution of all appeals under ORS 215****” The language is based on ORS 215.427.

§ 5.0.200(5) If the application is for industrial or traded sector development of a site identified under Section 12 below, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with Section 4 above.

Comments submitted by: Katy Eymann

Response:

Ms. Eymann is correct this should be subsection 11 and not 12. This change was made.

~~§ 5.0.250(6) Land use permits that have been approved by the county shall be held in abeyance until the decision is final and all fees are paid: That is, until the appeal period has expired and no appeals have been filed, or all appeals have been exhausted and final judgments are effective.~~

Comments submitted by: Katy Eymann
Jody McCaffree
Beverly Segner

Response:

The section is a conflict for the calculation of time periods under Expiration and Extension of conditional uses and variances. This provision could be construed to mean the permit would not be valid until all appeals have been resolved, meaning you would not calculate the time period for an extension or expiration until those decisions were made. This is a conflict with how the time periods are calculated under OAR 660-033-0140 and ORS 215.417. To alleviate these procedural issues, the language was removed. A project will not receive

zoning compliance until all appeals have been resolved and the applicable conditions of approval have been met.

§ 5.0.550 HEARINGS BODY REVIEW OF ADMINISTRATIVE DECISIONS:

Notwithstanding Article 5.8 (Appeals), a contested quasi-judicial hearing shall be held to review a Planning Director's decision regarding an administrative conditional use, when, within ~~fifteen~~ **twelve (12)** days of notice of the decision, two or more members of the Planning Commission advise the Planning Director, orally or in writing, of their desire for a public hearing to review the application. Said hearing shall be held pursuant to Article 5.7.

Comments submitted by: Jody McCaffree
Jan Dilley
Kathy Dodds
Katy Eymann
Jonathan Hanson
Richard Knablin
Beverly Segner
Janet Stoffel
William York

Response:

Ms. Eymann's suggestion is inconsistent with the intent of the provision. Administrative decisions (Planning Director decisions) are appealable to the Planning Commission unless pre-empted by the Board of Commissioners. The Board reviewed this section and the suggestions by staff made the following modification:

Notwithstanding Article 5.8 (Appeals), a contested quasi-judicial hearing shall be held to review **all noticeable** Planning Director's decisions ~~regarding an administrative conditional use~~, when, within ~~fifteen (15) days of notice of the decision~~ **the appeal period**, two or more members of the Planning Commission advise the Planning Director, orally or in writing, of their desire for a public hearing to review the application. Said hearing shall be held pursuant to Article 5.7.

This section limits the Planning Commission to call up only conditional uses but did not include variances or other discretionary decisions made by the Planning Director. This is just for call up and does not extend to appeals of a Planning Director's decision. Normally an appeal of a Planning Director's decision is reviewed by the Planning Commission but the Board reserves the right to call the matter directly before them. This allows for flexibility for a hearings officer to meet a timeline.

§ 5.0.600(4) The Board of Commissioners reserves the right to pre-empt any permit review process or appeal process and hear any permit application or appeal directly. The Board also reserves the right to appoint a Hearings Officer or Hearings Body to hear and consider any permit application or appeal. Notice of appeals of administrative actions shall be promptly forwarded to the Board of Commissioners, which may elect to hear the appeal instead of the Planning Commission.

Comments submitted by: Katy Eymann
Jonathan Hanson
Beverly Segner
JC Williams

Response:

The Board of Commissioner chose not to remove the ability to pre-empt a process. There are special circumstances that warrant the use of this provision especially if the application is approaching the 150 or 120 day time period and a final decision has not been made.

There have been request to have a hearing regarding hiring a hearings officer. When the contract is proposed it is reviewed in a regular board meeting which is a public meeting and contracting laws that are outside of the land use regulations. There is no legal basis for this suggestion. None of the opponents provide suggestions for criteria or how that process would function. There is also no consideration for the 120 or 150 timeline application requirements pursuant to ORS 215.416.

§5.0.900 NOTICE REQUIREMENTS (ORS 197.763):

§ 5.0.900(1)(c)(x) The Planning Director shall cause notice of the hearing to be mailed to all affected property owners pursuant to this section, **the applicant and to all neighborhood or community organizations recognized by the County and whose boundaries include the site and to the owners of record of property on the most recent property tax assessment roll where such property is located:**

- 1) Within 100 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is wholly or in part within an urban growth boundary;**
- 2) Within 250 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is outside an urban growth boundary and not within a farm or forest zone;**
- 3) Within 500 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is within a farm or forest zone**

§ 5.0.900(2)(a)(ii) The owners of record of property as described in ORS 215.416(11)(c), **the applicant and to all neighborhood or community organizations recognized by the County and whose boundaries include the site and to the owners of record of property on the most recent property tax assessment roll where such property is located:**

- a. **Within 100 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is wholly or in part within an urban growth boundary;**
- b. **Within 250 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is outside an urban growth boundary and not within a farm or forest zone;**
- c. **Within 750 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is within a farm or forest zone.**

Comments submitted by: Jody McCaffree

Jan Dilley

Beverly Segner

William York

Response :

The Board of Commissioners cannot base a notification area on one project. Several opponents of this section cite a case that is not within the jurisdiction of Coos County and failed to provide the facts for that case. It is understood that some of the opponents have suggested that all Commercial and Industrial projects (not zones) to have a 1,000 foot notification area from the project rather than be consistent with state law. So, if a pipeline were to be considered an industrial project and it is going through a very large property, such as 1000 acres, the neighbors may not receive notice because the 1000 feet of the project could be contained on the subject property. No notification would be given and that would be less restrictive than state law. The second issue raised was to have a use classified as a hazard before notice can be sent. That is also not consistent with state law and would require an interpretation of every project prior to notification. However, the interpretation would be a discretionary decision that would require notice and an opportunity for appeal. There are no criteria on how to determine if a project itself is industrial or commercial. The consequences of this type of proposal would be that the county would never be able to meet the 120 or 150 day deadline and would be required to refund the applicant half of their fee. The opponents are requesting to hold certain applicants to higher standards than others but they fail to provide any legal basis.

In ORS 197.763 provides for notices of hearings:

- 1. Within 100 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is wholly or in part within an urban growth boundary;***
- 2. Within 250 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is outside an urban growth boundary and not within a farm or forest zone;***
- 3. Within 500 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is within a farm or forest zone.***

ORS 215.416 Notice of Administrative Decision (no public hearing)

- ii. The owners of record of property as described in ORS 215.416(11)(c), **the applicant and to all neighborhood or community organizations recognized by the County and whose boundaries include the site and to the owners of record of property on the most recent property tax assessment roll where such property is located:**
- a. **Within 100 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is wholly or in part within an urban growth boundary;**
 - b. **Within 250 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is outside an urban growth boundary and not within a farm or forest zone;**
 - c. **Within 750 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is within a farm or forest zone.**

The Board of Commissioner requested that staff review how other counties process notifications. Staff sent out a survey and did some research. Out of 19 of the counties only five have a different type of notification process. Out of the five counties the following changes were made: One county expanded the area for Goal 5 aggregate area, one expanded the notification area for mass gatherings and agri-tourism applications; One county has expanded the Farm/Forest from 750 to 1000; One county expanded the farm/forest to 1500; and One County expanded urban to 300 and rural to 500 but left farm/forest to minimum. Several counties responded that they objected to being more restrictive than state law due to the criticism from the citizens. As far as the recent pipeline case there were no properties that had the urban residential zoning so increasing the 100 boundary would not have gained any notification area in that specific case. The opposition is blending jurisdictions and the Board has to look at Coos County not the City of North Bend.

There have been comments received that imply that staff was mailing notice in a different manner than what the proposed language requires, but this is a false assumption. Staff has been following the notification rules of ORS 197.763 and ORS 215.416 to the current process. The changes in the ordinance list out the exact language from the ORS for clarification. The wording 'affected property owners' refers to adjacent property owners as described in the ORS. The Board of Commissioners chose to mirror state law and not be more restrictive.

§ 5.0.900(b) The Planning Department shall mail a copy of the staff report to the city, special district, applicant and Hearings Body at least seven (7) days prior to the scheduled public hearing.

Response:

There is no proposed change to this section. This is based on ORS 197.763.

§ 5.2.600 EXPIRATION AND EXTENSION OF CONDITIONAL USES

~~All conditional uses, except for site plans, variances and land divisions, remain valid for the period set forth in ORS 215.417. Any conditional use not initiated within said time frame may be granted a two-year extension as specified in ORS 215.417 provided that:~~

- ~~1. An application for said extension is filed with the Planning Department prior to the expiration of the deadline. The applicant must state the reasons that prevented the proposal from beginning or the development from continuing within the approval period; and~~
- ~~2. The Planning director finds:~~
 - ~~a. That there have been no substantial changes in the land use pattern of the area or other circumstances sufficient to cause a new conditional use application to be sought for the same use; and~~
 - ~~b. That the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.~~

~~Additional extensions granted are ministerial decisions and not a land use decisions as described in ORS 197.015 and are not subject to appeal as land use decisions per OAR 660-33-140(3). (OR-93-12-017PL-2-23-94) (OR-95-05-006 PL-11-29-95) (OR-05-01-002PL-3-21-05)~~

Any conditional use not initiated within the time frame set forth in subsection (3) of this section may be granted an extension provided that an applicant has made a request and provided the appropriate fee for an extension prior to the expiration of the conditional use permit approval. Such request shall be considered an Administrative Action and shall be submitted to the Director.

- 1. Extensions on Farm and Forest Zoned Property shall comply with OAR 660-033-0140 Permit Expiration Dates which states:*
 - a. Except as provided for in subsection (e) of this section, a discretionary decision, except for a land division, made after the effective date of this section approving a proposed development on agricultural or forest land outside an urban growth boundary is void two years from the date of the final decision if the development action is not initiated in that period.*
 - b. Coos county may grant one extension period of up to 12 months if:*
 - i. An applicant makes a written request for an extension of the development approval period;*
 - ii. The request is submitted to the county prior to the expiration of the approval period;*
 - iii. The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and*
 - iv. The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.*
 - c. Approval of an extension granted under this section is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision. (possible delete)*
 - d. Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.*

- e. *If a permit is approved for a proposed residential development on agricultural or forest land outside of an urban growth boundary, the permit shall be valid for four years. An extension of a permit described in subsection (e) of this section shall be valid for two years.*
 - f. *For the purposes of subsection (e) of this section, "residential development" only includes the dwellings provided for under in the EFU and Forest zones in Chapter 4.*
 - g. *Extension requests do not apply to temporary use permits, compliance determinations or zoning compliance letters.*
2. *Extensions on all non-resource zoned property shall be governed by the following.*
- a. *The Director shall grant an extension of up to two (2) years so long as the use is still listed as a conditional use under current zoning regulations.*
 - b. *If use or development under the permit has not begun within two (2) years of the date of approval and an extension has not been requested prior to the expiration of the conditional use then that conditional use is deemed to be invalid and a new application is required.*
 - c. *If an extension is granted, the conditional use will remain valid for the additional two years from the date of the original expiration.*
3. *Time frames for conditional uses and extensions are as follows:*
- a. *All conditional uses within non-resource zones are valid four (4) years from the date of approval; and*
 - b. *All conditional uses for dwellings within resource zones outside of the urban growth boundary or urban unincorporated community are valid four (4) years from the date of approval.*
 - c. *All non-residential conditional uses within resource zones are valid (2) years from the date of approval.*
 - d. *For purposes of this section, the date of approval is the date the appeal period has expired and no appeals have been filed, or all appeals have been exhausted and final judgments are effective.*
 - e. *Additional extensions may be applied.*
4. *Extensions are subject to notice as described in § 5.0.900(2) and appeal requirements of 5.8 for a Planning Director's decision.*

Comments submitted by: Jody McCaffree
 Susan P. Smith
 Katy Eymann

Response:

This proposed change mirrors Oregon Revised Statute and Oregon Administrative Rule for extensions. The change in the language removes any confusion and now it will be based on statute and rule. There have been multiple requests to incorporate the following sentence "[t]hat there have been no substantial changes in the land use pattern of the area or other circumstances sufficient to cause a new conditional use application to be sought for the same use." However, there has been no legal argument given that supports leaving this language in place. Staff suggested the Board adopt the proposed language as it is based on the statute and rule as described below:

The language from the ORS and OAR is as follows.

ORS 215.417 Time to act under certain approved permits; extension. (1) *If a permit is approved under ORS 215.416 for a proposed residential development on agricultural or forest land outside of an urban growth boundary under ORS 215.010 to 215.293 or 215.317 to 215.438 or under county legislation or regulation, the permit shall be valid for four years.*

(2) *An extension of a permit described in subsection (1) of this section shall be valid for two years.*

(3) *For the purposes of this section, "residential development" only includes the dwellings provided for under ORS 215.213 (3) and (4), 215.284, 215.317, 215.705 (1) to (3), 215.720, 215.740, 215.750 and 215.755 (1) and (3). [2001 c.532 §2; 2009 c.850 §10; 2013 c.462 §6]*

OAR 660-033-0140

Permit Expiration Dates

(1) *Except as provided for in section (5) of this rule, a discretionary decision, except for a land division, made after the effective date of this division approving a proposed development on agricultural or forest land outside an urban growth boundary under ORS 215.010 to 215.293 and 215.317 to 215.438 or under county legislation or regulation adopted pursuant thereto is void two years from the date of the final decision if the development action is not initiated in that period.*

(2) *A county may grant one extension period of up to 12 months if:*

(a) *An applicant makes a written request for an extension of the development approval period;*

(b) *The request is submitted to the county prior to the expiration of the approval period;*

(c) *The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and*

(d) *The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.*

(3) *Approval of an extension granted under this rule is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.*

(4) *Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.*

(5)(a) *If a permit is approved for a proposed residential development on agricultural or forest land outside of an urban growth boundary, the permit shall be valid for four years.*

(b) *An extension of a permit described in subsection (5)(a) of this rule shall be valid for two years.*

(6) *For the purposes of section (5) of this rule, "residential development" only includes the dwellings provided for under ORS 215.213(3) and (4), 215.284, 215.705(1) to (3), 215.720, 215.740, 215.750 and 215.755(1) and (3).*

However, there was some confusion about the following wording "Approval of an extension granted under this rule is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision." The language states that administrative decision are not land use decisions, however, the term administrative is a

conflict with the way it is utilized throughout the CCZLDO and CCCP. The Board chose to remove this sentence. It is shown in blue and tagged as a possible deletion. This response applies to § 5.3.360 Extensions for Variances. This allows the County to be in compliance with state law and the CCCP.

§ 5.3.350(5) Variance regulations in the CCZLDO Article 5.3 shall not apply to Sections 4.11.400 through 4.11.460, Chapter VII and Chapter VIII.

Comments submitted by: Susan P. Smith
Jody McCaffree

Response:

This specific variance criteria would not apply to Article § 4.11.400 through 4.11.460, Chapter VII and Chapter VIII. Each identified section or chapter has their own variance criteria. This came up in a LUBA case Sperber v. Coos County LUBA No. 2008-072 which explained the way the county's variance provisions are written and structured there is no reason why both variance standards in Chapter V and in Chapter VII would not apply. The county's ordinance failed to include language specifically explaining why one variance provision would apply and the other would not. Therefore, if there is specific variance criterion that applies or no criterion that applies it must be clear in this section. This is necessary to ensure that it does not become an issue in future decisions.

§ 5.6.115 SURFACE MINING:

Surface mining use continued under Section 5.6.100 shall not be deemed to be interrupted or abandoned for any period after July 1, 1972, provided:

- 1. The owner or operator was issued and continuously renewed a state or local surface mining permit, or received and maintained a state or local exemption from surface mining regulation; and**
- 2. The surface mining use was not inactive for a period of 12 consecutive years or more.**

Comments submitted by: Jody McCaffree

Response:

This language is based on 215.130 Application of ordinances and comprehensive plan; alteration of nonconforming use. 215.130 (A) The owner or operator was issued and continuously renewed a state or local surface mining permit, or received and maintained a state or local exemption from surface mining regulation; and (B) The surface mining use was not inactive for a period of 12 consecutive years or more.

§ 5.7.300 Quasi-Judicial Land Use Hearings Procedures

4. Representatives
 - b. Any person presenting *written* testimony on behalf of a group, company or any other organization, except an attorney, **consultant, owner, officer, or employee of that group, company, or organization** must enter written evidence into the

record establishing that the person is authorized to appear on behalf of the organization. Such written authorization must:

- i. *Be written on the group, company, or organization's official letterhead;*
- ii. *Name the person authorized to appear on behalf of the group, company, or organization;*
- iii. *Specify the scope of the authorization; and*
- iv. *Contain the signature of a person with authority to grant the authorization.*

Failure of a person to submit such written authorization shall cause the group, company, or organization to not achieve party status for the purposes of the proceeding and shall preclude the group, company, or organization from having standing to file an appeal.

Comments submitted by: Jody McCaffree

Philip Johnson, Oregon Shores Conservation Coalition

Katy Eymann

Response:

The new language is a reformat and clarification of the current language. The language concerning written testimony came from a prior county counsel who was concerned about the legality of representation and achieving standing. The last paragraph of the proposed language is important to explain the consequences of not providing authorization to appear on behalf of a group, company or any other organization. Currently there is no remedy or consequences provided if someone fails to present the required authorization. This point was brought up by the hearings officer in a past case as a procedural flaw.

The case cited by Oregon Shores and provided the head notes from LUBA below:

24.2.1 Standing - Before LUBA - Generally. Persons who made an appearance during the local government proceedings that led to a city decision that was remanded by LUBA satisfy the ORS 197.830(7)(b) requirement that a person who moves to intervene in a subsequent LUBA appeal of the city's decision following LUBA's remand must have "appeared." The appearance during the initial local government proceedings is sufficient to satisfy the ORS 197.830(7)(b) appearance requirement, and it does not matter that the local government refused those persons' attempt to appear during the remand proceedings. South Gateway Partners v. City of Medford, 53 Or LUBA 593 (2006).

The change in the local language proposed does not limit who can appear just how they appear. Anyone can appear on their own behalf but, if you are going to represent someone else or some type of group, company or organization, it needs to be shown that the person appearing has legal authority to do so. Furthermore, the LUBA citation provided seems to deal with remands and the failure of a county to understand that if a party has appeared at any point they have achieved party status. This case is not relevant as it does not provide an explanation regarding representation as used in §5.7.300. The Land Use Board of Appeals explained standing pursuant to ORS 197.830(7)(b) for filing an appeal at the Land Use Board of Appeals but does not cover standing at the local level or an opinion on local standing

issues outside of a remand. There has been no direct link to a statutory provision or case law that prohibits Coos County's language.

There was an opposing comment made concerning having § 5.7.300(4)(b)(i) and not requiring letter head but including a copy of the groups filing with the State to show that the person submitting testimony is qualified to speak. The document may not explain how an individual can represent a group. This was considered but the additional language was not chosen.

§ 5.7.300(5) Submission of Written Evidence

- c. Required Number of Copies: Submission of written materials for consideration shall be provided ~~as follows for hearings before the:~~ ***in the form one original hard copy and one exact copy or one original hard copy and one electronic copy.***
- i. ~~Planning Commission—15 copies~~
 - ii. ~~Board of Commissioners—7 copies~~

Comments submitted by: Philip Johnson, Oregon Shores Conservation Coalition
Susan P. Smith

Response:

The reason for the two copies is to ensure that one paper copy is available for the public to review. This section takes into account people that do not have the ability to submit material electronically. Two copies allows staff to have one document to copy from and one to place in the file for public records and viewing. Again there is no legal basis for changing the language as it is proposed.

§ 5.8.100 Appeals General

Coos County has established an appeal period of ~~15~~ **12** days from the date written notice of administrative or Planning Commission decision is mailed.

The Board of Commissioners or Hearings Body shall dismiss an appeal for failure to follow the requirements of this article. [OR 04 12 013PL 2/09/05]

Comments submitted by: Jody McCaffree
Jan Dilley
Philip Johnson, Oregon Shores Conservation Coalition
Katy Eymann
Beverly Segner
William York

Response:

There have been multiple statements made regarding the change in the date. Staff explained in the presentation that there would not be an issue with leaving the date at 15 days with the exception of property line adjustments and lawfully created parcels. Property line adjustments

and lawfully created parcels are a simple process with very limited criteria. However, the suggested change conforms with state law as shown below.

ORS 215.416(11) (C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall describe the nature of the decision. In addition, the notice shall state that any person who is adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this subsection may appeal the decision by filing a written appeal in the manner and within the time period provided in the county's land use regulations. A county may not establish an appeal period that is less than 12 days from the date the written notice of decision required by this subsection was mailed. The notice shall state that the decision will not become final until the period for filing a local appeal has expired. The notice also shall state that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

There was some testimony received from a few people in opposition, who referenced ORS 197.375 which is an Appeal of a decision on an application for expedited land divisions. Coos County does not have a process for expedited land divisions. This is an incorrect reference. The other repeated statement was that the normal appeal period is 21 days. That is unsubstantiated by any law; in fact, in Staff's research had concluded Coos County has one of the highest appeal deadlines. Most counties are either 12 or 14 days; however, some counties allow for comments from adjacent land owners prior to the final planning director decisions.

The Board of Commissioners decided to leave the timeline the same for all applications except property line adjustments and discrete parcels.

§ 5.8.170 Appeal procedures:

An appellant shall file the appeal for review on the appropriate county form and the form shall be completely filled out as required by this section or the reviewing body may dismiss the appeal. The petition must be filed with the appropriate fee as adopted by the Board of Commissioners.

The appeal form shall contain the following:

- 1. The name of the applicant and the County application file number;*
- 2. The name and signature of each petitioner and a statement of the interest of each petitioner to determine party status. Multiple parties shall join in filing a single petition for review, but each petitioner shall designate a single contact representative for all contact with the Planning Department. All communications regarding the petition, including correspondence, shall be with the Contact Representative;*
- 3. The appellant must explain how they have achieved party status pursuant to the applicable sections of 5.8.150 or 5.8.160;*
- 4. The date that the notice of the decision was mailed as written in the notice of decision;*
- 5. The nature of the decision and the specific grounds for appeal citing specific criteria from the Coos County Zoning and Land Development Ordinance, Comprehensive Plan, Statute or Rule.*

6. *The appellant must explain in detail, on the appeal form or attached to the appeal form, how the application did not meet the criteria in the case of an approval or why the criteria or should not apply; or, in the case of a denial the appellant shall explain why the application did meet the criteria or why certain criteria did not apply to the application.*
7. *Appeals of Planning Director's decision will be de novo;*
8. *Appeals of Planning Commission's or appointed Hearings Officer(s) decision shall be reviewed by the Board of Commissioners or Hearings Officer if the Board of Commissioners so chooses. The Board of Commissioners shall, provided there has been an initial evidentiary hearing:*
 - a. *Decline to hear the matter and enter an order affirming the lower decision; or*
 - b. *Accept the appeal and:*
 - i. *Make a decision on the record without argument;*
 - ii. *Make a decision on the record with argument;*
 - iii. *Conduct a hearing de novo; or*
 - iv. *Conduct a hearing limited to specific issues.*
 - c. *In the decision, the Board shall affirm, modify, or reverse the lower decision, and accept any or all of the findings and conditions in the Hearings Body decision, or modify or adopt new findings and conditions on a permit.*
 - d. *If the Board allows argument only on the record, no new evidence shall be submitted.*
 - e. *Any legal issues not specifically raised are considered waived for purposes of appeal to the Land Use Board of Appeals (LUBA).*
 - f. *Where a hearing is limited to specific issues, any evidence or argument submitted must be relevant to the specific issue.*
 - g. *All items to be submitted to the County must actually be received by the County Planning Department no later than 5:00 p.m. on the on the last day of the appeal period. If the last day of the appeal period falls on a weekend or County holiday, then the item must actually be received by the County Planning Department no later than 12:00 p.m. on the next County business day following the deadline date. All items to be mailed to another party must be postmarked no later than the end of the appeal period.*
 - h. *The decision of the Board of Commissioners shall not be final for the purpose of appeal until reduced to writing and signed by the Board.*

Comments submitted by: Jody McCaffree
Philip Johnson, Oregon Shores Conservation Coalition
Katy Eymann
Beverly Segner

Response:

The Board of Commissioners chose to change the language to read *"An appellant shall file the appeal for review on the appropriate county form and the form shall be completely filled out as required by this section. If an appellant fails to correctly fill out the form, and there has already been a public hearing on the matter, the Board of Commissioners may deny the appeal based on failure to comply with this section. In*

the event the appeal is denied based on a failure to comply with this section, a refund of unexpended fees shall be returned to the appellant.”

In the case of an appeal of a Planning Director’s decision, the hearing is de novo and new issues can be brought forward. The details of the appeal should be included at the beginning so they may be addressed in the staff report. This will save staff time and allow for better understanding of the issues that are being appealed. There is no legal reason given by Oregon Shores other than an inconvenience on the part of the potential appellant. The language is corrected under Subsection 8; however, staff agrees that it could be clarified, if an issue is not raised at the local level it is considered waived. This is referred to as the “raise it or waive it” law.

There was some testimony received that miss cites procedures for court of appeals and LUBA appeals. These procedures do not apply to local land use appeals. In urban areas all local processes must be completed within 120 days and outside of the urban area 150 days. There has been no legitimate legal argument provided. Having clear and concise language is beneficial to all parties. ORS 215 regulates local land use processes including timelines. In a first appeal or public hearing, the matter is always reviewed as a de novo hearing meaning that any issue can be raised even if it was not identified in the initial appeal. However, any subsequent appeals may be restricted to an issue or the record based on the appeal that was filed.

Ms. Eymann stated other appeal bodies only require notice of appeal. However, she fails to identify what other appeal bodies she is referring to. The staff reviewed other counties such as Washington, Douglas and Deschutes counties, and they require specific reasons for appeals. Their appeal period is only 12 days. Other appeal bodies may be a comparison of local hearings appeal boards (County) with the State (LUBA) but again there is not enough information to allow a response from the reviewing body.

The instructions for filing an appeal have been laid out in a manner such that everyone understands they will not be able meet the requirements. This is in line with Goal 1 as it provides a clear process to help citizens build a record.

Additionally, there was a suggestion to extend the time lines of subsection (g) to 5:00 p.m. the next business day. However, the appellant would have already been provided additional time due to the holiday or the weekend. There is no legal reason provide for this request.

The argument about Goal 1 is not valid in this situation. Goal 1, titled Citizen Involvement, states the purpose is to develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process. The County did develop a program and a committee to address citizen participation.

Furthermore, citizens can provide testimony in any form on their own behalf, which this provision does encourage. Therefore, the Board adopted the change as discussed.

SECTION 5.8.200. Appeals of Administrative Decisions.

1. ~~Notice of Appeal (NOA) shall be filed with the Department on the NOA form provided by the County along with any required filing fee. Upon receipt of an appeal, the Department shall schedule a public hearing before the Hearings Body and provide public notice as provided in Section 5.0.900(A). The hearing on appeal of an administrative decision shall be de novo (ORS 215.416).~~

2. ~~The appeal hearing procedure shall be in accordance with Section 5.7.300.~~
[OR 04-12-013PL 2/09/05]

Comments submitted by: Philip Johnson, Oregon Shores Conservation Coalition

Response:

Oregon Shores stated that removal of § 5.8.200 was confusing because § 5.8.170 did not include a reference to § 5.7.300 for hearing procedures. Staff agrees that § 5.8.170 should be clarified to include the cross reference to § 5.7.300. Suggested change: ***“Appeals of Planning Director’s decision will be de novo and processed in accordance with § 5.7.300”***; . The Board accepted staff’s suggestion.

§ 5.10.100 Compliance determinations:

An application for Compliance Determination (CD) are required to be submitted to the Planning Department with the elements described in § 5.10.200. Once the application is received the Planning Staff will review the CD against the applicable zoning district to determine if additional reviews or notifications are required. ***

Comments submitted by: Jody McCaffree

Response:

Currently, when someone requests a zoning compliance, staff looks at the property and the special considerations and makes a determination if the property is in compliance and, if so, a zoning compliance letter is then issued. Sometimes, however, discretion has to be applied in making this determination, which is an appealable action. This is not accounted for currently and a process needs to be formed. If discretion is used in making this type of decision it will be appealable. This is to ensure that the county is following the law for discretionary decisions.

Conclusion

Staff has made some suggested changes for clarity in this document. The opponents to the changes failed to make valid legal arguments for their testimony. In addition, there has been some case law provided by Ms. Eymann and Ms. McCaffree. Staff has printed out the final opinions on those cases for the Board of Commissioner to review as part of the record. The case law deals with comprehensive plan amendments and the Board of Commissioners has not proposed any comprehensive plan amendments. These are all ordinance text amendments. Any argument that has been raised has been addressed by explaining why the changes were necessary. The Board instructed staff to make the changes as discussed in the hearing as well as review the document one more time for typos. The final changes can be found at Attachment A to Ordinance 14-09-012PL.