

4661-1-1994
LURA

FORM No. 425a 10-1-87

22 JUN 94 2:45

SEC. OF STATE

CERTIFICATE AND ORDER FOR FILING PERMANENT ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on June 22, 1994 (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: April 1994

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)

Amended: (Existing Rules) OAR 661-10-000 through 661-10-052, 661-10-065, 661-10-067, 661-10-068 (Exhibit 4), and 661-10-075. Exhibits 1, 2, 3 + 5

Repealed: (Total Rules Only)

as Administrative Rules of the Land Use Board of Appeals (Department) (Division)

DATED this 22nd day of June 19 94

By: [Signature] (Authorized Signer)

Title: Chief Referee

Statutory Authority: ORS 183.545 and 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 Appeals

For Further Information Contact: Jan Zwenke (Rule Coordinator) Phone: 373-1265

1 LAND USE BOARD OF APPEALS

2 DIVISION 10

3 RULES OF PROCEDURE FOR APPEALS

4
5 Introduction

6 661-10-000 Scope of Rules and Effective Date: All
7 proceedings commenced by a [Notice of Intent to Appeal] notice
8 of intent to appeal filed after [September 29, 1991]
9 June 30, 1994 shall be governed by these rules. Any
10 proceedings commenced by a [Notice of Intent to Appeal] notice
11 of intent to appeal filed on or before [September 29, 1991]
12 June 30, 1994 shall be governed by OAR 661-10-005 through
13 661-10-075 as adopted [December 31, 1987] March 19, 1992.

14 Implements: ORS 197.805.

15
16 Purpose

17 661-10-005 These rules are intended to promote the
18 speediest practicable review of land use decisions and limited
19 land use decisions, in accordance with ORS 197.805-197.855,
20 while affording all interested persons reasonable notice and
21 opportunity to intervene, reasonable time to prepare and submit
22 their cases, and a full and fair hearing. The rules shall be
23 interpreted to carry out these objectives and to promote
24 justice. Technical violations not affecting the substantial
25 rights of parties shall not interfere with the review of a land
26 use decision or limited land use decision. Failure to comply

1 with the time limit for filing a [Notice of Intent to Appeal]
2 notice of intent to appeal under OAR 661-10-015(1) or a
3 Petition for Review under OAR 661-10-030(1) is not a technical
4 violation. Implements: ORS 197.805.

5

6 **Definitions**

7 **661-10-010** In these rules, unless the context or subject
8 matter requires otherwise:

9 (1) "Applicant" means the person who requested that the
10 governing body take an action which resulted in a land use
11 decision or limited land use decision.

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

14 (3) "Final decision": A decision becomes final when it is
15 reduced to writing and bears the necessary signatures of the
16 [decisionmaker(s)] decision maker(s), unless a local rule or
17 ordinance specifies that the decision becomes final at a later
18 time, in which case the decision is considered final as provided
19 in the local rule or ordinance.

20 (4) "Governing body" means a city, county or special
21 district governing body or a state agency or a person,
22 commission or other entity authorized by the governing body to
23 make a final decision.

24 (5) "Land use decision" has the meaning given the term in
25 ORS 197.015.

1 (6) "Lead Petitioner" means the petitioner
2 designated as the contact person for the purpose of
3 receiving documents from the Board and other parties,
4 when two or more petitioners are unrepresented by an
5 attorney. See OAR 661-10-075(7).

6 [(6)] (7) "Limited land use decision" has the meaning
7 given the term in ORS 197.015.

8 [(7)] (8) "Notice" means the [Notice of Intent to Appeal]
9 notice of intent to appeal and refers to the document which
10 must be filed with the Board in order to begin a review
11 proceeding.

12 [(8)] (9) "Party" means the petitioner, the governing
13 body, and any person who intervenes as provided in OAR 661-10-
14 050. "Party" does not include a state agency that files a brief
15 under ORS 197.830(6).

16 [(9) "Transmit" means to send with the United States Postal
17 Service by first class mail or to deliver in person.]

18 Implements: ORS 197.015(2), (10) and (12); 197.805.

19
20 **Notice of Intent to Appeal**

21 **661-10-015** (1) Filing of Notice:

22 (a) The Notice, together with two copies and the filing
23 fee and deposit for costs required by [sub]section (4) of this
24 rule, shall be filed with the Board [as provided in OAR 661-10-
25 075(2)(a)] on or before the 21st day after the date the decision
26 sought to be reviewed becomes final or within the time provided

1 by ORS 197.830(3) [and (4)] through (5). A [Notice of Intent
2 to Appeal] notice of intent to appeal plan and land use
3 regulation amendments processed pursuant to ORS 197.610 to
4 197.625 shall be filed with the Board on or before the 21st day
5 after the date the decision sought to be reviewed is mailed to
6 parties entitled to notice under ORS 197.615. A Notice filed
7 thereafter shall not be deemed timely filed, and the appeal
8 shall be dismissed.

9 (b) Filing of a notice of intent to appeal with the
10 Board shall be accomplished when the Notice, accompanied
11 by payment of the filing fee and deposit required by
12 section (4) of this rule, is delivered to or received by
13 the Board on or before the date due. A [notice] Notice
14 unaccompanied by payment of the required fee and deposit shall
15 not be accepted for filing.

16 (2) Service of Notice: The Notice shall be served on the
17 governing body, the governing body's legal counsel, and all
18 persons identified in the Notice as required by subsection
19 (3)(f) of this rule on or before the date the [Notice of Intent
20 to Appeal] notice of intent to appeal is required to be
21 filed.

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

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

1 the governing body as respondent;

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

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

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

7 (e) A concise description of the decision to be reviewed;

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

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

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

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

25 (D) Any other person to whom written notice of the land
26 use decision or limited land use decision was mailed as shown on

1 the governing body's records. The telephone number may be
2 omitted for any such person.

3 (g) A statement advising all persons, other than the
4 governing body, that in order to participate in the review
5 proceeding a person must file a motion to intervene pursuant to
6 OAR 661-10-050.

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

10 [(h)] (i) Proof of service upon all persons required
11 to be named in the Notice. See Exhibit 1.

12 (4) Filing Fee and Deposit for Costs: The Notice shall be
13 accompanied by a filing fee of \$50 and a deposit for costs in
14 the amount of \$150 payable to the Land Use Board of Appeals.
15 One check, State of Oregon purchase order or money order for
16 \$200 may be submitted. Cash shall not be accepted.

17 Implements: ORS 197.620; 197.830(1) and (8).

18

19 **Withdrawal of Decision for Reconsideration**

20 **661-10-021** (1) If a local government or state agency,
21 pursuant to ORS 197.830(12)(b), withdraws a decision for the
22 purposes of reconsideration, it shall file a notice of
23 withdrawal with the Board on or before the date the record is
24 due. A decision on reconsideration shall be filed with the
25 Board within 90 days after the filing of the notice of
26 withdrawal or within such other time as the Board may allow.

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

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

16 (4) Petitioner(s) may seek review of the decision on
17 reconsideration as provided in section 5 of this rule. Any
18 other person may file a notice of intent to appeal the decision
19 on reconsideration as provided in OAR 661-10-015. If such an
20 appeal is filed, and a petitioner files an amended notice of
21 intent to appeal or refiles the original notice of intent to
22 appeal as provided in section (5) of this rule, any party may
23 move to consolidate the appeals challenging the decision on
24 reconsideration as provided in OAR 661-10-055.

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

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

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

7 (B) In the event the local government or state agency
8 affirms its decision or modifies its decision with only minor
9 revisions, the petitioner may refile the original notice of
10 intent to appeal, with the date of the decision on
11 reconsideration indicated thereon, together with two copies
12 within 21 days after the decision on reconsideration is received
13 by the Board.

14 (b) Refiling of the original notice of intent to
15 appeal or filing of an amended notice of intent to
16 appeal is accomplished by delivery of the Notice to the
17 Board, or receipt of the Notice by the Board, on or
18 before the due date.

19 [(b)](c) An amended notice of intent to appeal or a
20 refiled notice of intent to appeal under paragraphs (A) and (B)
21 of section 5(a) of this rule shall conform with the requirements
22 of OAR 661-10-015(3) and shall be served on the following:

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

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

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

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

8 [(c)] (d) No additional filing fee or deposit for costs
9 shall be required to refile the original notice of intent to
10 appeal or file an amended notice of intent to appeal under
11 section (5) (a) of this rule.

12 [(d)] (e) If no amended notice of intent to appeal is
13 filed or no original notice of intent to appeal is refiled, as
14 provided in section (5) (a) and (b) of this rule, the appeal
15 will be dismissed.

16 (6) The local government or state agency shall, within 21
17 days after service of the amended notice of intent to appeal or
18 refiled original notice of intent to appeal under section (5) (a)
19 of this rule, transmit to the Board the original or a certified
20 copy of the record of the proceeding under review in accordance
21 with OAR 661-10-025. The record submitted by the local
22 government or state agency in an appeal of a decision on
23 reconsideration shall include the record of the original
24 decision and the decision on reconsideration.

25 Implements: ORS 197.830(12)(b).

26

1 **Record**

2 **661-10-025** (1) Contents of Record: Unless the Board
3 otherwise orders, or the parties otherwise agree in writing, the
4 record shall include at least the following:

5 (a) The final decision including any findings of fact and
6 conclusions of law;

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

10 (c) Minutes and tape recordings of the meetings
11 conducted by the governing body as required by law. A verbatim
12 transcript of audiotape or videotape recordings shall not be
13 required, but if a transcript has been prepared, it shall be
14 included. If a verbatim transcript is included in the
15 record, the tape recordings from which that transcript
16 was prepared need not be included in the record.

17 (2) Transmittal of Record: The governing body shall,
18 within 21 days after service of the Notice on the governing
19 body, transmit to the Board the original or a certified copy of
20 the record of the proceeding under review. The governing body
21 may, however, retain any large maps, tapes, or documents which
22 are difficult to duplicate, until the date of oral argument.
23 Transmittal of the record is accomplished by delivery of
24 the record to the Board, or by receipt of the record by
25 the Board, on or before the due date.

26 (3) Service of Record: Contemporaneously with

1 transmittal, the governing body shall serve a copy of the
2 record, exclusive of large maps [and other] tapes, and
3 documents which are difficult to duplicate, on the petitioner or
4 the lead petitioner, if one is designated. The governing body
5 shall also serve a copy of the record on any other party,
6 including intervenors-petitioner, requesting a copy
7 provided such other party reimburses the governing body for the
8 reasonable expense incurred in copying the record. **The**
9 governing body shall also serve a copy of any tape
10 included in the record, or any tape from which a
11 transcript included in the record was prepared, on any
12 party requesting such a copy, provided such party
13 reimburses the governing body for the reasonable expense
14 incurred in copying the tape.

15 (4) Specifications of Record:

16 (a) The record shall:

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

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

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

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

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

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

8 (5) If no record objection is filed and the
9 governing body transmits an amendment to the record, the
10 date the amendment is received by the Board shall be
11 considered the date the record is received for the
12 purpose of computing time limits as required by these
13 rules.

14 Implements: ORS 197.830(9)(a) and (14); 197.835.

15

16 **Objections to the Record**

17 **661-10-026** (1) Before filing an objection to the
18 record, a party shall attempt to resolve the matter with the
19 governing body's legal counsel. [If the governing body amends
20 the record in response to an objection, the date the amendment
21 is received by the Board shall be considered the date the record
22 is received for the purpose of computing time limits as required
23 by these rules.]

24 (2) An objection to the record or an objection to an
25 amendment to the record shall be filed with the Board within
26 10 days following [service] receipt of the record [on] by the

1 person filing the objection. Objections may be made on the
2 following grounds:

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

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

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

15 (3) An objection on grounds that the minutes or
16 transcripts are incomplete or inaccurate shall demonstrate with
17 particularity how the minutes or transcripts are defective and
18 shall explain with particularity why the defect is material.
19 Upon such demonstration, the Board shall require the governing
20 body to produce additional evidence to prove the accuracy of the
21 contested minutes or transcripts. If the evidence regarding
22 contested minutes is in an audiotape recording, a transcript of
23 the relevant portion shall be submitted.

24 (4) An opposing party may, within 10 days from the
25 receipt of a record objection, file an answer.

1 [(4)] (5) The Board may, at its discretion, conduct a
2 telephone conference with the parties to consider any objections
3 to the record. A party desiring a telephone conference on
4 an objection to the record shall include a request for a
5 telephone conference in its objection to the record or
6 answer.

7 [(5)] (6) If an objection to the record is filed, the time
8 limits for all further procedures under these rules shall be
9 suspended. When the objection is resolved, the Board shall
10 issue a letter or order declaring the record settled and setting
11 forth the schedule for subsequent events. Unless otherwise
12 provided by the Board, the date of the Board's letter or order
13 shall be deemed the date of receipt of the record for purposes
14 of computing subsequent time limits.

15 Implements: ORS 197.830(9)(a) and (14); 197.835.

16

17 **Petition for Review**

18 **661-10-030** (1) Filing and Service of Petition: The
19 petition for review together with four copies shall be filed
20 with the Board within 21 days after the date the record is
21 received by the Board. See OAR 661-10-025(2) and 661-10-026(1)
22 and (5). The petition shall also be served on the governing
23 body and any party who has filed a motion to intervene. Failure
24 to file a petition for review within the time required by this
25 section, and any extensions of that time under OAR 661-10-045(7)
26 or OAR 661-10-067(2), shall result in dismissal of the appeal

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

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

5 (a) Begin with a table of contents;

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

12 (c) Have [a] blue front and back covers of at least
13 65-pound weight paper. The front cover page[, stating]
14 shall state the full title of the proceeding, and the names,
15 addresses and telephone numbers of all parties unrepresented by
16 an attorney. If a party is represented by an attorney, the
17 name, address and telephone number of the attorney shall be
18 substituted for the party. If there is more than one
19 petitioner, the cover page shall specify which petitioner(s) are
20 filing the petition. An intervenor shall be designated as
21 either petitioner or respondent in accordance with OAR 661-10-
22 050;

23 (d) Be typewritten, in pica type, and double spaced,
24 except that quotations and footnotes may be single-
25 spaced with double space above and below each paragraph
26 of quotation;

1 (e) Be signed on the last page by the author.

2 (3) Contents of Petition: The petition for review shall:

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

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

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

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

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

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

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

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

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

25 (4) The petition for review may include appendices
26 containing verbatim transcripts of relevant portions of

1 tapes that are part of the record.

2 [[4)] (5) Amended Petition: A petition for review which
3 fails to comply with subsections (2) or (3) of this section may,
4 with permission of the Board, be amended. The Board shall
5 determine whether to allow an amended petition for review to be
6 filed in accordance with OAR 661-10-005.

7 (6) Cross Petition: Any respondent or intervenor-
8 respondent who desires to file a petition for review may
9 do so by filing a cross petition for review. The cover
10 page shall identify the petition as a cross petition and
11 the party filing the cross petition. The cross petition
12 shall be filed within the time required for filing the
13 petition for review and must comply in all respects with
14 the requirements of this rule governing the petition for
15 review, except that a notice of intent to appeal need
16 not have been filed by such party.

17 Implements: ORS 197.830(10), (11) and (12)(a).

18
19 **Respondent's Brief**

20 661-10-035 (1) Filing and Service of Brief: Unless
21 otherwise provided by the Board, respondent's brief together
22 with four copies shall be filed within 42 days after the date
23 the record is received by the Board. See OAR 661-10-025(2) and
24 661-10-026(1) and (5). A copy of the respondent's brief shall
25 be served on the petitioner or the lead petitioner, if one is
26 designated. and all intervenors.

1 (2) Specifications of Brief: Respondent's brief shall
2 conform to the specifications of the petition for review, except
3 that the brief shall have [a] red front and back covers. If
4 there is more than one respondent, the front cover page shall
5 specify which respondent is filing the brief.

6 (3) Contents of Brief:

7 (a) The respondent's brief shall follow the form
8 prescribed for the petition for review. The respondent shall
9 specifically accept the petitioner's statement of the case or
10 shall cite any alleged omissions or inaccuracies therein, and
11 may state additional relevant facts or other matters. The
12 statement shall be in narrative form with citations to the pages
13 of the record where support for the facts alleged can be found.

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

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

23 [[4]](5) Amended Brief: The Board may allow the filing
24 of an amended brief in accordance with OAR 661-10-005.

25 Implements: ORS 197.830(12)(a).

26

1 **State Agency Briefs**

2 **661-10-038** A state agency that wishes to file a brief
3 under ORS 197.830[(6)](7) shall file the brief together with
4 four copies within the time required for respondent's brief.
5 A state agency brief shall have [a] yellow front and back
6 covers. Implements: ORS 197.830(7).

7

8 **Reply Brief**

9 **661-10-039** A reply brief may not be filed unless
10 permission is [first] obtained from the Board. A request to
11 file a reply brief shall be filed with the proposed
12 reply brief together with four copies as soon as
13 possible after respondent's brief is filed. A reply brief
14 shall be confined solely to new matters raised in the
15 respondent's brief. A reply brief shall have [a] gray front
16 and back covers. Implements: ORS 197.830(12)(a).

17

18 **Oral Argument**

19 **661-10-040** (1) Only parties who have submitted briefs
20 shall be allowed to present oral argument to the Board.

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

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

11 (4) A state agency which has filed a brief pursuant to
12 ORS 197.830(6) may move to argue orally before the Board. The
13 motion shall be filed with the brief.

14 **Implements: ORS 197.830(12)(a).**

15

16 **Evidentiary Hearings**

17 **661-10-045** (1) Grounds for Hearing: The Board may,
18 upon written motion, conduct an evidentiary hearing in the case
19 of disputed allegations in the parties' briefs concerning
20 unconstitutionality of the decision, standing, ex parte contacts
21 or other procedural irregularities not shown in the record and
22 which, if proved, would warrant reversal or remand of the
23 decision. An evidentiary hearing may also be held upon motion
24 or at the direction of the Board to consider disputes regarding
25 the content of the record or requests for stays, attorney fees
26 and actual damages under ORS 197.845.

1 (2) Motions for Hearings: A motion for an evidentiary
2 hearing shall contain a statement explaining with particularity
3 what facts the moving party will present at the hearing and how
4 those facts will affect the outcome of the review proceeding.
5 Whenever possible such facts shall be presented by affidavit
6 with the motion.

7 (3) Conduct of Hearing:

8 (a) Insofar as the Board finds it practical, the hearing
9 shall be conducted in the following order:

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

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

14 (C) The moving party shall present rebuttal evidence;

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

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

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

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

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

1 (4) Evidentiary Rules:

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

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

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

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

14 (e) Any time ten days or more before a hearing, any party
15 may serve on every other party an affidavit, certificate or
16 other document the party proposes to introduce in evidence.
17 Unless cross-examination of the affiant, certificate preparer or
18 other document preparer or custodian is requested within five
19 days prior to hearing, the affidavit or certificate may be
20 offered subject to the same standards and received with the same
21 effect as oral testimony. If cross-examination is requested,
22 and the requestor is informed within five days prior to the
23 hearing that the requested witness will not appear for cross-
24 examination, the affidavit, certificate or other document may be
25 received in evidence if the Board determines that the party
26 requesting cross-examination would not be unduly prejudiced or

1 injured by lack of cross-examination.

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

5 (a) Simplification of the issues;

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

8 (c) Limitation of the number of witnesses;

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

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

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

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

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

20 (c) A statement of all agreed facts;

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

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

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

1 (7) Effect on Time limits: The filing of a motion for
2 evidentiary hearing shall suspend the time limits for all other
3 events in the review proceeding, including the issuance of the
4 Board's final order. If the Board grants an evidentiary
5 hearing, the time limits for other events shall remain suspended
6 until the close of the hearing. Unless the parties agree
7 otherwise, the Board shall schedule any evidentiary hearing not
8 less than ten days after the order granting the motion for
9 evidentiary hearing is issued. If the Board denies a motion for
10 an evidentiary hearing, the time for all other events will begin
11 to run on the date the Board issues its order denying the
12 motion, or on such other date as is specified in that order.

13 (8) Depositions: On petition of any party, the Board may
14 order testimony of any witness to be taken by deposition in the
15 same manner prescribed by law for depositions in civil actions
16 (ORCP 38-40). Depositions may also be taken by the use of audio
17 or audio visual recordings. The petition for depositions shall
18 set forth:

19 (a) The name and address of the witness whose testimony is
20 desired;

21 (b) A showing of relevance and materiality of the
22 testimony;

23 (c) A request for an order that the testimony of the
24 witness be taken.

25 (9) Subpoenas: If the Board orders an evidentiary
26 hearing, the Board shall issue subpoenas to any party to the

1 appeal upon request and upon a showing that the witness or the
2 documents to be subpoenaed will provide relevant evidence.
3 Subpoenas may also be issued under the signature of the attorney
4 of record of a party. Witnesses appearing pursuant to subpoena,
5 other than parties or employees of the Board, shall be tendered
6 fees and mileage as prescribed by law for witnesses in civil
7 actions. The party requesting the subpoena shall be responsible
8 for service of the subpoena and tendering the witness and
9 mileage fees to the witness.

10 **Implements: ORS 197.830(13)(b).**

11

12 **Intervention**

13 **661-10-050** (1) Standing to Intervene: The applicant and
14 any person who appeared before the local government, special
15 district or state agency may intervene in a review proceeding
16 before the Board. Status as an intervenor is recognized when a
17 motion to intervene is filed, but the Board may deny that status
18 at any time prior to issuance of its final order.

19 (2) Motion to Intervene: In the interests of promoting
20 timely resolution of appeals, a motion to intervene shall be
21 filed as soon as is practicable after the [Notice of Intent to
22 Appeal] **notice of intent to appeal** is filed pursuant to
23 OAR 661-10-015, or the amended [Notice of Intent to Appeal]
24 **notice of intent to appeal** is filed or original [Notice of
25 Intent to Appeal] **notice of intent to appeal** is refiled
26 pursuant to OAR 661-10-021. The motion to intervene (see

1 Exhibit 3) shall:

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

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

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

8 (3) Intervenor's Brief:

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

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

17 Implements: ORS 197.830(2) and (6).

18

19 **Amicus Participation**

20 **661-10-052** (1) A person or organization may appear as
21 amicus only by permission of the Board on written motion. The
22 motion shall set forth the interest of the movant and state
23 reasons why a review of relevant issues would be significantly
24 aided by participation of the amicus. A copy of the motion
25 shall be served on all parties to the proceeding.

1 (2) Appearance as amicus shall be by brief only, unless
2 the Board specifically authorizes or requests oral argument. An
3 amicus brief shall be subject to the same rules as those
4 governing briefs of parties to the appeal, and shall be filed
5 together with four copies within the time required for
6 filing respondent's brief. No filing fee is required. An
7 amicus brief shall have [a] green front and back covers.

8 Implements: ORS 197.805; 197.830(12)(a).

9

10 **Consolidation**

11 **661-10-055** The Board, at the request of any party or on
12 its own motion, may consolidate two or more proceedings,
13 provided the proceedings seek review of the same or closely
14 related land use decision(s) or limited land use decision(s).

15 Implements: ORS 197.805.

16

17 **Motions**

18 **661-10-065** (1) When Motion is Appropriate: Unless
19 these rules or applicable statutes provide another form of
20 application, a request for an order or relief shall be made by
21 filing a motion in writing for such order or relief. A motion
22 shall show proof of service on all parties.

23 (2) Time of Filing: A party seeking to challenge the
24 failure of an opposing party to comply with any of the
25 requirements of statutes or Board rules shall make the challenge
26 by motion filed with the Board and served on the adverse party

1 within 10 days after the moving party obtains knowledge of such
2 alleged failure. The opposing party may, within 10 days from
3 the receipt of a motion, file an answer.

4 (3) How Submitted: Parties shall submit all motions
5 without oral argument unless otherwise directed by the Board. A
6 party that desires a telephone conference on a motion
7 shall include a request for a telephone conference in
8 its motion or answer. The Board may, at its discretion,
9 conduct a telephone conference with the parties to
10 consider any motion.

11 (4) Effect of Filing Motion: Except as provided in
12 OAR 661-10-026(6) with regard to objections to the
13 record and OAR 661-10-045(7) with regard to motions for
14 evidentiary hearing, or as may otherwise be ordered by
15 the Board, the filing of a motion shall not suspend the
16 time limits for other events in the review proceeding.

17 Implements: ORS 197.805.

18
19 **Extensions of Time**

20 661-10-067 (1) In no event shall the time limit for the
21 filing of the [Notice of Intent to Appeal] notice of intent
22 to appeal be extended.

23 (2) [In] Except as provided in this section, in no
24 event shall the time limit for the filing of the petition for
25 review be extended without the written consent of all parties.
26 The Board may, on its own motion, extend the deadline

1 for filing the petition for review to allow time to rule
2 on a motion to dismiss.

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

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

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

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

16 Implements: ORS 197.830(12)(a).

17

18 **Stays**

19 **661-10-068** (1) A motion for a stay of a land use
20 decision or limited land use decision shall include:

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

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

25 (c) A statement of facts and reasons for issuing a stay,
26 demonstrating a colorable claim of error in the decision and

1 specifying how the movant will suffer irreparable harm if a stay
2 is not granted;

3 (d) A suggested expedited briefing schedule;

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

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

11 (3) Unless otherwise ordered by the Board, a response to a
12 motion for a stay of a land use decision or limited land use
13 decision shall be filed within 10 days after the motion is filed
14 and shall set forth all matters in opposition to the motion and
15 any facts showing any adverse effect, including an estimate of
16 any monetary damages that will accrue if a stay is granted.

17 (4) An order granting a stay of a quasi-judicial land use
18 decision or limited land use decision involving a specific
19 development of land shall be conditional upon filing an
20 undertaking in the principal amount of \$5,000. In all other
21 cases an undertaking, if ordered by the Board, shall be in the
22 amount set forth in the order granting the stay. All
23 undertakings shall be substantially in the form as set forth in
24 Exhibit 4, and shall be accompanied by proof that the surety is
25 qualified by law to issue surety insurance as defined in ORS
26 731.186. Any objections to the form of undertaking or the

1 surety shall be filed within 10 days after service of a copy of
2 the undertaking on the objecting party.

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

9 **Implements: ORS 197.845.**

10

11 **Final Order of Board**

12 **661-10-070** (1) An Order of the Board is final when the
13 cover page of the order containing the caption of the appeal:

14 (a) States "Final Opinion and Order";

15 (b) Indicates whether the decision being reviewed is
16 dismissed, affirmed, reversed or remanded;

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

18 (d) Is time and date stamped by the Board.

19 (2) When an order of the Board becomes final it shall be
20 made available to interested members of the public. The Board
21 may charge a reasonable fee for copies of its final orders or
22 other orders furnished to members of the public.

23 (3) Notwithstanding subsections (1)(a) and (b) of this
24 section, an order granting a motion to dismiss an appeal is a
25 final order.

26 **Implements: ORS 197.805.**

1

2 **Reversal or Remand of Land Use Decisions**

3 **661-10-071** (1) The Board shall reverse a land use
4 decision when:

5 (a) The governing body exceeded its jurisdiction;

6 (b) The decision is unconstitutional; or

7 (c) The decision violates a provision of applicable law
8 and is prohibited as a matter of law.

9 (2) The Board shall remand a land use decision for further
10 proceedings when:

11 (a) The findings are insufficient to support the decision,
12 except as provided in ORS 197.835(9)(b);

13 (b) The decision is not supported by substantial evidence
14 in the whole record;

15 (c) The decision is flawed by procedural errors that
16 prejudice the substantial rights of the petitioner(s); or

17 (d) The decision improperly construes the applicable law.

18 **Implements: ORS 197.835.**

19

20 **Reversal or Remand of Limited Land Use Decisions**

21 **661-10-073** (1) The Board shall reverse a limited land
22 use decision when:

23 (a) The governing body exceeded its jurisdiction;

24 (b) The decision is unconstitutional; or

25 (c) The decision violates a provision of applicable law
26 and is prohibited as a matter of law.

1 (2) The Board shall remand a limited land use decision for
2 further proceedings when:

3 (a) The findings are insufficient to support the decision,
4 except as provided in ORS 197.835(9) (b);

5 (b) The decision is not supported by substantial evidence
6 in the record. The existence of evidence in the record
7 supporting a different decision shall not be grounds for
8 reversal or remand if there is evidence in the record to support
9 the final decision;

10 (c) The local government committed a procedural error
11 which prejudiced the substantial rights of the petitioner(s); or

12 (d) The decision violates a provision of applicable law
13 but is not prohibited as a matter of law.

14 Implements: ORS 197.828; 197.835.

15
16 **Miscellaneous Provisions**

17 **661-10-075** (1) Cost Bill and Attorney['s] Fees

18 (a) Time for Filing: The prevailing party [shall] may
19 file a cost bill [and] or a petition for attorney['s] fees, or
20 both, within [15] 14 days after the final order is issued. The
21 prevailing party shall serve a copy of [the] any such cost bill
22 [and] or petition for attorney['s] fees on all parties.

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

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

1 (B) If the governing body is the prevailing party, the
2 governing body may be awarded copying costs for the required
3 number of copies of the record, at [\$.10] 20 cents per page.

4 (C) Costs awarded to the governing body pursuant to this
5 section shall be paid from the deposit required by OAR 661-10-
6 015(4) and shall not exceed the amount of that deposit.

7 (c) Forfeit of Filing Fee and Deposit: If a record has
8 been filed[,] and a petition for review is not filed within the
9 time required by these rules, [the appeal shall be dismissed]
10 and the governing body files a cost bill pursuant to
11 this section requesting forfeiture of the filing fee and
12 deposit. the filing fee and deposit required by
13 OAR 661-10-015(4) shall be awarded to the governing body as cost
14 of preparation of the record. See OAR 661-10-030(1).

15 (d) Return of Deposit: After any award of costs
16 under subsection (b) or (c) of this section is made, any
17 amount of the deposit remaining shall be returned to
18 petitioner.

19 [(d)] (e) Attorney['s] Fees:

20 (A) Attorney['s] fees may be awarded by the Board to the
21 prevailing party as specified in ORS 197.830(15)(b).

22 (B) Attorney['s] fees shall be awarded to the applicant,
23 against the governing body, if the Board reverses a land use
24 decision or limited land use decision and orders a local
25 government to approve a development application pursuant to ORS
26 197.835(8).

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

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

12 (g) If a cost bill, a petition for attorney fees,
13 or both are filed, and the Board's decision is appealed
14 to the Court of Appeals, the Board shall act on the cost
15 bill or petition for attorney fees after an appellate
16 judgment is issued and any further Board proceedings
17 necessitated by that judgment are concluded.

18 (2) Filing and Service:

19 [(a) Filing of Notice of Intent to Appeal: Filing of a
20 Notice of Intent to Appeal with the Board is accomplished by
21 delivery of the Notice to the Board, or receipt of the Notice by
22 the Board, accompanied by payment of the filing fee and deposit
23 required by OAR 661-10-015(4), on or before the date due.]

24 [(b)] (a) [Filing of Other Documents: With the exception
25 of the Notice of Intent to Appeal] Except as provided in
26 OAR 661-10-015(1)(b) with regard to the notice of intent

1 to appeal, and as provided in OAR 661-10-021(5)(b) with
2 regard to a refiled original notice of intent to appeal
3 or an amended notice of intent to appeal, filing a
4 document with the Board is accomplished by:

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

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

8 [(c)] (b) Service:

9 (A) Any document filed with the Board, other than the
10 [Record] record as provided in OAR 661-10-025(3), or the
11 record after withdrawal for reconsideration as provided
12 in OAR 661-10-021(6), must also be served on all parties
13 contemporaneously. Service on two or more petitioners
14 unrepresented by an attorney is accomplished by serving the lead
15 petitioner designated under OAR 661-10-015(3)(f)(A).

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

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

21 (D) Documents filed with the Board shall contain either an
22 acknowledgement of service by the person served or proof of
23 service by a statement certified by the person who made service
24 of the date of personal delivery or deposit in the mail, and the
25 names and addresses of the persons served. (See Exhibit 6).

1 [(3) Cross Petition: Any respondent who desires to file a
2 petition for review may do so by filing a cross petition for
3 review. The cover page shall identify the petition as a cross
4 petition and the party filing the cross petition. The cross
5 petition shall be filed within the time required for filing the
6 petition for review and must comply in all respects with the
7 requirements of this rule governing the petition for review,
8 except that a Notice of Intent to Appeal need not have been
9 filed by such party.]

10 [(4)] (3) Number of Copies Required:

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

13 (b) Any other document filed with the Board, except
14 documents to be included as part of the record on review, shall
15 be filed with one copy.] Unless these rules provide
16 otherwise, all documents filed with the Board shall be
17 filed with one copy. No copy of a record transmitted
18 pursuant to OAR 661-10-025(2), or a record after
19 withdrawal for reconsideration transmitted pursuant to
20 OAR 661-10-021(6), is required.

21 (4) Copying Fee: The following fees shall be
22 charged for certified copies of Board public records or
23 other nonexempt documents as defined in ORS 192.410,
24 192.501, 192.502, and 192.505:

25 (a) 20 cents per page for copies of any Board
26 transcript or document of public record that is more

1 than fifty pages:

2 (b) \$10 for a copy of a cassette tape of a Board
3 oral argument or hearing.

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

9 (6) Appearances Before the Board: An individual
10 [petitioner] shall either appear on his or her own behalf or be
11 represented by an attorney. A corporation or other organization
12 shall be represented by an attorney. In no event may a party be
13 represented by someone other than an active member of the Oregon
14 State Bar.

15 (7) Lead Petitioner: A lead petitioner is
16 responsible for notifying the other petitioners of
17 documents received from the Board and other parties, but
18 each petitioner remains responsible for his or her own
19 representation.

20 [(7)] (8) Computation of Time: Time deadlines in these
21 rules shall be computed by excluding the first day and including
22 the last day. If the last day is Saturday, Sunday or other
23 legal holiday, the act must be performed on the next working
24 day.

25 [(8)] (9) Address and Hours of the Board: The Board's
26 address is [100 High Street, Suite 220,] 306 State Library

1 Building, 250 Winter Street NE Salem, Oregon, 97310. The
2 telephone number is 373-1265. The offices of the Board shall be
3 open from 8:00 a.m. to 5:00 p.m. Monday through Friday.

4 [(9)] (10) Citations to Board Decisions: Citations to
5 Board decisions shall be in the following form:

6 Reported Cases: John Doe v. XYZ County, 5 Or LUBA 654
7 (1981).

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

10 [(10)] (11) Motion to Transfer to Circuit Court:

11 (a) Any party may request, pursuant to ORS 19.230, that an
12 appeal be transferred to the circuit court of the county in
13 which the appealed decision was made, in the event the Board
14 determines the appealed decision is not reviewable as a land use
15 decision or limited land use decision as defined in ORS
16 197.015(10) or (12).

17 (b) A request for a transfer pursuant to ORS 19.230 shall
18 be initiated by filing a motion to transfer to circuit court not
19 later than ten days after the date a respondent's brief or
20 motion that challenges the Board's jurisdiction is [due
21 under OAR 661-10-035(1)] filed. If the Board raises a
22 jurisdictional issue on its own motion, a motion to
23 transfer to circuit court shall be filed not later than
24 ten days after the date the moving party learns the
25 Board has raised a jurisdictional issue.

1 (c) If the Board determines the appealed decision is not
2 reviewable as a land use decision or limited land use decision
3 as defined in ORS 197.015(10) or (12), and a motion to transfer
4 to circuit court is filed as provided in section (10)(b) of this
5 rule, the Board shall not dismiss the appeal and shall transfer
6 the appeal to the circuit court of the county in which the
7 appealed decision was made.

8 Implements: ORS 19.230; 197.830(8), (12)(a) and
9 (15); 197.835(8); 197.845(3).

EXHIBIT 1
(661-10-015)

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

Jane Smith,)
)
Petitioner,)
)
vs.)
)
Willamette County,)
)
Respondent.)

LUBA No. _____

NOTICE OF INTENT TO APPEAL

I.

Notice is hereby given that petitioner intends to appeal that land use decision or limited land use decision of respondent entitled [INDICATE TITLE OF LAND USE DECISION OR LIMITED LAND USE DECISION], which became final on [INDICATE DATE] and which involves [SET FORTH A BRIEF STATEMENT OF THE NATURE OF THE DECISION]

II.

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

or

(b) Petitioner, Jane Smith, represents herself: [INDICATE ADDRESS AND TELEPHONE NUMBER]. Petitioner, Jane Smith, is designated lead petitioner [IF APPLICABLE].

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III.

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 OF ATTORNEY].

[III.] IV.

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 or limited 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 OR LIMITED LAND USE DECISION. THE TELEPHONE NUMBERS OF SUCH PERSONS MAY BE OMITTED].

NOTICE:

Anyone designated in paragraph [III] IV 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)

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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] **III** and [III] **IV** of this Notice pursuant to OAR 661-10-015(2) by (a) first class mail or (b) personal delivery. [INDICATE WHICH]

Dated: _____

Signature

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EXHIBIT 2

(661-10-025)

TABLE OF CONTENTS

OF RECORD

<u>ITEM</u>		<u>PAGE</u>
1.	Certified cover sheet for City Council record of PC File Nos. 7517 PA: Application of Fred Meyer, Inc./Hyster Co. for a comprehensive plan map amendment and zone change (Fred Meyer/Hyster proposal)	1
2.	Record of City Council action on appeal of Fred Meyer/Hyster Co. from Hearings Officer's decision denying Fred Meyer/Hyster proposal	2
3.	Record of City Council action on proposed findings to grant appeal of Fred Meyer/Hyster Inc. and approve Fred Meyer/Hyster proposal	3
4.	Letter from a City Auditor to Edward J. Sullivan Transmitting a form letter mailed to parties of interest concerning the Fred Meyer/Hyster comprehensive plan map amendment and zone change and transmitting a copy of a notice published in the Oregonian on Sunday, June 7 and Wednesday, June 11, 1986	4
5.	Notice of final decision on Fred Meyer appeal and notice published in the Oregonian on Sunday, June 7, 1986 and Wednesday, June 11, 1986	5
6.	Form letter from City Auditor to interested parties, dated June 6, 1986, transmitting a copy of ordinance No. 158347, and list of persons to whom form letter was mailed	6
7.	Letter from City Auditor to Walter H. Lodewich, dated June 5, 1986, transmitting a copy of Ordinance No. 158573	13
8.	Letter from City Auditor to Hyster Co., dated June 5, 1986, transmitting a copy of Ordinance No. 158573	14
9.	Letter from City Auditor to Fred Meyer Real Estate Properties, Ltd., dated June 5, 1986, transmitting a copy of Ordinance No. 158573	15
10.	Ordinance No. 158573, adopted June 4, 1986	16

1 11. Minutes of City Council hearing on Fred Meyer
2 appeal, held June 1, 1986 43
3
4
5
6
7

8 Exhibits Retained by City Until Time of
9 Oral Argument Under OAR 661-10-025(2)
10

- 11
12 A. Casette tapes of City Council hearing on Fred
13 Meyer/Hyster Co. appeal, held June 1, 1986.
14
15 B. Map entitled Revised Site Plan, submitted by
16 applicant Fred Meyer/Hyster Co. at City Council
17 hearing on June 1, 1986.
18
19 C. Aerial photograph labelled EC-43/85-11, submitted by
20 opponents at City Council hearing on June 1, 1986.
21
22 D. The local record in the prior LUBA appeal, Younger
23 v. City of Portland, LUBA No. xx-xxx. A copy of
24 this record is on file with LUBA and is not included
25 in this transmittal. [NOTE: IF THERE ARE
26 PETITIONERS IN THE CURRENT LUBA PROCEEDING THAT WERE
27 NOT PARTIES IN THE PRIOR LUBA APPEAL, A COPY OF THE
28 RECORD IN THE PRIOR APPEAL MUST BE SERVED ON THE NEW
29 PETITIONERS.]
30

1 EXHIBIT 3
2 (OAR 661-10-050)

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

5
6 Jane Smith,)
7)
8 Petitioner,)
9)
10 vs.) LUBA No. _____
11)
12 Willamette County,)
13)
14 Respondent.)

15 MOTION TO INTERVENE

16 I.

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

21 II.

22 The facts establishing movant's right to intervene are as
23 follows: [SET FORTH STATEMENT OF FACTS WITH REFERENCES TO
24 THE RECORD OR ATTACH AFFIDAVITS OR OTHER PROOF].

25 III. [OPTIONAL]

26 In support of this motion, John Davis relies on the
27 attached [affidavit,] Memorandum of Law [or both].
28

29 _____
30 Date

John Davis

31 or

Denise Neil, Attorney for
John Davis

32
33
34
35
36 [Add Certificates of Filing and Service on separate page. See
37 forms in Exhibits 5 and 6.]

EXHIBIT 4
(661-10-068)

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

1			
2			
3			
4			
5			
6	Jane Smith,)	
7)	
8	Petitioner,)	
9)	
10	vs.)	LUBA No. _____
11)	
12	Willamette County,)	
13)	
14	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 or limited land use decision described as [DESCRIBE LAND USE DECISION OR LIMITED LAND USE DECISION]; and

II.

Whereas, the Land Use Board of Appeals entered an order dated [INDICATE DATE] staying said land use decision or limited 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

1 surety, hereby undertake that petitioner will pay all reasonable
2 attorney's fees and actual damages which may be awarded by the
3 Land Use Board of Appeals in the event the land use decision or
4 limited land use decision above described shall be affirmed, but
5 not to exceed the sum of \$_____.

6

IV.

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

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25

Dated this _____ day of _____, 19____.

Principal

By: _____
Surety

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

1 EXHIBIT 5
2 (661-10-075)

3
4 CERTIFICATE OF FILING

5 [For Document Other Than
6 Notice of Intent to Appeal or Record]

7
8 I hereby certify that on [INDICATE DATE], I filed the
9 original of this [IDENTIFY DOCUMENT], together with [INDICATE
10 NUMBER OF COPIES] copies, with the Land Use Board of Appeals,
11 [Suite 220, 100 High Street SE] 306 State Library Building.
12 250 Winter Street NE, Salem, OR, 97310, by (a) first class
13 mail or (b) personal delivery [INDICATE WHICH].
14
15
16
17

18 Dated: _____
19
20
21
22
23
24

Signature

EXHIBIT 6
(661-10-075)

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