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SED FORM No. 425a Rev. 87

CERTIFICATE AND ORDER FOR FILING

BARBARA SCOBITS SECRETARY OF STATE

PERMANENT ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

LUOT 10/10

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on December 17, 1987 (Date)

by the Land Use Board of Appeals

(Department)

(Division)

to become effective Upon filing

(Date)

The within matter having come before the Land Use Board of Appeals

(Department)

(Division)

after

all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

Notice of Intended Action published in Secretary of State's Bulletin: NO [] YES [x] Date Published: 12/1/87

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following action be taken: (List Rule Number(s) or Rule Title(s) on Appropriate Lines Below)

Adopted: (New Total Rules)

10-026, 10-039, 10-052, 10-067, 10-068, 10-07

Amended: (Existing Rules)

DAR 661-10-000 through DAR 661-10-075

10-010 thru 10-015, 10-025 thru 10-075

Deleted: (Rules Only)

10-020

as Administrative Rules of the Land Use Board of Appeals

(Department)

(Division)

DATED this 30th day of December, 19 87

By:

[Signature] (Authorized Signer)

Title: Chief Referee

Statutory Authority: ORS 197.820(4)

or

Chapter(s) _____, Oregon Laws 19 _____ or

House Bill(s) _____, 19 _____ Legislature; or Senate Bill(s) _____, 19 _____ Legislature

Subject Matter:

Land Use Board of Appeals Rules of Procedure

For Further Information Contact: Patricia J. Kadaja

(Rule Coordinator)

Phone: 373-1265

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NOV 20 1987
BARBARA ROBERTS
SECRETARY OF STATE

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

In the matter of amending the)	STATUTORY AUTHORITY
Rules of Procedure governing)	STATEMENT OF NEED
appeals before the Land Use)	PRINCIPAL DOCUMENTS
Board of Appeals)	RELIED UPON and
)	STATEMENT OF FISCAL IMPACT

1. Citation of Statutory Authority: ORS 197.820(4) provides that the Land Use Board of Appeals shall adopt rules governing the conduct of review proceedings.

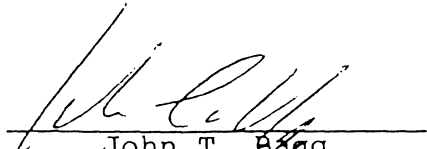
2. Need for the amendment: This amendment is primarily a housekeeping measure, designed to simplify and reorganize the current procedural rules. Some new provisions are added. The new provisions address procedural requirements not adequately covered in the current rules.

3. Documents, reports and studies relied upon:

4. Fiscal and economic impact: The amended rules of procedure have fiscal impacts on all parties to appeals before LUBA. The rules require a filing fee (\$50) and deposit for costs (\$150) when a petition is filed. They provide for an award of costs to the prevailing party after issuance of the Board's final order. The awardable costs include: witness and recording fees for evidentiary hearings, filing fee, and copying fees (at .10 per page) for certain documents filed with the Board. The rules also provide for an award of attorneys fees in certain instances and require the filing of an undertaking when a stay of a land use decision is issued.

The rules of procedure apply uniformly throughout the state; they do not single out any individuals, groups or sectors of the economy for particular treatment. The rules are designed to expedite land use appeals and to minimize economic impacts in this way.

Dated this 20th day of November, 1987.


John T. Egg
Chief Referee

DIVISION 10

RULES OF PROCEDURE FOR APPEALS

Introduction

661-10-000 [(1)] Scope of Rules and Effective Date: [All appeals new or pending on or after October 5, 1983 are governed by these rules, except that petitions for review filed prior to October 1, 1983, will be processed under the Board's Rules of Procedure adopted April 29, 1980. These rules also govern procedure for all pending and new appeals from October 1 to October 5, 1983, providing no party is unduly surprised or its interests adversely affected.] All proceedings commenced by a Notice of Intent to Appeal filed after December 31, 1987, shall be governed by these rules. Any proceedings commenced by a Notice of Intent to Appeal filed on or before December 31, 1987, shall be governed by OAR 661-10-005 through 661-10-075 as adopted October 3, 1983.

[(2) Legal Authority for Rules: 1983 Or Laws, ch 827, sec 28(b)(4), provides the Board shall adopt rules governing the conduct of review proceedings.]

[(3) Principal Authorities Relied Upon: In adopting these rules, the Board relies upon its existing Rules of Procedure adopted April 29, 1980, and subsequent amendments thereto, the Rules of Appellate Procedure for the Supreme Court and Court of Appeals of the State of Oregon, June 1, 1982, and the Attorney General's Model Rules of Procedure under the Administrative Procedure Act, November 17, 1981.]

[(4) Fiscal Impact: The rules will have a fiscal impact

upon petitioners and makers of land use decisions on appeal before the Board in that (1) the rules require a deposit for costs and further provide for distribution of costs after issuance of the Board's final order; (2) the rules include a provision for mileage and fees for witnesses; and (3) the rules control the award of attorney fees in certain circumstances.]

Purpose

661-10-005 [The procedures established in these rules are intended to provide for the speediest practicable hearing and decision in the review of land use decisions while affording all interested persons reasonable notice and opportunity to participate, reasonable time to prepare and submit their cases, and a full and fair hearing. The procedures established in these rules seek to accomplish these objectives to the maximum extent consistent with the time limitations placed upon the Board in 1983 Or Laws, ch 827. These rules shall be interpreted to effectuate these policies and to promote justice. Technical violations of these rules which do not affect substantial rights or interests of parties or of the public shall not interfere with the review of a petition.] These rules are intended to promote the speediest practicable review of 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. Failure to comply with the time limit for filing a Notice of Intent to Appeal under OAR 661-10-015(1) or a Petition for Review under OAR 661-10-030(1) is not a technical violation.

Definitions

661-10-010 In these rules, unless the context or subject matter requires otherwise [requires]:

(1) "Applicant" [is] means the person [identified by the governing body as having applied for authorization for a particular land use activity or having] who requested that the governing body take [some] an action which resulted in a land use decision.

(2) "Board" means the Land Use Board of Appeals or any member thereof.

(3) "Final decision [or determination]": [means a decision or determination which has been] A decision becomes final when it is reduced to writing and [which] bears the necessary signatures of the [governing body] decisionmaker(s), unless a local rule or ordinance specifies that the decision becomes final at a later time, in which case the decision is considered final as provided in the local rule or ordinance.

(4) "Governing body" means a city, county or special

district governing body or a state agency or a person,
commission or other entity authorized by the governing body to
make a final decision.

(5) "Land use decision" has the meaning given the term in
ORS 197.015 [as amended by 1983 Oregon Laws, Chapter 827, §1].

(6) "Notice" means the Notice of Intent to Appeal and
refers to [that] the document which must be filed with the
Board in order to begin a review proceeding [before the Board].

(7) "Party" means the petitioner, the governing body, and
any person [who files a Statement of Intent to Participate as
provided in rule 661-10-020 or any other person] who intervenes
as provided in [rule] OAR 661-10-050. "Party" does not include
a state agency that files a brief [pursuant to 1983 Oregon
Laws, Chapter 827, Section 31(6)] under ORS 197.830(6).

(8) "Transmit" means to send with the United States Postal
Service by first class mail or to deliver in person.

Notice of Intent to Appeal

661-10-015 (1) Filing of Notice: The Notice [must be
delivered to and received by the Board for filing] , together
with the filing fee and deposit for costs required by
subsection (4) of this rule, shall be filed with the Board as
provided in OAR 661-10-075(2)(a) on or before the 21st day
after the date the decision sought to be reviewed becomes
final. 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 [received after that day will] filed thereafter shall not be deemed timely filed, and the appeal [will] shall be dismissed. A notice unaccompanied by payment of the required fee and deposit shall not be accepted for filing.

(2) Service of Notice: The Notice [must] 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 [661-10-015(2) (f) within 21 days from] on or before the date [of] the [land use decision] Notice of Intent to Appeal is required to be filed.

[(2)] (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 [that] the person(s) as [a] petitioner(s), and the name of the governing body, identifying [that] the governing body as [the] respondent[.];

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

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

(d) The date [of] the [land use] decision to be reviewed became final;

(e) A concise description of the [land use] decision to be reviewed;

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

[(A) The petitioner, except that if the petitioner is

represented by an attorney, then the petitioner's address and telephone number may be deleted and the name, address and telephone number of the attorney shall be included;]

[(B) The applicant, if any (if other than the petitioner), except that if the applicant was represented by an attorney before the governing body, then the applicant's address and telephone number may be deleted and the name, address and telephone number of the applicant's attorney of record shall be included;]

[(C) The governing body and the governing body's legal counsel;]

[(D) Any other person whom the governing body's records indicate was mailed written notice of the land use decision for which review is sought.]

(A) The Petitioner. If the petitioner is not represented by an attorney, the petitioner's name, address and telephone number shall be included. If an attorney represents the petitioner, the attorney's name, address and telephone number shall be substituted for that of the petitioner. If two or more petitioners are unrepresented by an attorney, one petitioner shall be designated as the lead petitioner. See OAR 661-10-075(6);

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

(C) The applicant, if any (and if other than the petitioner). If an applicant was represented by an attorney

before the governing body, the applicant's address and telephone number may be omitted and the name, address and telephone number of the applicant's attorney shall be included;

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

(g) A statement [which advises] advising all persons [whose name, address and telephone number are required to appear in the notice as provided in subsection (f) of this section], other than the governing body, that in order to participate in the review proceeding [before the Board a Statement of Intent to Participate in such proceedings as required by rule 661-10-020 must be filed with the Board within 15 days of service of the Notice] a person must file a motion to intervene pursuant to OAR 661-10-050.

(h) Proof of service upon all persons required to be named in the Notice [which conforms to rule 661-10-010(9)] See Exhibit 1.

~~[(3)]~~(4) Filing Fee and Deposit for Costs: The Notice shall be accompanied by a filing fee of \$50 and a deposit for costs in the amount of \$150 payable to the Land Use Board of Appeals. [A separate check or money order shall be submitted for the filing fee and the deposit for costs in the amount of \$150] One check, State of Oregon purchase order or money order for \$200 may be submitted. Cash [will] shall not be accepted.

[Statement of Intent to Participate]

[661-10-020 (1) Any person identified in the Notice, other than the petitioner and governing body, who desires to participate as a party in the appeal shall within 15 days of service of the Notice upon such person, file with the Board and serve on all parties designated in the Notice, a Statement of Intent to Participate. The Statement may be in the form set forth in Exhibit 2 of these rules.]

[(2) Unless otherwise advised in writing, the Board shall designate as respondents all persons filing a Statement of Intent to Participate.]

Record

661-10-025 (1) Contents of Record: Unless the Board otherwise orders, or the parties otherwise [stipulate] agree in writing, the record shall include at least the following:

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

[(b) All exhibits, maps, documents or other written materials;]

[(c) All written testimony submitted in the course of the governing body's proceeding;]

[(d) Minutes of the proceeding as required by law.]

(b) All written testimony and all exhibits, maps, documents or other written materials included as part of the record during the course of the governing body's proceeding.

(c) Minutes of the meetings conducted by the governing body as required by law. A verbatim transcript of audiotape recordings shall not be required, but if a transcript has been prepared, it shall be included.

(2) Transmittal of Record: [(a)(A)]The governing body shall, within 21 days after service of the Notice on the governing body, transmit to the Board the original or a certified copy of the record of the proceeding under review. The governing body may, however, retain any large maps or [other large] documents which are difficult to duplicate, until the [time for submission of the governing body's brief] date of oral argument.

(3) Service of Record: [(B)] Contemporaneously with transmittal, the governing body shall serve a copy of the record, exclusive of large maps and other [large] documents which are difficult to duplicate, on the petitioner [and shall furnish a copy of the record to any other party] or the lead petitioner, if one is designated. The governing body shall also serve a copy of the record on any other party requesting a copy provided such other party reimburses the governing body for the reasonable expense incurred in copying the record [so furnished].

(4) Specifications of Record:

(a)[(b)] The record shall:

[(A)] Be transmitted to the Board in suitable cover or folder, bearing the title of the case as it appears in the

caption on the Notice and the governing body's numerical designation, if any, of the land use decision;]

[(B) Include a table of contents;]

[(C) Be securely fastened together;]

[(D) Contain consecutive numbering of pages with the page number appearing at the bottom of each page;]

[(E) Be prepared so that its contents appear in chronological order with the most recent item in the record appearing on top.]

(A) Be filed in a suitable folder; the cover shall bear the title of the case as it appears in the Notice, and the Board's numerical designation for the case, and shall indicate the numerical designation given the land use decision by the governing body;

(B) Begin with a table of contents, listing each item contained therein, and the page of the record where the item begins (see Exhibit 2), and listing each large map or document retained by the governing body under subsection (2) of this rule;

(C) Be securely fastened;

(D) Have pages numbered consecutively, with the page number at the bottom right-hand corner of each page;

(E) Be arranged in inverse chronological order, with the most recent item on top.

(b) A record which does not conform to the preceding requirements shall not be accepted by the Board.

[(3) Objections to Sufficiency or Accuracy of Record:]

[(a) Prior to filing an objection with the Board as provided in this section, a party shall first attempt to resolve the matter with the governing body or its legal counsel. When the governing body or its legal counsel transmits amendments or additions to the record in order to resolve the matter without objection, the date of such transmittal shall be considered the date of transmittal of the record for the purposes of computing time limits for issuance of the Board's final opinion and order. The date of receipt of such amendments by the Board shall be the date for computing the time limits for submittal of the petition for review and the respondent's brief. If objection is thereafter filed with the Board, the objection shall state that the party filing the objection was not able to resolve the matter with the governing body.]

[(b) Any objection that the record does not include all matters before the governing body, that the record contains matters not before the governing body, that the minutes do not accurately reflect the testimony submitted to the governing body or that the record is in any other manner insufficient or inaccurate shall be filed with the Board within 10 days following service of the record on the person filing the objection.]

[(c) If the objection is to the completeness or accuracy of the minutes, the party making the objection shall demonstrate with particularity how the minutes are defective. Upon such a

demonstration the Board shall require the governing body to produce any additional evidence it has supporting the accuracy and completeness of the contested minutes. If the evidence is to be found in a taped record, the relevant portion of the taped record shall be submitted to the Board in typewritten form.]

[(d) The Board may conduct a conference to consider any objections filed concerning the record.]

[(e) Filing of an objection to the sufficiency or accuracy of the record shall suspend the time for the filing of the petition for review, the respondent's brief and the time within which the Board must make a final decision. When the objection is settled by the parties or when the Board rules on the objection, the Board will issue a letter or order declaring the record settled. The date of issuance of the letter or order shall be considered the date of transmittal of and receipt of the record for the purposes of computing time limits for other events provided in these rules and 1983 Or Laws, ch 827.]

[(4) Review of Maps or Other Large Documents: Any party to an appeal who desires to review any large maps or other large documents must make suitable arrangements with the governing body or the Secretary of the Board.]

Objections to the Record

661-10-026 (1) Before filing an objection to the record, a party shall attempt to resolve the matter with the governing

body's legal counsel. If the governing body amends the record in response to an objection, the date the amendment is received by the Board shall be considered the date the record is received for the purpose of computing time limits as required by these rules.

(2) An objection to the record shall be filed with the Board within 10 days following service of the record on the person filing the objection. Objections may be made on the following grounds:

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

(b) The record contains material not included as part of the record during the proceedings before the governing body. The item(s) not included as part of the record during the proceedings before the governing body shall be specified, as well as the bases for the claim that the item(s) are not part of the record.

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

(3) An objection on grounds that the minutes or transcripts are incomplete or inaccurate shall demonstrate with particularity how the minutes or transcripts are defective and shall explain with particularity why the defect is material. Upon such demonstration, the Board shall require the governing body to produce additional evidence to prove the accuracy of

the contested minutes or transcripts. If the evidence regarding contested minutes is in an audiotape recording, a transcript of the relevant portion shall be submitted.

(4) The Board may conduct a telephone conference with the parties to consider any objections to the record.

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

Petition for Review

661-10-030 (1) Filing and Service of Petition: The petition for review shall be filed with the Board [and served on the governing body and all parties who have filed a Notice of Intent to Participate or intervened] within 21 days after the date the record is received by the Board. See OAR 661-10-025(2) and 661-10-026(1) and (5). The petition shall also be served on the governing body and any party who has filed a motion to intervene. Failure to file a petition for review within the time required by this section, and any extensions of that time under OAR 661-10-045(7) or OAR 661-10-067(2), [will] shall result in dismissal of the

appeal and forfeiture of the filing fee and deposit for costs to the governing body. See OAR 661-10-075(1)(c).

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

(a) [Contain] Begin with a table of contents [in the front portion];

(b) Not exceed 50 pages, exclusive of appendices, unless permission for [an extended] a longer petition is [allowed] given by the Board. If a Petition for Review exceeding the 50 page limit is filed without permission, the Board shall notify the author, and a revised brief satisfying the 50 page limit shall be filed within three (3) days of notification by the Board.

(c) [Set out on a cover page, which shall be blue in color, the full title of the review proceeding, including the names, addresses and telephone numbers of all parties or their attorneys who have filed Statements of Intent to Participate in the review proceeding. All such parties shall be designated as respondents on the cover page of the petition for review, unless otherwise indicated pursuant to rule 661-10-020(2)] Have a blue cover page, stating the full title of the proceeding, and the names, addresses and telephone numbers of all parties unrepresented by attorney. If a party is represented by an attorney, the name, address and telephone number of the attorney shall be substituted for the party. If

there is more than one petitioner, the cover page shall specify which petitioner(s) are filing the petition. An intervenor shall be designated as either petitioner or respondent in accordance with OAR 661-10-050;

(d) Be typewritten, in pica type, and double spaced [with double space above and below each paragraph or less of quotations. Printed or used area shall not exceed 6 and 1/4 inches by 9 and 1/2 inches, exclusive of page numbers];

(e) [Be on white pleading paper, without glaze, with surface suitable for both pen and pencil notations;] Be signed on the last page by the author.

[(f) Contain on the last page the name of the author of the petition for review and the name of the law firm or firms, if any, representing the petitioner.]

(3) Contents of Petition: The petition for review shall [contain petitioner's brief and shall set out the facts that establish that the petitioner has standing]:

[(a) If the petition challenges a legislative decision, the facts must show in what manner the interests of the petitioner have been adversely affected or in what manner the petitioner has been aggrieved.]

[(b) If the petition challenges an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation, the facts must show that the person participated either orally or in writing in the local government proceedings leading to adoption of the amendment.]

[(c) The provisions of paragraph (2) do not apply where (a) the local government determines that the goals do not apply to an amendment or new regulation; or (b) where the local government has submitted the amendment or new regulation with less than 45 days notice provided in ORS 197.610 under a local government determination that emergency circumstances exist requiring expedited review; or (c) where an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation differs from the proposal submitted under ORS 197.610 to such a degree that the notice under ORS 197.610 did not reasonably describe the nature of the local government final action.]

[(d) If the petition challenges a quasi-judicial decision, the facts must show that the petitioner appeared, either orally or in writing, in the proceeding below and that either the petitioner was entitled as a matter of right to notice and hearing prior to the making of the decision sought to be reviewed or the petitioner's interests were adversely affected or the petitioner was aggrieved by the decision.]

[(e) Open with a clear and concise statement of the case which shall set forth in the following order and under separate headings:]

[(A) The nature of the land use decision and the relief sought by the petitioner;]

[(B) A succinct and clear summary of arguments appearing in the body of the petition for review;]

[(C) A concise but complete summary of the facts of the appeal material to the determination of the question or questions presented for review. The summary shall be in narrative form with reference to the place in the record where such facts appear.]

[(D) Any other matters necessary to inform the Board concerning the questions and contentions raised by petitioner, insofar as such matters are a part of the record, with reference to the portions of the record where such matters appear.]

[(f) Set forth clearly and succinctly each assignment of error under a separate and appropriate heading. Where several assignments of error present essentially the same legal question, they shall be combined so far as is practicable.]

[(g) Set forth a separate argument for each assignment of error or combination of assignments of error; and]

[(h) Contain a copy of the land use decision of which review is sought, including the written findings of fact, statements of reasons and conclusions of law adopted by the governing body.]

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

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

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

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

(C) A summary of the material facts. The summary shall be in narrative form with citations to the pages of the record where the facts alleged can be found.

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

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

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

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

(4) Amended Petition: A petition for review which fails to comply with subsections (2) or (3) of this section may, with permission of the Board, be amended. The Board shall determine whether to allow an amended petition for review to be filed in accordance with [the provisions in rule] OAR 661-10-005.

Respondent's Brief

661-10-035 (1) Filing and Service of Brief: Unless otherwise provided by the Board, respondent's brief shall be

filed [with the Board] within 42 days after the date the record is received by the Board. See OAR 661-10-025(2) and 661-10-026(1) and (5). A copy of the respondent's brief shall be served on the petitioner or lead petitioner and all [persons who have filed a Statement of Intent to Participate or who have been allowed to intervene in the review proceeding] intervenors.

(2) Specifications of Brief: Respondent's brief shall conform to the specifications [required] of the petition for review, except that the brief shall have a red cover [page which is red in color]. If there is more than one respondent [in the review proceeding], the cover page [should] shall specify which respondent is filing the brief.

(3) Contents of Brief:

(a) The respondent's brief shall follow the form prescribed for the petition for review[, omitting repetition of the assignments of error]. [Under the heading "Statement of the Case,"] The respondent shall specifically accept the petitioner's statement of the case or shall cite any alleged omissions or inaccuracies therein, and may state additional relevant facts or other matters [as may apply to the decision]. [The additional statement shall refer to pages of the record in support of the additional matter set forth but shall not repeat those portions of petitioner's statement with which respondent agrees.] The statement shall be in narrative form with citations to the pages of the record where support for the facts alleged can be found.

(b) [If respondent challenges petitioner's standing on the basis that the facts alleged in support of standing are not true, respondent shall state in its brief under a separate heading the true facts and in what manner the facts alleged by petitioner are untrue. If necessary in order to obtain sufficient information to dispute petitioner's allegations of standing respondent may take petitioner's deposition pursuant to ORS 183.425 and OAR 661-10-045(6). Such deposition, if relied upon by respondent, shall be appended to respondent's brief, or filed with the Board and served on all parties as soon as is practicable.] Respondent shall accept or challenge petitioner's statement of the Board's jurisdiction and petitioner's statement of standing. The basis for any challenge shall be stated. If respondent contends that the facts alleged by petitioner in support of standing are not true, respondent shall specify which allegations are contested.

(4) Amended Brief: The Board may allow the filing of an amended brief in accordance with [the provisions for filing an amended petition for review contained in 661-10-034(4)] OAR 661-10-005.

State Agency Briefs

661-10-038 A state agency that wishes to file a brief [pursuant to 1983 Or Laws, ch 827, sec 31(6)] under ORS 197.830(6) shall file the brief within the time [set] required for respondent's brief. A state agency brief shall have a

yellow cover.

Reply Brief

661-10-039 A reply brief may not be filed unless permission is first obtained from the Board. A reply brief shall be confined solely to new matters raised in the respondent's brief. A reply brief shall have a gray cover.

Oral Argument

661-10-040 (1) [The parties shall be afforded an opportunity to present oral argument to the Board. The Board shall set a time for oral argument, generally within seven days of the filing of respondent's brief. The Board shall inform the parties of the time and place of oral argument. Unless the Board otherwise orders, petitioner and respondent shall each be allowed 30 minutes for oral argument. Unless otherwise required by any of the parties and appropriate arrangements are made by such party or parties, all arguments before the Board shall be tape recorded only. The parties may with consent of the Board stipulate to submit a case to the Board on briefs without oral argument.] Only parties who have submitted briefs shall be allowed to present oral argument to the Board.

(2) If a party waives the right to present oral argument, the Board shall consider the case based on that party's brief and the briefs and oral arguments presented by other parties. The parties may, with consent of the Board, stipulate to submit a case to the Board on briefs without oral argument.

(3) The Board shall inform the parties of the time and place of oral argument. Unless the Board otherwise orders, petitioner(s) shall be allowed 30 minutes for oral argument, which may be divided between the initial presentation and rebuttal. Multiple petitioners shall share the thirty minutes for argument. The respondent(s) shall be allowed 30 minutes to respond. The Board shall tape record all arguments, but any party may also arrange at its own expense to record the argument in some other manner.

[(2)] (4) A state agency which has filed a brief pursuant to [1983 Oregon Laws, Chapter 827, Section 31(6) and Rule 10] ORS 197.830(6) may move to argue orally before the Board. The motion [must] shall be filed [at least five (5) days prior to the date set for oral argument] with the brief.

[Special] Evidentiary Hearings

661-10-045 (1) Grounds for Hearing: The Board may, upon written motion, conduct [a special] an evidentiary hearing in the case of disputed allegations [of] in the parties' briefs concerning unconstitutionality of the decision, standing, ex parte contacts or other procedural irregularities not shown in the record and which, if proved, would warrant reversal or remand of the decision. [A special] An evidentiary hearing may also be held [to consider claims of irreparable injury in] upon motion or at the direction of the Board to consider disputes regarding the content of the record or requests for stays,

attorney fees and actual damages under [1983 Oregon Laws, Chapter 827, Section 34] ORS 197.845.

(2) Motions for Hearings: A motion for [a special] an evidentiary hearing shall contain [:] [(a) A] a statement explaining with particularity what facts the moving party will present at the hearing and how those facts will affect the outcome of the [Board's] review proceeding. Whenever possible such facts shall be presented by affidavit with the motion.

[(b) Whenever possible, the motion will contain affidavits supporting the request for hearing and the facts the moving party wishes to prove].

(3) Conduct of Hearing:

(a) [If allowed, and] [i] Insofar as the Board finds it practical, the hearing shall be conducted in the following [manner] order:

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

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

(C) The moving party shall [be allowed brief] present rebuttal [testimony] evidence;

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

[(b)] (c) Any member of the Board [or parties to the proceeding shall have the right to] may question[, examine or cross-examine] any witness[es];

[(c)] (d) The burden of presenting evidence in support of a fact or proposition rests on the proponent of the fact or proposition;

[(d)] The hearing may be continued with recesses as determined by the Board;]

(e) The Board may [set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial matter] continue a hearing, and may set time limits for any hearing.;

(f) Exhibits shall be marked [and the markings shall] to identify the [person] party offering the exhibits. The exhibits shall be preserved by the Board as part of the record [of the Board's proceeding].

(4) Evidentiary Rules:

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

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

(c) All [offered] evidence[,] not objected to, [will] shall be received by the Board, subject to [its] the Board's power to exclude irrelevant, immaterial or unduly repetitious matter.

(d) Evidence objected to may be received by the Board. [with] [r]ulings on [its] the admissibility [or exclusion to be made at or any time] of such evidence, if not made at the

hearing, shall be made at or before the time a final order is issued.

(e) Any time ten days or more before a hearing [or at such other time as the Board may specify], any party may serve on [an opposing] every other party [a copy of any] an affidavit, certificate or other document the party proposes to introduce in evidence. Unless [the opposing party requests] cross-examination of the affiant, certificate preparer or other document preparer or custodian is requested within five days prior to hearing, [or at such other time as the Board may specify,] the affidavit or certificate may be offered subject to the same standards and received with the same effect as oral testimony. If cross-examination is requested, and the requestor is informed within five days prior to the hearing that the requested witness will not appear for cross-examination, the affidavit, certificate or other document may be received in evidence if the Board determines that the party requesting cross-examination would not be unduly prejudiced or injured by lack of cross-examination.

[(f) If the opposing party requests cross-examination of the affiant, certificate preparer or other document preparer or custodian as provided in rule 661-10-045(4) (3) and the opposing party is informed within five days prior to the hearing, or at such other time as the Board may specify, that the person will not appear for cross-examination, the affidavit, certificate or other document may be received in evidence, provided the Board

determines that:]

[(A) The contents of the affidavit, certificate or other document is of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs; and]

[(B) The party requesting cross-examination would not be unduly prejudiced or injured by lack of cross-examination.]

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

(a) Simplification of the issues;

(b) The possibility of obtaining admissions of fact and documents which will avoid unnecessary proof;

(c) Limitation of the number of witnesses;

(d) The form and substance of any prehearing order;

(e) Such other matters as may aid in the disposition of the appeal.

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

(a) A statement of contentions of law of each party;

(b) A concise statement of all contentions of fact to be proved by each party;

(c) A statement of all agreed facts;

(d) A list of witnesses and a summary of their testimony;

(e) A list of exhibits and a statement of the contents of each;

(f) Such other matters as the Board may require in order to expedite the hearing and appeal.

~~[(5)](7) Effect on Time limits:~~ The filing of [any] a motion for evidentiary hearing [will] shall suspend the time limits for [any] all other events in the review proceeding, including the issuance of the Board's final order. If the Board grants [the request for] an evidentiary hearing, the time limits for other events shall [continue to be] remain suspended until the close of the [evidentiary] hearing. Unless the parties agree otherwise, [T]he Board shall schedule any evidentiary hearing not less than ten days after the [time the Board issues an] order granting the motion for evidentiary hearing [or at such other times as the parties may agree] is issued. If the Board denies a [request for] motion for an evidentiary hearing, the time for all [future] other events will begin to run [upon]on the date the Board issues its order denying the [hearing] motion, or on such other date as is specified in that order.

~~[(6)](8) Depositions[, Subpenas]:~~

~~[(a)]~~ On petition of any party [to a proceeding before the Board], the Board may order testimony of any witness to be taken by deposition in the same manner prescribed by law for depositions in civil actions (ORCP 38-40). Depositions may also be taken by the use of audio or audio visual recordings.

The petition for depositions shall set forth:

[(A)](a) The name and address of the witness whose testimony is desired[.];

[(B)](b) A showing of relevance and materiality of the testimony[.];

[(C)](c) A request for an order that the testimony of the witness be taken [before an officer named in the petition for that purpose].

[(b)](9) [Should] Subpenas: If the Board orders an evidentiary hearing, the Board shall issue subpenas to any party to [a contested case] the appeal upon request and upon a showing [of relevance and reasonable scope of the evidence sought] that the witness or the documents to be subpoenaed will provide relevant evidence. Subpenas may also be issued under the signature of the attorney of record of a party.

[(c)]Witnesses appearing pursuant to subpoena, other than parties [or officers] or employes of the Board, shall be tendered fees and mileage as prescribed by law for witnesses in civil actions. The party requesting the subpoena shall be responsible for service of the subpoena and tendering the witness and mileage fees to the witness.

Intervention

661-10-050 [(1) Except for those persons identified in the Notice of Intent to Appeal as required by rule 661-10-015(2) (f), any person who can show entitlement to

standing under rule 661-10-020(3), (a) through (e) may intervene in and become a party to any review proceeding before the Board involving that land use decision. Such intervention must be by written motion and must contain the facts which show that the person is entitled to intervene. The motion to intervene shall be filed within the time for:]

[(a) Filing the petition for review, if intervention is sought as a petitioner, or the time for]

[(b) Filing the respondent's brief, if intervention is sought as a respondent.]

[(2) The motion should set forth assignments of error or responses to assignments of error, as appropriate, with supporting argument. The motion shall contain intervenor's brief and shall conform to the specifications for the petition for review as set forth in rule 661-10-025. Where intervention is sought as a respondent, no reply by the petitioner will be allowed without permission of the Board.]

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

(2) Motion to Intervene: In the interests of promoting timely resolution of appeals, a motion to intervene shall be filed as soon as is practicable after the Notice of Intent to

Appeal is filed. The motion to intervene (see Exhibit 3) shall:

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

(b) State the facts which show the party is entitled to intervene, supporting the statement with affidavits, citations to the record or other proof;

(c) Be served upon the Board and all parties.

(3) Intervenor's Brief:

(a) If intervention is sought as a petitioner, the brief shall be filed within the time limit for filing the petition for review, and shall satisfy the requirements for a petition for review in OAR 661-10-030.

(b) If intervention is sought as a respondent, the brief shall be filed within the time for filing a respondent's brief and shall satisfy the requirements for respondent's brief in OAR 661-10-035.

Amicus Participation 661-10-052

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

(2) Appearance as amicus shall be by brief only, unless the Board specifically authorizes or requests oral

argument. An amicus brief shall be subject to the same rules as those governing briefs of parties to the appeal, and shall be filed within the time required for filing respondent's brief. No filing fee is required. An amicus brief shall have a green cover.

Consolidation

661-10-055 The Board [may], at the request of any party or on its own motion, may consolidate [any petitions for review into one proceeding provided the petitions] two or more proceedings, provided the proceedings seek review of the same or closely related land use decision(s) [and involve the same or substantially similar issues].

Motions

661-10-065 (1) When Motion is Appropriate: Unless these rules or applicable statutes provide another form of application, a request for an order or relief shall be made by [serving and] filing a motion in writing for such order or relief. A motion shall show proof of service on all parties.

(2) Time of Filing: A party seeking to challenge the failure of an [adverse]opposing party to comply with any of the requirements of statutes or Board rules shall make [such]the challenge[s] by motion filed with the Board and served on the adverse party within 10 days after the moving party obtains knowledge of such alleged failure. The [adverse]opposing party

may, within 10 days from the receipt of a motion, [under this rule, serve and] file an answer.

(3) How Submitted: Parties shall submit all motions without oral argument unless otherwise directed by the Board. [The motion shall show proof of service on all opposing counsel.]

Extensions of Time 661-10-067

(1) In no event shall the time limit for the filing of the Notice of Intent to Appeal be extended.

(2) In no event shall the time limit for the filing of the petition for review be extended without the written consent of all parties.

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

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

(5) Any agreement by the parties for an extension of time shall automatically extend the time for issuance of the Board's final order by an amount of time equal to the extension agreed to by the parties.

(6) In the event the Board extends the deadline for issuance of its final order without consent of the parties, it

shall enter the findings required by ORS 197.840.

Stays 661-10-068

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

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

(b) A statement explaining why the challenged decision is a land use decision subject to the Board's jurisdiction;

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

(d) A suggested expedited briefing schedule;

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

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

(3) Unless otherwise ordered by the Board, a response to a motion for a stay of a land use decision shall be filed within 10 days after the motion is filed and shall set forth all matters in opposition to the motion and any facts showing any adverse effect, including an estimate of any monetary damages

that will accrue if a stay is granted.

(4) An order granting a stay of a quasi-judicial land use decision involving a specific development of land shall be conditional upon filing an undertaking in the principal amount of \$5,000. In all other cases an undertaking, if ordered by the Board, shall be in the amount set forth in the order granting the stay. All undertakings shall be substantially in the form as set forth in Exhibit 4, and shall be accompanied by proof that the surety is qualified by law to issue surety insurance as defined in ORS 731.186. Any objections to the form of undertaking or the surety shall be filed within 10 days after service of a copy of the undertaking on the objecting party.

(5) The Board shall base its decision on the stay, including the right to a stay, amount of undertaking, or conditions of any stay order, upon evidence presented. Evidence may be attached to the motion in the form of affidavits, documents or other materials, or presented at an evidentiary hearing. See OAR 661-10-045.

Final Order of Board

661-10-070 (1) An Order of the Board [shall be deemed] is final when the cover page of the order containing the caption of the appeal:

- (a) States [that it is the] "Final Opinion and Order";
- (b) Indicates whether the decision being reviewed is

dismissed, affirmed, reversed or remanded;

[(A) The Board will reverse a land use decision when:]

[i. The governing body exceeded its jurisdiction; or]

[ii. The decision is unconstitutional; or]

[iii. The decision violates a provision of applicable law and is prohibited as a matter of law.]

[(B) Reversal of a decision vacates the decision.]

[(C) The Board will remand a land use decision for further proceedings when:]

[i. The findings are insufficient to support the decision; or]

[ii. The decision is not supported by substantial evidence in the whole record; or]

[iii. The decision is flawed by procedural errors that prejudice the substantial rights of the petitioner(s); or]

[iv. The decision improperly construes the applicable law.]

[(D) Remand of a decision reinvests the maker of the land use decision with jurisdiction over the issues remanded.]

(c) Contains the date of the final order; and

(d) [Has received a] Is time and date stamped [of the Land Use Board of Appeals] 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 [\$.10 per page] a reasonable fee for copies of its final orders or other orders furnished to members of the public.

(3) Notwithstanding subsections (1)(a) and (b) of this

section, an order granting a motion to dismiss an appeal is a final order.

Reversal or Remand of Decisions 661-10-071

(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(10) (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.

Miscellaneous Provisions

661-10-075 [(1) Extension of Time:]

[(a) Except as provided in subsection (b) of this section, any time deadline established by these rules for the filing of documents with the Board, other than the Notice of Intent to Appeal and the Petition for Review, may be extended by the Board upon motion of the party seeking the extension. The

motion shall state the reasons for the granting of the extension and must be filed with the Board within the time required for performance of the act for which an extension of time is requested.]

[(b) A motion which seeks to extend the time for filing the petition for review or respondent's brief must be accompanied by a written stipulation signed by all the parties to the appeal consenting to the extension. A written stipulation consenting to an extension of time for filing respondent's brief must also contain a provision consenting to an extension of the time within which the Board is required to issue a final order by an amount of time equal to the extension stipulated by the parties.]

[(c) The Board may extend the time within which the Board must make a final decision on a petition for review on its own motion or at the request of one of the parties if the Board finds that the ends of justice served by granting the extension outweigh the best interests of the public and the parties in having a decision within 77 days. The factors the Board shall consider in determining whether to grant an extension under this subsection of these rules are as follows:]

[(A) Whether the failure to grant a continuance in the proceeding would be likely to make a continuation of the proceeding impossible resulting in a miscarriage of justice; or]

[(B) Whether the case is so unusual or so complex, due to the number of parties or the existence of novel questions of

fact or law, that is unreasonable to expect adequate consideration of the issues within the 77 day time limit.]

[(d) Other than the time limit within which to file the notice of intent to appeal, any time limit established by these rules, including the time within which the Board must issue its final decision, may be extended upon consent of all the parties.]

[(e) Except when ordered by the Board, the filing of a motion to dismiss will not stay or suspend any time limit established by these rules or the provisions of 1983 Or Laws, ch 727.]

[(2) Cost Bill and Attorney's Fees]

[(a) In order for the Board to award costs, in whole or in part, to the prevailing party, the prevailing party shall file a cost bill within 15 days of the date the final order is issued and shall serve a copy of the cost bill on all parties to the proceeding. The prevailing party may be awarded as costs statutory witness fees, if any are incurred, and costs associated with the court reporting of the proceedings before the Board if the proceedings have been so reported at the election of the prevailing party. In addition, if the prevailing party is the governing body, the governing body may be awarded costs incurred in preparing the record. If the prevailing party is the petitioner, the petitioner may be awarded the cost of the filing fee. Any objections to the cost bill must be filed with the Board within 10 days after it is

filed with the Board. Costs awarded against more than one party shall be divided equally among all such parties unless the Board otherwise directs.]

[(b) A party seeking an award of attorney's fees shall file a petition therefor within 15 days of the date the final order is issued and shall serve a copy of the petition on all parties to the proceeding. Any objections to the petition for attorney's fees and expenses must be filed with the Board within 10 days after the petition is filed.]

(1) Cost Bill and Attorney's Fees

(a) Time for Filing: The prevailing party shall file a cost bill and a petition for attorney's fees within 15 days after the final order is issued. The prevailing party shall serve a copy of the cost bill and petition for attorney's fees on all parties.

(b) Recoverable Costs: Costs may be recovered only for the items set forth in this paragraph.

(A) If the petitioner is the prevailing party, the petitioner may be awarded the cost of the filing fee.

(B) If the governing body is the prevailing party, the governing body may be awarded copying costs for the required number of copies of the record, at \$.10 per page.

(C) Costs awarded to the governing body pursuant to this section shall be paid from the deposit required by OAR 661-10-015(4) and shall not exceed the amount of that deposit.

(c) Forfeit of Filing Fee and Deposit: If a record has been filed, and a petition for review is not filed within the time required by these rules, the appeal shall be dismissed and the filing fee and deposit required by OAR 661-10-015(4) shall be awarded to the governing body as cost of preparation of the record.

(d) Attorney's Fees:

(A) Attorney's fees may be awarded by the Board to the prevailing party as specified in ORS 197.830(13)(b).

(B) Attorney's fees shall be awarded to the applicant, against the governing body, if the Board reverses a land use decision and orders a local government to approve a development application pursuant to ORS 197.835(9).

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

(e) Objections: Objections to the cost bill and petition for attorney's fees shall be filed with the Board within 10 days after the cost bill or petition is filed.

(2) Filing and Service:

(a) Filing of Notice of Intent to Appeal: Filing of a

Notice of Intent to Appeal with the Board is accomplished by delivery of the Notice to the Board, or receipt of the Notice by the Board, accompanied by payment of the filing fee and deposit required by OAR 661-10-015(4), on or before the date due.

(b) Filing of Other Documents: With the exception of the Notice of Intent to Appeal, filing a document with the Board is accomplished by:

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

(B) Mailing on or before the date due by first class mail with the United States Postal Service.

(c) Service:

(A) Any document filed with the Board, other than the Record as provided in OAR 661-10-025(3), must also be served on all parties contemporaneously. Service on two or more petitioners unrepresented by an attorney is accomplished by serving the lead petitioner designated under OAR 661-10-015(3) (f) (A).

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

(C) Service copies shall include a certificate showing the date of filing with the Board (see Exhibit 5).

(D) Documents filed with the Board shall contain either an acknowledgement of service by the person served or proof of service by a statement certified by the person who made service of the date of personal delivery or deposit in the mail, and

the names and addresses of the persons served. (See Exhibit 6).

(3) Cross Petition

Any [person identified in the Notice as a] respondent who desires to file a petition for review may do so by filing a cross petition for review. The cover page shall identify the petition as a cross petition and the party filing the cross petition. The cross petition [must] shall be filed within the time required for filing the petition for review and must comply in all respects with the requirements of this rule governing the petition for review, except that a Notice of Intent to Appeal need not have been filed by such party.

[(4) Reply Briefs: Reply briefs shall not be allowed unless permission is first obtained from the Board. If allowed, the reply brief shall be confined solely to matters raised in the respondent's brief and the form shall be similar to the form of a respondent's brief. However, a petitioner may, as a matter of right, file a reply brief on the question of the Board's jurisdiction if that issue is raised in the respondent's brief. Reply briefs shall have a gray cover.]

[(5) Filing and Service: (a) With the exception of the notice of intent to appeal, which must be filed in the manner specified in rule 661-10-015(1), anything to be filed with the Land Use Board of Appeals may be accomplished by:

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

[(B) Mailed on or before the date due by first class mail with the United States Postal Service.]

[(b) Service]

[(A) A copy of anything filed under these rules must, contemporaneously with filing, be served by the filing party or attorney on all parties to the cause.]

[(B) Service may be in person or by first-class mail. Service by United States Postal Service mail is complete on deposit in the mail.]

[(C) All service copies must include a certificate showing the date of filing or mailing to the Board.]

[(D) Anything filed with the Board shall contain either an acknowledgment of service by the person served or proof of service in the form of a statement of the date of personal delivery or deposit in the mail and the names and addresses of the persons served, certified by the person who made service.]

[(E) Proof of service shall appear on or be affixed to anything filed.]

[(6)] (4) [Copies of Documents to be Filed With the Board]
Number of Copies Required:

(a) The petition for review and any briefs filed with the Board shall be filed [together] with four copies.

(b) Any other document filed with the Board, except documents to be included as part of the record on review, shall be filed [together] with one copy.

[(7)] (5) Conferences: On its own motion or at the request of any party, the Board may conduct one or more conferences. Conferences may be by telephone. The Board shall

provide reasonable notice advising all parties of the time, place and purpose of [the] any conference.

[(8)] (6) Appearances Before the Board: [A party to a proceeding before this Board may] An individual petitioner shall either appear on his or her own behalf or be represented by an attorney. [Appearances by a person other than an individual shall be by attorney, in all cases. As used in this Rule, attorney means] A corporation or other organization shall be represented by an attorney. In no event may a party be represented by someone other than an active member of the Oregon State Bar.

[(9)] (7) Computation of Time: [The time provided in these rules for acts to be performed] Time deadlines in these rules shall be computed by excluding the first day and including the last day. If the last day is Saturday, Sunday or other legal holiday, the act must be performed on the next [judicial] working day.

[(10)] (8) Address and Hours of the Board: The Board's address is [106 State Library Building] 100 High Street, Suite 220, Salem, Oregon, 97310. The telephone number is 373-1265. The offices of the Board shall be open from [8:30] 8:00 a.m. to 5:00 p.m. Monday through Friday[, exclusive of legal holidays].

[(11)] (10) Citations to Board Decisions: Citations to Board decisions shall be in the following form:

[_____ Or LUBA _____ (_____).]

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

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

EXHIBIT 1
(661-10-015)

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

Jane Smith,)	
)	
Petitioner,)	
)	
vs.)	LUBA No. _____
)	
Willamette County,)	
)	
Respondent.)	

NOTICE OF INTENT TO APPEAL

I.

Notice is hereby given that petitioner intends to appeal that land use decision of respondent entitled [INDICATE TITLE OF LAND USE DECISION], which became final on [INDICATE DATE] and which involves

[SET FORTH A BRIEF STATEMENT OF THE NATURE OF THE DECISION]

II.

Petitioner, Jane Smith, is represented by: [INDICATE NAME, ADDRESS AND TELEPHONE NUMBER OF ATTORNEY].

Respondent, Willamette County, has as its mailing address and telephone number: [INDICATE MAILING ADDRESS AND TELEPHONE NUMBER] and has, as its legal counsel: [INDICATE NAME, ADDRESS AND TELEPHONE NUMBER].

III

Applicant, John Developer, was represented in the proceeding below by: [INDICATE NAME, ADDRESS AND TELEPHONE NUMBER OF ATTORNEY].

Other persons mailed written notice of the land use decision by Willamette County, as indicated by its records in this matter, include: [INDICATE NAMES, ADDRESSES AND TELEPHONE NUMBERS OF ALL PERSONS WHOM THE GOVERNING BODY'S RECORDS INDICATE WERE MAILED WRITTEN NOTICE OF THE LAND USE DECISION. THE TELEPHONE NUMBERS OF SUCH PERSONS MAY BE OMITTED].

NOTICE:

Anyone designated in paragraph III of this Notice who desires to participate as a party in this case before the Land Use Board of Appeals must file with the Board a Motion to Intervene in this proceeding as required by OAR 661-10-050.

Petitioner (each petitioner must sign)

or

Attorney for Petitioner(s)

CERTIFICATE OF SERVICE

I hereby certify that on [INDICATE DATE], I served a true and correct copy of this Notice of Intent to Appeal on all persons listed in paragraphs II and III of this Notice pursuant to OAR 661-10-015(2) by (a) first class mail or (b) personal delivery. [INDICATE WHICH]

Dated: _____

Signature

EXHIBIT 2
(661-10-025)

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EXHIBIT 3
(OAR 661-10-050)

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

Jane Smith,)
)
 Petitioner,) LUBA No. _____
)
 vs.)
)
 Willamette County,)
)
 Respondent.)

MOTION TO INTERVENE

I

Robert Davis moves to intervene on the side of (a) Petitioner or (b) Respondent (INDICATE WHICH] in the above-captioned appeal. Mr. Davis' (or his attorney's) address and phone number are as follows: [INDICATE ADDRESS AND PHONE NUMBER].

II

The facts establishing movant's right to intervene are as follows: [SET FORTH STATEMENT OF FACTS].

III [OPTIONAL]

In support of this motion, Robert Davis relies on the attached affidavit, Memorandum of Law or both.

Date

Robert Davis

Or

Denise Neil, Attorney for
Robert Davis

[Add Certificates of Filing and Service on separate page. See forms in Exhibits 5 and 6.]

EXHIBIT 4
(661-10-068)

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

Jane Smith,)	
)	
Petitioner,)	LUBA No.
)	
v.)	
)	
Willamette County,)	
)	
Respondent.)	

UNDERTAKING ON STAY

I

Whereas, Jane Smith, the petitioner above named, has applied to the Land Use Board of Appeals for an order staying execution of that land use decision described as [DESCRIBE LAND USE DECISION]; and

II

Whereas, the Land Use Board of Appeals entered an order dated [INDICATE DATE] staying said land use decision pursuant to ORS 197.845, subject to filing an undertaking with the Land Use Board of Appeals in the principal amount of \$_____.

III

Now, therefore, we [INDICATE PETITIONER'S NAME(S)], the above-named petitioner, as principal, and [INDICATE SURETY NAME], a [INDICATE STATE OF INCORPORATION] corporation

qualified by law to issue surety insurance as defined in
ORS 731.186, as surety, hereby undertake that petitioner will
pay all reasonable attorney's fees and actual damages which may
be awarded by the Land Use Board of Appeals in the event the
land use decision above described shall be affirmed, but not to
exceed the sum of \$_____.

IV

The condition of this obligation is that if the land use
decision above described is not affirmed, then this obligation
shall be null and void; otherwise it shall remain in full force
and effect.

Dated this _____ day of _____, 19____.

Principal

By: _____
Surety

[Add Certificates of Filing and Service on separate page. See
forms in Exhibits 5 and 6.]

EXHIBIT 5

CERTIFICATE OF FILING
[For Document Other Than
Notice of Intent to Appeal]

I hereby certify that on [INDICATE DATE], I filed the original of this [IDENTIFY DOCUMENT], together with [INDICATE NUMBER OF COPIES] copies, with the Land Use Board of Appeals, Suite 220, 100 High Street SE, Salem, OR, 97310, by (a) first class mail or (b) personal delivery [INDICATE WHICH].

Dated: _____

Signature

EXHIBIT 6

CERTIFICATE OF SERVICE
[For Document Other Than
Notice of Intent to Appeal]

I hereby certify that on [INDICATE DATE], I served a true and correct copy of this [IDENTIFY DOCUMENT] by (a) first class mail or (b) personal delivery [INDICATE WHICH] on the following persons: [LIST NAME AND ADDRESS OF EACH PARTY OR THE PARTY'S ATTORNEY].

Dated: _____

Signature