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:

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 all applications.

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.

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 project without landowner consent otherwise required by this ordinance.

2. For any new applications submitted after the effective date of this section, such transportation agency, utility, or entity must mail certified notice to the Planning Department and any owner of land upon which the 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 project, and a name and telephone number of an official or representative of the available to discuss the proposed project.

3. Such transportation agency, utility or entity (applicant) must comply with all other applicable requirements of this ordinance including property owners that were provided with notice of any hearing on any hearing on the application pursuant to ORS 197.76.

4. Notwithstanding any other requirement of this ordinance, approvals granted to such transportation agency, 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.

5. Any permit subject to this section will be 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, 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]

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. For land divisions within the urban growth boundary or lands designated as Regionally Significant Industrial Areas (RSIA) see Article 5.12 for processing and time tables.

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.

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[1] 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.

[1] An application is no longer considered pending once the final decision has been issued and no appeals have been filed, or all appeals have been resolved and final judgments on appeal are effective. This provision does not apply to request for extensions on applications. See Section 5.0.250

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, when, within 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.

SECTION 5.0.900 NOTICE REQUIREMENTS (ORS 197.763): All applications that receive a notice shall follow this section except for land divisions within the urban growth boundary or lands designated as Regionally Significant Industrial Areas (RSIA). See Article 5.12 for processing and time tables.

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 two 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, 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 "1" 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:

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 5.1.110 WHO MAY SEEK CHANGE:

Coos County shall consider the appropriateness of legislative plan text and map amendment proposals upon:

1. A motion by the Board of Commissioners; or
2. A motion of the Planning Commission; or
3. The submission of formal request made by either:
   a. The Citizen Advisory Committee; or
   b. An application filed by a citizen or organization, accompanied by a prescribed filing fee. If a Measure 56 notice is required the applicant shall be responsible for the payment of all cost associated with that service.

SECTION 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 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 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 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 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 5.1.200 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 5.1.210 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 5.1.215 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 5.1.220 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 5.1.225.

5. The Board of Commissioners shall review and take appropriate action on any rezone recommendation by the Hearings Body pursuant to Section 5.1.235.

6. A decision by the Hearings Body that a proposed rezone is not justified may be appealed pursuant to Article 5.8.

SECTION 5.1.225 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 5.1.215; 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 5.1.230 STATUS OF HEARINGS BODY RECOMMENDATION OF APPROVAL:

The recommendation of the Hearings Body made pursuant to 5.1.225(1) or (2) shall not in itself amend the zoning maps.

SECTION 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. 225, the Board of Commissioners shall either:

1. adopt the Hearings Body recommendation for approval or approval with conditions;

2. reject the Hearings Body recommendation for approval or approval with conditions and dismiss the application;

3. accept the Hearings Body recommendation with such modifications as deemed appropriate by the Board of Commissioners; or

4. 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 5.1.240 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 5.1.250 PERMITS AND APPLICATIONS MORATORIUM:

1. After a proposed rezoning has been set for public hearing, no building or 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.

SECTION 5.1.275 STANDARDS FOR COMPREHENSIVE PLAN AND REZONE FOR NONRESOURCE LAND:

1. The subject property does not meet the definition of Agricultural Land under Statewide Planning Goal 3 and /or Forest Land under Statewide Planning Goal 4.

    NOTE: If the subject property is predominantly Class 1-IV soils or if it predominantly consists of soils capable of producing 5000 cubic feet of commercial tree species it is not considered to be nonresource land.

2. The subject property does not contain any natural resources defined in Statewide Planning Goal 5 which are identified in the Coos County Comprehensive Plan;
3. The subject property has been proven to be generally unsuitable for production of farm crops and livestock or merchantable tree species, considering terrain adverse soil conditions, drainage and flooding, vegetation, location and size of the tract.
4. The subject property is not considered to be nonresource land simply because it is too small to be farmed or forest managed profitably by itself. If the subject property can be sold, leased, rented or otherwise managed as part of a commercial farm, ranch or other forestland it is not considered to be nonresource land.
5. The subject property is not considered to be nonresource land if it has been given a special tax assessment for farm use or as designated forestland at any time in the past five years.
6. If the subject property is found to meet all of the standards above to be considered nonresource land the county shall also determine that rezoning the property to a nonresource zone will not materially alter the stability of the overall land use pattern in the area and lead to the rezoning of other lands to nonresource use to the detriment of the resource uses in the area.
7. The subject property shall be at least 10 acre in area unless it is contiguous to an area that is zoned for nonresource use.

   Any proposal of at least 2 acres but less than 10 acres requires approval of a Goal 14 exception pursuant to OAR 660-004-0040.

8. Rezoning of land that is found to be nonresource land shall be to a "rural" zone that is appropriate for the type of land and its intended use.

   Rural commercial or industrial development must comply with standards for small-scale, low impact commercial and industrial use.

   Development of property rezoned from Forest or Forest Mixed use to a nonresource zone shall comply with the resource development and siting standards. (ORD NO. 04-01-001PL February 10, 2004)

ARTICLE 5.2 CONDITIONAL USES

SECTION 5.2.100 CONDITIONAL USES.

Conditional uses are discretionary reviews that involve judgment or discretion in determining compliance with the approval requirements. The review is discretionary because not all of the approval requirements are objective. That is, they are not easily definable or measurable. The amount of discretion and the potential impact of the request vary among different reviews. Some have less discretion or impact, such as the reduction of a garage setback for a house on a hillside. Others may involve more discretion or potential impacts, such as the Discretionary reviews that must provide opportunities for public involvement by either a public hearing or the right to appeal. All conditions that are placed on an application shall be completed at the cost of the applicant. There are different application types that are considered conditional uses but below are the three most common types of conditional use applications.

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.

3. Variance (V)
   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. The authority to grant variances does not extend to use regulations, minimum lot sizes or riparian areas within the Coastal Shoreland Boundary.

Discretionary reviews contain approval criteria. Approval criteria are listed with a specific review and findings must be made to address such criteria. The criteria set the bounds for the issues that must be addressed by the applicant and which may be raised by the City or affected parties. A proposal that complies with all of the criteria will be approved. A proposal that can comply with the criteria with mitigation measures or limitations will be approved with conditions. A proposal that cannot comply with the criteria outright or cannot comply with mitigation measures will be denied.

Approval criteria have been derived from, and are based on the Comprehensive Plan, Statute, Rule and/or Oregon Statewide Planning Goals or any combination thereof. The Coos County Comprehensive Plan has been acknowledged by the Department of Land Conservation and Development. The identified enforceable policies have been incorporated into the Coos County Zoning and Land Development Ordinance. The county shall use the review criteria

set forth in the Coos County Zoning and Land Development Ordinance unless otherwise specified. Fulfillment of all requirements and approval criteria means the proposal is in compliance with the Comprehensive Plan and the implementing ordinance.

When approval criteria refer to the request meeting a specific threshold, such as adequacy of services or no significant detrimental environmental impacts, the review body will consider any proposed improvements, mitigation measures, or limitations proposed as part of the request when reviewing whether the request meets the threshold. All proposed improvements, mitigation measures, and limitations must be submitted for consideration prior to a final decision by a review body.

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 the zoning regulations and any other applicable requirements of this Ordinance.

SECTION 5.2.600 EXPIRATION AND EXTENSION OF CONDITIONAL USES

(1) Permits 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 is valid for four years.
    a. Extensions for Residential Development as 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) shall be granted as follows:
        i. First Extension - An extension of a permit for “residential development” as described in Subsection (1) above is valid for two (2) years.
            1. The applicant shall submit an application requesting an extension to the County Planning Department prior to expiration of the final decision. See Section 5.0.250 for time lines for final decisions. Untimely extension requests will not be processed.

2. Upon the Planning Department receiving the applicable application and fee, staff shall verify that the application was received within the deadline and if so issue an extension.
3. An extension of a permit as described in this section is not a land use decision as defined in ORS 197.015.

ii. Additional Extensions - A county may approve no more than five additional one-year extensions of a permit if:
1. The applicant submits an application requesting the additional extension prior to the expiration of a previous extension;
2. The applicable residential development statute has not been amended following the approval of the permit; and
3. An applicable rule or land use regulation has not been amended following the issuance of the permit, unless allowed by the county, which may require that the applicant comply with the amended rule or land use regulation.
4. An extension of a permit as described in this section is not a land use decision as defined in ORS 197.015.

(2) Permits approved under ORS 215.416, except for a land division and permits described in Subsection (1)(a) of this section, for 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, are void two years from the date of the final decision if the development action is not initiated in that period.
a. Extensions for Non-Residential Development as described in Subsection (2) above may be granted if:
i. The applicant submits an application requesting an extension to the County Planning Department prior to expiration of the final decision. See Section 5.0.250 for time lines for final decisions.
ii. The Planning Department receives the applicable application and fee, and staff verifies that it has been submitted within the deadline;
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.
b. An extension of a permit as described in this section is not a land use decision as defined in ORS 197.015.
c. Additional one-year extensions may be authorized where applicable criteria for the original decision have not changed, unless otherwise permitted by the local government.

(3) On lands not zoned Exclusive Farm, Forest and Forest Mixed Use:
a. All conditional uses for residential development including overlays shall not expire once they have received approval.
b. All conditional uses for nonresidential development including overlays shall be valid for period of five (5) years from the date of final approval.
c. Extension Requests:

i. All conditional uses subject to an expiration date of five (5) years are eligible for extensions so long as the subject property has not been:
    1. Reconfigured through a property line adjustment that reduces the size of the property or land division; or
    2. Rezoned to another zoning district in which the use is no longer allowed.

d. Extensions shall be applied for on an official Coos County Planning Department Extension Request Form with the fee.
e. There shall be no limit on the number of extensions that may be applied for and approved pursuant to this section.
f. An extension application shall be received prior the expiration date of the conditional use or the prior extension. See section 5.0.250 for calculation of time.

(4) Changes or amendments to areas subject to natural hazards[2] do not void the original authorization for a use or uses, as they do not determine if a use can or cannot be sited, but how it can be sited with the least amount of risk possible. Overlays and Special Development Considerations may have to be addressed to ensure the use can be sited with an acceptable level risk as established by Coos County.

SECTION 5.2.700 DEVELOPMENT TRANSFERABILITY

Unless otherwise provided in the approval, a land use approval that was obtained through a conditional use process shall be transferable provided the transferor files a statement with the Planning Director signed by the transferee. This document shall be recorded in the chain of title of the property, indicating that the transferee has been provided a copy of the land use approval containing all conditions or restrictions understands the obligation and agrees to fulfill the conditions, unless a modification is approved as provided in this ordinance. The property owner is responsible for ensuring compliance, and land use authorization shall remain recorded in the chain of title to alert a purchaser that development was approved subject to conditions and possible restrictions.

Land use permits that are not required to comply with this section if are:

1. Conditional uses that do not transfer with the property upon sale; and
2. Linear Projects as roads, trails, bikeways, sidewalks or utilities.

[2] Natural hazards are: floods (coastal and riverine), landslides, earthquakes and related hazards, tsunamis, coastal erosion, and wildfires.

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-INFLICTED 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, current owner(s) or previous owner(s) willful violation.

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. One of the following circumstances shall apply:
        i. 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;
        ii. 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
        iii. 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;
    b. 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.

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:
Variances are not subject to expiration dates.

ARTICLE 5.4 VESTED RIGHT

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 (RESERVED)

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 5.7.100 REVIEWING AUTHORITY

1. The Reviewing Authority as used in this section may consist of the Planning Commission, Board of Commissioners, Hearings Officer or Special Hearings Officers.
2. An impartial review authority should be free from potential conflicts of interest and prehearing ex-parte contacts as reasonably possible. It is recognized, however, that the public has a countervailing right of free access to public officials:
    a. Review Authority members shall disclose the substance of any prehearing ex-parte contacts with regard to the matter at the commencement of the next public hearing on the matter. The member shall state whether the contact has impaired the impartiality or ability of the member to vote on the matter and shall participate or abstain accordingly;
    b. A member of the Review Authority shall not participate in any proceeding or action in which any of the following has a direct or substantial financial interest: the member or the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, partner, any business in which the member is then serving or has served within the previous two (2) years; or any business with which the member is negotiating for, or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential conflicts of interest shall be disclosed at the meeting of the Review Authority where the action is being taken;
    c. Disqualification of a Review Authority member due to contacts or conflict may be ordered by a majority of the members present and voting. The person who is the subject of the motion may not vote;
    d. If all members abstain, or enough members that a quorum cannot be maintained are disqualified, the administrative rule of necessity shall apply. All members present who declare their reasons for abstention or disqualification shall thereby be requalified to act;
    e. Staff may confer with the Hearings Officer after the close of the record on technical review or procedural matters, but may not engage in argument or present additional evidence; and
    f. Staff may provide a summary of the issues to the Reviewing Authority prior to deliberation but may not present additional argument or evidence.
3. The Review Authority may set reasonable time limits for oral presentations. The Review Authority may determine not to receive cumulative, repetitious, immaterial, derogatory or abusive testimony. Persons may be required to submit written testimony in lieu of oral testimony if the Review Authority determines that a reasonable opportunity for oral presentations has been provided. No testimony shall be accepted after the close of the public hearing unless the Review Authority sets a deadline for such testimony and provides an opportunity for review and rebuttal prior to making a decision. Counsel for the Review Authority may be consulted solely on legal issues without reopening the public hearing. Objections alleging that counsel is discussing or testifying as to factual matters shall be heard at the discretion of the Review Authority. The presiding officer (Chair) shall preserve order at all public hearings and shall decide questions of order subject to a majority vote of the Review Authority. Persons who become disruptive or abusive may be ejected from the hearing.

4. Decision:
    a. Decision: After the record has been closed and all evidence submitted into the record has been reviewed the Review Authority shall:
        i. Approve or deny all or part of the application; or
        ii. Approve all or part with modifications or conditions of approval.
    b. Basis for Decision: An approval or denial of a development action shall be based upon substantial evidence in the record that addresses the pertinent standards and criteria set forth in the applicable provisions of state law, the Comprehensive Plan, Coos County Zoning and Land Development Ordinance and other applicable laws as determined by the Review Authority.
    c. Findings and Conclusions: The Review Authority shall provide brief and concise findings of fact, conclusions of law and an order for all development approvals, conditional approvals or denials. The findings and order shall set forth the criteria and standards considered relevant to the decision, state the facts relied upon and briefly indicate how those facts support the decision. In the case of denial, it shall be sufficient to address only those standards upon which the applicant failed to carry the burden of proof or, when appropriate, the facts in the record that support denial.
    d. Conditions of Approval: The Review Authority may impose conditions on any conditional use approval in compliance with Section 5.0.350.
    e. Appeal Deadlines: Appeal deadlines are set out in Section 5.0.900.

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.

i. 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:

ii. Be written on the group, company, or organization's official letterhead;
iii. Name the person authorized to appear on behalf of the group, company, or organization;
iv. Specify the scope of the authorization; and
v. 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.

b. 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.

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 in the form one original hard copy and one exact copy or one original hard copy and one electronic copy.

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 (2), or leave the record open for additional written arguments, evidence or testimony, in accordance with subsection (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(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 appellant was entitled to notice of the decision; or

2. 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 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 should 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 5.8.230 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 may 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 5.8.700 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 order[2], the request must be accompanied by the appropriate fee;

[2] Subsequent appeals could change the date of the final LUBA order.

2. Within 30 days of receiving the request a hearing will be scheduled before the Board of Commissioners.

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) is required to be obtained prior to obtaining permits from other agencies for building or sanitation installation or modification. However, there may be other types of reviews required before a ZCL may be issued. A compliance determination form must be submitted to verify compliance with regulations prior to the issuance of a ZCL 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;

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 ZCL 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); or

4. If a ZCL is required to maintain compliance for Medical/Family Hardship Dwellings and Home Occupation/Cottage Industries. These are valid for the specified time period set forth in the zoning district; or

5. If a ZCL letter is required as a condition of approval.

6. It meets one or more of the requirements under Sections 1.1.800.

The ZCL is valid for two years from the date it is issued unless it is issued for development or use that was subject to a final land use decision. In that case, the ZCL expire when that final land use decision expires. However, if the request for the ZCL has changed a new ZCL will be required prior to obtaining state permits.

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 and compliance determination has been completed, 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 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. This is not a land use decision but it is the mechanism to inform permitting agencies that the land use process has been completed. Uses or activities that do not require a building or sanitation permit from another agency are not required to obtain a ZCL from the Coos County Planning Department unless otherwise specified by this section of the ordinance.

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 is found to be incomplete, a notice of incompleteness will be issued consistent with CCZLDO Section 5.0.200(3). Applications will become void according to the timelines set forth in CCZLDO Section 5.0.200(6). If the project substantially changes with the additional information, an additional fee may be assessed to cover the extra review time.

Compliance determinations are nondiscretionary and are not subject to the additional timelines set forth in CCZLDO Section 5.0.200(2).

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 a conditional use is required the applicant is responsible for an additional fees and satisfying the criteria. 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:

1. If the compliance letter is needed for a sewage disposal system permits or evaluation; or

2. If a final land uses decision covering the property or site has been issued and is still valid.

3. If a compliance determination has previously been completed for the subject property and the request is an Accessory Activity, Use or Structure to that activity and/or use.

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 5.10.250 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 ACTIVES IN AN ESTUARY MANAGEMENT PLAN ZONE:

1. Compliance determinations will be reviewed for any permitted uses not subject to general conditions which require polices 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 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 review was required 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 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.

ARTICLE 5.11 GEOLOGIC ASSESSMENT REPORTS

SECTION 5.11.100 GEOLOGIC ASSESSMENT REQUIREMENTS

1. Applications for a geologic hazard review may be made concurrently with any other type of application required for the proposed use or activity. A review of the property must be conducted prior to any ground disturbance. All geologic hazard assessment reports shall include a description of the qualification of the licensed professional or professionals that prepared the assessment.
2. The applicant shall present a geologic hazard assessment report (geologic assessment) prepared by a qualified licensed professional competent in the practice of geosciences, at the applicant's expense, that identifies site specific geologic hazards, associated levels of risk, and the suitability of the site for the use and/or activity in view of such hazards. The geologic assessment shall include an analysis of the risk of geologic hazards on the subject property including the upslope and downslope properties that may be at risk from, or pose a risk to, the use and/or activity. The geologic hazard assessment shall also address the erosion impacts, any increase in storm water runoff, and any diversion or alteration of natural storm water runoff patterns resulting from the use and/or activity. The geologic hazard assessment shall include one of the following:
    a. A statement that the use and/or activity can be accomplished without measures to mitigate or control the risk of geologic hazard to the subject property resulting from the proposed use and/or activity;
    b. A statement that there is an elevated risk posed to the subject property by geologic hazards that requires mitigation measures in order for the use and/or activity to be undertaken safely sited on the property; or
    c. A certification that there are no geological hazards present on site. If such is certified by a licensed profession then an application is not required. Coos County is not liable for any type of certification that a geological hazard is not present on site.
3. If the assessment identifies any past or present risk then an administrative conditional use is required to evaluate such risk and if mitigation measures are necessary to ensure that proposed development can be safely sited. The assessment shall describe and recommend how the proposed use and/or activity will be adequately protected from geologic hazards, including land sliding and sloughing, soil erosion or deposition, and earthquakes.

   If structural requirements are part of the recommendation, then as a condition of approval, an engineering geologic report consistent with standard geologic practices and generally accepted scientific and engineering principles is required and shall, at a minimum, be consistent with the Oregon State Board of Geologist Examiners "Guidelines for Preparing Engineering Geologic Reports in Oregon". This shall be supplied to the planning department to be attached to a zoning compliance before a building permit may be obtained.

SECTION 5.11.200 GEOTECHNICAL APPLICATION REVIEWS

An application for a geotechnical review shall be reviewed under an administrative conditional use procedure unless Section 5.11.100.2 applies.

1. A geologic hazard assessment shall be deemed complete if the geologic report meets the content standards listed in Section 5.11.300.
2. Specific recommendations contained in the geologic report shall be incorporated into the approval as conditions. Based on content, recommendations and conclusions of the geotechnical report, the decision maker may apply other reasonable conditions.
3. The specific recommendations contained in the geotechnical report, and conditions applied to the geologic hazard permit shall be incorporated into the plans and specifications of the development which is the subject of the development permit.
4. The review requires an administrative application and all components shall be submitted with the Coos County Zoning and Land Development Ordinance (CCZLDO) §5.0.150 and Section 5.11.300. This review will be processed in accordance with Article 5.2.
5. At the discretion of the decision maker and at the applicant's expense, it may be required to have an evaluation of a geologic assessment by another expert as part of the review of a land use application located in an area subject to this section. The results of that evaluation shall be used in making the final decision on the effected land use application.
6. If § 5.11.100.2.b applies then prior to approval of the use and/or activity, the applicant shall provide a mitigation plan specific to the use and/or activity, including land divisions, and the approved geologic hazard mitigation report shall address the following:
    a. The mitigation plan must adequately address all issues identified in the geologic hazard mitigation report and must identify any potential appropriate protection methods for the subject property;
    b. The mitigation plan shall specify which, if any, measures and improvements must be installed or constructed under the direction of a supervising engineer;
    c. The applicant shall, prior to the issuance of any development permits, record on the title to the subject property a notification that includes a description of the measures or improvements and that also specifies the obligation of the property owners to refrain from interfering with such measures or improvements and to maintain them; and
    d. A schedule of inspections to be completed by the geologist or engineer to assure compliance with recommendations.

SECTION 5.11.300 APPLICATION AND DEVELOPMENT STANDARDS FOR GEOTECHNICAL APPLICATIONS:

The review and approval of a conditional use in a Geologic Hazard Special Development Consideration area shall be based on the conformance of the proposed development plans with the following standards. Conditions of approval may be imposed on the development permit to assure that the development plan meets the standards of this section and to prevent the creation of a hazard to public or private property.

1. All Geologic Assessments are valid as prima facie evidence of the information therein contained for a period of five (5) years. Coos County assumes no responsibility for the quality or accuracy of such reports.
2. The geologic assessment shall include the following:
    a. A topographic plot plan that shall include to scale:
        i. All adjacent, contiguous and related property identified in the geologic hazard assessment as being at risk from, or posing a risk to, the use and/or activity;
        ii. The degree of slope on the subject and adjacent properties;
        iii. All features on the subject and adjacent properties that may cause or contribute to mass movement. Such features shall specifically include any landslide, bluff failure or shoreline erosion that could migrate upslope into the subject or adjacent properties;
        iv. The location of all identified geomorphic features and micro-topographic features related to the identified geologic hazards;
        v. All on site or adjacent features or conditions, which contribute to the hazard or risk from the hazard(s); and
        vi. A map that depicts features and conditions associated with any building site or construction site associated with the development activity.
    b. A technical analysis and narrative describing the following:
        i. The geologic features or conditions of the property as well as those features or conditions which gave rise to the hazard from the use and/or activity;
        ii. All features related to earth movement or geologic instability on adjacent touching parcels or lots to the site;
        iii. The results of all geologic and/or engineering tests performed on soils, material, and rock type subsurface data from drill holes, or other data obtained from the site investigation with data points clearly identified on a map;
        iv. Whether the proposed development activity can be sited in a manner to mitigate the substantial risk to the subject property in view of the geological hazards and risks that have been identified in the geologic assessment;
        v. All features related to earth movement or geologic instability on, adjacent to, upslope or downslope from the subject property;
        vi. A clear statement of all requirements or conditions on the use and/or activity that the geologist has determined are necessary to mitigate the geologic hazards that require mitigation; and

vii. A schedule of inspections to be completed by the geologist or engineer to assure compliance with recommendations.

3. Additional Standards for Oceanfront Development. In addition to the requirements set forth in this subsection, geotechnical assessments for lots or parcels abutting the ocean shore shall include the following information, analyses, and recommendations:
    a. Site description:
        i. The history of the site and surrounding areas, such as previous riprap or dune grading permits, erosion events, exposed trees on the beach, or other relevant local knowledge of the site;
        ii. Topography, including elevations and slopes on the property itself;
        iii. Vegetation cover;
        iv. Subsurface materials – the nature of the rocks and soils;
        v. Conditions of the seaward front of the property, particularly for sites having a sea cliff;
        vi. Description of streams or other drainage that might influence erosion;
        vii. Description of any shore protection structures that may exist on the property; and
        viii. Presence of pathways or stairs from the property to the beach.

    b. Analyses of erosion and flooding potential:
        i. Analysis of DOGAMI beach monitoring data for the site, if available;
        ii. Analysis of possible mass wasting, including weathering process, land sliding, or slumping;
        iii. Calculation of wave run-up beyond mean water elevation that might result in erosion of the sea cliff or foredune (see Stockdon, 2006[3]);
        iv. Evaluation of frequency that erosion-inducing processes could occur, considering the most extreme potential conditions of unusually high water levels together with severe storm wave energy;
        v. For dune-backed shoreline, use established geometric model to assess the potential distance of property erosion, and compare the results with direct evidence obtained during a site visit, aerial photo analysis, and/or analysis of DOGAMI beach monitoring data;
        vi. For bluff-backed shoreline, use a combination of published reports, such as DOGAMI bluff and dune hazard risk zone studies, aerial photo analysis, and field work, to assess the potential distance of property erosion; and
        vii. Description of potential for sea level rise, estimated for local area by combining local tectonic subsidence or uplift with global rates of predicted sea level rise.

[3]Stockdon, Hilary F., Rob A. Holman, Peter A. Howd, and Asbury H. Sallenger."Empirical Parameterization of Setup, Swash, and Runup."Coastal Engineering, 2006, 573-88.Accessed January 14, 2016. https://www.researchgate.net/publication/223784721_Empirical_parameterization_of_setup_swash_and_runup_Coast_Eng.

c. Assessment of potential reactions to erosion episodes:
    i. Determination of legal restrictions of shoreline protective structures (Goal 18 prohibition, local conditional use requirements, priority for non-structural erosion control methods); and
    ii. Assessment of potential reactions to erosion events, addressing the need for future erosion control measures, building relocation, or building foundation and utility repairs.

d. Recommendations:
    i. Use results from the above analyses to establish setbacks (beyond any minimums set by this section), building techniques, or other mitigation to ensure an acceptable level of safety and compliance with all local requirements;
    ii. Recommend a plan for preservation of vegetation and existing grade within the setback area, if appropriate;
    iii. The applicant may apply for a variance if the recommendations show that a reduction to a property setback on the side of the property opposite the ocean, if this reduction helps to lessen the risk of erosion, bluff failure or other hazard; and
    iv. Recommend methods to control and direct water drainage away from the ocean (e.g. to an approved storm water system), or if not possible, to direct water in such a way so as to not cause erosion.

ARTICLE 5.12 LIMITED LAND USE NOTICES

ORS 197.360 ("Expedited land division" defined):

(1)(a) If the application for expedited land division is incomplete, the local government shall notify the applicant of exactly what information is missing within 21 days of receipt of the application and allow the applicant to submit the missing information. For purposes of computation of time under this section, the application shall be deemed complete on the date the applicant submits the requested information or refuses in writing to submit it.

(b)If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted, 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.

(2)The local government shall provide written notice of the receipt of the completed application for an expedited land division to any state agency, local government or special district responsible for providing public facilities or services to the development and to owners of property within 100 feet of the entire contiguous site for which the application is made. The notification list shall be compiled from the most recent property tax assessment roll. For purposes of appeal to the referee under ORS 197.375 (Appeal of decision on application for expedited land division), this requirement shall be deemed met when the local government can provide an affidavit or other certification that such notice was given. Notice shall also be provided to any neighborhood or community planning organization recognized by the governing body and whose boundaries include the site.

(3)The notice required under subsection (2) of this section shall:

(a)State:

(A)The deadline for submitting written comments;

(B)That issues that may provide the basis for an appeal to the referee must be raised in writing prior to the expiration of the comment period; and

(C)That issues must be raised with sufficient specificity to enable the local government to respond to the issue.

(b)Set forth, by commonly used citation, the applicable criteria for the decision.

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

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

(e)State a time and place where copies of all evidence submitted by the applicant will be available for review.

(f)Include the name and telephone number of a local government contact person.

(g)Briefly summarize the local decision-making process for the expedited land division decision being made.

(4)After notice under subsections (2) and (3) of this section, the local government shall:

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

(b)Make a decision to approve or deny the application within 63 days of receiving a completed application, based on whether it satisfies the substantive requirements of the local government's land use regulations. An approval may include conditions to ensure that the application meets the applicable land use regulations. For applications subject to this section, the local government:

(A)Shall not hold a hearing on the application; and

(B) Shall issue a written determination of compliance or noncompliance with applicable land use regulations that includes a summary statement explaining the determination. The summary statement may be in any form reasonably intended to communicate the local government's basis for the determination.

(c)Provide notice of the decision to the applicant and to those who received notice under subsection (2) of this section within 63 days of the date of a completed application. The notice of decision shall include:

(A)The summary statement described in paragraph (b)(B) of this subsection; and

(B)An explanation of appeal rights under ORS 197.375 (Appeal of decision on application for expedited land division).

ARTICLE 5.13 MEASURE 49 CLAIMS AND PROCESS

Measure 49 modifies Ballot Measure 37 (2004) to ensure that Oregon law provides just compensation for unfair burdens while retaining Oregon's protections for farm and forest uses and the state's water resources. Measure 49 has two main parts: the first part concerns Measure 37 claims that were filed on or before June 28, 2007; the second part addresses new Measure 49 claims. The first part of Measure 49 replaces the two alternate remedies of Measure 37 (a waiver of land use regulations or the payment of compensation) with an approval for claimants to establish a specific, but limited, number of home sites. This home site approval is provided as a form of compensation for land use regulations imposed after owners acquired their properties. It is available only for claimants who filed Measure 37 claims on or before June 28, 2007. The second part of Measure 49 concerns the filing of new claims, which may be based on land use regulations enacted only after January 1, 2007. As with Measure 37, Measure 49 provides either compensation or waivers for new land use regulations. However, Measure 49 defines the category of land use regulations that are eligible for relief more narrowly, to include only those regulations that limit residential uses of property or that restrict farming or forest practices. In addition, under Measure 49, relief is provided only if the owner demonstrates that the new regulations have reduced the value of property. For claims based on regulation of residential uses, claimants are exempted from regulation only to the extent necessary to allow additional residential development of a value comparable to the value lost as a result of the regulation.

The first part of Measure 49 applies to all Measure 37 claims that were filed on or before June 28, 2007, whether those claims were approved or pending. If a claimant elects to seek relief under Measure 49, the state must undertake a supplemental review of the relevant Measure 37 claim(s). The supplemental review will verify claimant ownership of the property, when the claimant acquired the property and the number of home sites that the claimant could have developed when the property was acquired. At the end of the supplemental review, the claimant will receive an order indicating what the claimant is approved for in terms of additional land divisions and/or dwellings. What claimants are approved for depends on where the property is located, when the claimant acquired the property and what the claimant asked for under Measure 37.

Most Measure 37 claims were filed for property located in rural parts of the state—land outside any UGB and any city. Claims for property located entirely outside any UGB and any city are eligible for relief under two options: an Express option that may allow up to three home sites, and a Conditional option that may allow up to 10 home sites. The Conditional option is not available for property with certain special designations and requires proof that the value of the claimant's property was reduced. Under both options, however, the claimant must have had the right to develop the additional home sites when the property was acquired. Verifying what claimants could have done when they acquired their property is the main focus of the supplemental review under Measure 49.

A claimant with a Measure 37 waiver who has begun the development described in the waiver may proceed under Measure 37 if the use of the property complies with the waiver and the claimant has a common law vested right to complete and continue the use. In areas of the state outside a UGB, claimants must have waivers from both the local government and the state. Generally, claimants also will need to have received land use permits for their uses and to have at least begun construction of their uses, before they will have vested rights. Additional information concerning vested rights is contained in guidance from the state that is available on the DLCD website at http://www.oregon.gov/LCD/MEASURE49. Claims for non-residential uses filed under Measure 37 for property outside any UGB and any city may be amended to seek approval for residential uses under Measure 49. Other non-residential uses may continue only to the extent they are vested.

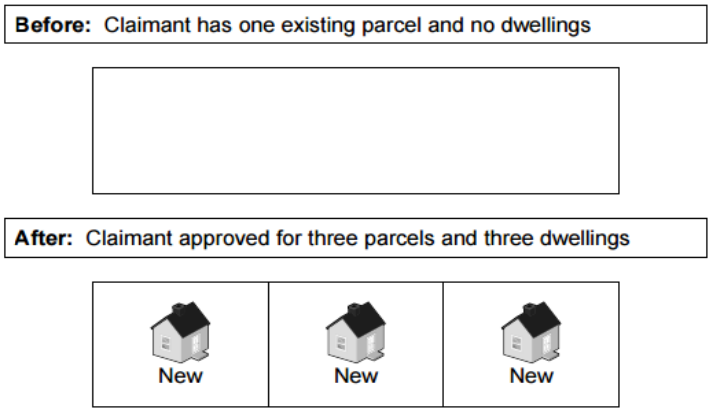
Measure 37 claims filed after June 28, 2007, are treated as new Measure 49 claims. Such claims are eligible for waivers or compensation under Measure 49 only if they are based on new land use regulations (those enacted after January 1, 2007) and only to the extent the claim demonstrates that the new regulation(s) has reduced the value of the property. New Measure 49 claims require proof that a regulation (those enacted after January 1, 2007) has reduced the value of your property. You have five years from the date the new regulation was enacted to file a new claim. Measure 49 requires public entities to compensate claimants for the effect of new land use regulations or to waive those regulations. However, the types of regulations that trigger claims are more limited under Measure 49. They include the following:

- State statutes that establish a minimum lot or parcel size;
- State statutes in ORS chapter 215 that restrict the residential use of private real property;
- Provisions in the Comprehensive Plans, zoning ordinances or land division ordinances that restrict the residential use of private real property "zoned for residential use" ;
- Certain statutes and rules that restrict forest practices or farming practices; and

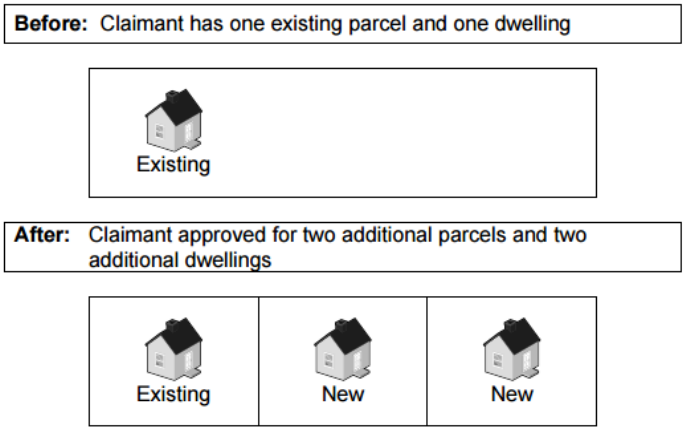
- Statewide planning goals and administrative rules of the Land Conservation and Development Commission.

Most common approved claims are referred to as the Express option. The number of lots, parcels or dwellings that may be approved under the Express option is limited to three. In addition, the number cannot exceed the number in the claimant's Measure 37 claim or waiver, if one was issued. If the property already contains one or more dwellings or more than one parcel, then neither the total number of dwellings nor parcels can exceed three. However, if a claimant's property already contains three or more parcels and three or more dwellings, the claimant may receive one more parcel and one more dwelling if the claimant otherwise qualifies under Measure 49. If a claimant's property already contains three parcels and has two or fewer dwellings, the claimant can receive only additional dwellings. The following diagrams illustrate some possibilities under the Express option.

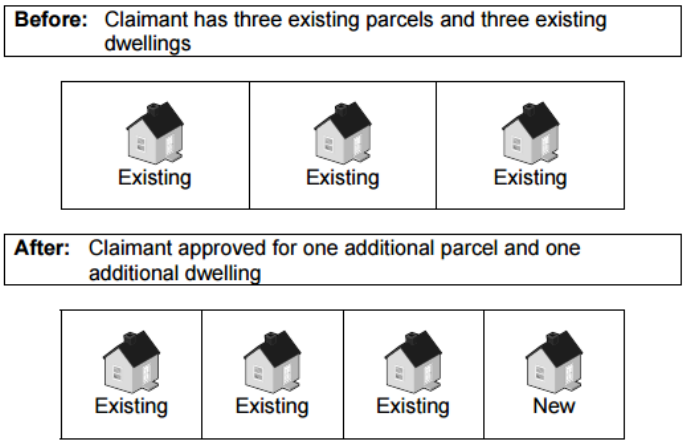
Express Option Example 1



Express Option Example 2



Express Option Example 3



SECTION 5.13.100 ONCE A CLAIM HAS BEEN RECEIVED

Once a claimant has received an approval under Measure 49, there is no time limit on when the claimant may carry out the development of the property. However, if the claimant sells the property, the claim will transfer but the purchaser only has ten (10) years to complete the development. The division of the property, and any dwellings, approved under Measure 49 are treated as permitted uses even if they would not otherwise be allowed under the zoning for the property.

The claimant will still need to apply for a subdivision or partition approval to divide the property, and for a building and development permit for any dwellings. Subdivisions, partitions and dwellings approved under Measure 49 must comply with all current applicable siting and development standards, except to the extent that the application of the development standards would prohibit the use. (There is an exception to this exception, in that standards that are "reasonably necessary to protect public health or safety or carry out federal law" must be applied

even if the effect would be to prohibit the use.) In addition, newly-created lots or parcels in an exclusive farm use (EFU), forest or mixed farm-forest zone may not exceed two acres, if located on land that is high-value farm- or forestland or in a ground water restricted area; or five acres otherwise. In addition, if the property is in an EFU, forest or mixed farm-forest zone, the new lots or parcels must be clustered "so as to maximize the suitability of the remnant lot or parcel for farm or forest use." A claimant with home site approvals on more than one property may cluster some or all of the dwellings, lots or parcels to which the claimant is entitled on one of the properties.

SECTION 5.13.110 PROCESS

The applicant is required to submit a tentative plan regarding development that is based on a Measure 49 claim. The plan will be provided to the Department of Land Conservation and Development (DLCD) for a 30 day comment period. Sometimes Measure 49 claims mistakenly have counted tax lots as parcels in the claims. Tax lots do not created legal parcels. Staff will review the property to determine if there are legal parcels established already or if they will be required to be divided to meet the intent of the Measure 49 claim. This will be done at the time the tentative plan is completed.

Once that has expired and as long as there are no negative comments regarding compliance with the Measure 49 claim form DLCD an applicant may applied for a partition. The minimum lots sizes and dimensions will be waived and replaced with the requirements of the waiver when creating and applying for a partition.

If any other land use actions are taken on the property under current law to site a dwelling, establish legally created parcels or land division this will reduce the number of dwellings and parcels granted by the Measure 49 claim.

Measure 49 claims do exempt health and safety rules such as hazards and road standards established in Article 4.11 and Chapter VII. Land divisions are subject to standards set out in Article 6.2.

ARTICLE 5.14 SIMILAR USE DETERMINATIONS:

It is recognized that in the development of a Comprehensive Zoning and Land Development Ordinance, not all uses of land and water can be listed, nor can all future uses be anticipated. A "use" may have been inadvertently omitted from the list of those specified as permitted or conditional in each of the various districts designated. Ambiguity may arise concerning the appropriate classification of a particular use within the meaning and intent of this Ordinance.

SECTION 5.14.100 PROCESS FOR DETERMINING A SIMILAR USE:

1. The similar determination of a use may be approved by the Planning Director, or may be referred to the Board of Commissioners for consideration.

2. To classify a similar use the Planning Director must find that the proposed use to be added is similar and not more obnoxious or detrimental to the public health, safety, and welfare as other uses listed in the respective zoning district.

3. Notice of any decision to classify a new use shall be published in a newspaper of general circulation at least ten (10) days prior to the effective date of the decision, and shall be subject to appeal pursuant to Article 5.8. Decisions to classify a new use may be appealed following the procedures of Article 5.8.

4. Any decision to classify a use pursuant to this section shall be entered in a registry available to the public setting forth:

    a. The street address or other easily understood geographic reference to the subject property;

    b. The date of the decision; and

    c. A description of the decision made.

5. New classified uses shall be subject to all other requirements of this Ordinance. This is a case-by-case basis and is subject to a conditional use review and will not change the list of uses for all properties within a zoning district.

6. Any new use classified for an Exclusive Farm Use or Forest zone must comply with ORS 215 and requirements of applicable case law and administrative rules. [OR-92-07-012PL]