

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, *[acceptable proof from the post*
30 *office shall consist of a]* **the date of the** receipt stamped by the United States Postal
31 Service showing the date mailed and the certified or registered number **is the date of**
32 **filing.**

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

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

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

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

3 (a) A caption which sets forth the name(s) of the person(s) filing the Notice, identifying
4 the person(s) as petitioner(s), and the name of the governing body, identifying the
5 governing body as respondent;

6 (b) Below the caption the heading "Notice of Intent to Appeal";

7 (c) The full title of the decision to be reviewed as it appears on the final decision;

8 (d) The date the decision to be reviewed became final;

9 (e) A concise description of the decision to be reviewed, or a copy of either the notice of
10 decision or the decision to be reviewed;

11 (f) The name, address and telephone number of each of the following:

12 (A) The Petitioner. If the petitioner is not represented by an attorney, the petitioner's
13 name, address and telephone number shall be included. If an attorney represents the
14 petitioner, the attorney's name, address and telephone number shall be substituted for that
15 of the petitioner. If two or more petitioners are unrepresented by an attorney, one
16 petitioner shall be designated as the lead petitioner, but the Notice shall include the
17 names, addresses, and telephone numbers of all such unrepresented petitioners. See
18 OAR 661-010-0075(7)(a);

19 (B) The governing body and the governing body's legal counsel;

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

23 (D) Any other person to whom written notice of the land use decision or limited land use
24 decision was mailed as shown on the governing body's records. The telephone number
25 may be omitted for any such person.

26 (g) A statement advising all persons, other than the governing body, that in order to
27 participate in the review proceeding a person must file a motion to intervene pursuant to
28 OAR 661-010-0050.

29 (h) On the last page, a signature by each petitioner, or the attorney representing that
30 petitioner, on whose behalf the Notice is filed.

31 (i) Proof of service upon all persons required to be named in the Notice. See Exhibit 1.

32 (4) Filing Fee and Deposit for Costs: The Notice shall be accompanied by a filing fee of
33 \$175 and a deposit for costs in the amount of [~~\$150~~] **\$200** payable to the Land Use Board
34 of Appeals. One check, State of Oregon purchase order or money order for [~~\$325~~] **\$375**
35 may be submitted. If a check providing the filing fee or deposit for costs or both is
36 returned for insufficient funds and the filing fee and deposit for costs are not paid within
37 the time set by the Board, the Board shall dismiss the appeal. Cash shall not be accepted.
38 Stat. Auth.: ORS 183.545 and ORS 197.820(4).

39 Stat. Implemented: ORS 197.620; 197.830(1) and (9).

40 41 **661-010-0021**

42 **Withdrawal of Decision for Reconsideration**

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

1 (2) The filing of a notice of withdrawal under section (1) of this rule shall suspend
2 proceedings on the appeal until a decision on reconsideration is filed with the Board, or
3 the time designated therefor expires, unless otherwise ordered by the Board. If no
4 decision on reconsideration is filed within the time designated therefor, the Board shall
5 issue an order restarting the appeal.

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

12 (4) Petitioner(s) may seek review of the decision on reconsideration as provided in
13 section (5) of this rule. Any other person may file a notice of intent to appeal the decision
14 on reconsideration as provided in OAR 661-010-0015. If such an appeal is filed, and a
15 petitioner files an amended notice of intent to appeal or refiles the original notice of
16 intent to appeal as provided in section (5) of this rule, any party may move to consolidate
17 the appeals challenging the decision on reconsideration as provided in OAR 661-010-
18 0055.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16
17 **661-010-0025**

18 **Record**

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

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

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

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

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

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

44 (3) Service of Record: Contemporaneously with transmittal, the governing body shall
45 serve a copy of the record, exclusive of large maps, tapes, and difficult-to-duplicate
46 documents and items, on the petitioner or the lead petitioner, if one is designated. The
47 governing body shall also serve a copy of the record on any other party, including

1 intervenors-petitioner, requesting a copy provided such other party reimburses the
2 governing body for the reasonable expense incurred in copying the record. The governing
3 body shall also serve a copy of any tape included in the record, or any tape from which a
4 transcript included in the record was prepared, on any party requesting such a copy,
5 provided such party reimburses the governing body for the reasonable expense incurred
6 in copying the tape.

7 (4) Specifications of Record:

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

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

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

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

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

23 (E) Be arranged in inverse chronological order, with the most recent item first. **Exhibits**
24 **attached to a record item shall be included according to the numerical or**
25 **alphabetical order in which they are attached, not the date of the exhibits.** Upon
26 motion of the governing body, the Board may allow the record to be organized
27 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 [*which*] **that** does not **substantially** conform to the preceding requirements
32 [*shall not be accepted*] **may be 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 [*precautionary*]

1 record objection while continuing to resolve objections with the governing body's legal
2 counsel. 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
24 in 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 **661-010-0030**

37 **Petition for Review**

38 (1) Filing and Service of Petition:

39 (a) The petition for review together with four copies shall be filed with the Board within
40 21 days after the date the record is received or settled by the Board. See OAR 661-010-
41 0025(2) and 661-010-0026(6). The petition shall also be served on the governing body
42 and any party who has filed a motion to intervene. Failure to file a petition for review
43 within the time required by this section, and any extensions of that time under OAR 661-
44 010-0045(9) or OAR 661-010-0067(2), shall result in dismissal of the appeal and
45 forfeiture of the filing fee and deposit for costs to the governing body. See
46 OAR 661-010-0075(1)(c).
47

1 **(b) The date of filing a petition for review is the date the petition is received by the**
2 **Board, or the date the petition is mailed, provided it is mailed by registered or**
3 **certified mail, and the party filing the petition has proof from the post office of such**
4 **mailing date. If the date of mailing is relied upon as the date of filing, the date of the**
5 **receipt stamped by the United States Postal Service showing the date mailed and the**
6 **certified or registered number is the date of filing.**

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

8 (a) Begin with a table of contents;

9 (b) Not exceed 50 pages, exclusive of appendices, unless permission for a longer petition
10 is given by the Board;

11 (c) Have blue front and back covers of at least 65-pound weight paper. The front cover
12 page shall state the full title of the proceeding, and the names, addresses and telephone
13 numbers of all parties unrepresented by an attorney. If a party is represented by an
14 attorney, the name, address and telephone number of the attorney shall be substituted for
15 the party. If there is more than one petitioner, the cover page shall specify which
16 petitioner(s) are filing the petition. An intervenor shall be designated as either petitioner
17 or respondent in accordance with OAR 661-010-0050;

18 (d) Be typewritten [*in pica-type not exceeding 10 characters per inch,*] or word-processed
19 in proportionately spaced **font such as Times New Roman** [*type*] no smaller than 12
20 point for text and 10 point for footnotes;

21 (e) Be double spaced, except that quotations and footnotes may be single-spaced with
22 double space above and below each paragraph of quotation;

23 (f) Have text printed on only one side of the page; however, text may be printed on both
24 sides of the page if the paper is sufficiently opaque to prevent material on one side from
25 showing through, and the petition is bound along the left-hand margin so that the pages
26 lie flat when open;

27 (g) Be printed on 8 1/2 by 11 inch paper, with numbers for each line of text;

28 (h) Have inside margins of 1 1/4 inches, outside margins of 1 inch, top and bottom
29 margins of 3/4 inch; and

30 (i) Be signed on the last page by the author. In cases where multiple unrepresented
31 petitioners or intervenors-petitioner file a single petition for review, the petition for
32 review shall be signed by all petitioners or intervenors-petitioner who wish to join the
33 petition for review.

34 (3) If the Board determines that the petition for review fails to conform with the
35 requirements of section (2) of this rule, it shall notify the author, and a brief conforming
36 with the requirements of section (2) shall be filed within three (3) days of notification by
37 the Board. The Board may refuse to consider a brief that does not substantially conform
38 to the requirements of this rule.

39 (4) Contents of Petition: The petition for review shall:

40 (a) State the facts that establish petitioner's standing;

41 (b) Present a clear and concise statement of the case, in the following order, with separate
42 section headings:

43 (A) The nature of the land use decision or limited land use decision and the relief sought
44 by petitioner;

45 (B) A summary of the arguments appearing under the assignments of error in the body of
46 the petition;

1 (C) A summary of the material facts. The summary shall be in narrative form with
2 citations to the pages of the record where the facts alleged can be found. **Where there is**
3 **a map in the record that helps illustrate the material facts, the petitioner shall**
4 **include a copy of that map in the summary of the material facts or attach it as an**
5 **appendix to the petition;**

6 (c) State why the challenged decision is a land use decision or a limited land use decision
7 subject to the Board's jurisdiction;

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

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

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

15 (5) The petition for review may include appendices containing verbatim transcripts of
16 relevant portions of **media recordings** [tapes] that are part of the record.

17 (6) Amended Petition: A petition for review which fails to comply with section (4) of this
18 rule may, with permission of the Board, be amended. The Board shall determine whether
19 to allow an amended petition for review to be filed in accordance with OAR 661-010-
20 0005.

21 (7) Cross Petition: Any respondent or intervenor-respondent who desires to file a petition
22 for review may do so by filing a cross petition for review. The cover page shall identify
23 the petition as a cross petition and the party filing the cross petition. The cross petition
24 shall be filed within the time required for filing the petition for review and must comply
25 in all respects with the requirements of this rule governing the petition for review, except
26 that a notice of intent to appeal need not have been filed by such party.

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

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

30 **661-010-0035**

31 **Respondent's Brief**

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

37 (2) Specifications of Brief: Respondent's brief shall conform to the specifications of the
38 petition for review at OAR 661-010-0030(2), except that the brief shall have red front
39 and back covers. If there is more than one respondent, the front cover page shall specify
40 which respondent is filing the brief. Respondent's brief shall be subject to OAR 661-010-
41 0030(3).

42 (3) Contents of Brief:

43 (a) The respondent's brief shall follow the form prescribed for the petition for review, but
44 need not contain the final decision. The respondent shall specifically accept the
45 petitioner's statement of the case or shall cite any alleged omissions or inaccuracies
46 therein, and may state additional relevant facts or other matters. The statement shall be in

1 narrative form with citations to the pages of the record where the facts alleged can be
2 found.

3 (b) Respondent shall accept or challenge petitioner's statement of the Board's jurisdiction
4 and petitioner's statement of standing. The basis for any challenge shall be stated. If
5 respondent contends that the facts alleged by petitioner in support of standing are not
6 true, respondent shall specify which allegations are contested.

7 (4) The respondent's brief may include appendices containing verbatim transcripts of
8 tapes that are part of the record.

9 (5) Amended Brief: The Board may allow the filing of an amended brief in accordance
10 with OAR 661-010-0005.

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

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

13 14 **661-010-0038**

15 **State Agency Briefs**

16 A state agency that wishes to file a brief under ORS 197.830(8) shall file the brief
17 together with four copies within the time required for respondent's brief. No fee is
18 required. A state agency brief shall have yellow front and back covers.

19
20 Stat. Implemented: ORS 197.830(8).

21 22 **661-010-0039**

23 **Reply Brief**

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

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

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

33 34 **661-010-0040**

35 **Oral Argument**

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

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

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

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

1 (a) Unless the board otherwise orders, petitioner(s) shall be allowed 30 minutes for oral
2 argument[, *which may be divided between the initial presentation and rebuttal.*].

3 **Petitioner(s) may reserve up to 10 minutes for rebuttal following respondents' oral**
4 **argument, to respond to arguments made during respondents' oral argument.**

5 **Multiple petitioners shall share the 30 minutes.**

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

8 (c) The Board shall [*tape*] record all arguments, but any party may also arrange at its own
9 expense to record the argument in some other manner.

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

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

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

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

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

18
19 **661-010-0045**

20 **Taking Evidence Not in the Record**

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

29 (2) Motions to Take Evidence:

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

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

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

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

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

45 (d) Subpoenas: the Board shall issue subpoenas to any party upon a showing that the
46 witness or documents to be subpoenaed will provide evidence relevant and material to
47 the grounds for the motion. Subpoenas may also be issued under the signature of the

1 attorney of record of a party. Witnesses appearing pursuant to subpoena, other than
2 parties or employees of the Board, shall be tendered fees and mileage as prescribed by
3 ORS 44.415(2) for witnesses in civil actions. The party requesting the subpoena shall be
4 responsible for service of the subpoena and tendering the witness and mileage fees to the
5 witness.

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

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

14 (5) Conduct of Hearing:

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

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

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

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

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

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

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

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

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

28 (6) Evidentiary Rules:

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

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

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

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

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

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

- 3 (a) Simplification of the issues;
- 4 (b) The possibility of obtaining admissions of fact and documents which will avoid
5 unnecessary proof;
- 6 (c) Limitation of the number of witnesses;
- 7 (d) The form and substance of any prehearing order;
- 8 (e) Such other matters as may aid in the disposition of the appeal.

9 (8) Proposed Prehearing Order: The Board, with or without a prehearing conference, may
10 require that the parties prepare and sign a proposed prehearing order to be filed with the
11 Board on or before a date specified by the Board. The order shall contain:

- 12 (a) A statement of contentions of law of each party;
- 13 (b) A concise statement of all contentions of fact to be proved by each party;
- 14 (c) A statement of all agreed facts;
- 15 (d) A list of witnesses and a summary of their testimony;
- 16 (e) A list of exhibits and a statement of the contents of each;
- 17 (f) Such other matters as the Board may require in order to expedite the hearing and
18 appeal.

19 (9) Effect on Time Limits: **Unless the Board orders otherwise**, [T]the filing of a motion
20 to take evidence shall suspend the time limits for all other events in the review
21 proceeding, including the issuance of the Board's final order. If the Board grants the
22 motion, the time limits for other events shall remain suspended until the Board issues its
23 findings. Unless the parties agree otherwise, the Board shall schedule any evidentiary
24 hearing not less than ten days after the order granting the motion to take evidence is
25 issued. If the Board denies a motion to take evidence, the time for all other events will
26 begin to run on the date the Board issues its order denying the motion, or on such other
27 date as is specified in that order.

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

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

30 31 **661-010-0050**

32 **Intervention**

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

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

- 44 (a) List the names, addresses, and telephone numbers of all persons moving to intervene.
45 If an attorney represents the intervenor(s), the attorney's name, address and telephone
46 number shall be substituted for that of the intervenor(s);
- 47 (b) State whether the party is intervening on the side of the petitioner or the respondent;

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

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

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

6 **(3) Intervention in an appeal that is consolidated with other appeals does not allow**
7 **the intervenor to appear as a party with respect to those appeals in which the**
8 **intervenor has not filed a timely motion to intervene.**

9 **(4) Parties who have already intervened in the appeal need not file new motions to**
10 **intervene when an amended notice of intent to appeal is filed or the original notice**
11 **of intent to appeal is refiled pursuant to OAR 661-010-0021.**

12 ([3]5) Intervenor's Brief:

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

16 (b) If intervention is sought as a respondent, the brief shall be filed within the time for
17 filing a respondent's brief and shall satisfy the requirements for a respondent's brief in
18 OAR 661-010-0035. **The brief may include one or more cross-assignments of error**
19 **in a separately designated section of the brief. A cross-assignment of error is**
20 **appropriate where the intervenor-respondent does not seek to overturn the**
21 **challenged decision but rather seeks contingent review of alleged errors that are**
22 **harmless if the challenged decision is affirmed.**

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 within the time required for filing respondent's brief. No filing fee is required. An amicus
36 brief shall have green front and back covers.

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

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

39
40 **661-010-0055**

41 **Consolidation**

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

46 Stat. Auth.: ORS 197.820(4)

47 Stats. Implemented: ORS 197.805

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

4
5 **661-010-0065**

6 **Motions**

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

11 (2) Time of Filing: A party seeking to challenge the failure of an opposing party to
12 comply with any of the requirements of statutes or Board rules shall make the challenge
13 by motion filed with the Board and served on all parties within **14** [10] days after the
14 moving party obtains knowledge of such alleged failure. However, motions to dismiss for
15 lack of jurisdiction may be filed at any time. An opposing party may, within 14 days
16 from the date of service of a motion, file a response.

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

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

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

27 Stats. Implemented: ORS 197.805

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

31
32 **661-010-0067**

33 **Extensions of Time**

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

36 (2) Except as provided in this section and OAR 661-010-0045(9), in no event shall the
37 time limit for the filing of the petition for review be extended without the written consent
38 of all parties. Written consent may include facsimile signatures. The Board may, on a
39 motion of a party or its own motion, extend the deadline for filing the petition for review
40 to allow time to rule on a motion to dismiss. Written consent to extend the deadline for
41 filing record objections shall [not] automatically extend the deadline for filing the
42 petition for review **for the same number of days granted to extend the deadline for**
43 **filing record objections, unless the consenting parties expressly provide otherwise.**

44 (3) All other time limits may be extended upon written consent of all parties, the Board's
45 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.

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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 [20] 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) Forfeit 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) [*or (c)*] of this
13 section is 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) Except as provided in OAR 661-010-0015(1)(b) with regard to the notice of intent to
38 appeal, [*and as provided in OAR 661-010-0021(5)(b) with regard to a refiled original*
39 *notice of intent to appeal or an amended notice of intent to appeal,*] **and as provided in**
40 **OAR 661-010-0030(1)(b) with regard to filing the petition for review,** filing a
41 document with the Board is accomplished by:

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

43 (B) 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 (C) Documents may not be filed by facsimile. Documents that are filed by delivery or
47 mailing may include facsimile signatures.

1 (b) Service:

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

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

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

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

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

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

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

29 (a) [20] **25** cents per page for copies of any Board transcript or document of public record
30 [*that is more than fifty pages.*]

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

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

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

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

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

47 (7) Lead Petitioner or Intervenor:

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** [*ten*] days after the date a respondent's brief or
28 motion that challenges the Board's jurisdiction is filed. If the Board raises a jurisdictional
29 issue on its own motion, a motion to transfer to circuit court shall be filed not later than
30 **14** [*ten*] days after the date the moving party learns the Board has raised a jurisdictional
31 issue.

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

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

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

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

45 **(13) Transfer from the Oregon Department of Land Conservation and**
46 **Development: Where the Director of the Oregon Department of Land Conservation**

1 **and Development transfers a matter to LUBA pursuant to ORS 197.825(2)(c)(A),**
2 **the case shall proceed as provided in LUBA's rules, subject to the following:**

3 **(a) The date of the notice from the Director making the transfer shall begin the**
4 **running of a 21-day period within which one or more parties in the proceedings**
5 **before the department may file a notice of intent to appeal with LUBA. A notice**
6 **filed thereafter shall not be deemed timely filed, and the appeal shall be dismissed.**

7 **(b) Except as provided in this section, the notice of intent to appeal shall conform to**
8 **the requirements of OAR 661-010-0015, including payment of the filing fee and**
9 **deposit for costs. The notice of intent to appeal shall identify the local government**
10 **as the respondent, rather than the Oregon Department of Land Conservation and**
11 **Development or the Land Conservation and Development Commission.**

12 **(c) On receipt of a notice of intent to appeal, the Board shall, by letter, establish a**
13 **deadline for the respondent to transmit the portion of the local record necessary to**
14 **review the transferred matter. In all other respects, an appeal of a transferred**
15 **matter shall proceed according to LUBA's rules.**

16 **([13]14) All briefs and motions filed with the Board shall comply with the rules in OAR**
17 **661-010-0030(2) with respect to type size, spacing, paper size and printing, numbering**
18 **and margins.**

19 **Stat. Auth.: ORS 183.545 and ORS 197.820(4).**

20 **Stat. Implemented: ORS 34.102; 197.830(9), (13)(a) and (15); 197.835(10); 197.845(3).**