

Topic: Site Plan Approval
Resource Type: Regulations
State: Oregon
Jurisdiction Type: Municipal
Municipality: City of Bend
Year (adopted, written, etc.): Unknown
Community Type - applicable to: Urban; Suburban
Title: City of Bend Land Use Review & Procedures Ordinance
Document Last Updated in Database: April 14, 2017

Abstract

The Bend Land Use Review and Procedures Ordinance requires developers to consult and plan with the City and the public in order to obtain development permits, and in so doing forces development to comply with zoning and land use regulations as outlined in the city's comprehensive plan.

Resource

Ordinance No. NS-1775

CHAPTER 10-16

CITY OF BEND LAND USE REVIEW AND
PROCEDURES ORDINANCE

Section 1. INTRODUCTION AND DEFINITIONS
Section 2. GENERAL PROVISIONS
Section 3. LEGISLATIVE PROCEDURES
Section 4. DEVELOPMENT ACTION PROCEDURES
Section 5. REVIEW OF LAND USE ACTION APPLICATIONS
Section 6. DESCHUTES RIVER CORRIDOR DESIGN REVIEW PROCEDURES
Section 6B. REFINEMENT PLAN REVIEW PROCEDURES
Section 7. LAND USE ACTION HEARINGS
Section 8. LAND USE ACTION DECISIONS
Section 9. RECONSIDERATION
Section 10. APPEALS
Section 11. PROCEEDINGS ON REMAND

Section 1. INTRODUCTION AND DEFINITIONS

- (1) Introduction and application.
- (2) Definitions.

(1) Introduction and application.

A. This ordinance is enacted to provide a uniform procedure for the grant or denial and processing of applications, approvals and determinations by the City of Bend under the applicable City comprehensive plan, land use regulations, subdivision and partition ordinance, and other ordinances which by their terms incorporate by reference the procedures in this ordinance. This ordinance shall be known as the City of Bend Land Use Review and Procedures Ordinance.

B. The provisions of this ordinance do not apply to the issuance, suspension, or revocation of any on-site sewage disposal, sign, building, electrical or plumbing permits except as they relate to Planning Division consideration of permitted uses.

C. Notwithstanding any reference to the contrary, this ordinance shall not apply to applications for land use or development approval for lands lying outside the city limits of the City of Bend.

D. Notwithstanding Section 1(1)(A), outside the City limits where authorized by an intergovernmental agreement, the functions of the City Planning Director and City Review Authority identified herein may be exercised by their counterparts in accordance with the respective intergovernmental agreements.

(2) Definitions.

The following definitions apply to this ordinance:

A. Definition-Argument.

"Argument" means assertions and analysis by a party regarding the satisfaction or violation of legal standards. "Argument" does not include assertion of facts not already in the record.

B. Definition-De novo review.

"De novo review" means a hearing by the review body as if the action had not previously been heard and as if no decision had been rendered, except that all testimony, evidence and other material from the record of the previous consideration will be considered a part of the record on review.

C. Definition-Development action.

"Development action" means the review of any permit, authorization or determination that the City of Bend Development Services Department is requested to issue, give or make that either:

- A. Involves the application of a City zoning ordinance or the City subdivision and partition ordinance and is not a land use action as defined below; or
- B. Involves the application of standards other than those referred to in subsection A.

For illustrative purposes, the term "development action" includes review of any condominium plat, permit extension, duplexes or triplexes under 3,600 square feet where permitted as an outright use, road name change, sidewalk permit, setback determination, and lot coverage determination.

D. Definition-Evidence.

"Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards relevant to the decision.

E. Definition-Hearings Body.

"Hearings Body" as used herein includes the Hearings Officer, Planning Commission, or City Council of the City of Bend.

F. Definition-Land use action.

"Land use action" includes any consideration for approval of a quasi-judicial plan amendment or zone change, any consideration for approval of a land use permit, and any consideration of a request for a declaratory ruling (including resolution of any procedural questions raised in any of these actions).

G. Definition-Land use permit.

"Land use permit" includes any approval of a proposed development of land under the standards in the City zoning ordinances or subdivision or partition ordinances involving the exercise of significant discretion in applying those standards.

By way of illustration, "land use permit" includes review of conditional use permits, partition, master plan, commercial design review, riverfront design review, site plan, site plan change of use, modification of approval, administrative determination, declaratory ruling, subdivision variance, subdivision, and variance.

H. Definition-Legislative changes.

"Legislative changes" generally involve broad public policy decisions that apply to other than an individual property owner. These include, without limitation, amendments to the text of the comprehensive plans, zoning ordinances, or the subdivision or partition ordinance and changes in zoning maps not directed at a small number of properties.

I. Definition-Modification of application.

"Modification of application" means the applicant's submittal of new information after an application has been deemed complete and prior to the close of the record on a pending application that would modify a development proposal by changing one or more of the following previously described components: proposed uses, operating characteristics, intensity, scale, site lay out (including but not limited to changes in setbacks, access points, building design, size or orientation, parking, traffic or pedestrian circulation plans), or landscaping in a manner that requires the application of new criteria to the proposal or that would require the findings of fact to be changed. It does not mean an applicant's submission of new evidence that merely clarifies or supports the pending application.

J. Definition-Party.

"Party" as used herein is one who takes part or participates in a land use action. A party includes any person who has standing, a state achieved by appearing on the record at a hearing (including appeals) or presenting written evidence in conjunction with an administrative action or hearing, or by being a property owner whose property would be burdened by a solar access permit. The City may designate a representative for persons whose participation consists only of signing a petition.

K. Definition-Planning Director.

"Planning Director," as used in this ordinance shall refer to the Development Services Director of the City of Bend or his or her designee.

L. Definition-Proceeding.

"Proceeding" as used herein refers to the review of a land use action either administratively by the Planning Director or through the public hearing process by the Hearings Body.

M. Definition-Quasi-judicial.

"Quasi-judicial" zone change or plan amendment generally refers to a plan amendment or zone change affecting a single or limited group of properties and that involves the application of existing policy to a specific factual setting. (The distinction between legislative and quasi-judicial changes must ultimately be made on a case-by-case basis with reference to caselaw on the subject.)

N. Definition-Review Authority.

"Review Authority" as used in this ordinance includes the Planning Director, Planning Commission, Hearings Officer, or City Council of the City of Bend.

O. Definition-Supplementation of Application.

"Supplementation of Application" as used herein refers to an applicant's submittal of additional evidence or argument that merely clarifies or supports a pending application, but which does not constitute a "modification of application" as defined herein.

P. Definition-120-day.

"120-day," as used in this ordinance shall have the meaning found in ORS 227.178(2).

Section 2. GENERAL PROVISIONS

- (1) Preapplication conference.
- (2) Application requirements.
- (3) Acceptance of application.
- (4) Incomplete applications.
- (5) False statements on application and supporting documents.
- (6) Withdrawal of application.
- (7) Applicable standards.
- (8) Notice to Division of State Lands.
- (9) Conflicting procedures.
- (10) Time computation.

(1) Pre-application requirements.

A. Pre-application Conference. A pre-application conference with the City of Bend is required for complex applications or for applicants who are unfamiliar with the land use process. The purpose of the conference shall be to acquaint the applicant with the substantive and procedural requirements of the applicable land use ordinances, to provide for an exchange of information regarding applicable requirements of the comprehensive plan, zoning ordinance or land division ordinance and to identify issues likely to arise in processing an application. The city zoning ordinance may require that a pre-application conference be held for particular types of applications.

B. Public Meeting. The applicant for a Land Use Action for a Bend Area General Plan Map Amendment, Zoning Map Amendment, Conditional Use Permit, Subdivision or, Site Plan Review for new development or an alteration/addition to an existing building exceeding 10,000 square feet shall present the proposal at a public meeting prior to submitting the land use application to the City Planning Division. The presentation shall be made at either, a regular or special meeting with a neighborhood association recognized by the City of Bend whose boundaries the subject property lies within, or a public meeting arranged and conducted by the applicant. The presentation at the public meeting shall include the following:

1. A map depicting the location of the subject property proposed for development.
2. A visual description of the project including a site plan, tentative subdivision plan and elevation drawings of any structures if applicable.
3. A description of the nature of the use including but not limited to, sizes and heights of structures, proposed lot sizes, density, etc.
4. The expected or anticipated impacts from the development.
5. Any mitigation proposed by the applicant to alleviate the expected/anticipated impacts.
6. Provide opportunity for public comments. Applicants are encouraged to reconcile as many public concerns as possible prior to submittal of their application.

C. Public Meeting Notification. If a proposal as referenced in Section 10-16.1(B) above is presented at a recognized neighborhood association meeting, the applicant shall notify the administrative body of such association to schedule the presentation. It shall be the responsibility of the administrative body of the neighborhood association to schedule the meeting/presentation and provide adequate notification to the residents of the affected neighborhood of the date, time and location of the meeting/presentation. However, it shall be the applicant's responsibility to provide the information listed in Section 10-16.1(C) (1)(b. and c.) below to the administrative body for the neighborhood association. Such meeting shall be held no less than 15 and no more than 45 days from the date that the applicant made the request for presentation to the neighborhood association. If the applicant chooses to present the proposal at a public meeting arranged and conducted by the applicant, the following provisions shall be applicable:

(1) The applicant shall send mailed notice of the public meeting to all property owners within 500 feet of the boundaries of the subject property. The property owner list shall be compiled from the Deschutes County Tax Assessor's property owner list from the most recent property tax assessment roll. The notice shall be sent a minimum of 15 days prior to the public meeting, and shall include at a minimum:

- a. Date, time and location of the public meeting.
- b. A brief written description of the proposal and proposed use, but with enough specificity so that the project is easily discernable.
- c. The location of the subject property, including address (if applicable), nearest cross streets and any other easily understood geographical reference, and a map (such as a tax assessors map) which depicts the subject property.

(2) Application requirements.

A. Property Owner. For the purposes of this section, the term "property owner" shall mean the owner of record or the contract purchaser and does not include a person or organization that holds a security interest.

B. Applications for development or land use actions shall:

1. Be submitted by the property owner or a person who has written authorization from the property owner as defined herein to make the application;
2. Be completed on a form prescribed by the city;
3. Include supporting information required by the zoning or land division ordinances and that information necessary to, in the judgement of the Planning Director, demonstrate compliance with applicable criteria;
4. Be accompanied by the appropriate filing fee;
5. Provide proof of ownership in the form of a Deed, or other recorded document; and
6. In the case of applications for a quasi-judicial plan amendment or zone change, may be accompanied by applications for a specific development

proposal.

7. Include an affidavit from the applicant attesting that the public meeting required by Section 10-16.1(B) and (C) of this ordinance was conducted in accordance with the provisions listed therein. If the public meeting was arranged and conducted by the applicant, the notification materials listed in Section 10-16.1(C)(1)(a-c) must also be submitted.

C. The following applications are not subject to the ownership requirement set forth in subsection B.1. of this section:

1. Applications submitted by or on behalf of a public entity or public utility having the power of eminent domain with respect to the property subject to the application; or
2. Applications for development proposals sited on lands owned by the state or the federal government.

(3) Acceptance of application.

A. Development action and land use action applications shall not be accepted until the Planning Director has determined that the requirements of subsection (2) of this Section have been met and; the application is complete or the application is deemed to be complete under state law.

B. An application is complete when, in the judgment of the Planning Director, complete information to address all criteria has been provided by the applicant.

C. Acceptance of an application as complete shall not preclude a determination at a later date that additional criteria needs to be addressed or a later determination that additional information is needed to adequately address applicable criteria.

(4) Incomplete applications.

A. If an application is incomplete, the Planning Director shall, within thirty (30) days of receipt of the application, notify the applicant in writing of exactly what information is missing. The applicant may amend the application or submit a new application supplying the missing information.

B. The applicant shall have thirty (30) days from the date of notice from the Planning Director to supply the missing information.

C. If the applicant submits the missing information within the 30-day period specified in subsection B of this section, the application shall be deemed complete upon receipt of the missing information.

D. If an applicant does not submit the missing information within the 30-day period specified in subsection B of this section, the application may be processed in accordance with Section 5 (5) of this ordinance.

(5) False statements on application and supporting documents.

If the applicant or the applicant's representative or apparent representative makes a misstatement of fact on the application regarding property ownership, authority to submit the application, acreage, or any other fact material to the acceptance or approval of the application, and such misstatement is relied upon by the Review Authority in making a decision whether to accept or approve the application, the Planning Director may upon notice to the applicant and subject to an applicant's right to a hearing declare the application void.

(6) Withdrawal of application.

An applicant may withdraw an application in writing at any time prior to the time a land use action decision becomes final. If the land owner is not the applicant, no consent to withdraw the application is needed from the land owner.

(7) Applicable standards.

The standards and criteria applicable to an application shall be the standards and criteria applicable at the time the application was first submitted if the application and requested information, if any, are received within one hundred eighty (180) days of the time the application was first submitted.

(8) Notice to State Agencies.

In addition to any notice required by this ordinance, written notice shall be provided to state agencies as prescribed below.

A. Division of State Lands. The city shall notify the Oregon Division of State Lands (DSL) of any application that involves lands that are wholly or partially within areas that are identified as a significant wetland in the city's Local Wetland Inventory. Notice shall be in writing using the *DSL Wetland Land Use Notification Form*, and shall be sent within five working days of acceptance of a complete application. [See ORS 227.350]

B. Department of Fish and Wildlife. The city shall notify the Oregon Department of Fish and Wildlife (ODFW) in writing of any application for development activities within the riparian corridor. A mitigation recommendation shall be obtained from ODFW. Approval of the proposed development shall include a condition requiring compliance with the ODFW mitigation recommendations. [See OAR 635-415]

C. Parks and Recreation Department. The city shall notify the Oregon Parks and Recreation Department (OPRD) in writing of any application for a proposed change, improvement, or

activity within the ¼ mile boundary of either the Upper Deschutes Scenic Waterway or the Middle Deschutes Scenic Waterway. A landowner proposing a change, improvement, or activity within a State Scenic Waterway shall notify OPRD using the form provided by OPRD. The proposed change, improvement, or activity shall not be approved by the city unless either OPRD has given its written approval, or OPRD has not responded within one year from the date of notification. [See OAR 736-40]

D. Other agencies. The city shall notify other state agencies, as appropriate, that have statutory or administrative rule authority to review or issue state permits for local land use actions.

(9) Conflicting procedures.

Notwithstanding the provisions of this section, where other provisions of the City of Bend Code or City of Bend ordinances specify procedures with greater opportunity for public notice and comment, those procedures shall apply.

(10) Time computation.

Except when otherwise provided, the time within which an act is required to be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, legal holiday or any day on which the city is not open for business pursuant to a city ordinance, in which case it shall also be excluded.

Section 3. LEGISLATIVE PROCEDURES

(1) Hearing required.

(2) Notice.

(3) Initiation of legislative changes.

(4) Review Authority.

(5) Final decision.

(6) Corrections.

(1) Hearing required.

No legislative change shall be adopted without review by the Planning Commission or Hearing Officer and a final public hearing before the City Council. Public hearings before the Planning Commission shall be set at the discretion of the Planning Director, unless otherwise required by state law.

(2) Notice.

A. Published Notice.

1. Notice of a legislative change shall be published in a newspaper of general circulation in the City at least ten (10) days prior to each public hearing.

2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.

B. Posted Notice. Notice shall be posted at the discretion of the Planning Director.

C. Individual Notice. Individual notice to property owners, as defined in Section 2(2)(A) of this ordinance, shall be provided at the discretion of the Planning Director.

(3) Initiation of legislative changes.

A legislative change may be initiated by application of individuals upon payment of required fees as well as by the City Council or the Planning Commission. Any quasi-judicial change initiated by an individual that includes a plan amendment and/or zone change for specific real property may be accompanied by the appropriate applications for a specific development proposal. Approval of such a plan amendment and/or zone change accompanied by a specific development proposal may be conditioned upon initiation of the development proposal within a specified time period, at the discretion of the Hearings Body, to ensure no greater intensity of use than that contemplated in the quasi-judicial proceeding. Approvals of quasi-judicial plan amendments/and or zone changes that are not accompanied by applications for a specific development proposal shall be based on evaluation of the highest impact uses authorized in the proposed zone.

(4) Review Authority.

A. The following shall serve as hearings or review body for legislative changes in this order:

1. The Planning Commission or Hearings Officer.

a. For quasi-judicial actions the Hearings Officer shall serve as the initial Hearings Body.

b. For legislative actions the Planning Commission shall serve as the initial Hearings Body.

2. The City Council, subject to Section 10 of this ordinance.

B. Any legislative or quasi-judicial change initiated by the City Council shall be reviewed by the Planning Commission or Hearings Officer prior to action being taken by the City Council.

(5) Final decision.

All legislative changes shall be adopted by ordinance.

(6) Corrections.

The City's comprehensive plans and zoning ordinances, subdivision ordinance, and development procedures ordinance may be corrected by order of the City Council to cure editorial and clerical errors.

Section 4. DEVELOPMENT ACTION PROCEDURES

- (1) Review of development action applications.
- (2) Decision.
- (3) Review of development action.

(1) Review of development action applications.

- A. A development action application may be handled administratively by the Planning Director without public notice or hearing.
- B. The Planning Director has the discretion to determine that for the purposes of this ordinance a development action application should be treated as if it were a land use action application.

(2) Decision.

- A. Development action applications acted upon without notice or hearing shall be approved or denied by the Planning Director or his/or her designee within 30 days of the Planning Director's acceptance of the application.
- B. Notice of a decision shall be provided to the applicant or the applicant's representative.
- C. The decision may be appealed under Section 4(3) of this ordinance.
- D. A development action decision becomes final when no further appeal under this ordinance is available.

(3) Review of development action.

If the authority under which a development action is undertaken provides a means of review or appeal of a decision independent from this procedures ordinance, the review or appeal shall be in accordance with the procedures independently provided and not in accordance with this ordinance. If the authority under which a development action is reviewed does not provide a means of review or appeal of a decision, then review or appeal shall be in accordance with Section 10 of this ordinance.

Section 5. REVIEW OF LAND USE ACTION APPLICATIONS

- (1) Effect of determinations made outside of established processes.
- (2) Process for land use action applications.
- (3) Administrative land use decisions with prior notice.
- (4) Administrative decision without prior notice.
- (5) Final action in land use actions.
- (6) Temporary approval.
- (7) Supplementation of application within first 30 days of submittal.
- (8) Modification of application.
- (9) Availability of administrative decisions.

(1) Effect of determinations made outside of established processes.

Any informal interpretation or determination, or any statement describing the uses to which a property may be put, made outside the declaratory ruling process (Section 13) or outside the process for approval or denial of a land use permit (Sections 5-8) shall be deemed to be a supposition only. Such informal interpretations, determinations, or statements shall not be deemed to constitute final City action effecting a change in the status of a person's property or conferring any rights, including any reliance rights, on any person.

(2) Process for land use action applications.

A. Except for comprehensive plan amendments and zone changes and other instances where a hearing is required by state law or by other ordinance provision, the Planning Director may decide upon a land use action application administratively either with prior notice, as prescribed under Section 5(3) or without prior notice, as prescribed under Section 5(4) or may refer the application to the Hearings Body for hearing. The Planning Director shall take such action within 45 days of the date the application is accepted or deemed accepted as complete. This time limit may be waived at the option of the applicant.

B. The Planning Director's choice between or among administrative or hearing procedures to apply to a particular application or determination shall not be an appealable decision.

C. Zone change and plan amendment applications shall be referred to a hearing before the Review Authority.

(3) Administrative land use decisions with prior notice.

A. Notice of the application shall be sent at least fourteen (14) days prior to the issuance of a decision to persons entitled to notice under Section 7(3). Such notice shall include all the information specified under Section 7(4) A. except for the information specified in subsections 7 and 10 of Section 7 (4) A.

B. Any person may comment in writing on the application within fourteen (14) days from the date notice was mailed or a longer period as specified in the notice.

C. The Planning Director's decision to approve, deny or send to a hearing shall be made within forty-five (45) days after an application is accepted as complete. This time limit may be waived by the written consent of the Applicant.

D. Notice of the Planning Director's decision and the appeal period shall be sent to all persons entitled to notice under Section 7(3) and to all persons who commented. The notice shall contain the applicable information required under Section 7(4).

E. The applicant, all persons entitled to notice under Section 7(3) and all other persons commenting as provided in this section constitute parties to the administrative decision. Any party can appeal the decision in accordance with Section 10, "Appeals," of this ordinance.

(4) Administrative decision without prior notice.

The procedures for administrative decisions without prior notice shall be the same as those set forth in subsection 5(3) of this section, except that no prior notice shall be given.

(5) Final action in land use actions.

A. Except as otherwise provided, the City shall take final action, including consideration of appeals to the council, in land use actions within one hundred twenty (120) days after the application is deemed complete.

B. If the applicant refuses or fails to submit missing information within the 30 days specified in Section 2(4) of this ordinance, the application shall be deemed complete, for purposes of processing the application, on the 31st day after the application was first submitted, and final action of City Council, if required, shall be taken within one hundred fifty-one (151) days after the application was first received unless otherwise provided.

C. The periods set forth in this section during which a final decision on an application must be made may be extended for a reasonable period of time to a date certain at the written request of the applicant.

D. Applications for the following determinations or approvals are exempt from the 120-day time limit established by this section:

1. Quasi-judicial comprehensive plan amendments;
2. Revocation proceedings;
3. Verification of nonconforming uses;
4. Lot of record determinations;
5. Initiation of approval determinations;

6. Consideration of remanded applications; and
7. Legislative Actions.

(6) Temporary approval.

A. The purpose of temporary land use approval is to allow an applicant in certain hardship or emergency situations to proceed without notice to those ordinarily entitled to notice with a land use action proposed in an application made to the Planning Division before the Division completes its review of the proposed use. In all cases, an applicant receiving temporary approval must obtain final approval on the submitted application pursuant to the procedures specified in this ordinance.

B. Subject to subsection (E) of this section, the City Council or the Planning Director may authorize a temporary land use approval, provided:

1. An application for the land use approval has been accepted as complete.
2. A fee for review of the temporary approval has been paid.
3. The applicant has demonstrated good and sufficient cause for such a temporary approval.
4. It appears that the application will be given final approval in substantially the form submitted by the applicant.
5. The applicant accepts each and every risk of loss and damage that may result if the application is denied, and further agrees in writing to hold City, its officers, agents and employees harmless from such loss and damage.
6. The applicant agrees in writing to restore the site to its original condition if the application for the land use approval is denied.
7. The applicant posts a bond or other form of security acceptable to the Review Authority in an amount sufficient to cover the costs of restoration required by subsection 6 above.

C. For the purposes of this section, "good cause" shall include only hardship or emergency situations arising due to factors that, through the exercise of ordinary diligence, the applicant could not have foreseen. "Good cause" does not include an applicant's request for a temporary permit for reasons of convenience only.

D. A temporary use approval shall not be granted for variances, zone changes or plan amendments.

E. The scope of the temporary approval shall be limited to allow the applicant to proceed only with that portion of the proposed use justifying the applicant's claim of hardship or emergency.

F. A temporary use approval shall expire as follows:

1. Six months from the date of approval, if no decision has been reached on the underlying application.

2. On the date the appeal period runs on the decision on the underlying application.
3. On the date that all appeals of the decision on the underlying application are decided and final.

G. A decision to approve a temporary use application is not appealable.

(7) Supplementation of application within first 30 days of submittal.

An applicant shall not submit any evidence to supplement its application during the 30 days following submittal of its application, except to respond to a request for additional information made under Section 2(4). Any evidence submitted by an applicant in violation of this section will not be considered in determining whether the application is complete and will be returned to the applicant.

(8) Modification of application.

A. An applicant may modify an application at any time during the approval process up until the issuance of an administrative decision, or the close of the record for an application reviewed under a hearings process, subject to the provisions of Section 5(7) and this section.

B. The Review Authority shall not consider any evidence submitted by or on behalf of an applicant that would constitute modification of an application (as that term is defined in Section 1) unless the applicant submits an application for a modification, pays all required modification fees and agrees in writing to restart the 120-day time clock as of the date the modification is submitted. The 120-day time clock for an application, as modified, may be restarted as many times as there are modifications.

C. The Review Authority may require that the application be re-noticed and additional hearings be held.

D. Up until the day a hearing is opened for receipt of oral testimony, the Planning Director shall have sole authority to determine whether an applicant's submittal constitutes a modification. After such time, the Hearings Body shall make such determinations. The Review Authority 's determination on whether a submittal constitutes a modification shall be appealable only to LUBA and shall be appealable only after a final decision is entered by the City on an application.

Section 6. DESCHUTES RIVER CORRIDOR DESIGN REVIEW PROCEDURES

(1) Deschutes River Corridor Design Review Procedures.

For all property subject to the Deschutes River Design Review process pursuant to the City Zoning Ordinance, the following procedures shall apply:

A. There shall be two types of review for Design Review depending on the level and type of activity proposed. Notwithstanding these provisions, the Planning Director may refer any application to the Planning Commission for approval. The Planning Commission's consideration shall be subject to land use permit procedures.

1. Development Action review shall be performed by the Planning Director for the following activities:

- a. Minor alterations of 10 percent or less to an existing building facade facing river.
- b. Changes in window or door placement visible from the river.
- c. Changes in parking locations.
- d. Fill or removal activity within 10 feet of the ordinary high water mark of the Deschutes River.
- e. New construction or additions that are not visible from the river due to topography, vegetation or existing development.

2. Notwithstanding Section 7(2), land use permit review shall be performed by the Planning Commission for the following activities:

- a. Appeal of a Development Action decision.
- b. New construction and new development.
- c. Master Plan approval for large scale projects.
- d. Variances to application under Section 10.10.22A. of the City Zoning Ordinance, Deschutes River Corridor Design Review Combining Zone.
- e. Fill and removal activities associated with new development or for creation of fire breaks in association with appropriate fire prevention authorities.

B. Procedures: The applicant shall request approval for a procedure in writing to the Planning Division on forms provided by the city. The request shall include a site plan and a description of work and materials that will be used. The Review Authority shall review the request and respond to the applicant in writing of the decision and any conditions placed on the decision.

C. Land Use Permit Procedures: Land Use permit review shall be conducted by the Planning Commission as follows:

1. Notice for land use permit applications shall be as set forth in Section 7(3), Notice of Hearing or Administrative Action, and Section 7(4), Contents of Notice. The Commission may hold a public hearing for any Land Use Action

applications. The hearings procedure shall be as set forth in Section 7, Land Use Action Hearings.

2. Appeals of the decision of the Planning Commission shall be to the City Council, subject to the procedures and restrictions set forth in Section 10, Appeals.

D. Where the procedures in this section conflict with other provisions of this ordinance with respect to Deschutes River Corridor Design Review, the provisions of this section shall prevail.

Section 6B. REFINEMENT PLAN REVIEW PROCEDURES

(1) Refinement Plan Development and Approval Process.

(2) Refinement Plan Content.

(3) Land Use Review.

(4) Amendments and Adjustments to the Refinement Plan.

(1) Refinement Plan Development and Approval Process.

(a) Initiation. The process to establish a refinement plan shall be initiated by the City Council. The Planning Commission or interested property owners may submit requests to the City Council to initiate the refinement plan process. If owners request initiation of a refinement plan process, the City Council may require an application fee to cover the cost of creating the plan.

(b) Steering Committee. The City Council may appoint a steering committee to guide development of the plan. The steering committee may include persons representing affected property owners, neighbors, city staff, agencies, special districts and the community at large. The role of the steering Committee is advisory to the Planning Commission and the City Council.

(2) Refinement Plan Content.

At a minimum, a refinement plan shall include the following text and diagrams:

(a) Plan Objectives. A narrative shall set forth the goals and objectives of the plan.

(b) Site and Context. A map of the site and context shall identify the project area.

(c) Land Use Diagram. The land use diagram shall indicate the distribution and location of planned land uses, including open space and parks, within the area covered by the refinement plan.

(d) Density. If residential uses are proposed, a narrative shall describe planned residential densities.

(e) Facilities Diagram. The facilities diagram shall depict the general location and extent of major components of sanitary sewer, water, and other essential facilities proposed to be located within the area covered by the refinement plan and needed to support the land uses described in the plan.

(f) Circulation/Transportation Diagram. The circulation diagram shall indicate the proposed street pattern for the refinement plan area, including pedestrian pathways and bikeways. Design standards and street cross sections shall be included, if different than normal City standards.

(g) Design and Development Standards. If standards differ from normal City standards, design and development standards shall be included in the plan.

(2) Land Use Review.

Except as set forth below, the review procedures for Land Use Activity Categories outlined in Section 3 of this code shall apply for all property subject to a RP overlay zone.

(a) Administrative Review. The following activities shall be reviewed administratively. The Director, at his or her discretion, may refer a Type I application to the Planning Commission.

(A) Development Action permits.

(B) Land use permits conforming to the standards of the refinement plan.

(C) Administrative amendments to the refinement plan.

(D) Minor amendments to the refinement plan

(E) Lot line adjustments consistent with the refinement plan.

(b) Planning Commission Review. The Planning Commission shall review the following activities:

(A) Type II variance

(B) Lot line adjustments that are not consistent with the refinement plan.

(c) City Council Review. The following activities shall be reviewed by the City Council as either a quasi-judicial or legislative amendment.

(A) Major amendments to the refinement plan.

(B) Appeals of land use decisions.

(4) Amendments and Adjustments to the Refinement Plan.

Amendments to an approved refinement plan are classified as administrative, minor, or major amendments.

(a) Administrative Amendments. Administrative amendments may be approved by the City Planning Director pursuant to development action procedures. Public notice of administrative amendments is not required. Administrative amendments include:

(A) Street, easement, sidewalk, and trail relocations that result in a location change of less than 50 feet from what is depicted on refinement plan diagrams.

(B) Public park relocations that result in a location change of less than 100 feet from what is depicted on refinement plan diagrams.

(C) Increases in the size of public neighborhood parks, provided that transportation connections remain consistent with the refinement plan.

(D) Reductions in the size of public neighborhood parks, provided the reductions are less than 10% of park area depicted on refinement plan diagrams and that the reductions do not result in a park that is less than 20,000 square feet in size.

(E) Changes related to street trees, street furniture, fencing, or signage that were approved as part of the refinement plan.

(F) A change in the utility plan other than what would be necessary for other authorized adjustments.

(b) Minor Amendments. A minor amendment to a refinement plan shall be processed as a land use decision. Notice of the pending decision shall be provided to all owners of land within or abutting the Refinement Plan district(s) in question. The Hearings Body decision shall include findings demonstrating that the change will not affect adversely:

- i. the purpose and objectives of the refinement plan,
- ii. the functioning of the refinement plan, or
- iii. the coordination of transportation and infrastructure provision to properties within the refinement plan area.

Minor amendments are those that result in any of the following:

(A) A change in the circulation/transportation plan that requires an identified transportation element to be moved 50 to 100 feet from the location depicted on the refinement plan circulation/transportation diagram.

(B) A change in the circulation/transportation plan that requires a required transportation element including local street, easement, sidewalk or trail to be shifted 50 to 100 feet in any direction from what is depicted on the refinement plan circulation/transportation diagram.

(C) A change in the land use diagram that reduces the size of a public park or facility more than 10%, or moves the location more than 100 feet from the location depicted on the land use diagram.

(c) Major Amendment. A major amendment to a refinement plan shall be processed as a comprehensive plan amendment affecting the existing refinement plan. The amendment shall follow either quasi-judicial or legislative procedures and meet plan amendment and zone change criteria. Findings must additionally demonstrate that the change will not affect adversely:

- i. the purpose and objectives of the refinement plan,
- ii. the functioning of the refinement plan, or
- iii. the coordination of transportation and infrastructure provision to properties within the refinement plan area.

Major amendments are those that result in any of the following:

(A) A change in land use plan boundary or density, unless as part of the original approvals an alternative design was approved outlining acceptable plan designation options (for example, a residential designation may be approved as an alternative use for a park site).

(B) A change in the circulation/transportation plan that causes a required transportation element, including a trail, to be added, eliminated or moved more than 100 feet from the location depicted on the refinement plan circulation/transportation diagram.

(C) A change in the land use diagram that adds or eliminates a designated public park or facility.

(D) A change in development standards, except those set forth as minor or administrative amendments

Section 7. LAND USE ACTION HEARINGS

- (1) Filing of staff report for hearing.**
- (2) Hearings Body.**
- (3) Notice of hearing or administrative action.**
- (4) Contents of notice.**
- (5) Burden of proof.**
- (6) Nature of evidence.**
- (7) Limitation on oral presentations.**
- (8) Standing.**
- (9) Record.**
- (10) Disclosure of ex parte contacts.**
- (11) Disclosure of personal knowledge.**
- (12) Challenge for bias, prejudice of personal interest.**
- (13) Hearings procedure.**
- (14) Setting the hearing.**
- (15) Close of the record.**
- (16) Continuances or record extensions.**
- (17) Objections to jurisdiction, procedure, notice or qualifications.**
- (18) Reopening the record.**
- (1) Filing of staff report for hearing.**

A. At the time an application, that in the judgment of the Planning Director requires a hearing, is deemed complete, a hearing date shall be set.

B. A staff report shall be completed seven days prior to the hearing. If the report is not completed by such time, the hearing shall be held as scheduled, but any party may at the hearing or in writing prior to the hearing request a continuance of the hearing to a date that is at least seven days after the date the initial staff report is complete. Pursuant to subsection 7(16)(A)(3), grant of a continuance under these circumstances shall be at the discretion of the Hearings Body.

C. A copy of the staff report shall be mailed to the applicant, shall be made available at a reasonable cost to such other persons who request a copy and shall be filed with the Hearings Body.

D. Notwithstanding subsection 7(1)(B) above, oral or written modifications and additions to the staff report shall be allowed prior to or at the hearing.

(2) Hearings Body.

The following shall serve as the Hearings Body in this order:

1. Hearings Officer.
2. Planning Commission, where the Hearings Officer cannot hear the matter due to a conflict of interest.
3. City Council subject to Section 10 of this ordinance.

(3) Notice of hearing or administrative action.

A. Individual Mailed Notice.

1. Except as otherwise provided for herein, notice of a land use application shall be mailed at least twenty days prior to the hearing for those matters set for hearing, or at least fourteen (14) days prior to issuance of a written decision for those matters to be processed administratively with notice. Written notice shall be sent by mail to the following persons:

- a. The applicant.
- b. Owners of record of property as shown on the most recent property tax assessment roll of property located:

1. Within 100 feet of the property that is the subject of the notice and where any structure being proposed is less than or equal to 45 feet in height. The notice boundary shall increase by 200 feet for every 15-foot increment of structure height above 45 feet.

2. The required notice area boundary shall be measured from the opposite side of any street rights of way, rivers, and/or canals adjacent to the subject property from which the notice area originates.

3. The Applicant shall bear the cost (i.e. mailing, etc.) of any increased notice area required by a structure with height in excess of 45 feet.

- c. For a solar access or solar shade exception application, only those owners of record identified in the application as being burdened by the approval of such an application.

- d. The tenants of a mobile home park when the application is for the rezoning of any part or all of a mobile home park.

2. Notwithstanding subsection (A)(1)(b)(1) of this section, all owners of property within 250 feet of property that is the subject of a plan amendment application or zone change application shall receive notice.

3. Mailed notice per ORS 227.160 – 227-185 shall be provided to all property owners affected by a proposed text or plan amendment.

4. The failure of a property owner to receive mailed notice shall not invalidate any land use approval if the Planning Division can show by affidavit that such notice was given.

5. The Planning Director may increase the minimum notice area required under subsection (A)(1)(b)(1) at his or her sole discretion.

B. Posted Notice.

1. Notice of a land use action application for which prior notice procedures are required shall be posted on the subject property by the applicant/property owner for at least 10 continuous days prior to any date set for receipt of comments. Such notice shall, where practicable, be visible from any adjacent public way. Failure of applicant/property owner to maintain posting of the sign for 10 continuous days shall not invalidate a land use approval.

2. Posted notice of an application for a utility facility line approval shall be by posting the proposed route at intervals of not less than 500 feet. The notice shall be posted as close as practicable to, and be visible from, any public way in the vicinity of the proposed route.

3. Notice of a solar access application shall be posted as near as practicable to each lot identified in the application.

C. Published Notice. In addition to notice by mail and posting, notice of an initial hearing shall be published in a newspaper of general circulation in the City at least ten (10) days prior to the hearing.

(4) Contents of notice.

A. All mailed notices of a land use action hearing shall:

1. Describe the nature of the applicant's request and the nature of the proposed uses that could be authorized.

2. List the criteria from the zoning ordinance and the general plan applicable to the application at issue.

3. Set forth the street address or easily understood geographical reference to the subject property.

4. State the date, time and location of any hearing or date by which written comments must be received.

5. State that any person may comment in writing and include a general explanation of the requirements for submission of testimony and the procedures for conduct of testimony, including, but not limited to, a party's right to request a continuance or to have the record held open.

6. If a hearing is to be held, state that any interested person may appear and provide evidence.

7. State that failure to raise an issue in person at a hearing or in writing precludes appeal by that person to the Land Use Board of Appeals (LUBA), and that failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue precludes appeal to LUBA based on that issue.

8. State the name of a city representative to contact and the telephone number where additional information may be obtained.

9. 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 no cost and will be provided at reasonable cost.

10. 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 a reasonable cost.

11. All mailed notices shall contain the following statement: ORS197
REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE
FORWARDED TO THE PURCHASER.

B. All mailed and published notices for hearings shall contain a statement that recipients may request a copy of the staff report at a reasonable cost.

C. All mailed and published notices concerning applications necessitating an exception to one of the statewide land use planning goals shall state that a goal exception is proposed and shall summarize the issues in an understandable manner.

(5) Burden of proof.

Throughout all local land use proceedings the burden of proof rests on the applicant.

(6) Nature of evidence.

All relevant evidence shall be received.

(7) Limitation on oral presentations.

The Hearings Body may set reasonable time limits on oral testimony.

(8) Standing.

A. Any interested person may appear and be heard in a land use action hearing, except that in appeals heard on the record, a person must have participated in a previous proceeding on the subject application.

B. Any person appearing on the record at a hearing (including appeals) or presenting written evidence in conjunction with an administrative action or hearing shall have standing and shall be a party. A person whose participation consists only of signing a petition shall not be considered a party.

C. Additionally, any owner of property to be burdened by a solar access permit shall be considered a party at every stage of the solar access permit decision process.

(9) Record.

A. An audio tape recording of the hearing shall be made.

B. All exhibits presented shall be marked to show the identity of the person offering the exhibit.

C. Exhibits shall be numbered in the order presented, and shall be dated.

D. When exhibits are introduced, the exhibit number or letter shall be read into the record.

(10) Disclosure of ex parte contacts.

Prior to making a decision, the Hearings Body or any member thereof shall not communicate directly or indirectly with any party or his or her representative in connection with any issue involved in a pending hearing except upon notice and opportunity for all parties to participate. Should such communication - whether written or oral - occur, the Hearings Body member shall:

A. Publicly announce for the record the substance of such communication; and

B. Announce the parties' right to rebut the substance of the ex parte communication during the hearing.

C. Communication between City staff and the Hearings Body shall not be considered to be an ex parte contact.

(11) Disclosure of personal knowledge.

A. If the Hearings Body or any member thereof uses personal knowledge acquired outside of the hearing process in rendering a decision, the Hearings Body or member thereof shall state the substance of that knowledge on the record and allow all parties the opportunity to rebut such statement on the record.

B. For the purposes of this section, a site visit by the Hearings Body shall be deemed to fall within this rule. After the site visit has concluded, the Hearings Body must disclose its observations and conclusions gained from the site visit in order to allow for rebuttal by the parties.

(12) Challenge for bias, prejudice or personal interest.

Prior to or at the commencement of a hearing, any party may challenge the qualification of the Hearings Body, or a member thereof, for bias, prejudice or personal interest. The challenge shall be made on the record and be documented with specific reasons supported by facts. Should qualifications be challenged, the Hearings Body or the member shall disqualify itself, withdraw or make a statement on the record of its capacity to hear. A Planning Commission member with a conflict identified under ORS 197 must disqualify him or herself after disclosure.

(13) Hearings procedure.

A hearing shall be conducted as follows:

A. The Hearings Body shall explain the purpose of the hearing and announce the order of proceedings, including reasonable time limits on presentations by parties.

B. A statement by the Hearings Body regarding pre-hearing contacts, bias, prejudice or personal interest shall be made.

C. Any facts received, noticed or recognized outside of the hearing shall be stated for the record.

D. Challenges to the Hearings Body's qualifications to hear the matter shall be stated and challenges entertained.

E. The Hearings Body or his or her designee shall list applicable substantive criteria, explain that testimony and evidence must be directed toward that criteria or other criteria in the comprehensive plan or land use regulations that the person believes to apply to the decision, and that failure to address an issue with sufficient specificity to afford the decision-maker and the parties an opportunity to respond precludes appeal to LUBA based

on that issue. The failure of the applicant to raise a constitutional or other issues related to the proposed conditions of approval with sufficient specificity to allow the Hearings Body to respond to the issue precludes the applicant from pursuing an action for damages in circuit court.

F. Order of presentation:

1. Open the hearing.
2. Staff report.
3. Proponents' presentation.
4. Opponents' presentation.
5. Proponents' rebuttal.
6. Opponents' rebuttal may be allowed at the Hearings Body's discretion.
7. Staff comment.
8. Questions from or to the chair may be entertained at any time at the Hearings Body's discretion.
9. Close the hearing.

G. The record shall be available for public review at the hearing.

H. A form of preliminary statement incorporating the provisions of this section is set forth as Appendix A to this ordinance for use by the City Council.

(14) Setting the hearing.

A. After an application is deemed accepted a hearing date shall be set. A hearing date may be changed by the city staff, or the Hearings Body up until the time notice of the hearing is mailed. Once the notice of hearing is mailed any changes in the hearing date shall be processed as a continuance in accordance with Section 7(16) of this chapter.

B. If an applicant requests that a hearing date be changed, such request shall be granted only if the applicant agrees that the extended time period for the hearing shall not count against the 120-day time limit set forth in Section 5(5) of this ordinance.

(15) Close of the record.

A. Except as set forth herein, the record shall be closed to further testimony or submission of further argument or evidence at the end of the presentations before the Hearings Body.

B. If the hearing is continued or the record is held open under Section 7(16), further evidence or testimony shall be taken only in accordance with the provisions of that section.

C. Otherwise, further testimony or evidence will be allowed only if the record is reopened under Section 7(18).

D. An applicant shall be allowed, unless waived, to submit final written arguments in support of its application after the record has closed within such time limits as the Hearings Body shall set. The Hearings Body shall allow applicant at least seven days to submit its argument, which time shall be counted against the 120-day clock.

(16) Continuances or record extensions.

A. Grounds.

1. Prior to the date set for an initial hearing, an applicant shall receive a continuance upon any request if accompanied by a corresponding extension of the 120 day clock. If a continuance request is made after the published or mailed notice has been provided by the City, the Hearings Body shall take evidence at the scheduled hearing date from any party wishing to testify at that time after notifying those present of the continuance.

2. Any party is entitled to a continuance of the initial evidentiary hearing or to have the record left open in such a proceeding in the following instances:

a. Where additional documents or evidence are submitted by any party; or

b. Upon a party's request made prior to the close of the hearing for time to present additional evidence or testimony.

For the purposes of subsection (A)(2) of this section, "additional documents or evidence" shall mean documents or evidence containing new facts or analysis that are submitted after notice of the hearing.

3. The grant of a continuance or record extension shall be at the discretion of the Hearings Body.

B. Except for continuance requests made under subsection (16)(A)(1) of this Section, the choice between granting a continuance or leaving the record open shall be at the discretion of the Hearings Body. After a choice has been made between leaving the record open and granting a continuance, the hearing shall be governed thereafter by the provisions that relate to the path chosen.

C. Continuances.

1. 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.

2. An opportunity shall be provided at the continued hearing for persons to rebut new evidence and testimony received at the continued hearing.

3. If new written evidence is submitted at the continued hearing, any person may request prior to the conclusion of the continued hearing that the record be left open for at least 7 days to allow submittal of additional written evidence or testimony. Such additional written evidence or testimony shall be limited to evidence or testimony that rebuts the new written evidence or testimony.

D. Leaving record open.

If at the conclusion of the hearing the Hearings Body leaves the record open for additional written evidence or testimony, the Hearings Body shall allow for response to written evidence or testimony submitted during the period the record is held open.

E. A continuance or record extension granted under this section shall be subject to the 120-day time limit unless the continuance or extension is requested or otherwise agreed to by the applicant. When the record is left open or a continuance is granted after a request by an applicant, the time period during which the 120-day clock is suspended shall include the time period made available to the applicant and any time period given to parties to respond to the applicant's submittal.

(17) Objections to jurisdiction, procedure, notice or qualifications.

Any objections not raised prior to the close of oral testimony are waived. Parties alleging procedural error shall have the burden of proof at LUBA as to whether the error occurred and whether the error has prejudiced the party's substantial rights.

(18) Reopening the record.

A. The Hearings Body may at its discretion reopen the record, either upon request or on its own initiative. The Hearings Body shall not reopen the record at the request of an applicant unless the applicant has agreed in writing to an extension or a waiver of the 120-day time limit.

B. Procedures.

1. Except as otherwise provided for in this section, the manner of testimony (whether oral or written) and time limits for testimony to be offered upon reopening of the record shall be at the discretion at the Hearings Body.

4. The Hearings Body shall give written notice to the parties that the record is being reopened, stating the reason for reopening the record and how parties can respond. The parties shall be allowed to raise new issues that relate to

the new evidence, testimony or criteria for decision-making that apply to the matter at issue.

Section 8. LAND USE ACTION DECISIONS

- (1) Decision.**
- (2) Findings as to application acceptance date.**
- (3) Findings as to legal lot of record status.**
- (4) Notice of decision.**
- (5) Decision on plan amendments and zone changes.**
- (6) Reapplication limited.**
- (7) Proposed order.**
- (8) Compliance with ORS 227.350.**
- (9) Correction of clerical errors.**

(1) Decision.

A. Approval or denial of a land use action shall be based upon and accompanied by a written statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based upon the criteria standards and facts set forth.

B. Any portion of an application not addressed in a Review Authority's decision shall be deemed to have been denied.

C. A decision on a land use action is not final until the Review Authority issues a written decision, the decision or notice of the decision has been mailed and the appeal period to the next higher Review Authority within the City has run.

D. Unless a temporary use permit has been issued, no building permit shall issue until a decision is final. Appeal of a final decision to LUBA does not affect the finality of a decision for purposes of issuing building permits. If an applicant elects at his or her own discretion to proceed under a land use action with a pending LUBA appeal, he or she shall proceed only if:

- a. The applicant accepts each and every risk of loss and damage that may result if the application is denied, and further agrees in writing to hold City, its officers, agents and employees harmless from such loss and damage.
- b. The applicant agrees in writing to restore the site to its original condition if the application for the land use approval is denied.

c. The applicant posts a bond or other form of security acceptable to the Review Authority in an amount sufficient to cover the costs of restoration of the site to its pre-approval condition.

(2) Findings as to application acceptance date.

Each decision shall include findings as to when the proposed land use action application was deemed complete and formally accepted as such by the Planning Director.

(3) Findings as to legal lot of record status.

Each decision shall include a finding that the property subject to the proposed land use action is a legal lot of record as that term is defined in the City of Bend Zoning Ordinance.

(4) Notice of decision.

A Review Authority's decision shall be in writing and mailed to all parties; however, one person may be designated by the Review Authority to be the recipient of the decision for a group, organization, group of petitioners or similar collection of individual participants.

(5) Decision on plan amendments and zone changes.

Except as set forth herein, the Hearings Body shall have authority to make decisions on all quasi-judicial zone changes and plan amendments. No quasi-judicial plan amendment or zone change shall be effective unless adopted by the City Council.

(6) Reapplication limited.

A. If a specific application is denied on its merits, reapplication for substantially the same proposal may be made at any time after the date of the final decision denying the initial application.

B. Notwithstanding subsection A of this section, a final decision bars any reapplication for a nonconforming use verification or for a determination on whether an approval has been initiated, unless the applicant comes forward with new evidence that was not available at the time the decision was made, and which could not, through reasonable diligence, have been discovered by the applicant prior to the decision. A lot of record determination shall be subject to reapplication under subsection A only if the applicant presents new factual evidence not submitted with the prior application.

(7) Proposed order.

The Review Authority may request that any prevailing party draft a set of proposed findings and conclusions.

(8) Compliance with ORS 227.350.

A. Final approval of any activity referred to in ORS 227.350(1) regarding state-identified wetlands must include the notice statements required by ORS 227.350(3).

B. Individual notice to the applicant and the owner of record consistent with ORS 227.350(5) shall be provided, unless notice in the written decision notice satisfies that requirement.

C. Failure of the City to provide notice as required in this section shall not invalidate City approval.

D. This section shall not become operative until the Division of State Lands makes available to the City a copy of the applicable portion of the Statewide Wetland Inventory.

(9) Correction of clerical errors.

Upon its own motion or the motion of a party, the City Council may, subject to any applicable public notice and hearing requirements, enact an ordinance correcting clerical or typographical errors in plan amendment or zone change ordinances and any maps appended thereto implementing decisions of the Review Authority. Such changes shall be entered only if the council is able to make a finding that the decision of the Review Authority, including appendices, is not accurately reflected in the implementing ordinances.

Section 9. RECONSIDERATION

(1) Reconsideration.

(2) Procedure.

(3) Limitation on reconsideration.

(1) Reconsideration.

A. An applicant may request that the Review Authority's decision be reconsidered as set forth herein. A request for reconsideration shall be accompanied by a fee established by the City and by applicant's written consent that the 120-day time clock will not run during the period of the reconsideration and the resulting extended appeal period.

B. Grounds for reconsideration of an administrative decision are limited to the following instances:

1. The applicant's submission of additional documents or evidence that merely clarifies or supports, the pending application directed to one or more discreet aspects of the approval. The new information shall not constitute a modification of application as defined herein.

2. Correction of an error in a condition established by the Review Authority where the condition is not supported by the record or is not supported by law;

3. Correction of errors that are technical or clerical in nature.

C. Grounds for reconsideration of the Hearing Body's decision are limited to the following instances where an alleged error substantially affects the rights of the applicant:

1. Correction of an error in a condition established by the Review Authority where the condition is not supported by the record or is not supported by law;

2. Correction of errors that are technical or clerical in nature.

(2) Procedure.

A. A request for reconsideration shall be filed with the Planning Director within twelve (12) days of the date the decision was mailed. The request shall identify the condition or issue to be considered and shall specify how the applicant would be adversely affected if the issue were to remain uncorrected.

B. Upon receipt of a request for reconsideration of a Hearings Body's decision, the Planning Director shall notify all parties to the proceeding of the request and allow for a ten-day comment period on the request. At the end of the comment period, the Hearings Body shall determine whether the request for reconsideration has merit. No comment period or prior notice shall be required for an administrative reconsideration.

C. The Review Authority shall modify the decision upon a determination that the request has merit and the issue substantially affects the applicant. Notice of the modification shall be sent to all parties to the proceeding. If the Review Authority determines that no modification is warranted, a determination shall issue to that effect.

D. Filing a request for a reconsideration shall not be a precondition for appealing a decision.

E. Filing a request for reconsideration stays the deadline for any party to file an appeal of the Review Authority's decision. A new 12-day appeal period for all parties to the proceeding shall commence upon mailing of a modification or upon mailing a determination that a modification is not warranted. If an opponent files an appeal and an applicant has requested reconsideration, the opponent's appeal shall be stayed pending disposition of the request for modification. If the decision is not modified, the appeal will be processed in accordance with the procedures set forth in Section 10. If the decision is modified, the appellant must within 12 days of the mailing of the modified decision file in writing a statement requesting that its appeal be activated or the appeal will be invalidated.

(3) Limitation on reconsideration.

No decision shall be reconsidered more than once before the same Review Authority.

Section 10. APPEALS

(1) Who may appeal.

(2) Filing appeals.

(3) Notice of appeal.

(4) Determination of jurisdictional defects.

(5) Transcript requirement for appeals to City Council.

(6) Consolidation of multiple appeals.

(7) Scope of review.

(8) Hearing on appeal.

(9) Development action appeals.

(10) Rehearing.

(11) Remands.

(12) Withdrawal of an appeal.

(1) Who may appeal.

A. The following may file an appeal:

1. A party;

2. In the case of an appeal of an administrative decision without prior notice, a person entitled to notice, a person adversely affected or aggrieved by the administrative decision, or any other person who has filed comments on the application with the Planning Division; and

3. A person entitled to notice and to whom no notice was mailed. A person who, after such notices were mailed, purchases property to be burdened by a solar access permit shall be considered a person to whom notice was to have been mailed; and

B. A person to whom notice is mailed is deemed notified even if notice is not received.

(2) Filing appeals.

A. To file an appeal, an appellant must file a completed notice of appeal on a form prescribed by the Planning Division and pay an appeal fee.

B. Unless a request for reconsideration has been filed, the notice of appeal and appeal fee must be received at the offices of the City services no later than 5:00 PM on the twelfth day following mailing of the decision. If a decision has been modified on reconsideration, an appeal must be filed no later than 5:00 PM on the twelfth day following mailing of the decision as modified. Notices of Appeals shall not be received by facsimile machine.

C. If the City Council is the Hearings Body and the council declines review, the appeal fee will not be refunded.

D. The appeal fee shall be paid by cash or check or money order, except that local, state or federal governmental agencies may supply a purchase order at the time of filing.

(3) Notice of appeal.

The Notice of Appeal shall contain:

A. A description of the decision which is being appealed, including the date of decision.

B. A statement describing the interest the person who is appealing has in the decision. Only persons who have proper standing as provided by the law, and who have participated in the decision being appealed (if provision for such participation was provided in the previous proceeding) may appeal the decision. The statement of interest must demonstrate the person's standing and participation.

C. A description of the issues sought to be raised by the appeal; and a statement that the issues were raised during the proceeding that produced the decision being appealed. This description must include the specific criteria relied upon as the basis for the appeal, and an explanation of why the decision has not complied with the standards or requirements of the criteria. The issues raised by the appeal must be stated with sufficient specificity to afford the reviewing authority an opportunity to resolve each issue raised.

D. In the case of an appeal to the City Council, the Notice of Appeal shall include the following additional information to assist the Council in deciding whether to grant discretionary review of the decision being appealed:

(1) How the appeal presents issues that have significant public policy or community wide implications for the City, as opposed to more limited issues which primarily involve the directly affected property or persons involved in the land use decision being appealed.

(2) Why it is necessary or desirable for the City Council to review these issues; and why the issues cannot be adequately and fairly reviewed by the Land Use Board of Appeals.

E. If the appeal asks for City Council discretionary review of the decision being appealed, and the person appealing wants to present additional evidence (beyond that already in the

record made as part of the decision being appealed), then the Notice of Appeal shall also contain:

(1) A statement summarizing the new evidence and the criteria to which it will relate.

(2) An explanation why the proposed new evidence was not submitted as part of the record made in the decision being appealed. Evidence that is substantially similar to evidence already in the record of the decision being appealed will not be allowed. Evidence that could have been submitted in the record of the decision being appealed will not be allowed unless there is a compelling reason that justifies its presentation as part of the appeal.

(4) Determination of jurisdictional defects.

A. Any failure to conform to the requirements of Sections 10(2) and 10(3) shall constitute a jurisdictional defect.

B. Determination of jurisdictional defects in an appeal shall be made by the Review Authority to which an appeal has been made.

(5) Transcript requirement for appeals to City Council.

A. Except as otherwise provided in this section, appellants shall provide a complete transcript of any hearing appealed from the Hearings Officer or Planning Commission, from audio recordings provided by the City.

B. Appellants shall submit the transcript to the Planning Division no later than the close of the day 5 days prior to the date set for a de novo appeal hearing or, in on-the-record appeals, the date set for receipt of written arguments. Unless excused under this section, an appellant's failure to provide a transcript shall cause the Council to decline to consider the appellant's appeal further and shall, upon notice mailed to the parties, cause the lower Hearings Body's decision to become final.

C. An appellant shall be excused from providing a complete transcript if appellant was prevented from complying by: (1) the inability of the Planning Division to supply appellant with an audio recording of the prior proceeding; or (2) defects on the audio recording of the prior proceeding that make it not reasonably possible for applicant to supply a transcript. Appellants shall comply to the maximum extent reasonably and practicably possible.

(6) Consolidation of multiple appeals.

A. If more than one party files a notice of appeal on a land use action decision, the appeals shall be consolidated and noticed and heard as one proceeding.

B. In instances of multiple appeals where separate appellants have asked for a differing scope of review, any grant of de novo review shall control over a separate request for a more limited review on appeal.

(7) Scope of review.

A. Before Hearings Officer or Planning Commission. The review on appeal before the Hearings Officer or Planning Commission shall be de novo.

F. Before the Council:

(1) Review of land use decisions by the City Council on appeal shall be discretionary. A decision by the City Council to not grant discretionary review of the appeal shall be the final determination of the City, and the appeal of the decision shall be to the Land Use Board of Appeals as provided by law. The City Council's decision whether to grant discretionary review shall be made without testimony or argument from persons interested in the appeal, except as specifically permitted by the City Council.

(2) The scope of review for appeals that are granted discretionary review by the City Council shall be:

(a) Restricted to the issues raised in the Notice of Appeal, or as prescribed by the City Council for decisions called up by the City Council for review.

(b) Be conducted during an appeal hearing before the City Council on the record made as part of the decision being appealed, unless the City Council has permitted the presentation of new evidence as part of the appeal.

(c) De novo review if the City Council so chooses.

(3) The record for discretionary review by the City Council shall include:

(a) The land use application or request which is the subject of the appeal, any staff report, and all written comments, exhibits, or any other materials or information considered by the decision maker in the proceedings that produced the decision being appealed.

(b) A written transcript of all proceedings before the decision maker, or a stipulated written summary of the proceedings submitted by all of the parties to the appeal.

(4) An appeal hearing before the City Council shall be conducted according to such procedures as the City Council shall prescribe, which shall include an opportunity for presentations by the parties to the appeal.

(5) Decisions reviewed by the City Council can be affirmed, remanded, reversed, or modified in whole or in part by the City Council.

(8) Hearing on appeal.

A. The appellant and all other parties to the decision below shall be mailed notice of the hearing on appeal at least ten (10) days prior to any de novo hearing or deadline for submission of written arguments.

B. Except as otherwise provided in this chapter, the appeal shall be heard as provided in Section 7, "Land Use Action Hearing." The applicant shall proceed first in all de novo appeals.

C. The order of Hearings Body shall be as provided in Section 7(2) of this ordinance.

D. The record of the proceeding from which appeal is taken shall be a part of the record on appeal.

E. The record for a review on the record shall consist of the following:

1. A written transcript of any prior hearing;
2. All written and graphic materials that were part of the record below;
3. The Review Authority's decision appealed from;
4. Written arguments, based upon the record developed below, submitted by any party to the decision;
5. Written comments submitted by the Planning Commission or individual Planning Commissioners, based upon the record developed below; and
6. A staff report and staff comment based on the record: and
7. Other information deemed relevant by the Review Authority.

F. No oral evidence, argument or comment other than staff comment based on the record shall be taken. The council shall not consider any new factual information.

(9) Development action appeals.

Notice of the hearing date set for appeal shall be sent only to the applicant. Only the applicant, his or her representatives, and his or her witnesses shall be entitled to participate. Continuances shall be at the discretion of the Hearings Body, and the record shall close at the end of the hearing.

(10) Rehearing.

Rehearings shall not be allowed.

(11) Remands.

Applications shall not be remanded to a lower level Review Authority after appeal.

(12) Withdrawal of an appeal.

An appeal may be withdrawn in writing by an appellant at any time prior to the rendering of a final decision. Subject to the existence of other appeals on the same application, in such event the appeal proceedings shall terminate as of the date the withdrawal is received. An appeal may be withdrawn under this section regardless of whether other non-filing parties have relied upon the appeal filed by the appellant.

Section 11. PROCEEDINGS ON REMAND

(1) Purpose.

(2) Hearings Body.

(3) Notice and hearings requirements.

(4) Scope of proceeding.

(5) Effect of reversal.

(1) Purpose.

This chapter shall govern the procedures to be followed where a decision of the City has been remanded by LUBA or the appellate courts or a decision has been withdrawn by the City following an appeal to LUBA.

(2) Hearings Body.

The Hearings Body for a remanded or withdrawn decision shall be the Hearings Body from which the appeal to LUBA was taken, except that in voluntary or stipulated remands, the council may decide that it will hear the case on remand. If the remand is to the Hearings Officer, the Hearings Officer's decision may be appealed under this ordinance to the council, subject to the limitations set forth herein.

(3) Notice and hearings requirements.

A. The City shall conduct a hearing on any remanded or withdrawn decision, the scope of which shall be determined in accordance with the applicable provisions of this section, the LUBA or Appellate Court decision, and applicable state law. Unless state law requires otherwise, only those persons who were parties to the proceedings before the City shall be entitled to notice and be entitled to participate in any hearing on remand.

B. The hearing procedures shall comply with the minimum requirements of state law and due process for hearings on remand and need comply with the requirements of Section 7 only to the extent that such procedures are applicable to remand proceedings under state law.

(4) Scope of proceeding.

A. On remand, the Hearings Body shall review those issues that LUBA or the Appellate Court required to be addressed. In addition, the Council shall have the discretion to reopen the record in instances in which it deems it to be appropriate.

B. At the Council's discretion, a remanded application for a land use permit may be modified to address issues involved in the remand or withdrawal to the extent that such modifications would not substantially alter the proposal and would not have a significantly greater impact on surrounding neighbors. Any greater modification would require a new application.

C. If additional testimony is required to comply with the remand, parties may raise new, unresolved issues that relate to new evidence directed toward the issue on remand. Other issues that were resolved by LUBA or the Appellate Court or that were not appealed shall be deemed to be waived and may not be reopened.

(5) Effect of reversal.

A land use decision reversed by LUBA or the Court of Appeals that results in a final appellate judgment or order of reversal cannot be further heard by the City in the absence of an amended or a new application. Submission of a revised application shall be governed by the time limit set forth in Section 8(6).

Section 12. LIMITATIONS ON APPROVALS

(1) Expiration of approval.

(2) Initiation of use.

(3) Extensions to avoid environmental or health hazards.

(4) Modification of approval.

(5) Transfer of permit.

(6) Revocation of Approvals.

(1) Expiration of approval.

A. Scope.

1. Except as otherwise provided herein, this section shall apply to and describe the duration of all approvals of land use permits provided for under this ordinance, the zoning ordinances and the land division ordinance.

2. This section does not apply to:

a. Those determinations made by declaratory ruling, such as verifications of nonconforming uses, lot of record determinations and expiration determinations that involve a determination of the legal status of a property, land use or land use permit rather than whether a particular application for a specific land use meets the applicable standards of the zoning ordinance. Such determinations, whether favorable or not to the applicant or land owner, shall be final unless appealed and shall not be subject to any time limits;

b. Temporary use permits of all kinds, which shall be governed by applicable ordinance provisions specifying the duration of such permits; or

c. Quasi-judicial map changes.

B. Duration of Approvals.

1. Except as otherwise provided under this section or under applicable zoning ordinance provisions, a land use permit is void one year after the date the discretionary decision becomes final if the use approved in the permit is not initiated within that time period.

2. Except as otherwise provided under applicable ordinance provisions, preliminary approval of plats or master plans shall be void after one year from the date of preliminary approval, unless the final plat has been submitted to the Planning Division for final approval within that time period, an extension is sought under this section or the preliminary plat or master plan approval has been initiated as defined herein.

3. In the case of a land use approval authorized under applicable approval criteria to be completed in phases, each phase must be initiated within the time specified in the approval, or initiated within one (1) year of completion of the prior phase if no timetable is specified.

C. Extensions.

1. The Planning Director may grant one extension of up to one year for a land use approval or a phase of a land use approval, unless the applicable criteria have changed, if:

a. An applicant makes a written request for an extension of the development approval period;

b. The request, along with the prescribed fee, is submitted to the city prior to the expiration of the approval period;

D. Procedures.

1. A determination of whether a land use has been initiated shall be processed as a declaratory ruling.

2. Approval of an extension granted under this section is an administrative decision, is not a land use decision described in ORS 197.015 or this ordinance. An extension is not subject to appeal as a land use decision and shall be processed under this ordinance as a development action, except to the extent it is necessary to determine whether the use has been initiated.

E. Effect of Appeals. The time period set forth in subsection B of this section shall be tolled upon filing of an appeal to LUBA, until all appeals are resolved.

(2) Initiation of use.

A. For the purposes of this Chapter, development action undertaken under a land use approval described in Section 12(1), has been "initiated" if it is determined that:

1. The proposed use has lawfully occurred;

2. Substantial construction toward completion of the land use approval has taken place; or

3. Where construction is not required by the approval, the conditions of a permit or approval have been substantially exercised and any failure to fully comply with the conditions is not the fault of the applicant.

B. For the purposes of this section, "substantial construction" has occurred when the holder of a land use approval has physically altered the land or structure or changed the use thereof and such alteration or change is directed toward the completion and is sufficient in terms of time, labor or money spent to demonstrate a good faith effort to complete the development.

(3) Extensions to avoid environmental or health hazards.

A. In addition to extensions granted pursuant to Section 12(1)(C) and notwithstanding any other provision of the Bend Code, a one-time extension may be granted to a tentative plat approval and any associated land use permits regarding the time for final plat approval where conditions of the approval, or extensions thereof, require or can be read to require

approvals from other agencies for sewer or water systems and (1) the applicant can show that without such extension or extensions, a health or environmental hazard or risk thereof would continue to exist, be exacerbated or likely would be created and (2) the applicant submits a time frame and plan for meeting the outstanding conditions with the concurrence of a homeowner's association having an ownership interest in project lands and such concurrence is demonstrated in the application.

B. Such an extension shall be administrative, in writing, and not subject to appeal and shall, subject to the termination provisions of Section C of this subsection, be granted for a time period not to exceed one year.

C. In lieu of submittal of the time frame and plan and concurrence of the homeowner's association with the application, that requirement of section A of this subsection may be satisfied by conditioning approval of the extension to require establishment of the agreed-to time frame and plan within the first 60 days of the extension period, which time line and plan shall thereupon be deemed to be a condition of the extension approval.

D. An extension under this section shall be conditioned upon adherence to the time lines and plan proposed in the extension application or as agreed to pursuant to Section C of this subsection.

E. Failure to demonstrate compliance with any extension condition shall, after notice and hearing under this ordinance, result in termination of the extension granted under this section.

(4) Modification of approval.

A. An applicant may apply to modify an approval at any time after a period of 60 days has elapsed from the time a land use action approval has become final.

B. Unless otherwise specified in a particular zoning ordinance provision, the grounds for filing a modification shall be that a change of circumstances since the issuance of the approval makes it desirable to make changes to the proposal, as approved. A modification shall not be filed as a substitute for an appeal or to apply for a substantially new proposal or one that would have significant additional impacts on surrounding properties.

C. An application to modify an approval shall be directed to one or more discrete aspects of the approval, the modification of which would not amount to approval of a substantially new proposal or one that would have significant additional impacts on surrounding properties. Any proposed modification, as defined in this section, shall be reviewed only under the criteria applicable to that particular aspect of the proposal. Proposals that would modify an approval in a scope greater than allowable as a modification shall be treated as an application for a new proposal.

D. An application for a modification shall be processed as a land use action.

E. The effect, if any, of a modification upon the original approval time limitation shall be established in the modification decision.

(5) Transfer of permit.

A. A land use action permit shall be deemed to run with the land and be transferable to applicant's successors in interest.

B. The Planning Division may require that an applicant record a notice of land use permit and conditions of approval agreement in the Deschutes County Records. Such an agreement shall set forth a description of the property, describe the permit that has been issued and set forth the conditions of approval. The Planning Director is authorized to sign the notice and agreement on behalf of the City.

C. The terms of the approval agreement may be enforced against the applicant and any successor in interest.

(6) Revocation of Approvals.

A. Approvals shall be subject to revocation according to standards set forth in the applicable zoning ordinances.

Revocations shall be processed as a declaratory ruling under this ordinance. Section 5(2) notwithstanding, a public hearing shall be held in all revocation proceedings.

Section 13. DECLARATORY RULING

(1) Availability of declaratory ruling.

(2) Persons who may apply.

(3) Procedures.

(4) Effect of declaratory ruling.

(5) Interpretation.

(1) Availability of declaratory ruling.

A. Subject to the other provisions of this section, there shall be available for the City's comprehensive plans, zoning ordinances, the subdivision and partition ordinance and this ordinance a process for:

1. Interpreting a provision of a comprehensive plan or ordinance (and other documents incorporated by reference) in which there is doubt or a dispute as to its meaning or application;

2. Interpreting a provision or limitation in a land use permit issued by the City or quasi-judicial plan amendment or zone change in which there is doubt or a dispute as to its meaning or application;

3. Determining whether an approval has been initiated or considering the revocation of a previously issued land use permit, quasi-judicial plan amendment or zone change;
4. Determining the validity and scope of a nonconforming use; and
5. Determination of other similar status situations under a comprehensive plan, zoning ordinance or land division ordinance that do not constitute the approval or denial of an application for a permit.

Such a determination or interpretation shall be known as a "declaratory ruling" and shall be processed in accordance with this chapter. In all cases, as part of making a determination or interpretation the Planning Director (where appropriate) or Hearings Body (where appropriate) shall have the authority to declare the rights and obligations of persons affected by the ruling.

B. A declaratory ruling shall be available only in instances involving a fact-specific controversy and to resolve and determine the particular rights and obligations of particular parties to the controversy. Declaratory proceedings shall not be used to grant an advisory opinion on a specific quasi-judicial land use application. Declaratory proceedings shall not be used as a substitute for seeking an amendment of general applicability to a legislative enactment.

C. Declaratory rulings shall not be used as a substitute for an appeal of a decision in a land use action or for a modification of an approval. In the case of a ruling on a land use action a declaratory ruling shall not be available until 60 days after a decision in the land use action is final.

D. The Planning Director may refuse to accept and the Hearings Officer may deny an application for a declaratory ruling if:

1. The Planning Director or Hearings Officer determines that the question presented can be decided in conjunction with approving or denying a pending land use action application or if in the Planning Director or Hearings Officer's judgment the requested determination should be made as part of a decision on an application for a quasi-judicial plan amendment or zone change or a land use permit not yet filed; or
2. The Planning Director or Hearings Officer determines that there is an enforcement case pending in circuit court in which the same issue necessarily will be decided as to the applicant and the applicant failed to file the request for a declaratory ruling within two weeks after being cited or served with a compliant.

The Planning Director or Hearings Officer's determination to not accept or to deny an application under this section shall be the City's final decision.

(2) Persons who may apply.

A. Section 2(2)(B) notwithstanding, the following persons may initiate a declaratory ruling under this chapter:

1. The owner of a property requesting a declaratory ruling relating to the use of the owner's property;
2. In cases where the request is to interpret a previously issued quasi-judicial plan amendment, zone change or land use permit, the holder of the permit;
or
3. In all cases arising under Section 13(1), the Planning Director.

No other person shall be entitled to initiate a declaratory ruling.

B. A request for a declaratory ruling shall be initiated by filing an application with the Planning Division and, except for applications initiated by the Planning Director, shall be accompanied by such fees as have been set by the Planning Division. Each application for a declaratory ruling shall include the precise question on which a ruling is sought. The application shall set forth whatever facts are relevant and necessary for making the determination and such other information as may be required by the Planning Division.

(3) Procedures.

Except as set forth in this chapter or in applicable provisions of a zoning ordinance, the procedures for making declaratory rulings shall be the same as set forth in this ordinance for land use actions. Where the Planning Division is the applicant, the Planning Division shall bear the same burden that applicants generally bear in pursuing a land use action.

(4) Effect of declaratory ruling.

A. A declaratory ruling shall be conclusive on the subject of the ruling and bind the parties thereto as to the determination made.

B. Section 8(6) notwithstanding, and except as specifically allowed therein, parties to a declaratory ruling shall not be entitled to reapply for a declaratory ruling on the same question.

C. Except when a declaratory ruling is made by the City Council, the ruling shall not constitute a final policy of the City of Bend.

(5) Interpretation.

Interpretations made under this chapter shall not have the effect of amending the interpreted language. Interpretation shall be made only of language that is ambiguous

either on its face or in its application. Any interpretation of a provision of the comprehensive plan or other land use ordinance shall consider applicable provisions of the comprehensive plan and the purpose and intent of the ordinance as applied to the particular section in question.

APPENDIX A
(Section 7(13)(H))

PRELIMINARY STATEMENT IN LAND USE ACTION HEARINGS OR APPEALS BEFORE THE COUNCIL

INTRODUCTION

This is a hearing on (insert application type and number). Applicant requested (set forth what the applications are and what is being requested.) (If an appeal) These applications were previously considered by the (Planning Director). [or, if Hearings Officer or Planning Commission after a public hearing held on (insert date). Evidence and testimony were received at that hearing.] The (Planning Director, Hearings Officer or Planning Commission) (denied/approved) the applicant's requests.

BURDEN OF PROOF AND APPLICABLE CRITERIA

The applicant has the burden of proving that he/she is entitled to the land use approval sought. The standards applicable to the application(s) before us are as follows: (list applicable criteria)

HEARINGS PROCEDURE

The procedures applicable to this hearing provide that the (Hearings Body) will hear testimony, receive evidence and consider the testimony, evidence and information submitted into the record on appeal as well as that evidence constituting the record in the prior proceeding. The record as developed to this point is available for public review at this hearing.

Testimony and evidence at this hearing must be directed toward the criteria set forth in the notice of this hearing and listed in this statement. Testimony may be directed to any other criteria in the comprehensive land use plan of the City or land use regulations which any person believes apply to this decision.

Failure on the part of any person to raise an issue with sufficient specificity to afford the (Hearings Body) and parties to this proceeding an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals on that issue.

The failure of the applicant to raise a constitutional or other issues related to the proposed conditions of approval with sufficient specificity to allow the Hearings Body to respond to the issue precludes the applicant from pursuing an action for damages in circuit court.

ORDER OF PRESENTATION

The hearing will be conducted in the following order. The staff will give a report of the prior proceedings and the issues raised by the applications on appeal. The applicant will then have an opportunity to make a presentation and offer testimony and evidence. Opponents will then be given a chance to make a presentation. After both proponents and opponents have made a presentation, the proponents will be allowed to make a rebuttal presentation. At the Hearings Body's discretion, opponents may be recognized for a rebuttal presentation. At the conclusion of this hearing, the staff will be afforded an opportunity to make any closing comments. The Hearings Body may limit the time period for presentations.

Questions to and from the Hearings Body may be entertained at any time at the Hearings Body's discretion. Cross-examination of witnesses will not be allowed. However, if any person wishes a question be asked of any person during that person's presentation, please direct such question to the Hearings Body after being recognized. The Hearings Body is free to decide whether or not to ask such questions of the witness.

PRE-HEARING CONTACTS

I will now direct a question to the other members of the Hearings Body. If any member of the Hearings Body, including myself, has had any pre-hearing contacts, now is the time to state the substances of those pre-hearing contacts so that all persons present at this hearing can be fully advised of the nature and context of those contacts and with whom contact was made. Are there any contacts that need be disclosed?

At this time, do any members of the Hearings Body need to set forth the substance of any ex parte observations or facts of which this body should take notice concerning this appeal? Any person in the audience has the right during the hearings process to rebut the substance of any communication or observation that has been placed in the record.

CHALLENGES FOR BIAS, PREJUDGMENT, OR PERSONAL INTEREST

Any party prior to the commencement of the hearing may challenge the qualifications of the Hearings Body or any member thereof of bias, prejudice or personal interest. This challenge must be documented with specific reasons supported by facts.

I will accept challenges now.

Should any Hearings Body member be challenged, the member may disqualify himself or herself, withdraw from the hearing or make a statement on the record of their capacity to hear the appeal.

(Hearing no challenges, I shall proceed.)