



MEMORANDUM

Date: July 21, 2022
To: Residents of Lane County
From: LMD Planning Director – Amber Bell
Re: Notice of Required Process for Resource Dwelling Site Plan Modifications

I. Purpose:

This memo provides an update on the required process to modify a site plan for a dwelling in a resource zone previously approved through a Type II or III land use decision process pursuant to Lane Code 14.090(5), 16.210, 16.211, and 16.212.

II. Background:

LMD Planning strives to provide clear processes to follow for property owners who are working to realize the development potential of their properties for building a home. In many cases, to achieve the development potential of a property, special use approval through a Type II or III decision process is required according to State law and/or Lane Code. Through the Type II or III decision process, applicants propose, and may receive, approval for a development area or home site with specific dimensions and within a specific area of the subject property. An approved home site location and dimensions are typically the result of required discretionary siting standards and criteria for dwellings in resource zones.

Past County policy was to allow property owners to seek over the counter planning authorization to enlarge or modify approved home sites at the time of development, without additional application, when located within the “same site” area¹. However, due to increased scrutiny of the discretionary criteria addressed in these decisions, it has become apparent that multiple logistical and legal issues surround allowances for property owners to receive over the counter Planning Authorization to modify active approvals for Type II and Type III Special Use Permits. Additionally, in their interpretation for Planning Action File No. 509-PA18-05866, *Keepers*, the Hearings Official determined that the County practice to condition compliance with approval criteria unlawfully deferred determination of discretionary criteria to a non-land use decision process. In Planning Action File No. 509-PA19-05860, *Matthews* (LUBA 2020-070), the Hearings Official further analyzed and overturned the County’s past process for “over the counter” site plan modification. Namely, the Hearings Official determined that the allowance for modifications of approved home sites or development areas illegally deferred determinations on discretionary criteria, such as siting standards and setbacks. Criteria like siting standards and setbacks are considered discretionary because they are not based on clear an objective standards, and compliance is determined through weighing and balancing of multiple criteria to reach the best possible outcome. As such, modifications of approved dwelling placement site plans in resource zones are subject to the regulations of Lane Code 14.090(5):

Lane Code 14.090(5)

(5) Modification of Approval. An application for modification of approval must comply with the subsection (5)(a) through (c) below:

(a) An application for modification of approval must:

(i) Be in writing on a form provided by the Director;

¹ “Same site” area is defined as a square with dimensions of 200-feet, which is centered on the footprint of an established, lawful dwelling. In implementation, the “same site” is often described as a 142-foot radius circle centered on the footprint of an established dwelling. See Lane Code 16.210(3)(o), 16.211(3)(r), 16.212(4)(bb).

- (ii) Include the required application fee;
 - (iii) Be received by the Director prior to the expiration of the approval time period to complete any conditions of approval of the decision for which modification is requested, where calculation of the expiration date includes any time extension approved in accordance with subsection (7) below;
 - (iv) Identify and address any standards or criteria that the original approval addressed; and
 - (v) Address compliance of the requested modifications with any applicable standards or criteria.
- (b) The applicable standards and criteria for the final decision have not changed; and
- (c) A decision on a modification of approval must be made by the same approval authority as the original final decision unless the original decision allows modification by a different approval authority.

Additionally, the Director notes that the implications of the Hearings Official's decisions regarding deferral of discretionary criteria apply to all Type II or III applications regardless of specific zoning and Lane Code sections. As such, if a proposal for development requires additional review of discretionary approval standards then application pursuant to Lane Code 14.090(5) is required.

III. Conclusion:

The Lane County Planning program must follow the Hearings Official's determination, unless overturned by the Hearings Official or as a matter of law. Based on this, and the increased scrutiny of the discretionary siting criteria required for resource zone dwelling approvals, Lane County Land Management can no longer accept modifications to home sites or development areas approved through Type II or III process without Type II or III application for Modification of Approval, pursuant to Lane Code 14.090(5).²

If you have questions regarding this memo, please visit our Planner-on-Duty desk at Delta Campus or call our Planner-on-Duty hotline at 541-682-3577.

² Where siting standards have not changed and the modification proposed is specific to siting, the Land Management Division does not consider such changes to preclude modification based on Lane Code 14.090(5)(b).