



Mariposa County

APPEALS PROCEDURE

APPLICABILITY OF APPEALS PROCEDURE

These *Procedures*, or the applicable portions, shall apply to all findings or decision of any County official, commission, hearing officer, etc., wherein an appeal therefrom is a matter of right, and there are no other appeal procedures which have been adopted relating thereto.

I

NOTICE

Public notices mailed to affected property owners which notice a public review period or public hearing for a pending finding or decision of a County official, commission, hearing officer, etc., shall contain the following information in addition to information required by State law and other County ordinances and policies:

- A. A statement that the finding or decision of the County official, commission, or hearing officer may be appealed to the Board of Supervisors or Planning Commission, if applicable, but further notification of the finding or decision will not be provided to non-applicants unless specifically requested.
- B. The County departments or offices where information and copies of the appeals procedures are available.
- C. A statement that if a finding or decision is appealed the appeal will be limited to only those issues which were raised during the public review or hearing process or to new information which was not and could not have been available during the public review or hearing process.

Applicants and any other party or parties that have requested notification of the action, in writing, shall be notified in writing, pursuant to County policy of any findings or decision

of any County official, commission, hearing officer, etc., not later than three (3) working days from date of decision or findings. A copy of the Appeals Procedure information sheet attached hereto as Exhibit "A" and a Notice of Appeal form attached hereto as Exhibit "B" shall be included in the notice of decision where a right of appeal exists.

II

FILING OF APPEALS

An appeal may be filed by a person or persons where the person or persons allege that a decision or finding of a County official, commission, hearing officer, etc. was inappropriately determined based upon a violation of any applicable code, rule, policy, or law, and the person or persons provide substantiating evidence as specified in Section III of these procedures. By way of example, an appeal could be filed when it is alleged that action taken resulted in an abuse of discretion, improper application of standards, a procedural error, a requested waiver be denied, etc.

Appeals may be filed wherein an appeal is a matter of right and may be directed to the Board of Supervisors (BOARD) or the Planning Commission (COMMISSION), if applicable, by filing a Notice of Appeal on the form attached hereto as Exhibit "B" with the Clerk of the Board, if appealing to the Board, or the Planning Commission Secretary, if appealing to the Commission. If the written material attached to the Notice of Appeal exceeds ten (10) pages in length then the appellant shall submit fourteen (14) copies ; if any materials attached to the Notice of Appeal exceeds eleven inches (11") in width or seventeen inches (17") in length then the appellant shall submit fourteen (14) copies of the oversized material. All pages shall be three (3) hole punched and numbered consecutively. The appellant may elect to submit one copy of the written material attached to the Notice of Appeal and bear the copying costs of processing the appeal. Appeals not filed on an official Notice of Appeal form shall not be accepted by the County for processing. The time frames for filing an appeal are as follows:

In all cases the APPEAL must be filed within twenty (20) calendar days of determination of the decision or order being appealed.

An APPEAL (Notice of Appeal) shall be forwarded to County Counsel by the Clerk or Planning Commission Secretary receiving the APPEAL no later than the day after the filing of the APPEAL. County Counsel shall review the appeal and determine if the appeal has been filed in a timely manner and if the appeal contains sufficient grounds for appeal as described in Section III. If County Counsel determines the appeal is not timely filed, the appeal shall not be accepted by the County and the decision of the County official, commission, hearing officer, etc. shall be final.

If County Counsel determines the appeal does not contain sufficient grounds of the basis for the appeal, County Counsel shall inform the appellant that the appeal is not complete and is not accepted for processing. The appellant shall have seven (7) calendar days from the date of notification to submit sufficient grounds for the appeal. If sufficient grounds

for the appeal are not submitted within seven (7) calendar days to the satisfaction of County Counsel, the appeal shall not be accepted by the County and the decision of the County official, commission, hearing officer, etc. shall be final.

If the appeal is determined to be timely filed and complete and is accepted for processing, County Counsel shall forward the appeal to the applicable County official or department head for processing. Any additional reasons for appeal and any amendments or supplements to the APPEAL shall be filed with the Clerk or Commission Secretary, whichever has jurisdiction, no later than twenty-five (25) Calendar days prior to the hearing dated of the appeal.

An appeal may be withdrawn at any time prior to commencement of the actual appeal hearing by written request signed by the Appellant(s). Appeals which are withdrawn shall not be heard by the BOARD or COMMISSION.

III

STATEMENT OF GROUNDS AND ISSUES FOR APPEAL

An appellant must clearly and concisely state the reason or reasons why the decision, determination, or finding is being appealed and why the appellant does not agree with the decision, determination or finding by the County body or official. By way of example, these reasons may include, but not be limited to, abuse of discretion, improper application standards, a procedural error, a requested waiver being denied, etc.

An appeal shall be limited to those issues clearly raised by any interested party through the public review and/or hearing process for the finding or decision being appealed or to new information which was not and could not have been available at the time the finding or decision was made. An appeal, or portions thereof, that identifies issues in the statement of grounds which were not raised through the public review and/or hearing process or contains information which was or could have been available at the time the finding or decision was made shall not be accepted and shall not be considered by the Board of Supervisors or Planning Commission. For those findings or decisions which did not include a public review and/or hearing process, the appeal shall be limited to those issues that clearly relate to the finding or decision being appealed. An appeal, or portions thereof, which identifies issues in the statement of grounds which do not clearly relate to the finding or decision being appealed shall not be accepted and shall not be considered by the Board of Supervisors or Planning Commission.

The evidence considered at the hearing on the APPEAL shall be limited to the issues clearly identified in said Notice of Appeal with amendments or supplements as permitted, filed by Appellant. Copies of the Notice of Appeal and all amendments and supplements to the appeal shall be made available to the public and all interested parties, along with copies of these rules, upon request.

IV

HEARING DATED: NOTICE

In all cases the hearing shall be set not less than thirty (30) days from the date the APPEAL is accepted for processing.

In no event shall a hearing be set for a time later than ninety (90) days from the date the APPEAL is accepted for processing except under the following circumstances. The hearing date may be set or re-set later than ninety (90) days from the date the APPEAL is accepted for processing with the consent of the permit applicant or property owner whose property, development project, or business is impacted by the discretionary action which has been appealed. In the event the hearing date is after ninety (90) days from the date the appeal is accepted as complete, the date for submission of any amendments or supplements to materials as specified by Section II of these procedures shall adjust in a similar time period with the hearing date or reset hearing date.

Hearing dates for appeals shall be set by the Clerk of the Board, for Board hearings, or the Planning Commission Secretary, for Commission hearings, to conform to the time frames contained herein. Scheduling a hearing date later than ninety (90) days from the date the APPEAL is accepted for processing shall be approved by the county department head responsible for preparing the staff report materials for the public hearing.

There shall be no appeal rights for the scheduling decisions of an appeal public hearing.

All appeal hearings on land use matters shall be noticed in accordance with the following standards:

- A. A notice of the appeal hearing shall be published in a newspaper of general circulation within the County at least once.
- B. If the decision, finding, or determination being appealed was previously noticed in a public notice for a public review period or public hearing, a notice of the appeal hearing shall be mailed to all property owners and other parties which received the original public notice.
- C. If the decision, finding or determination being appealed was not previously noticed in a public notice and the decision, finding, or determination applies to a specific use or property, a notice of the appeal hearing shall be mailed as specified in Section 17.132.020 of County Code.
- D. All notices of the appeal hearing shall be mailed to at least twenty (20) days prior to the scheduled hearing date, and published at least ten (10) days prior to the scheduled hearing date.

E. All mailed and published notices shall contain the information identified in Section 17.132.030 of County Code.

V

STAFF REPORTS

Written staff reports shall be submitted for inclusion in the BOARD or COMMISSION agenda at least five (5) working days prior to the scheduled hearing, and shall be available to all interested parties from the Clerk of the Board or Planning Commission Secretary, whichever has jurisdiction. Parties who are not principals in the appeal shall pay the County established rate for copies of the Staff Report.

VI

LETTERS AND STATEMENTS

The BOARD or COMMISSION may receive written statement and letters concerning the appeal at any time prior to commencement of deliberation by the BOARD or COMMISSION, after which no such written evidence will be received into the record. The issues considered shall nevertheless be limited as set forth in Section III above. If the written material exceeds ten (10) pages in length then the person submitting the material shall submit fourteen (14) copies; if any materials exceed eleven inches (11”) in width or seventeen inches (17”) in length then the person submitting the material shall submit fourteen (14) copies of the oversize material. All pages shall be three (3) hole punched and numbered consecutively. The appellant may elect to submit one copy of the written material attached to the Notice of Appeal and bear the copying costs of processing the appeal.

VII

RULES

Rule 1: Copies of Rules

Copies of this Resolution and any amendments hereto shall be made available to the general public and any interested principal parties prior to and during any APPEAL hearing. A copy of the *Appeals Procedure* information sheet and a Notice of Appeal form shall accompany all decisions required to be mailed pursuant to Section I above.

Rule 2: Identification of Witnesses

A. All persons wishing to speak at the hearing must approach the microphone and state their name and address.

B. A hearing officer or a member of a BOARD appointed committee or commission which rendered the decision being appealed shall be prohibited from testifying before the BOARD in favor of or against any position of appeal to the BOARD.

Rule 3: Questions

Any BOARD or COMMISSION member may direct questions through the Chairman to staff and witnesses at any time during the hearing or deliberations. During the deliberation portion of the meeting, answers shall be limited to the specific question only.

Rule 4: Cross-examination

The opportunity to ask questions of persons testifying at the hearing shall be at the discretion of the Chairman. Questions for this purpose shall be directed to the Chairman, identifying the witness from whom an answer is sought. Persons present who have not previously testified shall not be questioned except by the BOARD or COMMISSION.

Rule 5: Continuance of Hearing

All or any portion of the hearing may be continued to a time, date and place certain without further formal notice, provided the continuance is announced to all persons present at the hearing, and is noticed in the BOARD or COMMISSION agenda for the date which the continued hearing will be heard.

Rule 6: Eligibility to Vote

BOARD or COMMISSION members not present during the entire testimony portion of the hearing, or who have not listened to the tapes of the entire testimony, shall not be eligible to vote on the decision. In the event that less than three (3) BOARD or COMMISSION members eligible to vote are present during the testimony portion of the hearing, the Chairman shall continue the hearing until such time as at least three (3) eligible Supervisors or Commissioners are present to hear testimony.

Rule 7: Variance from Rules

The rules and procedures of Section VII may be varied by a majority vote of the BOARD or COMMISSION.

Rule 8: Record

A record, by tape or otherwise, shall be made of each hearing on appeals processed pursuant to this *Appeals Procedure*. Persons desiring copies of the record may purchase

tape copies from the Clerk of the Board or Secretary of the Commission upon reasonable notice, or may arrange for a Certified Court Reporter to be present at their own expense.

Rule 9: Decision

A decision shall be rendered by the BOARD or COMMISSION in the form of a Resolution at the conclusion of the deliberation phase.

Rule 10: Findings of Fact

Findings of Fact shall be prepared in all cases where the appealed decision is reversed, and in other cases when a request is received prior to the close of the hearing by a legally interested party. The Findings shall be incorporated in the decision resolution. Findings will be prepared by staff at the direction of the BOARD or COMMISSION.

Rule 11: Rehearing

The BOARD or COMMISSION may, at its sole discretion, rehear a matter if written application is made within twenty (20) days of the final decision, and the BOARD or COMMISSION finds that substantial new evidence exists which was not and could not have been available at the previous appeal hearing. A four-fifths (4/5ths) vote shall be required to obtain a rehearing.

Rule 12: Judicial Review

The time within which judicial review of any final decision of the BOARD or COMMISSION must be sought is ninety (90) days from the date of such final decision pursuant to Code of Civil Procedure Section 1094.6 and Government Code Section 66499.37, or such other time as required by State Statute in the event of amendment or repeal of the above-cited Statutes.

VIII

CONDUCT OF HEARING

No. 1: Opening of Meeting

The Chairman shall open the meeting and state the purpose and procedures to be followed. All questions and/or presentations shall be directed to the BOARD or COMMISSION through the Chairman. Any BOARD or COMMISSION member may direct questions to staff and witnesses at any time during the hearing or deliberation process.

No. 2: Staff Presentation

- A. Present Staff report.

1. Oral.
 2. Documentary evidence copies for BOARD or COMMISSION if not previously provided. (Copies to Appellant)
 3. Staff's report shall contain a recitation of the facts regarding the history of the matter and the decision rendered. Staff may provide a recommendation to the BOARD or COMMISSION.
- B. Questions by BOARD or COMMISSION to staff.

No. 3: Appellant's Presentation

- A. Appellant makes its presentation and presents evidence.
 1. Questions by BOARD or COMMISSION.
- B. Other speakers in support of Appellant's position.

No. 4: Opponent's Presentation

- A. Opponents present evidence against issue.
 1. Questions by BOARD or COMMISSION.
- B. Other speakers in opposition of Appellant's position.

No. 5: Rebuttal by Appellant

- A. Appellant responds to issues raised by Opponents. No new issues are to be raised by Appellant.
 1. Questions by BOARD or COMMISSION.

No. 6: Any Clarification Needed by BOARD or COMMISSION

- A. Staff response to issue raised during public process.
- B. BOARD or COMMISSION members questions either staff, Appellant or Opponents to clarify any areas of concern, etc.
- C. If new evidence is submitted, BOARD or COMMISSION will give all Parties an opportunity to respond.

No. 7: Staff Procedural Questions

- A. Possible procedural issues raised by staff to presentations.
 - 1. Has evidence been submitted which requires additional staff research or information, or additional comment or testimony from Appellant and/or Opponents.
 - 2. If no additional research or information required, staff reports as to mandatory findings required, procedures, alternative actions, etc.

No. 8: Close Public Portion of Hearing

- A. Deliberation – no further input from general public. Staff may provide information regarding mandated procedures only.
 - 1. If BOARD or COMMISSION has additional questions, which call for new evidentiary testimony or documents and new evidence is taken, the testimony portion of the meeting shall be reopened, and Appellant and general public shall be limited to addressing new evidence only.
 - 2. Close public portion of hearing.
- B. Continued deliberation.
- C. If decision cannot be reached, hearing continued to date and time certain for further deliberation and decision.
- D. Decision.
 - 1. Resolution proposed by BOARD or COMMISSION.
 - a. Motion should contain facts and evidence which was adduced at the hearing to support action, or should direct staff to prepare draft resolution for review and action by BOARD or COMMISSION at a continued meeting of BOARD or COMMISSION, which shall be at a date and time certain.
 - b. A decision shall be rendered by the BOARD or COMMISSION in the form of a resolution at the conclusion of the deliberation phase.