

Summary of 2013 Proposed Amendments to OAR chapter 661, division 010

Withdrawal of Decision for Reconsideration

OAR 661-010-0021(1). Allows motion to withdraw a post-acknowledgment plan amendment decision to be filed by the date the response brief is due. The amendment is to make the rule consistent with ORS 197.830(13)(b).

Record

OAR 661-010-0025(2)(a). Requires transmittal of *paper* copy of the record (*but see* proposed new subsection (b) allowing transmittal of an electronic copy of the record). Also clarifies that retained items must be identified as retained in the record table of contents. *See also* corresponding amendments at OAR 661-010-0025(4)(a)(B)(i) and (ii).

OAR 661-010-0025(2)(b). Allows local governments to transmit the record to LUBA in electronic form, on optical disks such as CD-ROM or DVDs, in PDF format, preferably searchable. Limits cost recovery for electronic records. Intent is to reduce burden on local governments and expense of filing appeals, while still providing LUBA with a useable record.

OAR 661-010-0025(4)(a)(B)(i). Requires table of contents to separately list attached exhibits to record items. *See also* amended Exhibit 2 (sample table of contents). Also requires that where an exhibit is a retained item, the exhibit shall also be listed at the end of the table of contents.

OAR 661-010-0025(4)(a)(B)(ii). Language clarifying the requirement to separately list retained items at the end of the table of contents.

Petition for Review

OAR 661-010-0030(2)(d). Requires 14 point font for both text and footnotes. The 14 point font requirement is the same as required for briefs filed with the Oregon Appellate Courts. ORAP 5.05(4)(g). Intent is to make the briefs easier to read.

OAR 661-010-0030(4)(d). Requires each assignment of error to demonstrate that the issue raised was preserved during the proceedings below, if preservation is required, and to state the applicable standard of review. The circumstances where “preservation is required” is not spelled out, but the intent is to include, at a minimum, waiver under ORS 197.763(1) and circumstances where waiver under *Miles v. City of Florence*, 190 Or App 500, 79 P3d 382 (2003) applies. Intent is to reduce the need to file reply briefs to address waiver arguments, by flushing out waiver issues earlier in the briefing.

OAR 661-010-0030(7). Language intended to clarify that a cross-petition for review may include either assignments of error, cross-assignments of error, or both.

Intervention

OAR 661-010-0050(3). Clarifies that intervention filing fee applies per appeal, and that multiple parties can file a single joint motion to intervene, and pay only one fee per appeal.

Extensions of Time

OAR 661-010-0067(3). Provides that all time limits (except the deadline for filing the petition for review) can be extended based on oral as well as written consent of all parties. Intent is to make stipulated extensions more convenient for the parties.

OAR 661-010-0067(4). Requires that where a motion for extension of time is not accompanied by written consent of all parties, the motion shall state whether all parties have orally agreed to the motion. Intent is to reduce uncertainty whether and to what extent all parties have consented to an extension request.

Reversal or Remand of Land Use and Limited Land Use Decisions

OAR 661-010-0071 and -0073 are amended to provide that LUBA shall remand a land use or limited land use decision if all parties stipulate to remand. LUBA believes that this rule amendment is consistent with *Dexter Lost Valley Community Assn. v. Lane County*, 255 Or App 701,300 P3d 1243 (2013) (a case where petitioner opposed the county's motion for voluntary remand), and that there is sufficient statutory authority for LUBA to remand a decision in cases where all parties stipulate to the remand. *See* ORS 197.860.

Miscellaneous Provisions

OAR 661-010-0075(1)(b)(D). Provides that an intervenor or state agency that is the prevailing party may be awarded the cost of the intervention or state agency filing fee.

OAR 661-010-0075(9). Makes permanent the Board's address change.

Exhibit 2

Amendments to the sample record table of contents to illustrate separate listing of exhibits and retained items required by proposed amendments to OAR 661-010-0025(4)(a)(B).