

**LAND USE BOARD OF APPEALS
OAR Chapter 661**

**DIVISION 010
RULES OF PROCEDURE FOR APPEALS**

661-010-0000

Introduction

Scope of Rules and Effective Date: All proceedings commenced by a notice of intent to appeal filed after June 30, 2010 shall be governed by these rules. Any proceedings commenced by a notice of intent to appeal filed on or before June 30, 2010 shall be governed by OAR 661-010-0005 through 661-010-0075 as effective January 1, 2002.
Stat. Auth.: ORS 183.545 and ORS 197.820(4).
Stat. Implemented: ORS 197.805.

661-010-0005

Purpose

These rules are intended to promote the speediest practicable review of land use decisions and limited land use decisions, in accordance with ORS 197.805-197.855, while affording all interested persons reasonable notice and opportunity to intervene, reasonable time to prepare and submit their cases, and a full and fair hearing. The rules shall be interpreted to carry out these objectives and to promote justice. Technical violations not affecting the substantial rights of parties shall not interfere with the review of a land use decision or limited land use decision. Failure to comply with the time limit for filing a notice of intent to appeal under OAR 661-010-0015(1), or a petition for review under OAR 661-010-0030(1) is not a technical violation.
Stat. Auth.: ORS 183.545 and ORS 197.820.
Stat. Implemented: ORS 197.805.

661-010-0010

Definitions

In these rules, unless the context or subject matter requires otherwise:

- (1) "Applicant" means the person who requested that the governing body take an action which resulted in a land use decision or limited land use decision.
- (2) "Board" means the Land Use Board of Appeals or any member thereof.
- (3) "Final decision": A decision becomes final when it is reduced to writing and bears the necessary signatures of the decision maker(s), unless a local rule or ordinance specifies that the decision becomes final at a later date, in which case the decision is considered final as provided in the local rule or ordinance.
- (4) "Final decision maker" means the governing body, or a person, commission or other entity authorized by the governing body, that makes the final decision.
- (5) "Governing body" means a city, county or special district governing body, or a state agency.
- (6) "Land use decision" has the meaning given the term in ORS 197.015.
- (7) "Lead Intervenor" means the intervenor designated as the contact person for the purpose of receiving documents from the Board and other parties, when two or more

1 intervenors join in a single motion to intervene and are unrepresented by an attorney. See
2 OAR 661-010-0075(7)(b).

3 (8) "Lead Petitioner" means the petitioner designated as the contact person for the
4 purpose of receiving documents from the Board and other parties, when two or more
5 petitioners are unrepresented by an attorney. See OAR 661-010-0075(7)(a).

6 (9) "Limited land use decision" has the meaning given the term in ORS 197.015.

7 (10) "Notice" means the notice of intent to appeal and refers to the document that must
8 be filed with the Board in order to begin a review proceeding.

9 (11) "Party" means the petitioner, the governing body, and any person who intervenes as
10 provided in OAR 661-010-0050. "Party" does not include a state agency that files a brief
11 under ORS 197.830(8) or an amicus participating under OAR 661-010-0052.

12 Stat. Auth.: ORS 183.545 and ORS 197.820(4).

13 Stat. Implemented: ORS 197.015(2), (10) and (12); 197.805.

14
15 **661-010-0015**

16 **Notice of Intent to Appeal**

17 (1) Filing of Notice:

18 (a) The Notice, together with two copies, and the filing fee and deposit for costs required
19 by section (4) of this rule, shall be filed with the Board on or before the 21st day after the
20 date the decision sought to be reviewed becomes final or within the time provided by
21 ORS 197.830(3) through (5). A notice of intent to appeal plan and land use regulation
22 amendments processed pursuant to ORS 197.610 to 197.625 shall be filed with the Board
23 on or before the 21st day after the date the decision sought to be reviewed is mailed to
24 parties entitled to notice under ORS 197.615. A Notice filed thereafter shall not be
25 deemed timely filed, and the appeal shall be dismissed.

26 (b) The date of filing a notice of intent to appeal is the date the Notice is received by the
27 Board, or the date the Notice is mailed, provided it is mailed by registered or certified
28 mail, and the party filing the Notice has proof from the post office of such mailing date.
29 If the date of mailing is relied upon as the date of filing, the date of the receipt stamped
30 by the United States Postal Service showing the date mailed and the certified or
31 registered number is the date of filing.

32 (c) If a Notice is received without payment of the fee and deposit required by section (4)
33 of this rule, the petitioner will be given an opportunity to submit the required fee and
34 deposit. If the filing fee and deposit for costs are not received within the time set by the
35 Board, the Board shall dismiss the appeal.

36 (d) If the Board determines that a Notice identifies more than one final decision as the
37 subject of appeal, the Board shall notify the petitioner. The Board shall dismiss the
38 Notice if the petitioner fails to submit within the date specified by the Board either a
39 written election to appeal only one decision, or a separate Notice and separate filing fee
40 and deposit, as required by section (4) of this rule, for each additional decision.

41 (2) Service of Notice: The Notice shall be served on the governing body, the governing
42 body's legal counsel, and all persons identified in the Notice as required by subsection
43 (3)(f) of this rule on or before the date the notice of intent to appeal is required to be
44 filed. Service of the Notice as required by this section may be in person or by first class
45 mail. The date of serving such notice shall be the date of mailing.

46 (3) Contents of Notice: The Notice shall be substantially in the form set forth in Exhibit 1
47 and shall contain:

LUBA's Administrative Rules
as of July 1, 2010

- 1 (a) A caption which sets forth the name(s) of the person(s) filing the Notice, identifying
2 the person(s) as petitioner(s), and the name of the governing body, identifying the
3 governing body as respondent;
4 (b) Below the caption the heading "Notice of Intent to Appeal";
5 (c) The full title of the decision to be reviewed as it appears on the final decision;
6 (d) The date the decision to be reviewed became final;
7 (e) A concise description of the decision to be reviewed, or a copy of either the notice of
8 decision or the decision to be reviewed;
9 (f) The name, address and telephone number of each of the following:
10 (A) The Petitioner. If the petitioner is not represented by an attorney, the petitioner's
11 name, address and telephone number shall be included. If an attorney represents the
12 petitioner, the attorney's name, address and telephone number shall be substituted for that
13 of the petitioner. If two or more petitioners are unrepresented by an attorney, one
14 petitioner shall be designated as the lead petitioner, but the Notice shall include the
15 names, addresses, and telephone numbers of all such unrepresented petitioners. See
16 OAR 661-010-0075(7)(a);
17 (B) The governing body and the governing body's legal counsel;
18 (C) The applicant, if any (and if other than the petitioner). If an applicant was represented
19 by an attorney before the governing body, then the name, address and telephone number
20 of the applicant's attorney shall also be included;
21 (D) Any other person to whom written notice of the land use decision or limited land use
22 decision was mailed as shown on the governing body's records. The telephone number
23 may be omitted for any such person.
24 (g) A statement advising all persons, other than the governing body, that in order to
25 participate in the review proceeding a person must file a motion to intervene pursuant to
26 OAR 661-010-0050.
27 (h) On the last page, a signature by each petitioner, or the attorney representing that
28 petitioner, on whose behalf the Notice is filed.
29 (i) Proof of service upon all persons required to be named in the Notice. See Exhibit 1.
30 (4) Filing Fee and Deposit for Costs: The Notice shall be accompanied by a filing fee of
31 \$200 and a deposit for costs in the amount of \$200 payable to the Land Use Board of
32 Appeals. One check, State of Oregon purchase order or money order for \$400 may be
33 submitted. If a check providing the filing fee or deposit for costs or both is returned for
34 insufficient funds and the filing fee and deposit for costs are not paid within the time set
35 by the Board, the Board shall dismiss the appeal. Cash shall not be accepted.
36 Stat. Auth.: ORS 183.545 and ORS 197.820(4).
37 Stat. Implemented: ORS 197.620; 197.830(1) and (9).

38
39 **661-010-0021**

40 **Withdrawal of Decision for Reconsideration**

41 (1) If a local government or state agency, pursuant to ORS 197.830(13)(b), withdraws a
42 decision for the purposes of reconsideration, it shall file a notice of withdrawal with the
43 Board on or before the date the record is due. A copy of the decision on reconsideration
44 shall be filed with the Board within 90 days after the filing of the notice of withdrawal or
45 within such other time as the Board may allow.

46 (2) The filing of a notice of withdrawal under section (1) of this rule shall suspend
47 proceedings on the appeal until a decision on reconsideration is filed with the Board, or

LUBA's Administrative Rules
as of July 1, 2010

1 the time designated therefor expires, unless otherwise ordered by the Board. If no
2 decision on reconsideration is filed within the time designated therefor, the Board shall
3 issue an order restarting the appeal.

4 (3) A copy of the decision on reconsideration under section (1) of this rule shall be filed
5 with the Board within 7 days after the local government or state agency issues the
6 decision on reconsideration and copies of the decision on reconsideration shall be served
7 on all parties. The first page of the decision on reconsideration, or an accompanying
8 transmittal letter, shall indicate the title and case number of the pending appeal before the
9 Board.

10 (4) Petitioner(s) may seek review of the decision on reconsideration as provided in
11 section (5) of this rule. Any other person may file a notice of intent to appeal the decision
12 on reconsideration as provided in OAR 661-010-0015. If such an appeal is filed, and a
13 petitioner files an amended notice of intent to appeal or refiles the original notice of
14 intent to appeal as provided in section (5) of this rule, any party may move to consolidate
15 the appeals challenging the decision on reconsideration as provided in OAR 661-010-
16 0055.

17 (5) After the filing of a decision on reconsideration:

18 (a) If the petitioner wishes review by the Board of the decision on reconsideration:

19 (A) Except as provided in paragraph (B) of this subsection, the petitioner shall file an
20 amended notice of intent to appeal together with two copies within 21 days after the
21 decision on reconsideration is received by the Board.

22 (B) In the event the local government or state agency affirms its decision or modifies its
23 decision with only minor revisions, the petitioner may refile the original notice of intent
24 to appeal, with the date of the decision on reconsideration indicated thereon, together
25 with two copies within 21 days after the decision on reconsideration is received by the
26 Board.

27 (b) Refiling of the original notice of intent to appeal or filing of an amended notice of
28 intent to appeal is accomplished by delivery of the Notice to the Board, or receipt of the
29 Notice by the Board, on or before the due date. Filing or refiling may also be
30 accomplished by mailing on or before the due date by first-class, certified or registered
31 mail.

32 (c) An amended notice of intent to appeal or a refiled notice of intent to appeal under
33 paragraphs (A) and (B) of subsection 5(a) of this rule shall conform with the
34 requirements of OAR 661-010-0015(3) and shall be served on the following:

35 (A) All parties to the appeal suspended pursuant to section (2) of this rule;

36 (B) The applicant, if any (and if other than the petitioner). If an applicant was represented
37 by an attorney before the governing body, then the name, address and telephone number
38 of the applicant's attorney shall also be included;

39 (C) Any other person to whom written notice of the original or reconsidered land use
40 decision or limited land use decision was mailed as shown on the governing body's
41 records. The telephone number may be omitted for any such person.[:]

42 (d) No additional filing fee or deposit for costs shall be required to refile the original
43 notice of intent to appeal or file an amended notice of intent to appeal under subsection
44 (5)(a) of this rule.

45 (e) If no amended notice of intent to appeal is filed or no original notice of intent to
46 appeal is refiled, as provided in subsection (5)(a) and (b) of this rule, the appeal will be
47 dismissed.

1 (f) Parties who have already intervened in the appeal need not file new motions to
2 intervene when an amended notice of intent to appeal is filed or the original notice of
3 intent to appeal is refiled.

4 (6) The local government or state agency shall, within 21 days after service of the
5 amended notice of intent to appeal or refiled original notice of intent to appeal under
6 subsection (5)(a) of this rule, transmit to the Board a certified copy of the record of the
7 proceeding under review in accordance with OAR 661-010-0025. The record submitted
8 by the local government or state agency in an appeal of a decision on reconsideration
9 shall include the record of the original decision and the decision on reconsideration.

10 Stat. Auth.: ORS 183.545 and ORS 197.820(4).

11 Stat. Implemented: ORS 197.830(13)(b).

12

13 **661-010-0025**

14 **Record**

15 (1) Contents of Record: Unless the Board otherwise orders, or the parties otherwise agree
16 in writing, the record shall include at least the following:

17 (a) The final decision including any findings of fact and conclusions of law.[:]

18 (b) All written testimony and all exhibits, maps, documents or other written materials
19 specifically incorporated into the record or placed before, and not rejected by, the final
20 decision maker, during the course of the proceedings before the final decision maker.

21 (c) Minutes and tape, CD, DVD or other media recordings of the meetings conducted by
22 the final decision maker as required by law, or incorporated into the record by the final
23 decision maker. A verbatim transcript of media recordings shall not be required, but if a
24 transcript has been prepared by the governing body, it shall be included. If a verbatim
25 transcript is included in the record, the media recordings from which that transcript was
26 prepared need not be included in the record, unless the accuracy of the transcript is
27 challenged.

28 (d) Notices of proposed action, public hearing and adoption of a final decision, if any,
29 published, posted or mailed during the course of the land use proceeding, including
30 affidavits of publication, posting or mailing. Such notices shall include any notices
31 concerning amendments to acknowledged comprehensive plans or land use regulations
32 given pursuant to ORS 197.610(1) or 197.615(1) and (2).

33 (2) Transmittal of Record: The governing body shall, within 21 days after service of the
34 Notice on the governing body, transmit to the Board a certified copy of the record of the
35 proceeding under review. The governing body may, however, retain any large maps,
36 media recordings, or difficult-to-duplicate documents and items until the date of oral
37 argument. Transmittal of the record is accomplished by delivery of the record to the
38 Board, or by receipt of the record by the Board, on or before the due date.

39 (3) Service of Record:

40 (a) Contemporaneously with transmittal, the governing body shall serve a paper copy of
41 the record, exclusive of large maps, media recordings, and difficult-to-duplicate
42 documents and items, on the petitioner or the lead petitioner, if one is designated. The
43 governing body shall also serve a paper copy of the record on any other party, including
44 intervenors-petitioner, requesting a copy provided such other party reimburses the
45 governing body for the reasonable expense incurred in copying the record. The governing
46 body shall also serve a copy of any media recording included in the record, or any
47 recording from which a transcript included in the record was prepared, on any party

1 requesting such a copy, provided such party reimburses the governing body for the
2 reasonable expense incurred in copying the recording.

3 (b) By prior agreement of the party to be served, service of the record as described in
4 OAR 661-010-0025(3)(a) may be in an electronic format instead of a paper copy. If
5 copies of the record are served on the parties in electronic format only, the local
6 government may not recover copying costs under OAR 661-010-0075(1)(b)(B) for such
7 electronic copies of the record.

8 (4) Specifications of Record:

9 (a) The record, including any supplements or amendments, shall:

10 (A) Be filed in a suitable folder; the cover shall bear the title of the case as it appears in
11 the Notice or in the Board's order consolidating multiple appeals, and the Board's
12 numerical designation for the case, and shall indicate the numerical designation given the
13 land use decision or limited land use decision by the governing body; if the record
14 consists of multiple volumes, the cover shall indicate the page numbers contained in each
15 volume;

16 (B) Begin with a table of contents, listing each item contained therein, and the page of the
17 record where the item begins (see Exhibit 2). Where a listed item includes attached
18 exhibits, the exhibits shall be separately listed. Each large map, media recording, item or
19 document retained by the governing body under section (2) of this rule shall be separately
20 listed at the end of the table of contents;

21 (C) Be securely fastened on the left side;

22 (D) Have pages numbered consecutively, with the page number at the bottom outside
23 corner of each page;

24 (E) Be arranged in inverse chronological order, with the most recent item first. Exhibits
25 attached to a record item shall be included according to the numerical or alphabetical
26 order in which they are attached, not the date of the exhibits. Upon motion of the
27 governing body, the Board may allow the record to be organized differently.

28 (b) Where the record includes the record of a prior appeal to this Board, the table of
29 contents shall specify the LUBA number of the prior appeal, and indicate that the record
30 of the prior appeal is incorporated into the record of the current appeal.

31 (c) A record that does not substantially conform to the preceding requirements may be
32 rejected by the Board.

33 (5) If no record objection is filed and the governing body transmits an amendment to
34 the record, the date the amendment is received by the Board shall be considered the date
35 the record is received for the purpose of computing time limits as required by these rules.
36 Stat Auth. ORS 183.545 and ORS 197.820(4).

37 Stat Implemented: ORS 197.830(10)(a) and (14); 197.835.

38
39 **661-010-0026**

40 **Objections to the Record**

41 (1) Before filing an objection to the record, a party shall attempt to resolve the matter
42 with the governing body's legal counsel. The objecting party shall include a statement of
43 compliance with this section at the same time the objection is filed. The Board may deny
44 any objection to the record that does not comply with this rule.

45 (2) An objection to the record or an objection to an amendment or supplement to the
46 record shall be filed with the Board within 14 days of the date appearing on the notice of
47 record transmittal sent to the parties by the Board. A party may file a record objection

1 while continuing to resolve objections with the governing body's legal counsel.

2 Objections may be made on the following grounds:

3 (a) The record does not include all materials included as part of the record during the
4 proceedings before the final decision maker. The omitted item(s) shall be specified, as
5 well as the basis for the claim that the item(s) are part of the record.

6 (b) The record contains material not included as part of the record during the proceedings
7 before the final decision maker. The item(s) not included as part of the record during the
8 proceedings before the final decision maker shall be specified, as well as the bases for the
9 claim that the item(s) are not part of the record.

10 (c) The minutes or transcripts of meetings or hearings are incomplete or do not accurately
11 reflect the proceedings.

12 (d) The record does not conform to the requirements of OAR 661-010-0025(4).

13 (3) An objection on grounds that the minutes or transcripts are incomplete or inaccurate
14 shall demonstrate with particularity how the minutes or transcripts are defective and shall
15 explain with particularity why the defect is material. Upon such demonstration regarding
16 contested minutes, the Board shall require the governing body to produce a transcript of
17 the relevant portion of the proceeding, if an audiotape recording or other type of
18 recording is available. Upon such demonstration regarding contested transcripts, the
19 Board shall require the governing body to produce a more complete or amended
20 transcript.

21 (4) A party may, within 14 days from the date of service of a record objection, file a
22 response. The governing body's legal counsel shall, within 14 days of the filing of a
23 record objection, either file a response to the record objection or advise the Board in
24 writing of the status of the parties' efforts to resolve the record objection.

25 (5) The Board may, at its discretion, conduct a telephone conference with the parties to
26 consider any objections to the record. A party desiring a telephone conference on an
27 objection to the record shall include a request for a telephone conference in its objection
28 to the record or response.

29 (6) If an objection to the record is filed, the time limits for all further procedures under
30 these rules shall be suspended. When the objection is resolved, the Board shall issue an
31 order declaring the record settled and setting forth the schedule for subsequent events.
32 Unless otherwise provided by the Board, the date of the Board's order shall be deemed
33 the date of receipt of the record for purposes of computing subsequent time limits.

34 Stat. Auth.: ORS 183.545 & ORS 197.820(4)

35 Stats. Implemented: ORS 197.830(10)(a), ORS 197.830(14) & ORS 197.835.

36
37 **661-010-0030**

38 **Petition for Review**

39 (1) Filing and Service of Petition: The petition for review together with four copies shall
40 be filed with the Board within 21 days after the date the record is received or settled by
41 the Board. See OAR 661-010-0025(2) and 661-010-0026(6). The petition shall also be
42 served on the governing body and any party who has filed a motion to intervene. Failure
43 to file a petition for review within the time required by this section, and any extensions of
44 that time under OAR 661-010-0045(9) or OAR 661-010-0067(2), shall result in dismissal
45 of the appeal and forfeiture of the filing fee and deposit for costs to the governing body.

46 See OAR 661-010-0075(1)(c).

47 (2) Specifications of Petition: The petition for review shall:

LUBA's Administrative Rules
as of July 1, 2010

- 1 (a) Begin with a table of contents;
- 2 (b) Not exceed 50 pages, exclusive of appendices, unless permission for a longer petition
- 3 is given by the Board;
- 4 (c) Have blue front and back covers of at least 65-pound weight paper. The front cover
- 5 page shall state the full title of the proceeding, and the names, addresses and telephone
- 6 numbers of all parties unrepresented by an attorney. If a party is represented by an
- 7 attorney, the name, address and telephone number of the attorney shall be substituted for
- 8 the party. If there is more than one petitioner, the cover page shall specify which
- 9 petitioner(s) are filing the petition. An intervenor shall be designated as either petitioner
- 10 or respondent in accordance with OAR 661-010-0050;
- 11 (d) Be typewritten or word-processed in proportionately spaced font such as Times New
- 12 Roman no smaller than 12 point for text and 10 point for footnotes;
- 13 (e) Be double spaced, except that quotations and footnotes may be single-spaced with
- 14 double space above and below each paragraph of quotation;
- 15 (f) Have text printed on only one side of the page; however, text may be printed on both
- 16 sides of the page if the paper is sufficiently opaque to prevent material on one side from
- 17 showing through, and the petition is bound along the left-hand margin so that the pages
- 18 lie flat when open;
- 19 (g) Be printed on 8 1/2 by 11 inch paper, with numbers for each line of text;
- 20 (h) Have inside margins of 1 1/4 inches, outside margins of 1 inch, top and bottom
- 21 margins of 3/4 inch; and
- 22 (i) Be signed on the last page by the author. In cases where multiple unrepresented
- 23 petitioners or intervenors-petitioner file a single petition for review, the petition for
- 24 review shall be signed by all petitioners or intervenors-petitioner who wish to join the
- 25 petition for review.
- 26 (3) If the Board determines that the petition for review fails to conform with the
- 27 requirements of section (2) of this rule, it shall notify the author, and a brief conforming
- 28 with the requirements of section (2) shall be filed within three (3) days of notification by
- 29 the Board. The Board may refuse to consider a brief that does not substantially conform
- 30 to the requirements of this rule.
- 31 (4) Contents of Petition: The petition for review shall:
- 32 (a) State the facts that establish petitioner's standing;
- 33 (b) Present a clear and concise statement of the case, in the following order, with separate
- 34 section headings:
- 35 (A) The nature of the land use decision or limited land use decision and the relief sought
- 36 by petitioner;
- 37 (B) A summary of the arguments appearing under the assignments of error in the body of
- 38 the petition;
- 39 (C) A summary of the material facts. The summary shall be in narrative form with
- 40 citations to the pages of the record where the facts alleged can be found. Where there is a
- 41 map in the record that helps illustrate the material facts, the petitioner shall include a
- 42 copy of that map in the summary of the material facts or attach it as an appendix to the
- 43 petition.
- 44 (c) State why the challenged decision is a land use decision or a limited land use decision
- 45 subject to the Board's jurisdiction;

1 (d) Set forth each assignment of error under a separate heading. Where several
2 assignments of error present essentially the same legal questions, the argument in support
3 of those assignments of error shall be combined;

4 (e) Contain a copy of the challenged decision, including any adopted findings of fact and
5 conclusions of law; and

6 (f) Contain a copy of any comprehensive plan provision, ordinance or other provision of
7 local law cited in the petition, unless the provision is quoted verbatim in the petition.

8 (5) The petition for review may include appendices containing verbatim transcripts of
9 relevant portions of media recordings that are part of the record.

10 (6) Amended Petition: A petition for review which fails to comply with section (4) of this
11 rule may, with permission of the Board, be amended. The Board shall determine whether
12 to allow an amended petition for review to be filed in accordance with OAR 661-010-
13 0005.

14 (7) Cross Petition: Any respondent or intervenor-respondent who desires reversal or
15 remand of an aspect of the decision on appeal regardless of the outcome under the
16 petition for review may file a cross petition for review that includes one or more
17 assignments of error. The cross petition for review may also include contingent cross-
18 assignments of error, clearly labeled as such, that the Board will address only if the
19 decision on appeal is reversed or remanded under the petition for review. The cover page
20 shall identify the petition as a cross petition and the party filing the cross petition. The
21 cross petition shall be filed within the time required for filing the petition for review and
22 must comply in all respects with the requirements of this rule governing the petition for
23 review, except that a notice of intent to appeal need not have been filed by such party.

24 Stat Auth.: ORS 183.545 and ORS 197.820(4).

25 Stat Implemented: ORS 197.830(11), (12) and (13)(a).

26
27 **661-010-0035**

28 **Respondent's Brief**

29 (1) Filing and Service of Brief: Unless otherwise provided by the Board, respondent's
30 brief together with four copies shall be filed within 42 days after the date the record is
31 received or settled by the Board. See OAR 661-010-0025(2) and 661-010-0026(6). A
32 copy of the respondent's brief shall be served on the petitioner or the lead petitioner, if
33 one is designated, and all intervenors or the lead intervenor, if one is designated.

34 (2) Specifications of Brief: Respondent's brief shall conform to the specifications of the
35 petition for review at OAR 661-010-0030(2), except that the brief shall have red front
36 and back covers. If there is more than one respondent, the front cover page shall specify
37 which respondent is filing the brief. Respondent's brief shall be subject to OAR 661-010-
38 0030(3).

39 (3) Contents of Brief:

40 (a) The respondent's brief shall follow the form prescribed for the petition for review, but
41 need not contain the final decision. The respondent shall specifically accept the
42 petitioner's statement of the case or shall cite any alleged omissions or inaccuracies
43 therein, and may state additional relevant facts or other matters. The statement shall be in
44 narrative form with citations to the pages of the record where the facts alleged can be
45 found.

46 (b) Respondent shall accept or challenge petitioner's statement of the Board's jurisdiction
47 and petitioner's statement of standing. The basis for any challenge shall be stated. If

1 respondent contends that the facts alleged by petitioner in support of standing are not
2 true, respondent shall specify which allegations are contested.
3 (c) A response brief shall not include an assignment of error or cross-assignment of error.
4 (4) The respondent's brief may include appendices containing verbatim transcripts of
5 media recordings that are part of the record.
6 (5) Amended Brief: The Board may allow the filing of an amended brief in accordance
7 with OAR 661-010-0005.
8 Stat. Auth.: ORS 183.545 and ORS 197.820(4).
9 Stat. Implemented: ORS 197.830(13)(a).

10
11 **661-010-0038**

12 **State Agency Briefs**

13 A state agency that wishes to file a brief under ORS 197.830(8) shall file the brief
14 together with four copies within the time required for respondent's brief. No fee is
15 required. A state agency brief shall have yellow front and back covers. **A state agency**
16 **brief shall be accompanied by a filing fee of \$100.**

17
18 Stat. Implemented: ORS 197.830(8).

19
20 **661-010-0039**

21 **Reply Brief**

22 A reply brief may not be filed unless permission is obtained from the Board. A request to
23 file a reply brief shall be filed with the proposed reply brief together with four copies
24 within seven days of the date the respondent's brief is filed. A reply brief shall be
25 confined solely to new matters raised in the respondent's brief, state agency brief, or
26 amicus brief. A reply brief shall not exceed five pages, exclusive of appendices, unless
27 permission for a longer reply brief is given by the Board. A reply brief shall have gray
28 front and back covers.

29 Stat Auth.: ORS 183.545 and ORS 197.820(4).

30 Stat. Implemented: ORS 197.830(13)(a).

31
32 **661-010-0040**

33 **Oral Argument**

34 (1) Only parties who have submitted briefs shall be allowed to present oral argument to
35 the Board. The Board shall not consider issues raised for the first time at oral argument.

36 (2) If a party waives the right to present oral argument, the Board shall consider the case
37 based on that party's brief and the briefs and oral arguments presented by other parties.

38 The parties may, with consent of the Board, stipulate to submit a case to the Board on
39 briefs without oral argument. If a party fails to appear at the time set for oral argument,
40 the Board may deem the cause submitted without oral argument as to that party. A
41 party's failure to so appear shall not preclude oral argument by other parties.

42 (3) The Board shall inform the parties of the time and place of oral argument. A party
43 shall seek the consent of other parties before requesting a change in the scheduled time or
44 date for oral argument.

45 (a) Unless the board otherwise orders, petitioner(s) shall be allowed 30 minutes for oral
46 argument. Petitioner(s) may reserve up to 10 minutes for rebuttal following respondents'

1 oral argument, to respond to arguments made during respondents' oral argument.

2 Multiple petitioners shall share the 30 minutes.

3 (b) The respondent(s) shall be allowed 30 minutes to respond. Multiple respondents shall
4 share the 30 minutes.

5 (c) The Board shall record all arguments, but any party may also arrange at its own
6 expense to record the argument in some other manner.

7 (4) A state agency which has filed a brief pursuant to ORS 197.830(8) may move to
8 argue orally before the Board. The motion shall be filed with the brief.

9 (5) Demonstrative exhibits presented at oral argument shall be limited to copies of
10 materials already in the record, including reductions or enlargements, or materials created
11 during the party's presentation at oral argument.

12 (6) The Board may conduct oral argument by telephone conference call.

13 Stat. Auth.: ORS 183.545 and ORS 197.820(4).

14 Stat. Implemented: ORS 197.830(13)(a).

15
16 **661-010-0045**

17 **Taking Evidence Not in the Record**

18 (1) Grounds for Motion to Take Evidence Not in the Record: The Board may, upon
19 written motion, take evidence not in the record in the case of disputed factual allegations
20 in the parties' briefs concerning unconstitutionality of the decision, standing, ex parte
21 contacts, actions for the purpose of avoiding the requirements of ORS 215.427 or
22 227.178, or other procedural irregularities not shown in the record and which, if proved,
23 would warrant reversal or remand of the decision. The Board may also upon motion or at
24 its discretion take evidence to resolve disputes regarding the content of the record,
25 requests for stays, attorney fees, or actual damages under ORS 197.845.

26 (2) Motions to Take Evidence:

27 (a) A motion to take evidence shall contain a statement explaining with particularity what
28 facts the moving party seeks to establish, how those facts pertain to the grounds to take
29 evidence specified in section (1) of this rule, and how those facts will affect the outcome
30 of the review proceeding.

31 (b) A motion to take evidence shall be accompanied by:

32 (A) An affidavit or documentation that sets forth the facts the moving party seeks to
33 establish; or

34 (B) An affidavit establishing the need to take evidence not available to the moving party,
35 in the form of depositions or documents as provided in subsection (2)(c) or (d) of this
36 rule.

37 (c) Depositions: the Board may order the testimony of any witness to be taken by
38 deposition where a party establishes the relevancy and materiality of the anticipated
39 testimony to the grounds for the motion, and the necessity of a deposition to obtain the
40 testimony. Depositions under this rule shall be conducted in the same manner prescribed
41 by law for depositions in civil actions (ORCP 38-40).

42 (d) Subpoenas: the Board shall issue subpoenas to any party upon a showing that the
43 witness or documents to be subpoenaed will provide evidence relevant and material to
44 the grounds for the motion. Subpoenas may also be issued under the signature of the
45 attorney of record of a party. Witnesses appearing pursuant to subpoena, other than
46 parties or employees of the Board, shall be tendered fees and mileage as prescribed by
47 ORS 44.415(2) for witnesses in civil actions. The party requesting the subpoena shall be

LUBA's Administrative Rules
as of July 1, 2010

1 responsible for service of the subpoena and tendering the witness and mileage fees to the
2 witness.

3 (3) Any party may file a response within 14 days of the date of service of the motion to
4 take evidence. The response shall specifically state what facts alleged in the motion are
5 contested, with references to where contrary facts are found in the record or in affidavits
6 or documents appended to the response.

7 (4) If the Board grants the motion to take evidence, the Board shall so notify the parties,
8 and indicate whether it will decide the motion on the submitted materials, whether it will
9 allow depositions or discovery of evidence under section (2), or whether it will schedule
10 an evidentiary hearing on the motion.

11 (5) Conduct of Hearing:

12 (a) Where the Board schedules an evidentiary hearing, the hearing shall be conducted in
13 the following order, insofar as the Board finds it practical:

14 (A) The moving party shall present its evidence including that of any witnesses;

15 (B) The other party(ies) shall have the opportunity to present evidence rebutting that of
16 the moving party;

17 (C) The moving party may present surrebuttal evidence;

18 (b) Any witness is subject to cross examination by opposing parties.

19 (c) Any member of the Board may question any witness;

20 (d) The burden of presenting evidence in support of a fact or proposition rests on the
21 proponent of the fact or proposition;

22 (e) The Board may continue a hearing, and may set time limits for any hearing;

23 (f) Exhibits shall be marked to identify the party offering the exhibits. The exhibits shall
24 be preserved by the Board as part of the record.

25 (6) Evidentiary Rules:

26 (a) Evidence of a type commonly relied upon by reasonably prudent persons in conduct
27 of their serious affairs shall be admissible.

28 (b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

29 (c) All evidence not objected to shall be received by the Board, subject to the Board's
30 power to exclude irrelevant, immaterial or unduly repetitious matter.

31 (d) Evidence objected to may be received by the Board. Rulings on the admissibility of
32 such evidence, if not made at the hearing, shall be made at or before the time a final order
33 is issued.

34 (e) Any time 14 days or more before a hearing, any party may serve on every other party
35 an affidavit, certificate or other document the party proposes to introduce in evidence.
36 Unless cross-examination of the affiant, certificate preparer or other document preparer
37 or custodian is requested within seven days prior to hearing, the affidavit or certificate
38 may be offered subject to the same standards and received with the same effect as oral
39 testimony. If cross-examination is requested, and the requestor is informed within seven
40 days prior to the hearing that the requested witness will not appear for cross-examination,
41 the affidavit, certificate or other document may be received in evidence if the Board
42 determines that the party requesting cross-examination would not be unduly prejudiced
43 or injured by lack of cross-examination.

44 (7) Prehearing Conference: The Board, on its own motion or at the request of any party,
45 may call a prehearing conference to consider:

46 (a) Simplification of the issues;

- 1 (b) The possibility of obtaining admissions of fact and documents which will avoid
2 unnecessary proof;
- 3 (c) Limitation of the number of witnesses;
- 4 (d) The form and substance of any prehearing order;
- 5 (e) Such other matters as may aid in the disposition of the appeal.
- 6 (8) Proposed Prehearing Order: The Board, with or without a prehearing conference, may
7 require that the parties prepare and sign a proposed prehearing order to be filed with the
8 Board on or before a date specified by the Board. The order shall contain:
- 9 (a) A statement of contentions of law of each party;
- 10 (b) A concise statement of all contentions of fact to be proved by each party;
- 11 (c) A statement of all agreed facts;
- 12 (d) A list of witnesses and a summary of their testimony;
- 13 (e) A list of exhibits and a statement of the contents of each;
- 14 (f) Such other matters as the Board may require in order to expedite the hearing and
15 appeal.
- 16 (9) Effect on Time Limits: Unless the Board orders otherwise, the filing of a motion to
17 take evidence shall suspend the time limits for all other events in the review proceeding,
18 including the issuance of the Board's final order. If the Board grants the motion, the time
19 limits for other events shall remain suspended until the Board issues its findings. Unless
20 the parties agree otherwise, the Board shall schedule any evidentiary hearing not less
21 than ten days after the order granting the motion to take evidence is issued. If the Board
22 denies a motion to take evidence, the time for all other events will begin to run on the
23 date the Board issues its order denying the motion, or on such other date as is specified in
24 that order.

25 Stat. Auth. ORS 183.545 and ORS 197.820(4).

26 Stat. Implemented: ORS 197.835(2)(b).

27

28 **661-010-0050**

29 **Intervention**

30 (1) Standing to Intervene: The applicant and any person who appeared before the local
31 government, special district or state agency may intervene in a review proceeding before
32 the Board. Status as an intervenor is recognized when a motion to intervene is filed, but
33 the Board may deny that status at any time.

34 (2) Motion to Intervene: A motion to intervene shall be filed within 21 days of the date
35 the notice of intent to appeal is filed pursuant to OAR 661-010-0015, or the amended
36 notice of intent to appeal is filed or original notice of intent to appeal is refiled pursuant
37 to OAR 661-010-0021. When two or more intervenors join in a motion to intervene and
38 are unrepresented by an attorney, a lead intervenor shall be designated as the contact
39 person for the purpose of receiving documents from the Board and other parties. The
40 motion to intervene (see Exhibit 3) shall:

41 (a) List the names, addresses, and telephone numbers of all persons moving to intervene.
42 If an attorney represents the intervenor(s), the attorney's name, address and telephone
43 number shall be substituted for that of the intervenor(s);

44 (b) State whether the party is intervening on the side of the petitioner or the respondent;

45 (c) State the facts which show the party is entitled to intervene, supporting the statement
46 with affidavits or other proof;

1 (d) On the last page, be signed by each intervenor, or the attorney representing that
2 intervenor, on whose behalf the motion to intervene is filed;

3 (e) Be served upon the Board and all parties.

4 (3) Filing Fee: A motion to intervene shall be accompanied by a filing fee of \$100
5 payable to the Land Use Board of Appeals. If a motion to intervene is received without
6 payment of the filing fee or a check providing the filing fee is returned for insufficient
7 funds, the intervenor will be given an opportunity to submit the required fee. If the filing
8 fee is not paid within the time set by the Board, the Board shall deny the motion to
9 intervene. Cash shall not be accepted.

10 (4) Intervention in an appeal that is consolidated with other appeals does not allow the
11 intervenor to appear as a party with respect to those appeals in which the intervenor has
12 not filed a timely motion to intervene.

13 (5) Parties who have already intervened in an appeal need not file new motions to
14 intervene when an amended notice of intent to appeal is filed or the original notice of
15 intent to appeal is refiled pursuant to OAR 661-010-0021.

16 (6) Intervenor's Brief:

17 (a) If intervention is sought as a petitioner, the brief shall be filed within the time limit for
18 filing the petition for review, and shall satisfy the requirements for a petition for review
19 in OAR 661-010-0030.

20 (b) If intervention is sought as a respondent, the brief shall be filed within the time for
21 filing a respondent's brief and shall satisfy the requirements for a respondent's brief in
22 OAR 661-010-0035.

23 Stat. Auth.: ORS 183.545 and ORS 197.820(4).

24 Stat. Implemented: ORS 197.830(2) and (7).

25
26 **661-010-0052**

27 **Amicus Participation**

28 (1) A person or organization may appear as amicus only by permission of the Board on
29 written motion. The motion shall set forth the interest of the movant and state reasons
30 why a review of relevant issues would be significantly aided by participation of the
31 amicus. A copy of the motion shall be served on all parties to the proceeding.

32 (2) Appearance as amicus shall be by brief only, unless the Board specifically authorizes
33 or requests oral argument. An amicus brief shall be subject to the same rules as those
34 governing briefs of parties to the appeal, and shall be filed together with four copies.
35 Where amicus is aligned with the interests of the petitioner(s), the amicus brief is due
36 seven days after the date the petition for review is due. In all other circumstances, the
37 amicus brief is due within the time required for filing respondent's brief. No filing fee is
38 required. An amicus brief shall have green front and back covers.

39 Stat. Auth.: ORS 183.545 & ORS 197.820(4)

40 Stats. Implemented: ORS 197.805 & ORS 197.830(13)(a)

41
42 **661-010-0055**

43 **Consolidation**

44 The Board, at the request of any party or on its own motion, may consolidate two or more
45 proceedings, provided the proceedings seek review of the same or closely related land
46 use decision(s) or limited land use decision(s). Consolidation of appeals does not affect
47 the status of the parties to each appeal. See OAR 661-010-0050(3).

LUBA's Administrative Rules
as of July 1, 2010

1 Stat. Auth.: ORS 197.820(4)
2 Stats. Implemented: ORS 197.805
3 Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-
4 1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1992, f. & cert. ef. 1-
5 21-92; LUBA 2-1992, f. & cert. ef. 3-19-92

6

7 **661-010-0065**

8 **Motions**

9 (1) When Motion is Appropriate: Unless these rules or applicable statutes provide
10 another form of application, a request for an order or relief shall be made by filing a
11 motion in writing for such order or relief. A motion shall show proof of service on all
12 parties.

13 (2) Time of Filing: A party seeking to challenge the failure of an opposing party to
14 comply with any of the requirements of statutes or Board rules shall make the challenge
15 by motion filed with the Board and served on all parties within 14 days after the moving
16 party obtains knowledge of such alleged failure. However, motions to dismiss for lack of
17 jurisdiction may be filed at any time. An opposing party may, within 14 days from the
18 date of service of a motion, file a response.

19 (3) How Submitted: Parties shall submit all motions without oral argument unless
20 otherwise directed by the Board. A party that desires a telephone conference on a motion
21 shall include a request for a telephone conference in its motion or response. The Board
22 may, at its discretion, conduct a telephone conference with the parties to consider any
23 motion.

24 (4) Effect of Filing Motion: Except as provided in OAR 661-010-0026(6) with regard to
25 objections to the record and OAR 661-010-0045(9) with regard to motions to take
26 evidence, or as may otherwise be ordered by the Board on its own motion, the filing of a
27 motion shall not suspend the time limits for other events in the review proceeding.

28 Stat. Auth.: ORS 183.545 & ORS 197.820(4)

29 Stats. Implemented: ORS 197.805

30 Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-
31 1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1994, f. & cert. ef. 6-
32 22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98

33

34 **661-010-0067**

35 **Extensions of Time**

36 (1) In no event shall the time limit for the filing of the notice of intent to appeal be
37 extended.

38 (2) Except as provided in this section and OAR 661-010-0045(9), in no event shall the
39 time limit for the filing of the petition for review be extended without the written consent
40 of all parties. Written consent may include facsimile signatures. The Board may, on a
41 motion of a party or its own motion, extend the deadline for filing the petition for review
42 to allow time to rule on a motion to dismiss. Written consent to extend the deadline for
43 filing record objections shall automatically extend the deadline for filing the petition for
44 review for the same number of days granted to extend the deadline for filing record
45 objections, unless the consenting parties expressly provide otherwise.

46 (3) All other time limits may be extended upon written consent of all parties, the Board's
47 motion or motion of a party. Written consent may include facsimile signatures.

1 (4) A motion for extension of time shall state the reasons for granting the extension and
2 must be filed with the Board within the time required for performance of the act for
3 which an extension of time is requested.

4 (5) Any agreement by the parties allowing an extension of time shall automatically
5 extend the time for subsequent filings, as well as the issuance of the Board's final order
6 by an amount of time equal to the extension agreed to by the parties.

7 (6) In the event the Board extends the deadline for issuance of its final order without
8 consent of the parties, it shall enter the findings required by ORS 197.840.

9 Stat. Auth.: ORS 183.545 and ORS 197.820(4).

10 Stat. Implemented: ORS 197.830(13)(a).

11
12 **661-010-0068**

13 **Stays**

14 (1) A motion for a stay of a land use decision or limited land use decision shall include:

15 (a) A statement setting forth movant's right to standing to appeal the decision;

16 (b) A statement explaining why the challenged decision is subject to the Board's
17 jurisdiction;

18 (c) A statement of facts and reasons for issuing a stay, demonstrating a colorable claim of
19 error in the decision and specifying how the movant will suffer irreparable injury if a stay
20 is not granted;

21 (d) A suggested expedited briefing schedule;

22 (e) A copy of the decision under review and copies of all ordinances, resolutions, plans or
23 other documents necessary to show the standards applicable to the decision under review.

24 (2) A copy of a motion for stay shall be served on the governing body and the applicant
25 for the land use decision or limited land use decision, if any, on the same day the motion
26 is filed with the Board.

27 (3) Unless otherwise ordered by the Board, a response to a motion for a stay of a land use
28 decision or limited land use decision shall be filed within 14 days after the date of service
29 of the motion and shall set forth all matters in opposition to the motion and any facts
30 showing any adverse effect, including an estimate of any monetary damages that will
31 accrue if a stay is granted.

32 (4) An order granting a stay of a quasi-judicial land use decision or limited land use
33 decision involving a specific development of land shall be conditional upon filing an
34 undertaking in the principal amount of \$5,000. In all other cases an undertaking, if
35 ordered by the Board, shall be in the amount set forth in the order granting the stay. All
36 undertakings shall be substantially in the form as set forth in Exhibit 4, and shall be
37 accompanied by proof that the surety is qualified by law to issue surety insurance as
38 defined in ORS 731.186. Any objections to the form of undertaking or the surety shall be
39 filed within 14 days after the date of service of a copy of the undertaking on the objecting
40 party.

41 (5) The Board shall base its decision on the stay, including the right to a stay, amount of
42 undertaking, or conditions of any stay order, upon evidence presented. Evidence may be
43 attached to the motion in the form of affidavits, documents or other materials, or
44 presented by means of a motion to take evidence outside the record. See OAR 661-010-
45 0045.

46 Stat Auth.: ORS 183.545 and ORS 197.820(4).

47 Stat. Implemented: ORS 197.845.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

661-010-0070

Final Order of Board

- (1) An Order of the Board is final when the cover page of the order containing the caption of the appeal:
 - (a) States "Final Opinion and Order";
 - (b) Indicates whether the decision being reviewed is affirmed, reversed, remanded, or whether the appeal is dismissed;
 - (c) Contains the date of the final order; and
 - (d) Is time and date stamped by the Board.

(2) When an order of the Board becomes final it shall be made available to interested members of the public. The Board may charge a reasonable fee for copies of its final orders or other orders furnished to members of the public.
Stat. Auth.: ORS 183.545 & ORS 197.820(4)
Stats. Implemented: ORS 197.805
Hist.: LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98

661-010-0071

Reversal or Remand of Land Use Decisions

- (1) The Board shall reverse a land use decision when:
 - (a) The governing body exceeded its jurisdiction;
 - (b) The decision is unconstitutional; or
 - (c) The decision violates a provision of applicable law and is prohibited as a matter of law.
- (2) The Board shall remand a land use decision for further proceedings when:
 - (a) The findings are insufficient to support the decision, except as provided in ORS 197.835(11)(b);
 - (b) The decision is not supported by substantial evidence in the whole record;
 - (c) The decision is flawed by procedural errors that prejudice the substantial rights of the petitioner(s); or
 - (d) The decision improperly construes the applicable law, but is not prohibited as a matter of law.

Stat. Auth.: ORS 183.545 & ORS 197.820(4)
Stats. Implemented: ORS 197.835
Hist.: LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98

661-010-0075

Miscellaneous Provisions

- (1) Cost Bill and Attorney Fees
 - (a) Time for Filing: The prevailing party may file a cost bill or a motion for attorney fees, or both, no later than 14 days after the final order is issued. The prevailing party shall serve a copy of any such cost bill or motion for attorney fees on all parties.
 - (b) Recoverable Costs: Costs may be recovered only for the items set forth in this subsection.
 - (A) If the petitioner is the prevailing party, the petitioner may be awarded the cost of the filing fee.

1 (B) If the governing body is the prevailing party, the governing body may be awarded
2 copying costs for the required number of copies of the record, at 25 cents per page,
3 whether or not the governing body actively participated in the review.

4 (C) Costs awarded to the governing body pursuant to this section shall be paid from the
5 deposit required by OAR 661-010-0015(4) and shall not exceed the amount of that
6 deposit.

7 (c) Forfeiture of Filing Fee and Deposit: If a record has been filed and a petition for review
8 is not filed within the time required by these rules, and the governing body files a cost
9 bill pursuant to this section requesting forfeiture of the filing fee and deposit, the filing
10 fee and deposit required by OAR 661-010-0015(4) shall be awarded to the governing
11 body as cost of preparation of the record. See OAR 661-010-0030(1).

12 (d) Return of Deposit: After any award of costs under subsection (b) of this section is
13 made, any amount of the deposit remaining shall be returned to petitioner.

14 (e) Attorney Fees:

15 (A) Attorney fees shall be awarded by the Board to the prevailing party as specified in
16 ORS 197.830(15)(b); a motion for attorney fees shall include a signed and detailed
17 statement of the amount of attorney fees sought.

18 (B) Attorney fees shall be awarded to the applicant, against the governing body, if the
19 Board reverses a land use decision or limited land use decision and orders a local
20 government to approve a development application pursuant to ORS 197.835(10).

21 (C) Attorney fees shall be awarded to the applicant, against the person who requested a
22 stay pursuant to ORS 197.845, if the Board affirms a quasi-judicial land use decision or
23 limited land use decision for which such a stay was granted. The amount of the award
24 shall be limited to reasonable attorney's fees incurred due to the stay request, and
25 together with any actual damages awarded, shall not exceed the amount of the
26 undertaking required under ORS 197.845(2).

27 (f) Responses and Objections: Any response to a motion for attorney fees, together with
28 any objections to the detailed statement of the amount of attorney fees sought, shall be
29 filed with the Board within 14 days after the date of service of the motion. Objections to
30 the cost bill shall be filed with the Board within 14 days after the date of service of the
31 cost bill.

32 (g) If a cost bill, a motion for attorney fees, or both are filed, and the Board's decision is
33 appealed to the Court of Appeals, the Board shall act on the cost bill or motion for
34 attorney fees after an appellate judgment is issued and any further Board proceedings
35 necessitated by that judgment are concluded.

36 (2) Filing and Service:

37 (a) Filing:

38 (A) Documents may not be filed by facsimile. Documents filed with the Board may
39 include facsimile signatures.

40 (B) Except as provided in OAR 661-010-0015(1)(b) with regard to the notice of intent to
41 appeal, filing a document with the Board is accomplished by:

42 (i) Delivery to the Board on or before the date due; or

43 (ii) Mailing on or before the date due by first class mail with the United States Postal
44 Service. If the date of mailing is relied upon as the date of filing, the date of the first
45 class postmark on the envelope mailed to the Board is the date of filing.

46 (b) Service:

LUBA's Administrative Rules
as of July 1, 2010

1 (A) Any document filed with the Board, other than the record as provided in OAR 661-
2 010-0025(3), or the record after withdrawal for reconsideration as provided in
3 OAR 661-010-0021(6), must also be served on all parties contemporaneously. Service on
4 two or more petitioners unrepresented by an attorney is accomplished by serving the lead
5 petitioner designated under OAR 661-010-0015(3)(f)(A). Service on two or more
6 intervenors unrepresented by an attorney is accomplished by serving the lead intervenor
7 designated under OAR 661-010-0050(2).

8 (B) Service may be in person, or by first-class mail. Mail service is complete on deposit
9 in the mail.

10 (C) Service copies of documents other than the Notice or the record shall include a
11 certificate showing the date of filing with the Board (see Exhibit 5).

12 (D) Documents filed with the Board shall contain either an acknowledgement of service
13 by the person served or proof of service by a statement certified by the person who made
14 service of the date of personal delivery or deposit in the mail, and the names and
15 addresses of the persons served (see Exhibit 6).

16 (c) Recycled Paper. Parties filing anything with the Board, including but not limited to
17 notices of intent to appeal, records, motions, and briefs, are encouraged to use recycled
18 paper if recycled paper is readily available at a reasonable price in the party's
19 community. Further, parties are encouraged to use paper containing the highest available
20 content of post-consumer waste, as defined in ORS 279.545, that is recyclable in the
21 office paper recycling program in the party's community.

22 (3) Number of Copies Required: Unless these rules provide otherwise, all documents
23 filed with the Board shall be filed with one copy. No copy of a record transmitted
24 pursuant to OAR 661-010-0025(2), or a record after withdrawal for reconsideration
25 transmitted pursuant to OAR 661-010-0021(6), is required.

26 (4) Copying Fee: The following fees shall be charged for certified copies of Board
27 nonexempt public records as defined in ORS 192.410, 192.501, 192.502, and 192.505:

28 (a) 25 cents per page for copies of any Board transcript or document of public record.

29 (b) \$10 for a copy of a cassette tape, compact disc or similar media disc in the record.

30 (c) \$20 for a copy of a videocassette tape in the record.

31 (d) The Board shall also charge the actual cost of copying and mailing oversized exhibits,
32 plans or maps.

33 (5) Conferences: On its own motion or at the request of any party, the Board may conduct
34 one or more conferences. Conferences may be by telephone. The Board shall provide
35 reasonable notice advising all parties of the time, place and purpose of any conference.

36 (6) Appearances Before the Board: An individual shall either appear on his or her own
37 behalf or be represented by an attorney. A corporation or other organization shall be
38 represented by an attorney. In no event may a party be represented by someone other than
39 an active member of the Oregon State Bar. In the event someone other than an active
40 member of the Oregon State Bar files a notice of intent to appeal on behalf of a
41 corporation, other organization, or another individual, the individual filing the notice of
42 intent to appeal will be given an opportunity to provide an amended notice of intent to
43 appeal that conforms with this section. If an amended notice of intent to appeal is not
44 filed within the time set by the Board, the Board will dismiss the appeal.

45 (7) Lead Petitioner or Intervenor:

LUBA's Administrative Rules
as of July 1, 2010

1 (a) A lead petitioner is responsible for notifying the other petitioners of documents and
2 communications received from the Board and other parties, but each petitioner remains
3 responsible for his or her own representation.

4 (b) A lead intervenor is responsible for notifying the other intervenors of documents and
5 communications received from the Board and other parties, but each intervenor remains
6 responsible for his or her own representation. A lead intervenor's responsibilities under
7 this subsection extend only to intervenors who joined in the lead intervenor's motion to
8 intervene and does not extend to intervenors who filed separate motions to intervene.

9 (8) Computation of Time: Time deadlines in these rules shall be computed by excluding
10 the first day and including the last day. If the last day is Saturday, Sunday or other state
11 or federal legal holiday, the act must be performed on the next working day.

12 (9) Address and Hours of the Board: The Board's address is Public Utility Commission
13 Building, 550 Capitol Street NE, Suite 235, Salem, Oregon, 97301-2552. The telephone
14 number is (503) 373-1265. The offices of the Board shall be open from 8:00 a.m. to
15 12:00 p.m., and 1:00 p.m. to 5:00 p.m. Monday through Friday.

16 (10) Citations to Board Decisions: Citations to Board decisions shall be in the following
17 form:

18 Reported Cases: John Doe v. XYZ County, 5 Or LUBA 654 (1981).

19 Unreported Cases: John Doe v. XYZ County, ___ Or LUBA ___ (LUBA No. 80-123,
20 February 15, 1981).

21 (11) Motion to Transfer to Circuit Court:

22 (a) Any party may request, pursuant to ORS 34.102, that an appeal be transferred to the
23 circuit court of the county in which the appealed decision was made, in the event the
24 Board determines the appealed decision is not reviewable as a land use decision or
25 limited land use decision as defined in ORS 197.015(10) or (12).

26 (b) A request for a transfer pursuant to ORS 34.102 shall be initiated by filing a motion to
27 transfer to circuit court not later than 14 days after the date a respondent's brief or motion
28 that challenges the Board's jurisdiction is filed. If the Board raises a jurisdictional issue
29 on its own motion, a motion to transfer to circuit court shall be filed not later than 14
30 days after the date the moving party learns the Board has raised a jurisdictional issue.

31 (c) If the Board determines the appealed decision is not reviewable as a land use decision
32 or limited land use decision as defined in ORS 197.015(10) or (12), the Board shall
33 dismiss the appeal unless a motion to transfer to circuit court is filed as provided in
34 subsection (11)(b) of this rule, in which case the Board shall transfer the appeal to the
35 circuit court of the county in which the appealed decision was made.

36 (12) Transfer from Circuit Court: When any appeal of a land use or limited land use
37 decision is transferred to LUBA from circuit court, the petition for writ of review filed in
38 the circuit court shall be treated as the notice of intent to appeal, and the case shall
39 proceed as provided in LUBA's rules, subject to the following:

40 (a) No additional filing fee shall be required;

41 (b) After an appeal is transferred to LUBA, the Board, by letter, will establish a deadline
42 for the petitioner to submit the deposit for costs and a deadline for the respondent to
43 transmit the record.

44 (13) Transfer from the Oregon Department of Land Conservation and Development:

45 Where the Director of the Oregon Department of Land Conservation and Development
46 transfers a matter to LUBA pursuant to ORS 197.825(2)(c)(A), the case shall proceed as
47 provided in LUBA's rules, subject to the following:

LUBA's Administrative Rules
as of July 1, 2010

- 1 (a) The date of the notice from the Director making the transfer shall begin the running of
2 a 21-day period within which one or more parties in the proceedings before the
3 department may file a notice of intent to appeal with LUBA. A notice filed thereafter
4 shall not be deemed timely filed, and the appeal shall be dismissed.
- 5 (b) Except as provided in this section, the notice of intent to appeal shall conform to the
6 requirements of OAR 661-010-0015, including payment of the filing fee and deposit for
7 costs. The notice of intent to appeal shall identify the local government as the
8 respondent, rather than the Oregon Department of Land Conservation and Development
9 or the Land Conservation and Development Commission.
- 10 (c) On receipt of a notice of intent to appeal, the Board shall, by letter, establish a
11 deadline for the respondent to file the portion of the local record necessary to review the
12 transferred matter. In all other respects, an appeal of a transferred matter shall proceed
13 according to LUBA's rules.
- 14 (14) All briefs and motions filed with the Board shall comply with the rules in OAR 661-
15 010-0030(2) with respect to type size, spacing, paper size and printing, numbering and
16 margins.
- 17 Stat. Auth.: ORS 183.545 and ORS 197.820(4).
- 18 Stat. Implemented: ORS 34.102; 197.830(9), (13)(a) and (15); 197.835(10); 197.845(3).