

## II. “FOR THE RECORD”

### B. Josephine County Rural Land Development Code (RLDC): Rules For Accepting Testimony “For The Record”

This section is a summary of the RLDC regulations on “For The Record” for land use proceedings through an appealable decision (Appendix BC). They include sections of the RLDC on the following topics concerning the Planning Director, the Josephine County Rural Planning Commission (RPC), and the Josephine County Board of County Commissioners (BCC).

1. Duties of the Planning Director
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#### 1. Duties of the Planning Director

The Planning Director has the following “For The Record” responsibilities (RLDC 12.090) pertaining to site review, administrative reviews, and public hearings:

1. conduct the correspondence of the review or hearing body,
2. give notice in accordance with RLDC 32,
3. **maintain a record** and enter into the record relevant dates such as those of giving notice, hearings, postponement, and continuances, and a summary of action taken by the review or hearing body, and [Emphasis added]
5. prepare and maintain findings of fact and/or minutes of public meetings conducted under this code.

#### 2. Quasi-Judicial Review Procedures

The Planning Director is responsible to mail notice of an application to all persons within the notice area as required by RLDC 32. All comments or objections relating to the application shall be submitted in writing within 15 days from the mailing of the notice in order to be included in the review, or to establish party status for appeal purposes. RLDC 22.040.B.5.

In those cases where the RPC or the BCC is the review body, permit application requiring quasi-judicial review shall be processed in accordance with the procedures outlined in this section, as well as the applicable provisions of RLDC 24 (RPC) and 25 (BCC), and Chapter 3 (Public Hearings, Notices and Appeals). RLDC 22.040.D.

### **3. RPC's Review Procedures**

The purpose of the procedures is to provide for the conduct of an impartial public hearing by the RPC for applications which involve significant policy issues having county-wide impact, or which call for review and recommendation to the BCC. RLDC 24.010.

The RPC acts on behalf of the BCC in hearings deciding and making recommendations regarding land use applications as authorized by the RLDC. RLDC 24.020.C.

Public hearings conducted by the RPC shall follow the procedures for Quasi-Judicial land use hearings as set forth in RLDC 22, and as further governed by RLDC 3, *Public Hearings, Notice & Appeal.*" RLDC 24.030.

The RPC may conduct a site visit as part of the public hearing record. The presiding officer of the RPC shall summarize the site visit on the record when the public hearing reconvenes. RLCD 24.050.C .

The RPC may grant a continuance or hold the record open as provided in RLDC 31.120.J.; RLCD 24.050.D.

A final decision of the RPC shall be in the form of findings of fact meeting the requirements of state law and RLDC 31.130.C. *Decisions which constitute a recommendation* to the BCC shall be in the form of minutes detailing the testimony, arguments and deliberations leading up to the recommendation. RLCD 24.050.F.

### **4. BCC's Review Procedures**

The purpose of BCC review procedures is to hear and resolve appeals from decisions by the Planning Director, the RPC (*final decisions and recommended decisions*), to hear matters of original or assumed jurisdiction, and to hear matters remanded to it from a higher board or court. RLDC 25.010.

The BCC may conduct a site visit as part of the public hearing record. The presiding officer of the BCC shall summarize the site visit on the record when the public hearing reconvenes. RLDC 25.040.C.

The BCC may grant a continuance or hold the record open as provided in RLDC 31.120.J.; RLDC 25.040.D.

## **5. Application Information Is Tardy**

Any participant of the first evidential public hearing shall be entitled to request and receive a continuance of the hearing or have the record left open if the applicant submits additional documents, evidence, exhibits and other information between the 21st day before the first scheduled date of public hearing and the public hearing. Unless a continuance has otherwise been provided, any participant may request any time before the conclusion of the initial evidentiary hearing that the record be left open for at least 7 days after the hearing. RLDC 30.020.

## **6. Public Land Use Hearings**

The public hearings regulation shall govern the conduct of all quasi-judicial and legislative land use hearings within the county, as well as the Urban Growth Boundary of Cave Junction, which are held or made by the BCC or its designates. Such hearings include all *proceedings* before the RPC, or the BCC, and may involve comprehensive plan changes, zone changes, subdivision or partition platting, conditional use permit, changes in non-conforming uses, appeals, and the interpretation and administration of ordinances, codes, laws, and items referred by the Planning Director, as well as all other official actions upon application or request. Public Hearing Purpose - RLDC 31.010.

Land use hearings conducted pursuant to the RLDC which are quasi-judicial administrative determinations shall be conducted according to the rules and procedures governing those actions. All applicants are entitled to a notice of the hearing, to an opportunity to be heard, to present and rebut evidence before an impartial hearing body, *to have the proceedings recorded*, and to have a decision rendered in accordance with the facts on record and the law.” Nature of Public Hearing - RLDC 31.040.

Land use hearings conducted pursuant to the RLDC which are legislative determinations shall be conducted according to the rules and procedures governing those actions. Notice of the hearing shall be published and the public shall be invited to testify, to present and rebut evidence before an impartial hearing body, *to have the proceedings recorded*, and to have a decision rendered. Nature of Public Hearing - RLDC 31.040.

Land use hearings held pursuant to the RLDC are *proceedings* and the applicant(s) shall appear in person or through an attorney or authorized representative. Nature of Public Hearing - RLDC 31.040.

Persons wishing to be heard at a public hearing must state their name and address for the record. RLDC 31.060.

The decision of the hearing body shall be supported by substantial evidence in the record. RLDC 31.070

No official or employee of the county who has a financial interest or other private interest in the proposal shall participate in discussion, or give an official opinion on the proposal without first declaring for the record the nature and extent of the conflict of interest. RLDC 31.080.B.1.e.

A challenge for bias, prejudice, or conflict of interest challenge and any response shall be incorporated into the record of the hearing. RLDC 31.090.

All evidence offered and not properly objected to may be received unless otherwise excluded by the hearing body. Rules of Evidence - RLDC 31.110.

**All evidence received by the hearing body shall be made a part of the record of the case,** except for matters stipulated to and matters judicially noticeable. No other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference (if the document so incorporated is a public record not exempt from inspection). Rules of Evidence - RLDC 31.110. [Emphasis added]

Judicial notice may be taken of any applicable federal, state or local statute/ordinance, rule, regulation, general fact, and/or scientific fact within the experience, technical competence, or specialized knowledge of a member of the hearing body, staff, or technical witness called by either side. Opportunity will be given for rebuttal of these facts. Rules of Evidence - RLDC 31.110.

No decision shall be rendered except upon consideration of the whole record, or portions as may be cited by the hearing body, and as supported by, and in accordance with, reliable, probative, and substantial evidence. Rules of Evidence - RLDC 31.110.

Any member of the hearing body abstaining shall identify the reasons for the record and shall not participate in the discussion of, or vote on the proposal. Any member of the hearing body whose participation has been challenged by an allegation of bias, prejudice, conflict of interest, or pre-judgment, or who has been subject to significant ex parte or pre-hearing contacts with proponents or opponents, may make a statement explaining the nature of the conflict or bias for the record, and shall announce whether the member will participate in the hearing. Order Of Procedure - RLDC 31.120.C.

Objections to the jurisdiction of the hearing body to hear the matter shall be noted in the record, and the matter shall proceed or terminate at the discretion of the hearing body. Order Of Procedure - RLDC 31.120.D.

Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. Order Of Procedure - RLDC 31.120.J.

The decision of the hearing body shall be made after the hearing is closed and deliberations are completed, and shall be in the form of a motion, duly seconded, and approved by a majority of the members. The presiding officer shall poll each member regarding their vote and the reasons for it. All members shall state their vote for the record. Final Action - RLDC 31.130.B.

Public land use hearings will have the record of the proceedings recorded. Record of Proceedings and Decisions - RLDC 31.140.

All exhibits received in evidence shall be marked or otherwise made readily available and identified for purposes of review. Evidence or exhibits of unusual size or bulk, which cannot be conveniently held, shall not be received. All exhibits received into the record shall be retained by the Planning Director on behalf of the hearing body, and shall be made accessible for inspection or copying by interested persons, subject to a reasonable copying fee. Record of Proceedings and Decisions - RLDC 31.140.

The Planning Director shall hold all sound recordings made of hearings items in accordance with the requirements of the RLDC. Record of Proceedings and Decisions - RLDC 31.140.

Findings of the decision are to be compiled for each decision made at a public hearing. The responsibility for preparation of this document shall be determined by the presiding officer of the hearing body at the close of the hearing. Notice of the decision shall be mailed to the participants who are determined in the hearing to have party status, and by courtesy to anyone otherwise requesting notice of the decision. Copies of the findings of decision may be reviewed and copied at the Planning Office (RPC decisions or the BCC decisions). Record of Proceedings and Decisions - RLDC 31.140.

## **7. Public Notice Prior To A Decision**

ORS 197.763(3)(g) and (j) provide:

“(3) **The notice provided by the jurisdiction shall:**” [Emphasis added].

“(g) Include the name of a **local government representative** to contact and the telephone number where additional information may be obtained;” [Emphasis added].

“(j) Include a general explanation of the **requirements for submission of testimony** and the procedure for conduct of hearings.” [Emphasis added].

The purpose of public notice as identified in the RLDC is to provide an opportunity for affected or interested persons to participate in Josephine county’s *land use review and decision-making process*. Purpose - RLDC 32.010.

The name of a local government representative to contact and the telephone number where additional information may be obtained is a content requirement of the notice prior to a decision. Content of Notice Prior To Decision - RLDC 32.030.A.2.f.

A general explanation of the requirements for submission of testimony and the procedure for the conduct of hearings is a content requirement of the notice prior to a decision. Content of Notice Prior To Decision - RLDC 32.030.A.2.i.

The name, telephone number and address of the planner or other person who can be contacted for information about the decision is a content requirement of the notice after a decision. Notice After Decision - RLDC 32.030.B.1.c.

Notice by publication shall be given for any quasi-judicial land use application that proposes to change the zone or plan maps for specific properties. Published notice shall also be given for any legislative land use action that proposes to amend any element of the county's comprehensive plan (maps, data bases, goals and policies, land use regulations, etc.). In all such cases, 10 days' advance notice of the hearing shall be published in a newspaper of general circulation in the county or, in the case the plan as it is to be heard concerns only part of the county, it is published in the territory so concerned. Published Notice - RLDC 32.040.

## **8. Appeal Of Decisions**

Notice for appeal hearings shall be given only to those individuals or organizations that were deemed to have party status in the record for the hearing under appeal, unless the appeal results in an initial evidentiary hearing, in which case notice of the appeal hearing shall comply fully with the requirements of RLDC 32.030.B.1. Time Limits, Notice Requirements & Standing For Appeals  
- RLDC 33.030.

A statement of appeal shall contain information on what information in the record of decision was pertinent to the decision, but was not considered by the review body. This may include the comprehensive plan, this code, applicable state law, or other evidence. Statement of Appeal - RLDC 33.00.

One criteria for a person or organization seeking to appeal a decision made without a public hearing is to demonstrate the person or organization was entitled to notice for the original hearing and submitted written comments or objections into the record. RLDC 33.060 - Standing to Appeal.

Appeals from decisions made by the RPC shall be to the BCC, and shall be confined to the record made at the *hearing* under appeal. Appeal Of Hearing Officer Or Planning Commission Decision - RLDC 33.080. The record shall include:

1. All materials, pleadings, memoranda, stipulations, motions, exhibits, and documents submitted by any party to the action as evidence in the *hearing*,
2. All materials submitted by the planning staff in the *hearing*,
3. The tape recording, if one exists, of the *hearing*,
4. A typewritten summary of the testimony given at the *hearing*.
5. The findings of fact entered by the hearing body.

Within 21 days of filing of the statement of appeal, the Planning Director shall cause the record to be compiled, including the written summary of testimony, and mail notice to the parties indicating the record is available for inspection and/or copying. The Planning Director is authorized to charge a reasonable fee for paper or tape copying. RLDC 33.080.

Any party wishing to challenge the composition or completeness of the record, or the accuracy of the typewritten summary of the testimony, shall file written objections within 14 days from the date of the mailing of the notice of completion of record. RLDC 33.080.

A party to an appeal from any action by the RPC may request permission to submit evidence not contained in the record for an appeal when certain criteria are met. RLDC 33.080.

In addition to appeals authorized by other provisions of the RLDC, the BCC may order its own review of final decisions made by the Planning Director or the RPC. Review under these circumstances shall be governed by the provisions of the RLDC including the creation of the record. A summary of testimony as required by RLDC 33.040.C shall be prepared at the county's expense. Action Of The Board Of County Commissioners - RLDC 33.090.

The BCC may cause supplemental or replacement findings and conclusions, based on the record for the decision, to be prepared and signed after the original findings and conclusions have been executed. When supplemental or replacement findings and conclusions are prepared and signed, this document shall constitute the final action of the Board for appeal and other purposes in lieu of the original findings and conclusions. RLDC 33.090.

The BCC may open the record for clarification on a part of the record. RLDC 33.090.

The applicant in a remand proceeding shall specify in the application whether the remand hearing will be confined to the record of the earlier proceeding or whether the remand hearing will involve the introduction of new evidence. In the event the remand hearing is confined to the earlier record, the applicant shall submit amended findings with the remand application. The remand hearing shall be confined to the earlier record unless the review body opens the record for new evidence pursuant to Sections 33.080.E or 33.090.F.” Remand Hearings - RLDC 33.130.

Participation in the remand hearing shall be strictly limited to those persons or organizations who were legal parties in the higher appeal. Only parties to the higher appeal may present arguments

(in the case of a hearing on the record), or present evidence, witnesses, testimony and arguments (in the event new evidence is allowed) in the remand hearing. RLDC 33.130.

## **9. Amending & Updating the Comprehensive Plan**

The purpose of RLDC 46 is to implement the procedures and criteria for amending any element of the comprehensive plan pursuant to the requirements of Goal 11 of the county's goals and policies. RLDC 46.010

## **10. RPC Review Procedure for Amending & Updating the Comprehensive Plan**

Applications to amend any element of the comprehensive plan shall be processed using RPC's review procedures (RLDC 24) and/or the BCC review procedures (RLDC 25). RLDC 46.020.

The RPC shall review all applications to amend any element of the comprehensive plan. RPC reviews shall be subject to the following rules. RLDC 46.020.

The RPC shall make the final decision on applications to amend any element of the comprehensive plan unless the applications involve an exception to statewide planning goals or involve lands designated as agricultural or forest lands under a statewide planning goal. RLDC 46.020.

A final decision by the RPC shall be in the form of written findings that explain the standards and criteria considered relevant to the decision, state the facts relied upon in rendering the decision and explain the justification for the decision based on the applicable standards and criteria, and shall be accompanied by a recommended ordinance. RLDC 46.020.

Final decisions of the RPC may be appealed on the record to the BCC as provided in RLDC 33. RLDC 46.020.

Applications involving exceptions or agricultural or forest lands shall be reviewed by the RPC in a public hearing. At the conclusion of the hearing the RPC shall deliberate and make a recommend-ed decision to the BCC. RLDC 46.020.

All RPC hearings shall conform to the notice and hearing rules as set forth in RLDC 3. RLDC 46.020.

Final authority of the RPC to act upon plan amendments is for appeal purposes only, and does not include the authority to implement changes by ordinance. RLDC 46.020.

## **11. BCC Review Procedure for Amending & Updating the Comprehensive Plan**

The BCC's authority to review actions by the RPC to adopt, amend or repeal any part of the comprehensive plan follows. RLDC 46.020.

Where the RPC made a recommended decision to the BCC pursuant to subsection RLDC 46.020 B.1.d, the BCC shall conduct a full *de novo* hearing regarding the application. The BCC's public hearing shall conform to the notice and hearing rules as set forth in RLDC 3, and any other applicable state law or rule. RLDC 46.020.

This policy shall not prevent or limit the BCC's authority to initiate a hearing to review any RPC action regarding the comprehensive plan pursuant to provisions of the RLDC. RLDC 46.020.

The BCC has the sole authority to implement changes to the county's comprehensive plan by ordinance. RLDC 46.020.

In the event the application's proposed change relates to an inventory, data base, plan or ordinance, the application shall include the scientific and technical data, reports or other evidence prepared by an expert in that field necessary to support the change. It shall be the function of the review body to determine, based upon substantial evidence in the record, whether the particular training and experience of a witness qualifies the witness to testify as an expert. Plan Amendment Application Requirements - RLDC 46.030.

In the event a farm or forest operator within the review area contends in the record that the map changes could significantly impede or increase the cost of specific practices or operations, and this contention is based upon records, data and other information in the operator's possession, but unavailable to participants in the hearing from public sources, the review body is authorized to require the operator to submit the supporting records, data and other information into the record for examination by the review body and other participants. Non-Resource Land Criteria - RLDC 46.050.C.

## **12. Summary. Rules For Accepting Testimony "For the Record"**

The Planning Director has "For The Record" responsibilities for site reviews, administrative reviews, and public hearings: conducting the correspondence for the hearing body and maintaining the record for the course of the proceedings. The hearing body is normally the RPC or the BCC. The Planning Director's judgmental responsibilities to determine "For The Record" procedures for the "course of the land use proceedings" are substantial to absolute as there are no identified county procedures, except procedures for quasi-judicial, public notice, and public hearings. Even for these three areas there are many situations not covered in the procedures and the hearing bodies' deferral to the Planning Director's opinion is near absolute. LUBA's court law definition of the "course of the proceeding" (OAR 661-010-0025) is from the time of a land use application until after the local decision is reduced to a written, signed and final decision for

the purposes of a LUBA appeal. In contrast the local code is almost 100 percent focused on the requirements of ORS 197.763 (i.e., conduct of local quasi-judicial land use hearings, notice requirements, and hearing procedures), and is silent on the other time periods during the course of the proceedings which written testimony can be placed before the hearing body and/or final decision maker.

The RPC acts on behalf of the BCC in hearings making decisions or recommendations regarding land use applications. RLDC procedures provide for the conduct of public hearing by the RPC. Hearings follow the procedures for legislative or quasi-judicial land use hearings as set forth in RLDC. The RPC may conduct a site visit as part of the public hearing record. The presiding officer of the RPC shall summarize the site visit on the record when the public hearing reconvenes. The RPC may grant a continuance or hold the record open as provided in RLDC. A *final decision* of the RPC shall be in the form of findings of fact. *Decisions which constitute a recommendation* to the BCC shall be in the form of minutes detailing the testimony, arguments and deliberations leading up to the recommendation. In summary, the “For The Record” procedures for the RPC all relate to the first evidentiary public hearing and actions resulting from that hearing.

The purpose of the BCC’s land use review procedures is to hear and resolve appeals from decisions by the Planning Director, the RPC (*final decisions and recommended decisions*), to hear matters of original or assumed jurisdiction, and to hear matters remanded to it from a higher board or court. The BCC may conduct a site visit as part of the public hearing record. The presiding officer of the BCC shall summarize the site visit on the record when the public hearing reconvenes. The BCC may grant a continuance or hold the record open as provided in the RLDC. In summary, the “For The Record” procedures for the BCC all relate to its first public hearing and actions resulting from that hearing.

The RLDC public hearing regulations govern the conduct of all quasi-judicial and legislative land use hearings. Such hearings include all *proceedings* before the RPC, or the BCC. Proceedings as defined in the RLDC are public hearings before the hearing body. This is a narrow definition when compared to proceedings as defined by LUBA which includes the “course of the proceeding” from the application point until after the local decision is reduced to a written, signed and final decision for the purposes of a LUBA appeal. Land use hearings held pursuant to the RLDC are *proceedings* and the applicant(s) and opponents must appear in person, through an attorney, or authorized representative. All evidence offered and not properly objected to may be received unless otherwise excluded by the hearing body. All evidence received by the hearing body shall be made a part of the record of the case, except for matters stipulated to and matters judicially noticeable. No other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. No decision shall be rendered except upon consideration of the whole record, or portions as may be cited by the hearing body, and as supported by, and in accordance with, reliable, probative, and substantial evidence. Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to

present additional evidence or testimony regarding the application. The decision of the hearing body shall be made after the hearing is closed and deliberations are completed, and shall be in the form of a motion, duly seconded, and approved by a majority of the members. Public land use hearings will have the record of the proceedings recorded. All exhibits received in evidence shall be marked or otherwise made readily available and identified for purposes of review. All exhibits received into the record shall be retained by the Planning Director on behalf of the hearing body, and shall be made accessible for inspection or copying by interested persons. In summary, 90 percent or more of the RLDC procedures on the contents of the record for land use proceedings are directly related to written materials specifically placed before the hearing body during the course of public hearing(s).

The purpose of public notice is to provide an opportunity for affected or interested persons to participate in Josephine county's *land use review and decision-making process*. It is interesting that the county's purpose for public notice matches LUBA's definition of land use proceedings versus the county's narrower definition of proceedings being defined as hearings. The name of local government representative to contact and the telephone number where additional information may be obtained is a content requirement of the notice prior to a decision per the RLDC and the ORS. A general explanation of the requirements for submission of testimony and the procedure for the conduct of hearings is a content requirement of the notice prior to a decision per the RLDC and the ORS. The name, telephone number and address of the planner or other person who can be contacted for information about the decision is a content requirement of the notice after a decision. Notice by publication shall be given for any quasi-judicial land use application that proposes to change the zone or plan maps for specific properties. Published notice shall also be given for any legislative land use action that proposes to amend any element of the county's comprehensive plan (maps, data bases, goals and policies, land use regulations, etc.). In all such cases, 10 days' advance notice of the hearing shall be published in a newspaper of general circulation in the county or, in the case the plan as it is to be heard concerns only part of the county, it is published in the territory so concerned.

Applications to amend any element of the comprehensive plan shall be processed using the RPC's review procedures and the BCC review procedures. The RPC shall review all applications to amend any element of the comprehensive plan. The RPC shall make the final decision on applications to amend any element of the comprehensive plan unless the applications involve an exception to statewide planning goals or involves lands designated as agricultural or forest lands under a statewide planning goal. A final decision by the RPC shall be in the form of written findings that explain the standards and criteria considered relevant to the decision, state the facts relied upon in rendering the decision, and explain the justification for the decision based on the applicable standards and criteria. It shall be accompanied by a recommended ordinance. Final decisions of the RPC may be appealed on the record to the BCC. Applications involving exceptions or agricultural or forest lands shall be reviewed by the RPC in a public hearing. At the conclusion of the hearing the RPC shall deliberate and make a recommended decision to the BCC.

All RPC hearings shall conform to the notice and hearing rules as set forth in RLDC. Final authority of the RPC to act upon plan amendments is for appeal purposes only, and does not include the authority to implement changes by ordinance.

Where the RPC makes a recommended decision to the BCC involving exceptions or agricultural or forest lands, the BCC shall conduct a full *de novo* hearing regarding the application. The BCC's public hearing shall conform to the notice and hearing rules as set forth in the RLDC, and any other applicable state law or rule. This policy shall not prevent or limit the BCC's authority to initiate a hearing to review any RPC action regarding the comprehensive plan pursuant to provisions of the RLDC. The BCC has the sole authority to implement changes to the county's comprehensive plan by ordinance. In the event the application's proposed change relates to an inventory, data base, plan or ordinance, the application shall include the scientific and technical data, reports or other evidence prepared by an expert in that field necessary to support the change. It shall be the function of the review body to determine, based upon substantial evidence in the record, whether the particular training and experience of a witness qualifies the witness to testify as an expert.

Notice for appeal hearings shall be given only to those individuals or organizations that were deemed to have party status in the record for the hearing under appeal, unless the appeal results in an initial evidentiary hearing. A statement of appeal shall contain information on what information in the record of decision was pertinent to the decision, but was not considered by the review body. One criteria for a person or organization seeking to appeal a decision made without a public hearing is to demonstrate the person or organization was entitled to notice for the original hearing and submitted written comments or objections into the record. Appeals from decisions made by the RPC shall be to the BCC, and shall be confined to the record made at the *hearing* under appeal. The record shall include:

1. All materials, pleadings, memoranda, stipulations, motions, exhibits, and documents submitted by any party to the action as evidence in the hearing,
2. All materials submitted by the planning staff in the hearing,
3. The tape recording, if one exists, of the hearing,
4. A typewritten summary of the testimony given at the hearing.
5. The findings of fact entered by the hearing body.

Within 21 days of filing of the statement of appeal to the BCC, the Planning Director shall cause the record to be compiled, including the written summary of testimony, and mail notice to the parties indicating the record is available for inspection and/or copying. Any party wishing to challenge the composition or completeness of the record, or the accuracy of the typewritten summary of the testimony, shall file written objections within 14 days from the date of the mailing of the notice of completion of record. A party to an appeal from any action by the RPC may request permission to submit evidence not contained in the record for an appeal when certain criteria are met. In addition to appeals authorized by other provisions of the RLDC, the BCC may order its own review of final decisions made by the Planning Director or the RPC. The

BCC may cause supplemental or replacement findings and conclusions, based on the record for the decision, to be prepared and signed after the original findings and conclusions have been executed. When supplemental or replacement findings and conclusions are prepared and signed, this document shall constitute the final action of the Board for appeal and other purposes in lieu of the original findings and conclusions. The BCC may open the record for clarification on a part of the record.

“For The Record” RLDC rules after a land use decision is appealed to LUBA does not directly apply to the purposes of this paper which is focused on defining the “Record” during the “course of the proceeding” from the land use application point until after the local decision is reduced to written, signed and final decision for the purposes of a LUBA appeal.

In conclusion, the Josephine County RLDC has procedures for determining “For The Record” testimony during the “course of the land use proceedings” for quasi-judicial procedures, public notice, and public hearings. However, even for these three areas there are many situations not covered in the procedures and the hearing bodies’ deferral to the Planning Director’s opinion is near absolute.

LUBA’s court law definition of the “course of the proceeding” (OAR 661-010-0025) is from the time of a land use application until after the local decision is reduced to a written, signed and final decision for the purposes of a LUBA appeal. A problem, in contrast to LUBA’s definition, is the RLDC, which is almost 100 percent focused on the requirements of ORS 197.763 (i.e., conduct of local quasi-judicial land use hearings, notice requirements, and hearing procedures), and is silent on the other time periods during the course of the proceedings which written testimony can be placed before the hearing body and/or final decision maker.” For areas not covered by the RLDC procedures the Planning Director has “For The Record” responsibilities for site reviews, administrative reviews, and public hearings: conducting the correspondence for the hearing body and maintaining the record for the course of the proceedings. The Planning Director’s judgmental responsibilities to determine “For The Record” procedures for the “course of the land use proceedings” are substantial to complete where there are no identified county procedures.