

## **660-001-0000**

### **Notice of Proposed Rule**

(1) Except as provided in OAR 660-001-0000(2) and ORS 183.335(7), prior to the adoption, amendment, or repeal of any permanent rule, the Department of Land Conservation and Development shall give notice of the proposed adoption, amendment, or repeal:

(a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date of the rule;

(b) By mailing a copy of the notice and proposed rule(s) to persons on the Department of Land Conservation and Development's mailing list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the rule, **including electronic notices if allowed by law;**

(c) By mailing a copy of the notice, **including electronic mailing and also publication on the department website, of notices** to the persons, groups of persons, organizations, and associations who the department considers to be interested in such adoption;

(d) By mailing or furnishing a copy of the notice to the Associated Press and Capitol Press Room;

(e) By mailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule;

(f) The department, at its discretion, may purchase a display ad in a newspaper of statewide circulation to publicize the rulemaking; and

(g) In instances where the rulemaking adopts, amends or repeals a statewide planning goal, the department shall provide additional notice as required by statute.

(2) The Commission may adopt, amend or suspend any rule by temporary rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable pursuant to ORS 183.335(5). At the time the Commission adopts, amends or suspends any rule under this section, it shall:

(a) Prepare and adopt the statements and rule documents required by ORS 183.335(5)(a) to (e) which includes the Commission's statement of its findings "that its failure to act promptly will result in serious prejudice to the public interest or the parties concerned and the specific reasons for its findings of prejudice;" and

(b) Include in the notice of adoption of any temporary rule a statement explaining the opportunity for judicial review of the validity of the rule as provided in ORS 183.400.

Stat. Auth.: ORS [~~183~~] **197.040**

Stats. Implemented: ORS 183

Hist.: LCD 7-1976, f. & ef. 6-4-76; LCDC 1-1995, f. & cert. ef. 1-4-95; LCCD 2-2004, f. & cert. ef. 5-7-04

## **660-001-0005**

### **Model Rules of Procedure**

(1) Pursuant to the provisions of ORS 183.341, the Land Conservation and Development Commission adopts the Attorney General's Model Rules and Uniform Rules of Procedure under the Administrative Procedure Act, effective [~~October 3, 2001~~] **January 1, 2008**, except for **that portion of** OAR 137-003-0092**(2)** regarding the

[amount of time required] **number of calendar days allowed** to act on a stay request.  
**The number of calendar days allowed to act on a stay request shall be 75 days rather than 30 days.**

(2) Pursuant to the provisions of ORS 183.457 and OAR 137-003-0008, the Land Conservation and Development Commission authorizes parties and limited parties to contested case proceedings to be represented by an authorized representative, subject to the other requirements of ORS 183.457 and OAR 137-003-0008.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Land Conservation and Development Department.]

Stat. Auth.: [~~ORS 183 &~~]ORS 197.**040**

Stats. Implemented: ORS 183.341 & ORS 183.457

Hist.: LCD 3, f. 1-9-75, ef. 2-11-75; Renumbered from 660-010-0005; LCD 5-1978, f. & ef. 3-24-78; LCD 11-1981, f. & ef. 12-15-81; LCDC 8-1983, f. & ef. 11-23-83; LCDC 2-1986, f. & ef. 4-25-86; LCDC 4-1988, f. & cert. ef. 9-29-88; LCDC 4-1990, f. & cert. ef. 8-14-90; LCDC 4-1992, f. & cert. ef. 7-30-92; LCDC 1-1995, f. & cert. ef. 1-4-95; LCDC 1-1996, f. & cert. ef. 4-3-96; LCDD 1-1999, f. & cert. ef. 1-6-99; LCDD 2-2002, f. & cert. ef. 9-23-02

#### **[660-001-0007**

##### **Request for Stay -- Agency Determination**

**Except as provided in OAR 660-001-0005(1) with regard to the number of calendar days allowed to act on a stay request, agency determinations concerning a request for a stay will be processed under OAR 137-003-0090 to 137-003-0092.**

~~(1) Unless otherwise agreed to by the agency and the parties, within a reasonable time following delivery or mailing to the agency of the Request for Stay, the agency shall:~~

- ~~(a) Conduct such further proceedings as the parties mutually agree upon; or~~
- ~~(b) Conduct a contested case hearing, which may be limited to hearing rebuttal testimony; or~~
- ~~(c) Allow the petitioner within a time certain to submit affidavits to answer any of the intervenor's evidence.~~

~~(2) Unless otherwise agreed to by the agency and the parties, within 75 days of the delivery or mailing to the agency of the Request for Stay, the agency shall:~~

- ~~(a) Grant the stay request in writing and impose reasonable conditions including but not limited to requirements of a bond or other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within a specified reasonable period of time; or~~
- ~~(b) Deny the stay request in writing and explain that the petitioner failed to show irreparable injury or a colorable claim of error in the agency order; or~~
- ~~(c) Deny the stay request in writing and specifically state why, notwithstanding the petitioner's showing of irreparable injury and a colorable claim of error in the agency order, to grant the stay would result in substantial public harm.~~

~~(3) Nothing in OAR 137-003-0090 to 137-003-0091 prevents an agency from~~

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stay request was granted. Such evidence shall be presented by affidavit.]

Stat. Auth.: [~~ORS 183 &~~]ORS 197.**040**

Stats. Implemented: ORS 183, ORS 195, ORS 196, ORS 197 & OAR Ch. 137

Hist.: LCDC 2-1985, f. & ef. 3-13-85

**Director's Appeal of Land Use Decisions, Expedited  
Land Divisions, or Limited Land Use Decisions**

**660-001-0201**

**Definitions**

The following definition, and the definitions in ORS 197.015 and 197.090(2)(e), apply to rules 660-001-0210 through 660-001-0220: "Affected local government" means the local government, as defined in ORS 197.015, that made or adopted the land use decision, expedited land division or limited land use decision at issue in the director's request under these rules.

Stat. Auth.: ORS 197.040(1)(c)

Stats. Implemented: [~~ORS 184.633 &~~]ORS 197.090

Hist.: LCDD 1-2000, f. & cert. ef. 1-24-00

**660-001-0210**

**Timing of Director's Request**

(1) If a meeting of the commission is scheduled to occur six or fewer days before the close of the applicable appeal period, or the period for intervention in an appeal, the director shall seek commission approval before appealing, or intervening in, a land use decision, expedited land division or limited land use decision to the Land Use Board of Appeals. If the next scheduled meeting of the commission does not occur or a quorum of the commission is unavailable at the scheduled meeting, the department shall proceed as provided in [S]section (2) of this rule.

(2) If there is no commission meeting scheduled to occur six or fewer days before the close of the applicable appeal period, or the period for intervention in an appeal, the director may file, or intervene in, the appeal and report the action to the commission and request permission to pursue the appeal, or intervention, at the commission's next scheduled meeting.

Stat. Auth.: ORS 197.040(1)(c)

Stats. Implemented: [~~ORS 184.633 &~~]ORS 197.090

Hist.: LCDD 1-2000, f. & cert. ef. 1-24-00

**660-001-0220**

**Notice**

(1) When the director seeks commission approval to file or pursue an appeal, or an intervention in an appeal, of a land use decision, expedited land division or limited land use decision, the department shall provide written notice to the applicant and the affected local government. The notice shall:

- (a) Identify the land use decision, expedited land division or limited land use decision at issue;
  - (b) Give the date and location of the commission meeting at which the director will seek commission approval to file or pursue an appeal, or an intervention in an appeal, of the identified action;
  - (c) Inform the applicant and affected local government that each may provide written and oral testimony to the commission concerning whether to approve the director's request; and
  - (d) Include a list of the factors in OAR 660-001-0230(3), on which all testimony and the commission's decision must be based.
- (2) The notice shall be mailed or sent by some other means such as fax or e-mail as soon as practicable after the department receives notice of the land use decision, expedited land division or limited land use decision at issue.

Stat. Auth.: ORS 197.040(1)(c)

Stats. Implemented: [~~ORS 184.633 &~~]ORS 197.090

Hist.: LCDD 1-2000, f. & cert. ef. 1-24-00

### **660-001-0230**

#### **Commission Hearing**

- (1) Only the director, or department staff on the director's behalf, the applicant and the affected local government may submit written or oral testimony concerning whether the commission should approve the director's request to file or pursue an appeal, or an intervention in an appeal, of a land use decision, expedited land division or limited land use decision.
- (2) Unless the director allows a closer deadline, written testimony must be submitted at least five days before the commission meeting to be provided to commission members in advance of the meeting. Written testimony shall be no more than five pages, including any attachments, and must be received in the Department's Salem office to be "submitted" by the deadline. If the time to submit written testimony under these rules falls on a Saturday, Sunday, or state legal holiday, the time to perform the obligation shall be shortened to the next day preceding that is not a Saturday, Sunday, or state legal holiday.
- (3) Written and oral testimony and the commission's decision to approve or deny the director's request shall be based on one, or more, of the following factors:
- (a) Whether the case will require interpretation of a statewide planning statute, goal, or rule;
  - (b) Whether a ruling in the case will serve to clarify state planning law;
  - (c) Whether the case has important enforcement value;
  - (d) Whether the case concerns a significant natural, cultural, or economic resource;
  - (e) Whether the case advances the objectives of the agency's Strategic Plan; or
  - (f) Whether there is a better way to accomplish the objective of the appeal, such as dispute resolution, enforcement proceedings, or technical assistance.
- (4) The Chair shall limit the amount of time each speaker may testify, and shall exclude written or oral testimony not relevant to the factors in OAR 660-001-0230(3).

(5) Unless the Chair establishes a different order, oral testimony will be presented in the following sequence:

- (a) Director, and/or department staff;
- (b) Applicant;
- (c) Affected local government; and
- (d) Director, and/or department staff.

(6) No rebuttal or response is permitted, although the commissioners may question the director, department staff, the applicant, and the affected local government regarding the factors during the commission's deliberations.

Stat. Auth.: ORS 197.040(1)(c)

Stats. Implemented: [~~ORS 184.633 &~~]ORS 197.090

Hist.: LCDD 1-2000, f. & cert. ef. 1-24-00