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5 **BEFORE THE BOARD OF COMMISSIONERS**  
6 **FOR LINCOLN COUNTY, OREGON**  
7 **ORDINANCE # 538**

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**Related to land use planning; amending Lincoln County Code (LCC) Chapter One regarding**  
11 **Administration; and declaring an emergency**

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12  
13 WHEREAS, Chapter One of the Lincoln County Code (LCC) is entitled “Land Use  
14 Planning”; and

15 WHEREAS, Chapter One of the LCC contains a number of sections dealing with  
16 administration of the land use process in Lincoln County; and

17 WHEREAS, these administrative sections are in need of updating to reflect changes in  
18 the Oregon Revised Statutes and Oregon Administrative Rules which now require amendments  
19 to the LCC itself; and

20 WHEREAS, the current administrative procedure in LCC Chapter One is also in need of  
21 some “housekeeping” to recognize current land use practices in Lincoln County, to address  
22 additional procedures not previously covered in the LCC but which are part of the land use  
23 process, to adopt more current terminology, to delete unnecessary restrictions and procedures,  
24 and to correct internal inconsistencies and typos, and;

25  
26 WHEREAS the Lincoln County Planning Commission, pursuant to a duly noticed  
27 hearing, adopted on September 9, 2024 an Order making a recommendation that the Board of  
28 Commissioners adopt the legislative amendment to LLC Chapter One.

29 **NOW, THEREFORE, THE LINCOLN COUNTY BOARD OF COMMISSIONERS**  
30 **ORDAINS AS FOLLOWS:**

31 **SECTION 1: AMENDMENT OF LCC CHAPTER ONE**

32 Chapter One of the LCC is amended as outlined in Attachment “A” that is incorporated by  
33 reference.  
34

35 **SECTION 2: SEVERANCE CLAUSE**

36 If any section, subsection, provision, clause or paragraph of this Ordinance shall be  
37 adjudged or declared by any court of competent jurisdiction to be unconstitutional or invalid,  
38 such judgement shall not affect the validity of the remaining portions of this Ordinance, and it  
39 shall be expressly declared that every other section, subsection, provision, clause or paragraph of  
40 this Ordinance enacted, irrespective of the enactment or validity of the portion thereof declared  
41 to be unconstitutional or invalid, is valid.

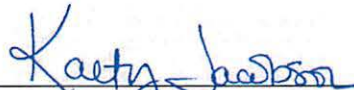
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43 **SECTION 3: EMERGENCY CLAUSE**

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45 This Ordinance being necessary for the immediate preservation of the public health and  
46 safety, an emergency is declared to exist, and this Ordinance shall take effect upon its passage.

47  
48 DATED this 8th day of January, 2025.

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50 **LINCOLN COUNTY BOARD OF COMMISSIONERS**

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54 Claire Hall, Chair

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58 Kaety Jacobson, Commissioner

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62 Casey Miller, Commissioner

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65 ATTESTED TO:

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69 Kathleen Kellay, Recorder

APPROVED AS TO FORM:

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\_\_\_\_\_   
Kristin Yuille, County Counsel

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ADMINISTRATION

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- 1.1288 **Application for a LCC Chapter 1 Interpretation**
- 1.1290 **Review of Similar Uses**
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- 1.1297 **Final Action on Remand from LUBA**

Note: Matter in boldfaced type in an amended section is new; matter in [italic and bracketed] is existing ordinance to be omitted. New sections are in boldfaced type.

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ADMINISTRATION

**1.1200 Purpose**

The purpose of LCC 1.1200 to 1.1297 is to establish procedures for approval of development required by this Ordinance, appeals from aggrieved persons and parties, and review of any decision by a higher authority.

**1.1201 [Planning] Commission Membership**

The requirement for membership, qualifications, voting and participation for the [*Lincoln County Planning*] Commission shall be as follows:

(1) **Membership:** The [*Lincoln County Planning*] Commission shall consist of ~~13~~ **9** voting members appointed by the [*Lincoln County*] Board [*of Commissioners*]. **Members of the Commission shall be residents of the various geographic areas of the county. No more than two members of the Commission shall be engaged in the same kind of occupation, business, trade or profession. No more than two of the members shall be engaged principally in the buying, selling or developing of real estate for profit, as individuals, or be members of any partnership or officers or employees of any corporation that is engaged principally in the buying, selling or developing of real estate for profit.**

**(2) Terms and Vacancies [*Categories of Membership*]:**

*[(a) Of the 13 members of the Planning Commission, nine commissioners shall be regular members, three commissioners shall be alternate members and one commissioner shall be an ex-officio member.]*

*[(b)] (a) The terms of [regular and alternate] members shall be four years, or until their respective successors are appointed and qualified. [The term of the ex-officio member shall be one year.]*

**(b) Any vacancy on the Commission shall be filled by the Board, including any unexpired term.**

**(3) Qualifications:** All [*Planning*] Commission members shall be ~~citizens~~ **residents** of Lincoln County, and at least **18 years of age**. *[and the ex-officio shall be a high school senior student.]*

**(4) Quorum and Voting:** *[and Participation in Decision Making]* **Five members shall constitute a quorum. At least five affirmative (aye) votes shall be required to carry a motion. [Only regular members of the Lincoln County Planning Commission shall vote on matters before the Commission unless a regular member or members are not present. If nine regular members are not present, alternate members shall participate after appointment by the chairperson and have full authority to vote as if a regular member. In no case shall more than nine regular or alternate members vote on a decision before the Commission. The ex-officio member shall be allowed to participate in the decision making process of the Commission but may not vote on any official matter before the Commission.]**

**(5) Removal from the Planning Commission:** Members of the Lincoln County Planning Commission shall only be removed *[for cause as set forth in the bylaws adopted by resolution of the Planning Commission]* **by the Board, after a hearing, for misconduct or non-performance of**

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**duty. Nonperformance of duty includes, but is not limited to, having two or more unexcused absences in a calendar year.**

(6) **Application:** Except as otherwise provided for in this section, the provisions of ORS chapter 215 shall apply to the membership and operation of the [*Lincoln County Planning*] Commission.

(7) **Bylaws:** The Board by resolution shall establish bylaws governing the Commission.

**1.1202 Coordination of Development Approval**

The review of all applications shall be a coordinated process between various County departments and other affected agencies.

(1) The Director shall be responsible for the coordination of application review procedures.

(2) After an application for development has been submitted, no on-site sewage disposal permit, building permit or license for the proposed use shall be issued until final action including the resolution of all local appeals has been taken. Following final action on the application, the issuance of permits or licenses shall be in conformance with the applicable requirements of this chapter, and any conditions of development approval.

**1.1203 Who May Apply**

Applications for development approval or division of property or amendment to the Comprehensive Plan and/or Zoning map may be initiated by one or more of the following:

(1) The owner(s) of the property as listed in the records of the County Assessor which is the subject of the application; or

(2) The purchaser of such property who submits a duly executed written contract or copy thereof which has been recorded with the County Clerk; or

(3) The lessee in possession of such property who submits written consent of the owner to make such application; or

(4) A person or entity authorized by resolution of the Board or Commission; or

(5) Any department of County government (when authorized by The County Administrator) or a federal, state or local government entity when dealing with land involving public works or economic development projects; or

(6) A public utility or transportation agency, when dealing with land involving the location of facilities necessary for public service; or

(7) The agent of any of the foregoing who states on the application that he/she is the duly authorized agent and who submits evidence of being duly authorized in writing by his/her principal; or

(8) The Board.

**1.1204 Pre-Application Conference**

An applicant shall request a pre-application conference prior to submitting an application for a Type II or Type III review. The purpose of the conference shall be to acquaint the applicant with the substantive and procedural requirements of the Ordinance, provide for an exchange of information regarding applicable elements of this chapter and any

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other County requirements and policies, review technical and design requirements, and to identify policies and regulations that create opportunities or pose significant restraints for the proposed development.

**1.1205 Application Procedures**

*[Petitions,]-A[a]pplications, and appeals provided for in this chapter shall be made on forms prescribed by the **Planning D[d]ivision**. Applications shall be accompanied by plans, specifications, and such other information as specified on the application form **and shall include any other information deemed necessary by the Director to permit a complete review of the application.** *[An application shall be deemed complete 30 days after receipt by the division unless the applicant receives prior written notice from the division that the application is incomplete.]*-An applicant may apply at one time for all approvals and amendments required by this chapter for a development project. County action on a consolidated application is subject to the time limitations provided in **LCC 1.1207**. *[ORS 215.428]. [1995 o.255 §1]**

**1.1206 Completeness**

- (1) The Director shall date stamp the date of submission of application materials.**
- (2) If an application for a Type II or Type III review is incomplete, the Director 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. Incomplete applications may be voided subject to the criteria specified in subsection (5) below.**
- (3) If an application for a Type II or Type III review is complete upon submittal the application is deemed complete for the purposes of this subsection on the date of submittal.**
- (4) If an application for a Type II or Type III review is determined to be incomplete upon submittal pursuant to subsection (2) of this section, it shall be deemed complete for purposes of this subsection within 180 days of the date of submission under subsection (1) above upon receipt by the Director 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.****
- (5) On the 181st day after first being submitted, an application for a Type II or Type III review is void if the applicant has been notified of missing information pursuant subsection (2) above and has not provided the submittals prescribed in subsection (4)(a) through (b) of this section.**

**1.1207 Time Limits for Type II and Type III Reviews**

- (1) Except as provided in subsections (3) and (8) of this section, for land within an urban growth boundary and applications for mineral aggregate extraction, the county shall take final action on a Type II or Type III review, including resolution of all appeals provided for in this chapter, within 120 days after the application is deemed complete. The County shall take final action on all other applications for a Type II or Type III review, including**

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resolution of all appeals provided for in this chapter, within 150 days after the application is deemed complete, except as provided in subsections (3) and (8) of this section.

**(2)(a)** If an application for a Type II or Type III review is complete when first submitted or is deemed complete pursuant to LCC 1.1206, 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.

**(b)** If the application is for industrial or traded sector development of a site identified under section 12, 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 that the application complies with paragraph (a) of this subsection.

**(3)** The period set forth in subsection (1) of this section or the 100-day period set forth in ORS 197.311 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 subsection (8) of this section for mediation, may not exceed 215 days.

**(4)** The period set in subsection (1) of this section applies:

**(a)** Only to decisions wholly within the authority and control of the Board; and

**(b)** Unless the parties have agreed to mediation as described in subsection (8) of this section or ORS 197.319(2)(b).

**(5)** Notwithstanding subsection (4) of this section, the period set in subsection (1) of this section and the 100-day period set in ORS 197.311 do not apply to a decision of the County making a change to an acknowledged comprehensive plan or a land use regulation that has been submitted to the Director of the Department of Land Conservation and Development under ORS 197.610.

**(6)** Except when an applicant requests an extension under subsection (3) of this section, if the Board or its designee does not take final action on an application within the applicable time limits prescribed in subsection (1) of this section 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 County 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.

**(7)** The County may not compel an applicant to waive the period set forth in subsection (1) of this section or to waive the provisions of subsection (6) of this section or ORS 197.311 or 215.429 as a condition for taking any action on an application for Type II or Type III review except when such applications are filed concurrently and considered jointly with a plan amendment.

**(8)** The periods set forth in subsections (1) and (3) of this section and ORS 197.311 may be extended by up to 90 additional days, if the applicant and County agree that a dispute concerning the application will be mediated.

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**1.1209 Review Types**

All applications provided for in this chapter will be reviewed by the County using one of the following review types:

(1) **Type I Ministerial Review.** Decisions on Type I reviews are made by the Director, without public notice and without a public hearing. Type I reviews involve permitted uses or development governed by clear and objective approval criteria that do not require the use of discretion.

(2) **Type II Administrative Review.** Decisions on Type II reviews are made by the Director and include notice and an opportunity to appeal to the Commission or designated hearings body. Alternatively, the Director may refer an application for a Type II review to the Commission or designated hearings body without a decision, in which case review is conducted in accordance with a Type III procedure. Type II reviews involve application of existing review criteria that require the exercise of discretion.

(3) **Type III Public Hearing Review.** Decisions on Type III reviews (with the exception of a quasi-judicial map amendment) are made by the Commission or designated hearings body following public notice and a public hearing. A decision by the Commission or a designated hearings body on a Type III review may be appealed to the Board. A decision on a quasi-judicial map amendment is a Type III decision made by the Board after a public hearing before and recommendation by the Commission or designated hearings body. Type III reviews involve the application of existing policies and criteria that require the exercise of discretion and judgment.

(4) **Type IV Legislative Review.** Type IV reviews are initially considered by the Commission, which after conducting a public hearing makes a recommendation to the Board. Thereafter, the Board makes a final decision on a legislative proposal. Legislative decisions involve the creation, broad-scale implementation, or revision of public policy through amendment of the comprehensive plan or implementing land use regulations. Legislative amendments subject to Type IV review include amendments to the text of the comprehensive plan and land use regulations and amendments to the County's comprehensive plan and zoning map where a large number or entire class of property owners are directly affected.

**1.1210 Review Procedures**

The review of applications received under the provisions of this chapter shall be conducted according to the following procedures:

(1) **Type I Procedures** [*Procedure for action by the division on ministerial application not subject to notice requirements:*]

(a) [*The property owner or authorized agent*] **A party described in section 1.1203** shall submit an application to the **Planning D[d]ivision**.

(b) Upon [*determination that*] **receipt of an** application [*is complete,*] the **Planning D[d]ivision** may refer the application to affected cities, districts, local, state or federal agencies for comments.

(c) [*Within 10 days of determining an application complete, or such longer period as mutually agreed to by the division and the applicant,*] **T[t]he Planning D[d]ivision, without public**

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**notice or hearing**, shall approve or deny [*or, at the D[d]irector's discretion, refer*] the application. [*to the Planning Commission for consideration*]

(d) The applicant shall be notified in writing of the **Planning D[d]ivision's action. The decision is final on the date it is signed by the Director. A decision on a Type I review is not a land use decision as defined by ORS 197.015, and therefore is not subject to appeal to the Land Use Board of Appeals.**

(e) [*All actions*] **Decisions of the Planning D[d]ivision on Type I review may be appealed to the [Planning] Commission or other hearings body designated by the Board [of Commissioners] pursuant to LCC 1.1267.**

**(f) If in the sole discretion of the Director an application otherwise classified in this chapter as a Type I review presents unique circumstances that require the exercise of discretion in rendering a decision, the Director shall conduct the review of the application in accordance with Type II procedures set forth in subsection (2) of this section.**

(2) [*Procedure for action by the division on applications for permits as defined in ORS 215.402(4).*]**Type II Procedures**

(a) [*The property owner or authorized agent*] **A party described in LCC 1.1203 shall submit an application to the Planning D[d]ivision.**

(b) [*Upon determination that*] **When the application is deemed complete pursuant to LCC 1.1206, the Planning D[d]ivision may refer the application to affected cities, districts, and local, state or federal agencies for comments, and shall refer the application to the Oregon Department of Transportation and other public agencies providing transportation facilities and services that may be impacted by the application.**

(c) [*Within 30 days of determining an application complete, or such longer period as mutually agreed to by the division and the applicant,*] **T[t]he Planning D[d]ivision shall approve, deny or, at the D[d]irector's discretion, refer the application to the Planning Commission or designated hearings body for consideration at a public hearing.**

(d) Notice of a decision of the **Planning D[d]ivision** to approve or deny an application shall:

(A) Be provided to the applicant and the owners of record of property on the most recent tax assessment roll of Lincoln County:

(i) Within [*500 feet of the boundaries of the subject property in A-C and T-C zones*] **250 feet of the property that is the subject of the notice when the subject property is wholly or in part within an urban growth boundary.**

(ii) Within [*250 feet of the subject property in all other zones*] **250 feet of the property that is the subject of the notice when the subject property is outside an urban growth boundary and not within the Agricultural Conservation Zone (A-C) or Timber Conservation Zone (T-C).**

(iii) **Within 750 feet of the property that is the subject of the notice when the subject property is within the Agricultural Conservation Zone or Timber Conservation Zone.**

(B) Be provided to any neighborhood or community organization recognized by the Board [*of Commissioners*] and whose boundaries include the subject property;

(C) Be provided to the Oregon Department of Transportation if the Oregon Department of Transportation has responded to the agency referral provided in accordance with paragraph (b) of

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subsection (2) of this section, and to the Department of Land Conservation and Development, at the discretion of the applicant;

(D) Explain the nature of the decision and the use or uses which could be authorized;

(E) List the applicable criteria from this chapter that apply to the subject decision;

(F) Set forth the street address or other easily understood information identifying the location of the subject property;

(G) State that a copy of the application, all documents relied upon by the applicant, and the applicable criteria are available for inspection at the Planning Division office at no cost and can be provided at a reasonable cost;

(H) State that a copy of the Planning Division's staff report and record of decision is available for inspection at no cost and can be provided at a reasonable cost;

(I) Provide the name and telephone number of the Planning Division staff person to contact for additional information; and

(J) Provide an explanation of the procedure and deadline for appealing the decision to the Planning Commission or designated hearings body for a public hearing.

(3) *[Procedure for action on applications or appeals subject to public hearing requirements:]* **Type III Procedures:**

(a) *[The property owner, agent or other]* **A party described in LCC 1.1203 shall submit an application or appeal to the Planning Division.**

(b) *[Within five days of determining the application or appeal complete;]* **Upon receipt of the application or appeal, the Planning Division shall schedule the matter for public hearing before the Planning Commission or designated hearings body.**

(c) *[Upon determination that the application or ]* **When the application is deemed complete pursuant to LCC 1.1206, *[appeal is complete]* the Planning Division may refer the application to affected cities, districts, and local, state or federal agencies for comments, and shall refer the application to the Oregon Department of Transportation and other public agencies providing transportation facilities and services that may be impacted by the application.**

(d) Notice for, and conduct of, public hearings provided for in this section shall be in accordance with LCC 1.1250 and 1.1255.

(e) Decisions of the *[Planning]* Commission or designated hearings body may be appealed to the Board *[of Commissioners]* pursuant to LCC 1.1268. *[1995 o.255 §2; 2008 o.456 § 7]*

**(4) Type IV Procedures**

(a) **Legislative land use actions shall be made only by the Board after review and recommendation by the Commission and after conducting a public hearing pursuant to LCC 1.1250. Proceedings initiated by the Board shall be by resolution and shall be referred to the Commission for public hearing. The Planning Division shall set the date for the hearing and provide for notice pursuant to LCC 1.1250. The Commission shall make recommendations to the Board upon completion of the hearing.**

(b) **Proceedings may also be initiated by Commission resolution requiring the Director to set the date of the public hearing before the Commission and provide for notice as required in LCC 1.1250. The Commission shall make a recommendation to the Board upon completion of the hearing.**

(c) **Notice of the hearing shall be as provided in LCC 1.1250**

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(d) The following findings are required to be made by the Board and Commission for legislative actions:

(A) Establish that the legislative land use action will be consistent with the Comprehensive Plan goals and policies.

(B) Establish that the legislative land use action will be consistent with all other provisions of this Chapter and will be in conformance with the Statewide Planning Goals and all other applicable statutes and regulations.

(e) All legislative land use actions shall be enacted by ordinance.

1.1215 Effective Date of Decision

The effective date of a decision of the **Planning** Division is the date of the letter notifying the applicant **and other parties entitled to notice** of the **Planning** Division's action. The effective date of a decision of the [*Planning*] Commission or **designated hearings body** is the date of adoption of findings of fact **and final order**. [*The effective date of a decision of the Board is the date of the recording of the final order and findings of fact.*] **For Board decisions involving plan and land use regulations processed pursuant to ORS 197.610 to 197.625, the final decision date is the date the decision is mailed or otherwise submitted to the parties entitled to notice under ORS 197.615. For all other Board decisions, the final decision date is the date of the adoption of findings of fact.**

1.1220 Fees

(1) For the purpose of defraying the cost of processing applications, fees shall be paid to the Planning Division upon the filing of an application.

(2) A fee schedule for applications provided for in this chapter shall be set by order of the Board [*of Commissioners after review and recommendation by the Planning Commission.*] An annual review of the fee schedule shall occur [*during the month of January.*] with recommendations for changes made by the **Planning Division** [*Department of Planning and Development. The Planning Commission shall consider the proposed changes at a public hearing and, upon conclusion of the hearing, shall make a recommendation regarding the proposed changes to the Board of Commissioners.*] [1991 o.300 § 1; 1993 o.313 § 1]

1.1225 Amendments

The purpose of LCC 1.1225 to 1.1235 is to describe general requirements and criteria to be considered in reviewing an application for an amendment to the provisions of this chapter. An amendment may be made to the text of the Lincoln County Comprehensive Plan (LCC 1.0001 to 1.0190), Zoning and Land Division Regulations (LCC **Chapter One** [*1.1101 to 1.3270*]), the Comprehensive Plan and Zoning Maps, or to the related land use ordinances incorporated into this chapter by reference. An amendment may be accomplished in either a legislative or quasi-judicial manner as follows:

(1) Legislative amendments may be made only for the establishment of policy. Such an amendment may be initiated only by the Board or the Commission. A person may petition the Board or the Commission to initiate such a legislative amendment but may not initiate the

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amendment by making direct application. Such amendments shall be made only after a public hearing has been held pursuant to LCC 1.1250.

(2) Quasi-judicial amendments may be made only for the application of established policy to specific properties in the county. Such amendments may be initiated by **a party described in LCC 1.1203**. [*the Board, the Commission, or by the application of an owner of land or agent thereof*] An application for an amendment by an owner or agent shall be made in accordance with the application procedure specified in LCC 1.1205. All quasi-judicial amendments shall be subject to the public hearing requirements of LCC 1.1250 and 1.1255. [1995 o.255 §3]

1.1230 Legislative Amendments

(1) A legislative amendment shall be made only by the Board after review and recommendation by the Commission and after public hearing held pursuant to LCC 1.1250. Proceedings initiated by the Board shall be by resolution and shall be referred to the Commission for public hearing. The Division shall set the date for the hearing and provide for notice pursuant to LCC 1.1250. The Commission shall make recommendations to the Board upon completion of the hearing.

(2) Proceedings initiated by the Commission shall be by resolution directing the Planning Director to set the date of the public hearing before the Commission and provide for notice as provided in LCC 1.1250. The Commission shall make a recommendation to the Board upon completion of the hearing.

(3) Findings required to be made by the Board and the Commission for legislative amendments are as follows:

(a) Establish that the amendment will be consistent with the Comprehensive Plan goals and policies.

*[(b) Establish that there is a public need for the requested change and that the public need will be met by the change.]*

(e) (b) Establish that the amendment will be consistent with all other provisions of this Chapter and in conformance with the Statewide Planning Goals and all other applicable statutes and regulations.

**(4) Legislative amendments shall be reviewed as a Type IV review in accordance with LCC 1.1210(4).**

1.1235 Quasi-Judicial Amendments

**Quasi-judicial amendments to the comprehensive plan and zoning maps shall be reviewed as a Type III review in accordance with LCC 1.1210(3).** A quasi-judicial amendment to the Comprehensive Plan and Zoning Maps, may be authorized provided that the proposal satisfies all applicable requirements of this Chapter and also provided that the applicant, in a quasi-judicial hearing, demonstrates that the change is in accord with the Comprehensive Plan goals and policies or the Statewide Planning Goals and that:

(1) There has been a substantial change in the character of the area since zoning was adopted and which warrants changing the zone;

(2) Zoning previously adopted for the area was in error; or

(3) There is a public need for the change being sought.

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1.1240 Findings

Findings made by the decision-making body in justification of any **decision action** authorized pursuant to this chapter shall be made in writing and shall be provided to the applicant and to parties establishing testimony on the record of any hearing. Findings shall be made which are consistent and in conformance with the applicable regulations of this chapter. The **Planning D[*d*]**ivision shall make a record of any public hearing before the ~~Planning~~ Commission and assist in drafting findings upon request by the Commission. [1995 o.255 §4]

1.1245 Intent to Rezone; Purpose and Procedure

It is the purpose and intent of this Section to provide additional procedures for small tract zone map amendments to insure the public interest is considered as certain developments occur. These provisions may be invoked at any time during zone-change hearings and appeal process.

**(1) Resolution of Intent to Rezone:**

If, after consideration of the findings and recommendations of the ~~Planning~~ Commission, the Board determines that the public interest will be best served by this rezoning or any portion thereof, the Board may indicate its approval in concept of the rezoning by the adoption of a "resolution of intent to rezone" said property. This resolution may include any conditions, stipulations or limitations which the Board feels necessary to insure the public interest.

**(2) Resolution of Intent Binding:**

The adoption of this resolution of Intent to Rezone by the governing body shall make this a binding commitment on the County.

**(3) Site Development and Operation:**

Other than for residential development, property proposed to be developed under a resolution of intent to rezone shall be managed to insure compliance with the following conditions:

- (a) That storage of merchandise and supplies be contained entirely within a building;
- (b) That the proposed use continuously meets State D.E.Q. standards for air and water

quality and noise emissions;

- (c) That vehicle parking and maneuvering areas be hard surfaced and maintained dust free;

(d) That on-site drainage be designated to protect adjoining properties and public rights-of-way from increased storm runoff; and

- (e) Any other conditions that the Board feels necessary to protect the public interest.

**(4) Site Plan:**

The Board may require under a resolution of intent to rezone a site plan which shall be binding upon the property. Upon approval of the Board, property having an approved site plan under these provisions shall be plainly marked as "subject to approved site plan" on the official zoning map of ~~Lincoln~~ County. Any approved site plan may be amended or a variance therefrom obtained, or the property may be released from the restrictions of such site plan by resolution of the Board on recommendation from the [*Planning*] Commission after a public hearing as set forth in LCC 1.1250. No other changes shall be made constituting a departure from the approved site plan except by amendment or variance as herein provided unless the property has been released from the site plan.

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(5) Site Plan Composition:

Where a site plan is required pursuant to this Section, it shall include:

- (a) Location of existing property boundaries, existing and proposed buildings, structures, accesses, off-street parking and loading spaces and landscaping;
- (b) Topography, existing and proposed;
- (c) Mechanical roof facilities if subject property is so oriented as to become part of the view from adjacent properties; and
- (d) Architectural perspective, layout and all elevations drawn without exaggeration, except where noted including locations, area and design of signs and all landscaping.

(6) Change of Zone:

The fulfillment of all conditions, stipulations and limitations contained in the resolution of intent to rezone on the part of the applicant, shall be required prior to the governing body effecting the ordinance change. Upon completion of compliance action by the applicant, the Board shall enact the ordinance changing the zone.

(7) Resolution of Intent Void upon Failure to Comply:

The failure of the applicant to substantially meet any or all conditions, stipulations or limitations contained in a resolution of intent to rezone, including the time limit placed in the resolution, shall render said resolution null and void, unless an extension is granted by the Board upon recommendation of the *Planning* Commission.

1.1250 Notice of Public Hearings

(1) Legislative (**Type IV**) Hearings:

(a) Notice of hearings for legislative amendments shall consist of a statement specifying the date, time, place and general subject of the hearing published in a newspaper of general circulation in the county at least 10 days prior to the hearing.

(b) **In addition to the notice provided in (a) above**, notice shall be provided in accordance with ORS 215.503 and 215.513;{

(2) Quasi-Judicial (**Type III**) Hearings:

Notice of quasi-judicial hearings for the consideration of applications and appeals provided for in this chapter shall:*[unless such notice is not required under ORS 215.508.]*

(a) Be provided in writing to the applicant and to the owners of record of property on the most recent tax assessment roll of Lincoln County:

(A) Within 750 feet of the *[boundaries of the]* subject property in A-C and T-C zones.

(B) Within 250 feet of the subject property *[in all other zones]* **where the subject property is outside an urban growth boundary and not within the A-C or T-C zones.**

(C) **Within 250 feet of the subject property where the subject property is wholly or in part within an urban growth boundary.**

(b) Be provided to any neighborhood or community organization recognized by the Board *[of Commissioners]* and whose boundaries include the subject property;

(c) Explain the nature of the decision and the use or uses which could be authorized;

(d) List the applicable criteria from this chapter that apply to the subject application;

(e) Set forth the street address or other easily understood information identifying the location of the subject property;

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- (f) State the date, time and location of the hearing;
  - (g) State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant, and applicable criteria are available for inspection at the **Planning D[d]ivision** office at no cost and can be provided at a reasonable cost;
  - (h) State that a copy of the **Planning D[d]ivision's** staff report is available for inspection at no cost and can be provided at a reasonable cost seven days prior to the hearing;
  - (i) Provide the name and telephone number of the **Planning D[d]ivision** staff person to contact for additional information; and
  - (j) Include a general explanation of the requirements for submission of testimony and the **procedure for** conduct of hearings;
  - (k) State that failure to raise an issue in the hearing, either in person or in writing, or failure to provide statements or evidence sufficient to afford the hearings body an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals on that issue; and
  - (L) Be mailed at least 20 days prior to the hearing.
- (3) The failure of a property owner to receive notice as provided for in this section shall not invalidate the subject hearing proceeding provided that the division can demonstrate by affidavit that such notice was given. [1995 o.255 §5; 1997 o.368 §1]

1.1252 Notice of Exception to Statewide Planning Goals

Actions involving the consideration of exceptions to the Statewide Planning Goals shall be subject to the notice and hearing requirements of LCC 1.1250 and 1.1255. In addition, the required notice of public hearing shall specifically note the exceptions to be considered and shall summarize the issues in an understandable manner. [1995 o.255 §6]

1.1255 Conduct of Quasi-Judicial Public Hearings

Any quasi-judicial public hearing required by or provided for in this chapter shall be conducted in accordance with the following requirements:

(1) Staff Report:

At least seven days prior to the hearing, the **Planning D[d]ivision** shall provide to the hearings body and make available to the public for inspection or purchase a report detailing the nature of the request and the applicable criteria of this chapter.

(2) Application Materials:

All application materials, documents or other evidence submitted by or on behalf of the applicant for any land use approval shall be provided to the **Planning D[d]ivision** and made available to the public.

(3) Pre-Hearing Statement:

At the commencement of the hearing, a statement shall be made by the hearings body or staff to those in attendance that:

(a) Lists that applicable substantive criteria;

(b) States that testimony, **arguments** and evidence must be directed toward the criteria described in paragraph (a) of this subsection or other criteria in this chapter the party believes to apply to the subject request; and

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(c) States that failure to raise an issue accompanied by statements or evidence sufficient to afford the hearings body and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals on that issue.

(4) Presentation of Testimony:

Unless otherwise provided for by the hearings body, the order of presentation of testimony shall be as follows:

(a) Staff report.

(b) Presentation by the applicant or, in the case of an appeal of a prior decision, the appellant.

(c) Additional testimony by other parties in support of the application or appeal.

(d) Testimony by opponents or, in the case of an appeal, the respondent.

(e) Applicant's or, in the case of an appeal, appellant's, rebuttal arguments.

(5) Continuances:

The hearings body may continue any hearing as deemed necessary to receive additional arguments or testimony or for further consideration of any evidence or testimony. A continuance may be provided for by the hearing body on its own motion or may be requested by a party. [*Any continuance or extension of the record requested by an applicant shall result in a corresponding extension of the time limitations of ORS 215.248.*] If the hearings body grants a continuance, the hearing shall be continued to a date, time, and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence and testimony. If new written evidence is presented at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence or testimony for the purpose of responding to the new written evidence. No additional notice need be given of the continued hearing.

(6) Holding Open the Hearing Record:

Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The hearings body shall grant such a request by continuing the hearing pursuant to subsection (5) of this section or leaving the record open for additional written evidence or testimony. If the record is left open for additional written evidence or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the **Planning D**[*d*]ivision for an opportunity to respond to new evidence or testimony submitted during the period the record was left open. If such a request is filed, the hearings body shall reopen the record pursuant to subsection (7) of this section.

(7) Reopening the Hearing Record:

The hearings body may, on its own motion, or upon request of a party, reopen the record of any hearing previously concluded. When a hearing record is reopened to admit new evidence or testimony, any person may raise new issues which relate to the new evidence, testimony, or criteria for decision making which apply to the subject application or appeal.

(8) Time Limitations of [*ORS 215.428*] **LCC 1.1207(1)**:

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Any continuance or extension of the record shall be subject to the time limitations of [~~ORS 215.428~~] **LCC 1.1207(1)** unless the continuance or extension is requested or agreed to by the applicant.

(9) Final Arguments:

Unless waived by the applicant, the hearings body shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record but shall not include any new evidence. **This seven-day period shall not be subject to the limitations of LCC 1.1207(2).**

(10) Definitions:

For purposes of this section:

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

(b) "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to a decision by the hearings body. [1995 o.255 §7; 1997 o.368 §2]

**1.1260** [repealed 1995 o.255 §10]

1.1265 Appeals

**The appeal requirements in LCC 1.1267 and 1.1268 are jurisdictional. Failure to fully comply with the appeal requirements of these sections is a jurisdictional defect.** The hearing body [~~may~~] retains authority to dismiss an appeal for failure to follow the requirements of this chapter.

1.1267 Appeals of Decisions of Planning Division

Where it is alleged that there is an error in any procedure or decision of the **Planning D[*d*]ivision**, an appeal may be made to the Commission or such other hearings body as may be designated by order of the Board. An appeal of a ministerial decision of the **Planning D[*d*]ivision on a Type I** review made pursuant to LCC 1.1210(1) shall be filed within 10 days of the effective date of the decision. An appeal of a decision of the **Planning D[*d*]ivision on a [*permit made pursuant*]** **Type II review pursuant** to LCC 1.1210(2) shall be filed within 15 days of the effective date of the decision. In the event that the final day for the filing of an appeal falls on a Saturday, Sunday or legal holiday, the period for the filing of an appeal shall be extended through the next working day. An appeal of a **Planning D[*d*]ivision** decision shall be filed with the **Planning D[*d*]ivision** and shall be accompanied by a written statement of the grounds for the appeal and any required filing fee. In the event that the party filing the appeal prevails at the initial hearing or upon subsequent appeal, the fee for the initial appeal of the **Planning D[*d*]ivision** decision shall be refunded. Fees required for the filing of appeals of decisions of the **Planning D[*d*]ivision** shall not apply to the Department of Land Conservation and Development nor to neighborhood or community groups recognized by the Board and whose boundaries include the property subject to the decision. Upon receipt of an appeal, the **Planning D[*d*]ivision** shall schedule a public hearing

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before the Commission or other hearings body as designated by order of the Board. Public notice of the hearing shall be in accordance with LCC 1.1250. [1995 o.255 §8]

**1.1268 Appeals of Commission or Hearing Body Decisions**

Where it is alleged that there is an error in any procedure or decision made by the Commission or hearings body, an appeal therefrom may be made to the Board. Such an appeal shall be filed with the **Planning D[ivision]** within 15 days of the subject decision of the Commission or hearings body. In the event that the **final day for the filing of an appeal subject decision** falls on a Saturday, Sunday or legal holiday, the period for the filing of an appeal shall be extended through the next working day. An appeal of a Commission or hearings body decision subject to review by the Board pursuant to this section shall be filed on a form prescribed by the **Planning D[ivision]** and shall be accompanied by any required filing fee. When an appeal is filed, within 10 days of such filing, the **Planning D[ivision]** shall provide to the Board the record of the proceedings and decision of the Commission or hearings body. [*The Board shall hold a public hearing on the appeal. The decision of the Board on an appeal shall be recorded within 45 days of receiving the record of the subject decision, unless a longer period of time is stipulated to by the parties.*] [1995 o.255 §9]

**1.1270 Board Review**

Review by the Board at a public hearing shall be accomplished in accordance with its own adopted rules of procedure and the requirements of this chapter. The Board may continue its hearing to gather additional evidence or to consider the application more completely pursuant to this chapter.

**1.1275 Review on Record**

Unless otherwise provided by the Board under LCC 1.1280, the review of the decision of the Commission or **other designated hearings body** by the Board shall be confined to the record of the proceeding, which shall include:

- (1) All materials, pleading, memoranda, stipulations, and motions submitted by any party to the proceeding and received or considered by the Commission as evidence;
- (2) All materials submitted by the **Planning D[ivision]** with respect to the application;
- (3) The transcript or tape of the public hearing of the Commission;
- (4) The findings and action of the Commission and the notice of review; and
- (5) Argument confined to the record by the parties or their legal representatives at the time of review before the Board.

**1.1280 De Novo Hearing**

(1) The Board may, at its option, whether or not upon a motion of a party, hold a *de novo* hearing or admit additional testimony and other evidence, if it is satisfied that the testimony or other evidence could not have been presented upon initial hearing and action. In deciding this admission, the Board shall consider:

- (a) Prejudice to parties.
- (b) Convenience of locating the evidence at the time of initial hearing.

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- (c) Surprise to opposing parties.
- (d) When notice was given to other parties as to the attempt to admit.
- (e) The competency, relevancy, and materiality of the proposed testimony and other evidence.

(2) Upon a decision to admit additional testimony or evidence or to hear the entire matter *de novo*, the presentation of such testimony and evidence shall be governed by the procedures applicable to the presentation of such matters as provided in the Board's rules of procedure.

**1.1285 Board Action**

- (1) The Board may affirm, modify or reverse all or part of the action of the Commission or may remand the matter for additional review or information.
- (2) The Board may, on its own motion, review any decision of the **Planning** Division or the Commission pursuant to the review procedures in LCC 1.1270 to 1.1280. Such motion shall be made within 15 days of the effective date of the decision to be reviewed.

**1.1286 Code Interpretation and Statement of Purpose**

**(1) The purpose of LCC 1.1286 to 1.1294 is to provide a procedure for interpretation of Chapter 1 of the Lincoln County Code (hereinafter, Chapter I). The Board has adopted the Comprehensive Plan and Land Use Code after duly and regularly noticed and advertised public hearings and opportunity for public comment. Also, respective portions of the Comprehensive Plan and Land Use Code were adopted and amended following duly and regularly noticed and advertised public hearings and opportunity for public comment as the respective legislative and quasi-judicial procedure required. An interpretation is a declaration of what the Board meant at the time of adoption or amendment.**

**1.1287 Authority for Interpretation**

- (1) Subject to subsection (2) of this section, The Director shall be responsible for interpreting Chapter I, if in its administration, a question of interpretation or its applicability arises.**
- (2) The Director, at his/her discretion, may refer the application to the Board. In such event, the Board shall decide the question of the interpretation or applicability of Chapter I.**

**1.1288 Application for a LCC Chapter I Interpretation**

- (1) An application for a Chapter I interpretation may be filed with the Director when:**
  - (a) a word, text, or application of Chapter I is determined by the Director to be unclear or ambiguous; or**
  - (b) an application is filed involving a determination described in 1.1290.**
- (2) The person requesting an interpretation shall file an application:**
  - (a) that complies with LCC 1.1205, or**
  - (b) on a form approved by the Director. The person requesting an interpretation shall make the request in writing and submit the appropriate fee.**
- (3) The Director shall classify an application filed pursuant to this section as a Type II application.**

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**1.1289 Person Authorized to File an Application for an Interpretation**

**Any person may file an application seeking an interpretation of Chapter I.**

**1.1290 Review of Similar Uses**

**(1) The Director may permit, in any zone, any use not specifically described or listed in any other zone if, in the opinion of the Director, the requested use is**

**(a) of the same general type, and**

**(b) is similar to uses permitted in the subject zone.**

**(2) The similar use shall be consistent with the statement of purpose of the subject zone.**

**(3) This similar-use review and decision shall be made in the same manner as other interpretations of Chapter I.**

**1.1291 Code Interpretation Notice**

**The Director is not required to give initial application notice for a Chapter I interpretation.**

**1.1292 Chapter I Interpretation Procedure**

**(1) A Type II application shall be reviewed and decided in compliance with the procedure set forth in this section.**

**(2) At the Director's discretion, a Type II application requesting an interpretation may be reclassified as a Type III action and referred to the Board. If a Type II application is so referred by the Director to the Board for its review, the Board shall review and decide the application under LCC 1.1255.**

**(3) The interpretation of the Director or the Board shall not violate the intent or the provisions of Chapter I.**

**(4) The Director shall, within 90 calendar days of deeming an application complete:**

**(a) deny the application, if the findings of fact do not satisfy all of the criteria, or**

**(b) approve the application if the findings and conclusions satisfy all of the criteria or can be made to satisfy the criteria with conditions.**

**(5) The Director shall issue a decision on a Type II application. The decision shall be based upon and include findings of fact, applicable Chapter I criteria, and conclusions to support the decision.**

**(6) The Director shall make a decision on the application based only upon the evidence and testimony in the record and on any information that is customarily received by judicial notice.**

**(7) The Director or Board shall issue an interpretation in writing and shall base the interpretation on the purpose and intent of Chapter I as applied to the particular situation. The interpretation shall be on a form approved by the Director.**

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**1.1293 Notice of Interpretation Decision**

**(1) The Director shall prepare, sign and give notice of the interpretation decision to the applicant, or the landowner if different from the applicant.**

**(2) The Director shall prepare, sign and give notice of a decision of a Type II action in accordance with this section.**

**(3) The Director shall give notice of decision in the following situations:**

**(a) If the interpretation makes a use an outright use; or**

**(b) If the interpretation would result in requiring the applicant to file an application that would result in a legislative amendment to Chapter I.**

**(4) The Director shall give notice of a decision in compliance with LCC 1.1210(2) if an interpretation affects only a specific property or a restricted or limited number of landowners.**

**(5) The Director may give notice of a decision in compliance with LCC 1.1250(1) if an interpretation has a general, county-wide impact, rather than an impact only for a specific property or a restricted or limited number of landowners.**

**(6) Unless required by this section, notice of a decision to a surrounding landowner is not required to be provided unless such notice has been specifically requested by that landowner.**

**(7) The notice of a decision shall contain:**

**(a) The name of the applicant;**

**(b) The Planning Division's case file number;**

**(c) The location of the property, if available;**

**(d) The Director's decision on the matter;**

**(e) The date the decision was made;**

**(f) Information on how and where to inspect and to obtain a copy of the decision;**

**(g) A statement that the decision may be appealed to the Board by the applicant, or a party with standing, if any, within 15 days of the date of the decision by filing a notice of appeal with the Planning Division;**

**(h) A statement that an appeal shall:**

**(A) be in writing**

**(B) identify with particular specificity the inadequacies, omissions or errors made by the Director**

**(C) be accompanied by the appropriate appeal fee; and**

**(i) A statement that unless the decision is appealed in compliance with LCC 1.1294, the decision is a final land use decision.**

**(8) Within 10 days of the decision, the Director shall give the final decision to the persons who are to receive notice in accordance with this section.**

**1.1294 Code Interpretation Appeal Procedures**

**(1) An interpretation of Chapter I made by the Director may be appealed to the Board by a party adversely affected by the interpretation.**

**(2) An appeal of an interpretation decision of the Director must be filed within 15 days after the date of the decision. The appeal shall be in writing and state with sufficient specificity**

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why the interpretation is thought to be incorrect and shall be accompanied by the appropriate fee.

(3) The Board shall hear an appeal of an application for a Director interpretation of Chapter I pursuant to LCC 1.1270.

(4) On appeal the Board may:

(a) issue a final determination on the matter;

(b) find that the question is of a legislative nature and proceed in an appropriate manner;

(c) find that there is insufficient information to interpret Chapter I; or

(d) Require the Director to study the issue and provide additional information at a subsequent hearing.

(5) A copy of an interpretation not appealed or one that is rendered by the Board shall be provided to the Commission and to the Planning Division for their information and use.

(6) If necessary, interpretations shall be incorporated into Chapter I, and shall be implemented by the County during the interim.

**1.1295 Reconsideration by Board of Decision Before LUBA on Appeal**

At any time after the filing of notice of intent to appeal a land use decision to the Land Use Board of Appeals (LUBA), and prior to the date set for filing of the record, or, on appeal of a decision under ORS 197.610 to 197.625, prior to the filing of respondent's brief, the Board may withdraw its decision for purposes of reconsideration. If the Board withdraws an order for purposes of reconsideration, it shall, within such time as LUBA allows, affirm, modify, or reverse its decision.

**1.1296 Hearing Procedure on Remand from LUBA**

When a final decision of the Board on a quasi-judicial land use action is remanded to the County by LUBA, the Board shall hold a hearing on remand. Notice shall be given pursuant to LCC 1.1250, and the hearing shall be conducted pursuant to LCC 1.1255, except that evidence and testimony shall be limited to the criterion or criteria or the issue or issues upon which LUBA based its decision to remand. These criteria or issues shall be described in the notice and at the hearing referenced above in this section.

**1.1297 Final Action on Remand from LUBA**

(1) Final action must be taken on the application within 120 days of the effective date of the remand order issued by the Land Use Board of Appeals.

(a) The effective date of the final order is the last day for filing a petition for judicial review of a final order of the Land Use Board of Appeals under ORS 197.850(3).

(b) If judicial review of a final order of the Land Use Board of Appeals is sought under ORS 197.830, the 120-day period shall not begin until final resolution of the judicial review.

(c) In addition, the 120-day period shall not begin until the applicant requests in writing that the county proceed with the application on remand, but if the county does not

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**receive the request within 180 days of the effective date of the final order or the final resolution of the judicial review, the county shall deem the application terminated.**

**(d) The 120-day period may be extended for up to an additional 365 days if the parties enter into mediation as provided by ORS 197.860 prior to the expiration of the initial 120-day period. The county shall deem the application terminated if the matter is not resolved through mediation prior to the expiration of the 365-day extension.**

**(2) Subsection (1) of the section does not apply to a remand proceeding concerning a decision of the county making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610.**

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