

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

**DIVISION 010
RULES OF PROCEDURE FOR APPEALS**

661-010-0015

Notice of Intent to Appeal

(1) Filing of Notice:

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

(b) The date of filing a notice of intent to appeal is the date the Notice is received by the Board, or the date the Notice is mailed, provided it is mailed by registered or certified mail, and the party filing the Notice has proof from the post office of such mailing date. If the date of mailing is relied upon as the date of filing, acceptable proof from the post office shall consist of a receipt stamped by the United States Postal Service showing the date mailed and the certified or registered number. If a Notice is received without payment of the fee and deposit required by section (4) of this rule, the petitioner will be given an opportunity to submit the required fee and deposit. If the filing fee and deposit for costs are not paid within the time set by the Board, the Board will dismiss the appeal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (4) Filing Fee and Deposit for Costs: The Notice shall be accompanied by a filing fee of
22 [\$175] **\$200** and a deposit for costs in the amount of \$150 payable to the Land Use Board
23 of Appeals. One check, State of Oregon purchase order or money order for [\$325] **\$350**
24 may be submitted. If a check providing the filing fee or deposit for costs or both is
25 returned for insufficient funds and the filing fee and deposit for costs are not paid within
26 the time set by the Board, the Board shall dismiss the appeal. Cash shall not be accepted.
27 Stat. Auth.: ORS 183.545 and ORS 197.820(4).

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

30 **661-010-0038**

31 **State Agency Briefs**

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

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

37 Stat. Implemented: ORS 197.830(8).

39 **661-010-0050**

40 **Intervention**

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

45 (2) Motion to Intervene: A motion to intervene shall be filed within 21 days of the date
46 the notice of intent to appeal is filed pursuant to OAR 661-010-0015, or the amended
47 notice of intent to appeal is filed or original notice of intent to appeal is refiled pursuant

1 to OAR 661-010-0021. When two or more intervenors join in a motion to intervene and
2 are unrepresented by an attorney, a lead intervenor shall be designated as the contact
3 person for the purpose of receiving documents from the Board and other parties. The
4 motion to intervene (see Exhibit 3) shall:

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

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

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

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

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

14 (3) Intervenor's Brief:

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

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

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

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

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